

NATIONAL COMMITTEE
FOR
SEXUAL CIVIL LIBERTIES

Thomas F. Coleman, Esq.
Co-Chairman

Dr. Arthur C. Warner
Co-Chairman

1800 North Highland Avenue, Suite 106
Los Angeles, California 90028

(213) 464-6666

October 3, 1979

Re: Statewide Housing Protection
Now Available to California Gays

NEWS

FOR IMMEDIATE RELEASES

In a precedent setting move, the State of California, Division of Fair Employment Practices has agreed to investigate and remedy housing discrimination cases against gay persons. This is the first time that gay tenants in California will have a state agency to assist them in sexual orientation discrimination cases.

This decision resulted from extensive negotiations with Governor Brown's office and other administrative officials by Mr. Paul D. Hardman of San Francisco and Mr. Thomas F. Coleman, a Los Angeles attorney.

In 1978 a decision was made by the Division of Fair Employment Practices not to handle gay housing cases, although it appeared that the Division had jurisdiction to do so. In August, 1979, this problem was discovered by Ms. Susan McGrievy, staff attorney for the Los Angeles Gay Community Services Center, when the Division refused to process several housing cases which she had referred to the Division for investigation. That same month the National Committee intervened and brought the matter to the attention of Mr. J. Anthony Kline, the Governor's Legal Affairs Secretary. Kline, Hardman, and Coleman then worked out a solution with Ms. Joanne A. Lewis, Chief of the Division of Fair Employment Practices.

Upon learning of the decision to handle gay cases, Thomas F. Coleman, Co-chair of the National Committee commented, "This is another example of the firm commitment of the Brown administration to equality under the law for all regardless of sexual orientation. The intervention and assistance from the Governor's office probably saved us three years of litigation over this issue. Now that we have statewide protection in gay housing discrimination cases, we should refer such cases to the Division of Fair Employment Practices for resolution

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF FAIR EMPLOYMENT PRACTICES

455 GOLDEN GATE AVENUE, SAN FRANCISCO

Address reply to: FEPC, P.O. Box 603, San Francisco, CA 94101

Administrative Office 557-2000

Complaint Section 557-2005



September 26, 1979

Mr. Thomas F. Coleman
Co-Chairman
National Committee for
Sexual Civil Liberties
1800 North Highland Avenue, Suite 106
Los Angeles, CA 90028

Dear Mr. Coleman:

Enclosed is a copy of Directive Transmittal No. 044, Revised.

Sincerely,

Joanne A. Lewis/clw
Joanne A. Lewis
Chief

JAL/clu

Enclosure

cc: Paul Hardman (w/Enclosure)



DIRECTIVE TRANSMITTAL

Transmittal Number

044, Revised

Date of Distribution

September 25, 1979

1. SUBJECT. UNRUH ACT AND GROOMING STANDARD CASES.
2. PURPOSE. To create a procedure for screening grooming standard and Unruh Act cases to identify those requiring active involvement by the Division.
3. ORIGINATOR. Office of the Chief.
4. RESPONSIBILITIES. Consultants, senior consultants, area administrators, attorneys, Assistant Chiefs, and Chief.
5. DISTRIBUTION. Consultants, senior consultants, area administrators, attorneys, clerical office supervisors, clericals, and headquarters administrative staff.

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6. BACKGROUND. The Unruh Civil Rights Act (Civil Code Section 51) expressly prohibits arbitrary discrimination by business establishments, including those selling or renting real property, on the basis of sex, race, color, religion, ancestry, and national origin. The Act has also been interpreted by the California Supreme Court to prohibit arbitrary discrimination by business establishments on any basis, whether or not that basis is enumerated in the Unruh Act itself. Thus, along with discrimination on the basis of race, sex, and the other listed bases, the Unruh Act covers, for example, discrimination in housing against people with children or criminal records, discrimination in restaurants against barefoot people, and discrimination in private hospitals against poor people.

In November, 1977, the Commission determined formally that it would exercise jurisdiction over sex discrimination cases involving employers' grooming standards based on male and female stereotypes. Examples of such grooming standards are requirements that women wear bras or dresses, and requirements that men have short hair or not wear beards or mustaches.

