

MINUTES OF THE COMMISSION FOR HUMAN RIGHTS-JUNE 24, 2004

A regular meeting of the Commission for Human Rights was held in the agency conference room on Thursday, June 24, 2004. Present at the meeting were Commissioners Dr. John Susa, Chair, Iraida Williams and Camille Vella-Wilkinson. Absent were Commissioners Jean Stover, Randolph Lowman, and Joaquin F. Gomes. The Chairperson Called the meeting to order at 9:10 a.m.

Status Report: Michael D. Evora, Executive Director, Mr. Evora was not in

attendance as he was at The EEOC Annual Training Conference.

A written report from Mr. Evora was handed out – Attached

Case Production Report-Attached

Case Closures-Attached

AGED CASE REPORT-Attached

MISCELLANEOUS: Cynthia Hiatt, Legal Counsel, reported for Mr. Evora that

1) Betsy Ross has been named the filing Coordinator for the

Commission for filing on-line minutes and meeting notices with the Secretary of the State.

2) Joanne Goulet, EEOC Project Director will retire, effective July 10, 2004.

STATUS REPORT-COMMISSIONERS

GENERAL STATUS: No new information.

OUTREACH: Iraida Williams attended HUD'S 2004 National Fair Housing Training Conference and Policy Summit in Washington, D.C. from June 14-18.

1. Hud Training Academy (NASTA) was very informative.

Camille Vella- Wilkinson- attended the Labor Studies & Research Awards Evening at the Westin Hotel June 17, 2004.

STATUS REPORT- LEGAL COUNSEL, Cynthia M. Hiatt and Francis Gaschen.

LITIGATION: Report attached.

LEGISLATION: Ms. Hiatt and Mr. Gaschen discussed the status of legislation.

REGULATIONS: The Commission approved the regulatory agenda to be submitted to the Secretary of State.

HEARING SCHEDULE: Discussed

DECISIONS: No Discussion at this time.

The meeting adjourned at 10:10 a.m. The next regular meeting of the Commission is scheduled for July 29, 2004 at 9:00 a.m. at the Commission for Human Rights at 180 Westminster Street 3rd.

Respectfully Submitted,

Cynthia M. Hiatt
Legal Counsel

Notes taken by: M. Ramirez

**EXECUTIVE DIRECTOR'S
REPORT TO COMMISSIONERS
JULY 29, 2004**

I. BUDGET

The Commission's FY 2004 revised budget provides a total of \$1,270,686 for the agency (\$1,037,645 in general/state revenue and \$233,041 in federal revenue). The revised budget authorizes 15 full time equivalent (FTE) positions. The revised budget amount is \$104,588 more than enacted and includes \$116,557 to be applied to the negative balance (\$265,694) carried forward into FY 2004.

In June, the House Finance Committee approved \$1,263,245 for the Commission, or \$7441 less than provided for in the revised budget. We are inquiring as to the nature/reason for the decreased amount but expect that its fiscal impact will be minimal.

The Commission's FY 2005 recommended budget was heard by the House Finance Committee on March 19, 2004. The budget provides a total of \$1,223,744 (\$984,444 in general/ state revenue and \$239,300 in

federal revenue). The amount is \$165,549 more than our request/target, mainly due to the Budget Office's/Governor's decision NOT to recommend the proposed staff reduction of 2 FTEs.

II. FEDERAL CONTRACTS

EEOC – The FY 2004 contract is for 371 cases. In FY 2003, we contracted with EEOC to complete 271 cases; we received an upward modification of 30 cases in July 2003 and successfully completed the contract of 301. As of June 30, 2004, we completed 232 contract-eligible cases. In order to complete the contract, we must close an additional 139 contract-eligible cases between July and September. (We may request a downward modification; there is no penalty for not making the contract amount by September 30.)

HUD – The Commission was compensated for 24 housing cases completed in FY 2003. For FY 04, according to HUD Project Director Angela Lovegrove, we took in a record 47 new housing charges. In FY 04, we processed a total of 44 housing cases, 38 of which were co-filed with HUD. Our next HUD contract (to be executed some time in early Fall) will reflect these record closures.

III. PERSONNEL

Joanne Goulet, EEOC Project Director, retired after 30 years of dedicated service to the Commission. Her last day of work was July 9. We have received authorization from Budget/ Personnel to fill her

position. The position was posted and we received three (3) internal bids. We plan to schedule interviews for the week of August 9 (exact date to be determined). Any Commissioner interested in participating in the interview/selection process should let me know ASAP.

Glenn Cardozo, Senior Compliance Officer, has been activated into military service and will be deployed to Iraq. His last day of work will be Friday, July 30. A party/lunch is planned for him at 1:00 p.m. on that day. Commissioners are welcome to attend.

IV. OUTREACH

See attached report.

