



# Maine Human Rights Commission

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## Memorandum

From: Amy Sneirson, Executive Director *AMS*

To: File

Date: Feb 6, 2015

Re: Diaz v. Moody's Diner

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At approximately 10:45 am, I received a phone call from the Governor. The Governor said he had some folks from Moody's Diner with him and they were talking about the case. The Governor understood that people were coming here for the conciliation and he was asking us to postpone it so he could issue an executive order to investigate. There had been improper action by the hearing officer, by the agency, before it even got to being heard in front of the commissioners. If we don't cooperate, the Governor will go to court.

The Governor said he had been to the MHRC many times over the past 40 years as an employer and that this time the situation sounded like something was very different/wrong. The Moody's folks tell him that the hearing officer (he was referring to the investigator I think) had said to the Moody's folks "shut up, I'm not listening to you" and that the hearing officer was biased; the hearing officer told the Moody's folks they were tending to lean toward the complainant. Shows bias from the start. At some point in our conversation, the Governor said that he doesn't know these people (the Moody's folks, I believe he meant).

I told the Governor I understood that the Moody's folks had concerns but that I did not think the investigator told anyone to shut up. I said that the conciliation involved more than just the Commission staff, that all the parties were headed here now and that the conciliation process was required by statute. I said that the statute did not provide for any review by the Governor (or anyone else) of the Commission's decision. I asked if he had specific concerns to discuss. The Governor said our investigator edited an audiotape; that's inappropriate. At some point, I misspoke and said something like "your clients..." and the Governor immediately got very angry. The Governor said "oh, I see, by you referring to them as my clients you've made your position clear". I told the Governor I was sorry I had misspoken – I know they are not his clients, I just talk to lawyers all the time. The Governor said "you go by the law, ok" and "you've established your position". The Governor said that my predecessor and he had had a fantastic relationship, that he and Pat would talk if he had a concern and within an hour could clear it all up.

I told the Governor I would be glad to meet with him to talk about his concerns but that the upcoming conciliation was a separate matter. I told him that the respondents had counsel to assist them and had a choice of whether to participate in conciliation, that many respondents choose not to participate and/or not to settle a case. The Governor said the respondents felt they had no choice

because they were presented with “this public interest remedies” demand (I presume the respondents showed the Governor the sheet of confidential settlement proposal terms we prepared for discussion). I said that the respondents always have a choice not to agree to any settlement and had counsel to represent them. The Governor said you don’t understand, you don’t understand, this is an 87 year old company. The audiotape had been altered, not sure of the source. The Governor said I had indicated that the respondents were his “clients” and that showed my position, my predecessor had always been reasonable but he could see that was not the case, goodbye.

At approximately 10:54 am, Commission Counsel Barbara Archer Hirsch and I called the Attorney General to report the above, as the AG’s office represents our agency. We spoke to AAG Susan Herman and AG Mills. The AG’s office heard our description of my conversation with the Governor, and asked that I please write a memo for my file. They asked if there had been counsel there for the Governor; I said I did not know. The AG’s office told us that they would reach out to Cynthia Montgomery, the acting counsel for the Governor. The AG’s office said the Governor had no authority to review the case, that there was no such executive action he could take. The AG’s office stated they would inform Cynthia about this and express the AG’s concern about the Governor’s attempt to interfere in a pending action. The AG’s office also suggested that I pull counsel together before we began this conciliation to put this morning’s goings-on on the record, and to report to counsel the AG’s position that the Governor had no authority to intervene. I said I would.

At approximately 11:15 am, I called Rebecca Webber (complainant’s counsel) to report this morning’s goings-on, so she would not be taken aback if some of this arose in the conciliation. She said she had given the whole audiotape to us, and would be glad to talk to the Governor about our accuracy. I said that was not my reason for calling her. I said I stood behind our investigation and my only reason for calling her was to ensure that she was not prejudiced by not knowing about this in case it came up at conciliation, so we were transparent. I told her I would pull counsel aside before the conciliation to address it.

At approximately 11:39 am, AAG Sue Herman called me to report that she had talked to Cynthia Montgomery and that Cynthia had not been in the room when the call happened but that Cynthia had heard about the case/issue. Cynthia said that the Governor would not pursue an executive action but that he had asked Cynthia to review the case. Cynthia asked if we would reschedule the conciliation because if we did so it might make things less heated. Sue did tell Cynthia that the vote already happened in this case and this was just our regular process, with people already on the way and no request by the parties to postpone. I told Sue we had already postponed once at the request of the respondents. Sue said that Cynthia would appreciate it if we would postpone so she could look at it, but that I had to act in my role as ED to do what is appropriate. I said I was not inclined to postpone but also was aware that we had a budget request pending and that this might affect that; Sue said that I probably knew the Governor had refused to approve the AG’s budget orders. She said I had to do what I thought was appropriate here.

At approximately 11:45 am, the parties and counsel arrived for conciliation. At approximately 12:05 pm, Jill Duson asked counsel to join me in the conference room. BAH, JCD, and I met with Rebecca Webber and Janet Britton. I informed them about the following:

- The morning’s call and threat of action by the governor, and his concern that our investigator edited the audiotape, and my refusal to postpone the conciliation.
- My contact with the AG’s office and the AG’s opinion that the governor had no authority to review the Commission’s decision.

- The AG's contact with the governor's counsel and her agreement that the gov had no authority to review the decision but his continuing request that the counsel review the situation.
- My intent to continue conciliation as usual unless one of the parties requested postponement, which I would consider.

Janet had no idea what went on in the meeting and was not there, and says her clients didn't tell her what went on. It did appear that Janet knew that her clients were meeting with the Governor because she was waiting for them to tell her if conciliation was going to proceed and she should plan on that as usual, or not. Rebecca asked for the name of the Governor's counsel so Rebecca could get in touch and review the information with counsel. She was outraged that respondents were attacking Michele Dion's credibility. I did tell the attorneys that respondents had reached out to several legislators about this case, as they had contacted me on respondents' behalf, and that respondents have the right to complain to their legislators and the Governor; the only reason I brought this up was to be transparent and so we're all on the same page. Rebecca asked if we should continue the conciliation, and I said I wanted us to treat this as any other conciliation. If we are not making progress in good faith toward resolution, Jill can handle that scenario.

I clarified that neither counsel was requesting postponement; they both confirmed that was accurate.

We commenced conciliation as usual at about 12:10 pm.