The Division has determined that it does not have the enforcement resources necessary fully to pursue all grooming standard cases or all of the infinite variety of possible Unruh Act cases, but it also recognizes that many such cases involve serious discriminatory practices, in light of the underlying purposes of the FEP and Unruh Acts, and therefore warrant full prosecution. This Directive establishes a consistent procedure for identifying these cases.

7. PROCEDURE.

- a. Intake and Referral. With the exception for physical handicap complaints (see 8.) the Division will accept complaints within our Unruh Act jurisdiction, i.e., complaints alleging discrimination on bases other than those enumerated in the Act or in the FEP Act or Rumford Act. This includes, for example, complaints alleging discrimination in housing against families with children, discrimination in housing against gay people, discrimination in restaurants against barefoot people, discrimination in housing against people who are welfare recipients, are mentally retarded or have pets, and discrimination in housing against people with criminal records or poor credit ratings. The complaint should be accepted and docketed in the regular fashion. The complaint should be served on the Respondent with the short form service letter in Attachment A to this Directive (Form F-100-68-1). A regular case file should be assembled and sent immediately to the intake consultant's area administrator.
- b. Screening. The area administrator will put the case on the agenda of the next executive staff meeting by submitting a copy of the complaint and a written summary of any relevant additional information on the case that does not appear in the complaint. The executive staff will discuss the case and the Chief will make a final decision whether to pursue the case.


The criteria to be used in this screening include the seriousness of the challenged practice in light of the central purposes of the FEP and Unruh Acts, the severity of the injury suffered by the complainant due to the challenged practice, the impact on available enforcement resources of pursuing the complaint and others like it, and the potential impact of the Division's decision on others subject to the same practice. The executive staff and the Chief will endeavor to apply these and similar criteria uniformly over time in order to develop a consistent set of priorities for the Division's treatment of Unruh and grooming standard cases.

- c. Further Action. If a decision is made to pursue a case, the compliance staff will proceed with the case in the ordinary fashion. If the case is not to be pursued, it should be closed under closure category 14, and the complainant should be sent, by regular, first class mail, the appropriate closure letter in Attachment B to this Directive, along with the appropriate right-to-sue notice.

- d. Current Cases. On the effective date of this Directive, the Division will have on file Unruh Act complaints on the bases enumerated in the Act. These cases need not be submitted for screening and should be handled in the usual manner.
8. EXCEPTION FOR PHYSICAL HANDICAP CASES. The Division is not permitted to accept complaints under the Unruh Act on the basis of physical handicap. A California court has ruled that Civil Code Sections 54 and 54.1 (prohibiting discrimination in public accommodations against the physically disabled) and Sections 54.3 and 55 (permitting court actions to remedy such discrimination) provide the sole remedy for such discrimination. This limitation should be explained to any charging party attempting to file a physical handicap complaint under the Unruh Act, and that person should also be given a copy of the hand-out in Attachment C to this Directive, and informed orally that Civil Code Section 55 permits the person to file a private court action to remedy their grievance.
9. APPROVAL.



Joanne A. Lewis, Chief



Date

AD 103

NATIONAL COMMITTEE
FOR
SEXUAL CIVIL LIBERTIES

Thomas F. Coleman, Esq.
Co-Chairman

Dr. Arthur C. Warner
Co-Chairman

1800 North Highland Avenue, Suite 106
Los Angeles, California 90028
(213) 464-6666

August 28, 1979

Ms. Alice Lytle
Secretary of State and
Consumer Service Agencies
1220 "N" Street
Room 409
Sacramento, California 95814

Dear Ms. Lytle:

Thank you for meeting with members of the National Committee for Sexual Civil Liberties yesterday. I think the meeting was productive. I have written to Ms. Joanne Lewis of the Division of Fair Employment Practices regarding modifying the memorandum you issued last year. Any assistance you can give in this regard would be most appreciated. I have asked her to issue a directive to the effect that gay housing discrimination cases will be processed by the Division. We are not asking for public accommodations protection by the Division at this time, because it is not as pressing a need.

With respect to your objections to AB 1, I have written to Senator Roberti telling him that you wish to speak to him regarding his bill, Senate Bill 18. Please let me know the outcome of that meeting.