V. GENERAL STATUS

●Meetings with staff members – I continue to meet with individual investigative staff members on a monthly basis to monitor case production. I am meeting more frequently with those investigators who have exhibited low production rates.

●Case Closures – Refer to attached report. As with FY 03, FY 04 was a record-breaking year in terms of case processing.

●Aged Cases – Refer to attached report. Progress continues to be made on decreasing the aged caseload. Only 9 aged cases remain in investigation, a decrease of 72 % from December 2003.

These cases are expected to be processed no later than September. As of October 1, 2004, the “00” cases will be considered aged and will have to be added to the number of aged cases. The GOOD NEWS is that, due to the laudable efforts of Commissioners and staff, only five (5) “00” cases remain in investigation (and most, if not all, of these are expected to close by September)!!!

●Fiscal Fitness Project

The Commission has complied with all requests to date in a timely manner.

●Commissioner (Re)Appointments – The vacancy created by the resignation of Richard Ferland and the reappointment of Commissioners Lowman and Williams (whose terms have expired) are at issue. The Governor did not act upon the reappointments during the last legislative session.

After no (re)appointments were made despite raising the issue at a 10/27/03 meeting with Deborah Smith, Governor’s Director of Municipal Affairs & Appointments, and despite several follow-up contacts/requests with Christine DiFilippo of the Governor’s office, Dr. Susa sent a formal request letter directly to the Governor on March 31. There has been no response to this letter to date.

Patty Fairweather, in the Governor’s Legal Counsel Office, has been assigned the task of working on the Commissioner (re)appointment issue. I have called Ms. Fairweather on a number of occasions (most recently on Monday, June 21) and have not received a callback.

●Frank Gaschen has blazed a trail with respect to the Commission's stayed cases (stayed due to receivership proceedings and court order). Thanks to Frank's diligence, research and expertise, to date three (3) such cases have been administratively closed.

- Miscellaneous

-The Commission is in the midst of a Performance Audit by the Department of Admin./Bureau of Audits. Mary Murphy, who is conducting the audit, is using one of the Caucus Rooms adjacent to the Hearing Room.

-Intern Susan Pracht has begun working on the Commission's FY 2004 Annual Report. We expect to have a draft for review by mid-August.

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To: Commissioners

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: July 29, 2004

*** = new information since the last meeting**

***Rhode Island Commission for Human Rights on behalf of Beaufort v. Bay Management Corporation/Oxbow Associates and Tammy Nelson**

Suit in the name of the Commission was brought in Newport County Superior Court on behalf of Mr. Hymie Beaufort, the complainant. The suit alleges that Mr. Beaufort was discriminated against in Housing because of his race and perceived disability. The charge before the Commission was co-filed with HUD. The Commission is the plaintiff because our contract with HUD so provides. The defendants have all been served with the complaint and a Request for Production of Documents (similar to our RFI).

***Furtado v. Eclectic Grille**

In this matter the complainant filed a charge against the respondent alleging discriminatory termination from employment (disability). Thereafter, the respondent was put into receivership as the owners could not agree as to the proper management of the restaurant. As a result of the stay granted when the court case was filed, the Commission was prevented from further investigation of the charge. The Commission has filed with the Superior Court a request that the stay of proceedings be lifted as against the Commission so that the charge could be fully investigated. Due to oversights, the Commission was not given any notice of the most recent motions in Court, so the Commission has filed a motion for rehearing on the motions about which it was not given notice. The Commission motions were scheduled for hearing on June 25th. Frank Gaschen met with the Receiver and a tentative agreement on how to proceed has been reached. This is the first case in which the Commission has taken the active step of intervening in a Receivership to get permission to continue its proceedings, so any court order here could be a good precedent. Discussions re procedural issues are ongoing, as well as possible settlement of the claim.

***American Legion v. John B. Susa, Camille Vella-Wilkinson and Jean Stover in their official capacities and Cote, Stifano and Potter**

The respondent has appealed the decision in favor of complainants and moved for a stay of the Commission decision and order.

***Tucker v. Blue Cross**

The complainant has filed an administrative appeal of the Commission's finding of no probable cause. The Commission had received stipulations extending the time in which it must file the record as the complainant has represented that the parties are discussing settlement. It now appears that the attempt at settlement has not been successful and the Commission will soon be filing the appropriate file in the Superior Court. The Commission is currently seeking a stipulation on the record to be filed; two of the three attorneys have signed it and we are waiting for the third.