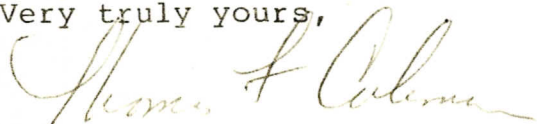
At yesterday's meeting with the State Personnel Board, Mr. Hank Harvey of the Public Employment and Affirmative Action Division informed me that a grant proposal was submitted under the Intergovernmental Personnel Act, to help implement the Governor's Executive Order on sexual orientation discrimination. It is my understanding the grant must be approved by the Personnel Board, an Advisory Panel, and finally, by you. Any assistance you can give in securing the necessary approval for a grant would be most appreciated. At this point in time, we are operating on a purely voluntary basis, using our own private funds to insure the Executive Order is implemented. However, since we are people of modest means,

Ms. Alice Lytle
August 28, 1979
Page 2

this cannot continue indefinitely. We need grant money and financial assistance to make the Governor's Executive Order meaningful. Please let me know if there is anything else we can do to help with this grant.

Again, thank you for meeting with us yesterday.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Thomas F. Coleman". The signature is written in dark ink and is positioned above the typed name.

Thomas F. Coleman

/mbo



DIRECTIVE TRANSMITTAL

Transmittal Number

44

Date of Distribution

September 15, 1978

1. SUBJECT. UNRUH ACT CASES.
 2. PURPOSE. To provide guidelines for accepting cases alleging violations of the Unruh Act (Civil Code Section 51).
 3. ORIGINATOR. Office of the General Counsel.
 4. RESPONSIBILITIES. Consultants, senior consultants and lawyers share the responsibility for implementing this directive.
 5. DISTRIBUTION. Consultants, senior consultants, area administrators, clerical office supervisors, legal staff and headquarters administrative staff.
-
6. BACKGROUND. The Unruh Civil Rights Act (Civil Code Section 51) expressly prohibits discrimination by business establishments, including those selling or renting real property, on the basis of sex, race, color, religion, ancestry, and national origin. The Act has been interpreted to prohibit, in addition, discrimination on any arbitrary basis. The Division does not have the personnel or resources to enforce the Act against any and all arbitrary discrimination, and must therefore establish some priorities for exercising its jurisdiction under the Act. That is the purpose of these guidelines.
 7. CASES TO BE ACCEPTED.
 - a. Grounds Specifically Enumerated in the Act. We will accept Unruh complaints based on the Act's specifically enumerated grounds (sex, race, color, religion, ancestry or national origin), except that complaints involving grooming restrictions alleged to discriminate on the ground of sex will not be accepted unless Division legal counsel has determined that the harm involved makes appropriate our exercise of jurisdiction.
 - b. Other Grounds. We will also accept Unruh complaints of discrimination on the ground of marital status, medical condition and age

(expressly listed as protected classes in the Rumford or FEP Acts). However, after initial investigation sufficient to determine the defense asserted by the respondent, legal counsel should be consulted to determine whether the case should be pursued. Legal counsel will determine whether the defense is sufficiently rational so that arbitrary discrimination could not be proved.

8. CASES NOT TO BE ACCEPTED.

- a. Physical Handicap. We will not accept Unruh Act complaints based on physical handicap. Instead, prospective complainants will be informed that their rights are protected under Section 54.1 of the Civil Code. They should be advised (give each prospective complainant a copy of Attachment A) that they may bring suit under Section 55, or attempt to get the Department of Rehabilitation (through the Attorney General), the city attorney, the district attorney or the Attorney General to sue for an injunction against the discrimination.

Note that this applies only to non-employment cases. The Division will continue to accept complaints of discrimination on the basis of physical handicap in employment, under the FEP Act.


- b. Other Cases. We will not accept other complaints within our Unruh Act jurisdiction, i.e., complaints alleging discrimination on bases other than those enumerated in the Act or in the FEP Act or Rumford Act. This excludes, for example, complaints alleging discrimination in housing against families with children, discrimination in housing against → gay people, discrimination in restaurants against barefoot people, discrimination in housing against people who are welfare recipients, are mentally retarded or have pets, and discrimination in housing against people with criminal records or poor credit ratings. However, consultants should be alert to identify cases in which the respondent's asserted basis for discrimination is a pretext for exclusion on the basis of race, national origin, etc.

In all cases not accepted, an Inquiry Report should be filled out and forwarded to the headquarters EDP coordinator. The Division wishes to identify the

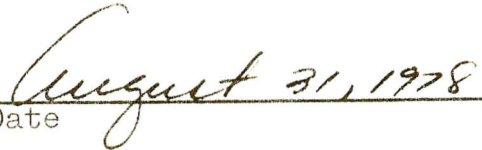
kinds of people, discrimination and facilities involved in potential Unruh Act cases.

Finally, the prospective complainants should be given Attachment B, which explains that our limited personnel and resources require us to concentrate on the persons expressly enumerated in the statutes we enforce.

9. APPROVAL.



Alice A. Lytle, Chief



Date

- ATTACHMENTS:
- A - To Physically Disabled Persons Experiencing Discrimination in Housing or Public Accommodations.
 - B - To Persons Wishing to File Unruh Act Complaints.

AD 103

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August 28, 1979

Ms. Alice Lytle
Secretary of State and
Consumer Service Agencies
1220 "N" Street
Room 409
Sacramento, California 95814

Dear Ms. Lytle:

Thank you for meeting with members of the National Committee for Sexual Civil Liberties yesterday. I think the meeting was productive. I have written to Ms. Joanne Lewis of the Division of Fair Employment Practices regarding modifying the memorandum you issued last year. Any assistance you can give in this regard would be most appreciated. I have asked her to issue a directive to the effect that gay housing discrimination cases will be processed by the Division. We are not asking for public accommodations protection by the Division at this time, because it is not as pressing a need.

With respect to your objections to AB 1, I have written to Senator Roberti telling him that you wish to speak to him regarding his bill, Senate Bill 18. Please let me know the outcome of that meeting.

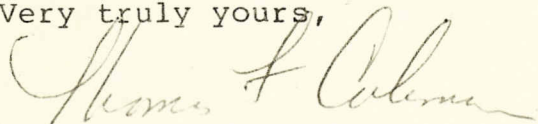
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Ms. Alice Lytle
August 28, 1979
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Again, thank you for meeting with us yesterday.

Very truly yours,

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Thomas F. Coleman

/mbo

AD-103

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1800 North Highland Avenue, Suite 106
Los Angeles, California 90028
(213) 464-6666

August 28, 1979

Ms. Joanne Lewis
Division Chief
Division of Fair Employment Practices
455 Golden Gate Avenue
San Francisco, California 94101

Re: Transmittal No. 44, Dated September 15, 1978,
Issued by Alice A. Lytle

Dear Ms. Lewis:

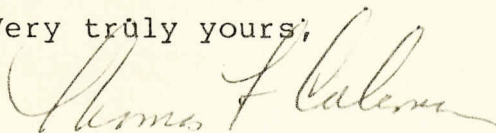
On August 8, 1979, I sent a letter to Mr. John Martin, Jr. regarding the document described above. I am enclosing a copy of that letter for your information, as it contains my objections to that Administrative Directive. Yesterday, I met with Alice Lytle in Sacramento to discuss the basis for that Directive. She admitted there was no legal basis whatsoever for limiting the Unruh Act jurisdiction, including no basis for limiting gay housing discrimination cases. She indicated it was strictly a way of setting priorities and saving resources. When we discussed the possibility of an administrative change in the Directive, she suggested I contact you.

As this Directive was issued administratively by a Division Chief, so may it be modified by a Division Chief. I am asking you at this time to issue an Administrative Directive, which would acknowledge the Division's jurisdiction to receive and remedy complaints of housing discrimination against gay persons. We are not asking for public accommodations to be handled at this time, as the need is not as pressing. If such an Administrative Directive were issued, there would be no need for a public hearing on the matter before the full Commission, nor any need for litigation over the matter. I hope you will seriously consider modifying the Directive at the earliest possible date. I would suggest that you might discuss this matter with Ms. Lytle, who originally issued the Directive.