International Assoc of Plasterers and Cement Masons Local #40 and Jeffrey Brunelle vs. Tracey McCue and the RI Commission for Human Rights by and through Michael Évora

A Commission hearing on this case was scheduled for April 2. The respondent, Jeffrey Brunelle, filed a complaint in Superior Court seeking to have the Commission case dismissed. The respondent filed in Superior Court a Motion to Disqualify Cynthia Hiatt as counsel for the Commission for the Superior Court case. The hearing on the motion was scheduled for March 2 before Judge Procaccini. When Mr. Brunelle's attorney spoke on the motion, it became evident that he was also arguing a Motion to Dismiss the charge and complaint before the Commission. Neither the Commission nor the Court had received the Motion to Dismiss. The Court continued the hearing to

April 5, asking that Mr. Brunelle's attorney send the motion to the Commission and giving the Commission two weeks to object to the Motion. The Court further requested that the April 2 Commission hearing date be continued to allow the Court to decide the Motion to Dismiss before the Commission hearing. The Commission filed a Memo in Opposition to the Motion to Dismiss, a Motion for Summary Judgment (to remove the Union as a party since there is nothing pending at the Commission against them) and a Motion to Dismiss (based on the failure of Mr. Brunelle to exhaust administrative remedies before going to Court). In the meantime, Judge Procaccini decided that the Motions should be heard on the Motion calendar, instead of on his calendar, the Formal and Special Cause Calendar. [Mr. Brunelle's attorney had scheduled the motions on the Formal and Special Cause calendar when Judge Procaccini was away and it was unusual to have them heard there.] The new date for hearing all the dispositive motions is August 3. It is up to Mr. Brunelle's attorney to reschedule the motion to recuse on the regular motion calendar.

King v. City of Providence Police Dept.

This is a case in which the Commission issued a decision finding that the City of Providence had denied Mr. King a position as a police officer because of his age. The Commission had not yet determined damages when the FUD's decision came down, so the Commission decision was not final and the respondent had the opportunity to have the case heard in Superior Court. The respondent elected to have the matter heard before the Superior Court and the trial will be

held shortly. The complainant conducted a record deposition of Cynthia Hiatt on March 12. The respondent may schedule a further deposition of Ms. Hiatt. The parties have also deposed former Commission employee Nancy Kolman. Ms. Hiatt was under subpoena to testify at the trial, but the trial has been postponed. At the last minute, the Judge agreed to hear complainant's motion for summary judgment, which argued that the Court should disallow respondent from having a hearing in court because the hearing at the Commission was complete before the FUD's decision came down. The court denied the motion for summary judgment. The complainant plans to appeal.

Finley v. Cannistraci

On March 17, 2003, the Commission received a copy of the Order of Judge Fortunato that dismissed the appeal and affirmed the Commission decision. The complainant has filed a Motion to Attach respondent's property. An attorney has entered his appearance for respondent and is objecting to the motion to attach.

Texeira v Biernacki

Judge Clifton ruled that the appeal had not been filed in time and refused to hear it. The R.I. Supreme Court denied the petition for certiorari. The CP and the RICHR drafted a Petition to Enforce. The respondent's attorney filed a motion to withdraw and a motion to stay proceedings until respondent retains another attorney. The Commission filed an objection to the motion to stay. The Court granted the motion for Mr. Kirwan to withdraw as attorney and denied

the request for a stay. The complainant's attorney has filed the Petition to Enforce. He is having difficulty serving the respondent.

Gaffney v Town of Cumberland et al

The respondent has appealed the Commission decision. The parties and the Commission have filed briefs. The case has been assigned to Judge Savage. The complainant's attorney plans to submit a motion for expedited consideration due to complainant's age.

Brenda Rossi and Charles Fletcher v. The Estate of Domenic DeRosa, Mrs. DeRosa and Rite Choice Realty

The decision finding that respondents discriminated against the complainants issued on June 30, 2003. All of the respondents except Lynn Attruia have appealed. The Commission has filed the administrative record.

Mackisey v. Sarvis

No new information since the court order specifying the amounts owed to complainant

Solis v. Frank Lombardo & Sons et al

The respondents have filed an appeal of the Commission decision that found discrimination. The Commission has filed the administrative record. The parties agreed on a briefing schedule. The complainant filed a motion to dismiss on 2/3/03. The hearing was scheduled for 2/14/03, but complainant's attorney needed to

reschedule it and does not yet have a new date.

DePasquale v. Providence School Committee, Jointly and Severally

The parties have settled the case. The parties and the Commission have agreed that the Commission Decision and Order will be vacated.

That stipulation will be filed once the complainant has received the last settlement check. Apparently no checks have yet been issued because one more committee of city government needs to approve the settlement.

Nelson v. Vames

Complainant filed a Petition to enforce the Commission Orders. The Commission has joined the Petition and an order to enforce has been submitted to the court. The respondent contends that it has no assets.

OUTREACH – FY 05

RI COMMISSION FOR HUMAN RIGHTS

DATE TRAINER(S) TOPIC LOCATION/GROUP NUMBER ATTENDING

7/27/04 SwindellPracht Fair Housing CrossroadsN. Kingston 2 reps

7/28/04 ÉvoraLovegroveToribio Commission Overview(Fair Empl./Fair Hsng.) Progreso LatinInstitute for Labor Studies & Research 3 reps