Ms. Joanne Lewis
August 28, 1979
Page 2

Mr. Paul Hardman, of this Committee, will be calling you for a meeting to discuss the matter more fully. If you have any questions, please give me a call.

Very truly yours,

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Thomas F. Coleman

/mbo

Enclosure

AD 103

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August 28, 1979

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1800 North Highland Avenue, Suite 106
Los Angeles, California 90028
(213) 464-6666

August 28, 1979

Senator David Roberti
Senate Majority Leader
State Capitol
Sacramento, California 95814

Dear David,

Thank you for meeting with me yesterday to discuss various issues of concern to this Committee. I hope Michael Woo will keep us informed of any developments with respect to Senate Bill 18, including the proposed hearing dates. Tony Kline of the Governor's Office has agreed to appear at the Committee hearing on that Bill to publicly support it on behalf of the Administration.

We met yesterday with Alice Lytle, and ironed out some of our differences. She may wish to meet with you to discuss your bill and offer some possible amendments to it. I would like to discuss those proposed amendments with you before you actually make any changes. Some of her concerns are legitimate, but there are political considerations involved. I might suggest that Michael Woo also get in contact with the Agnos people to find out more directly what their plans are. I would like to hear from Michael regarding any information he may discover.

I will send a copy of this letter to Jim Dantona of your Los Angeles office. Yesterday we discussed setting up a meeting with some gay leaders during the Legislative recess. I think you should meet with gay leaders on a regular basis, at least every three months. It shouldn't take too much time, and would help give you more visibility. I know you are seriously interested in issues surrounding sexual orientation discrimination, but unfortunately, the majority of gay people are not aware of your positions. I would also like to discuss with Jim Dantona the matter of publicity for you in this regard. I could provide him with a list of names and addresses of gay publications throughout California, and even nationally. I think a carefully worded press release issued to the gay media every two or three months would be very helpful for your image.

Senator David Roberti

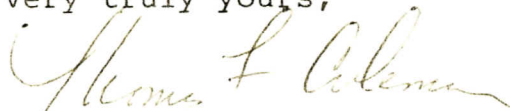
August 28, 1979

Page 2

At the Los Angeles meeting, I would like to more fully discuss the matter of the Advisory Council to State Government on Sexual Orientation Discrimination. It has become apparent to me that the state bureaucracy is so large and complicated that without such an advisory council, it will take a lifetime to make a substantial dent in state government.

Again, thanks for meeting with us, and I hope to see you in late September.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Thomas F. Coleman".

Thomas F. Coleman

/mbo

SACRAMENTO ADDRESS
STATE CAPITOL
SACRAMENTO, CA 95814
(916) 445-8390

DISTRICT ADDRESS
6640 SUNSET BOULEVARD, SUITE 202
HOLLYWOOD, CA 90028
(213) 464-1178

REPLY TO:
 DISTRICT OFFICE
 SACRAMENTO OFFICE

STATE SENATOR
DAVID A. ROBERTI
MAJORITY FLOOR LEADER

California Legislature

TWENTY-THIRD DISTRICT
LOS ANGELES COUNTY

CHAIRMAN
JOINT COMMITTEE ON
THE REVISION OF THE
PENAL CODE
SELECT COMMITTEE ON SMALL
BUSINESS ENTERPRISES
COMMITTEES
BUSINESS AND PROFESSIONS
(VICE CHAIRMAN)
ELECTIONS AND
REAPPORTIONMENT
FINANCE
JUDICIARY



September 27, 1979

Mr. Thomas F. Coleman
NATIONAL COMMITTEE FOR SEXUAL
CIVIL LIBERTIES
1800 No. Highland Avenue, Ste. 106
Los Angeles, CA 90028

Dear Tom:

Thank you for your letter of August 28th.

I will wait to hear from Alice Lytle to see how she can help us with the amendments to SB 18. I will have Michael Woo contact Assemblyman Agnos regarding his plans with his legislation. Jim Dantona will be setting up periodical meetings between the Gay Community and myself. He should be contacting you shortly regarding this.

Sincerely,

A handwritten signature in blue ink that reads "David".

DAVID A. ROBERTI
State Senator

cc: Michael Woo
Jim Dantona