

MINUTES OF THE COMMISSION FOR HUMAN RIGHTS-June 30, 2005

A meeting of the Commission for Human Rights was held in the agency conference room on Thursday, June 30, 2005. Present at the meeting were Commissioners Dr. John Susa, Chair. Camille Vella-Wilkinson, Jean Stover, Alberto Cardona, Alton Wiley, Jr. Randolph Lowman and Joaquin F. Gomes. Absent was Commissioner Iraida Williams. The meeting began at 9:02 am.

A motion to accept the minutes of April, 2005 and May, 2005 was made by Randolph Lowman. The motion was seconded by Commissioner Stover and carried.

Status Report: Michael D. Évora, Executive Director-

A written report was handed out - Attached - new information is in bold print

Case Production Report - Attached

Aged Case Report - Attached

Outreach Report - Attached

STATUS REPORT - COMMISSIONERS-

GENERAL STATUS: No report at this time. Chairperson Susa

welcomed Commissioner Alberto Aponte Cardona to the Commission's board.

OUTREACH: No Commissioner outreach reported at this time.

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

LITIGATION: report attached. New information is in bold print

Commissioner Meeting -2- June 30, 2005

LEGISLATION: Discussed

REGULATIONS: No action at this time.

HEARING SCHEDULE: Discussed

DECISIONS: No discussion

The meeting adjourned at 10:00 a.m. The next regular meeting of the Commission is scheduled for Thursday, July 28, 2005 at 9:00 am.

Respectfully Submitted,

**Michael D. Évora
Executive Director**

**Notes taken by: B. Ross
EXECUTIVE DIRECTOR'S
REPORT TO COMMISSIONERS
JUNE 30, 2005**

I. BUDGET

Per the 2005 Revised Appropriations bill*:

**FY 2005 FY 2005 FY 2006
(Enacted) (Revised) (Enacted)**

State 984,444 987,583 979,397

Fed. 239,300 213,328 269,705

Total 1,223,744 1,200,911 1,249,102

Compare FY 2004 Actual: 1,101,287

On June 29, I contacted Theo Toe, the Commission's Budget Analyst, for a budget status check; he advised that:

- 1. The red balance which has existed for the past two years has been eliminated;**
- 2. The Commission should end FY 2005 with about \$3000 in General Revenue.**

***The Revised Appropriations bill also seeks to amend the section of the FEPA entitled "Compensation of commission members – Reappointment" to provide that "Members of the commission shall not be compensated for the discharge of their official duties but shall be entitled to the reimbursement of expenses actually and necessarily incurred by them in the performance of their duties."**

II. FEDERAL CONTRACTS

EEOC – The FY 2005 contract is for 328 cases. As of 6/8/05, according to EEOC Project Director Marlene Toribio, we have closed 208 co-filed cases for EEOC FY 2005; we must close 120 by 9/30/05 to

complete the contract. We will be given the opportunity to request an upward or downward modification in July, after the close of the third quarter (June 30).

HUD – As of 6/28/05, according to HUD Project Director Angela Lovegrove, we have taken in 32 new housing charges, 27 of which are co-filed with HUD. Within this same time period, we have processed 36 housing charges, 29 of which were co-filed with HUD.

III. PERSONNEL

No change in status of regular staff.

The Commission has a total of 13 Summer Interns.

IV. OUTREACH – Refer to 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.

●Case Closures – Refer to attached report. Statistics for the first 11 months of FY 05 reveal that, despite our staffing shortages, we have processed nearly as many cases as the full staff had processed by this time last year.

●Aged Cases – Refer to attached report. Progress continues to be made on decreasing the aged caseload. The Commission successfully reduced the aged caseload by 81.2% (from 85 to 16 cases) in EEOC FY 04. As of the date of this report, there remains one (1) aged case in investigation; it is expected that this case will be submitted for ruling this month. We hope to enter the next EEOC fiscal year with NO aged cases in investigation. (I have identified two (2) cases which would become aged as of 10/1/05 and am working with the Investigators who have these cases to ensure that they are closed/processed before that date.)

●Commissioner (Re)Appointments –Alberto Aponte Cardona has been appointed to fill the vacancy created by the retirement of Commissioner Gomes.

- Miscellaneous**

- General Progress:**

- Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of fiscal 1998. That number has steadily decreased, and the Commission ended FY 2004 with 602 cases in inventory. As of 6/8/05, there were 409 cases in inventory.**

- The Performance Audit by the Department of Admin./Bureau of Audits has been completed. Mary Murphy, who conducted the audit, has indicated that she is in the process of finalizing the report based**

on input from her superiors. We should receive a draft shortly.

-New computers – Jason Flanders is working with the State’s IT staff to coordinate the setup of the computers. The conversion is nearly complete; old computers have been set up in the Intern Work Area for use by interns.

-Two grievances were filed against the Commission related to 1) interpreting services provided by staff, and 2) payment of Union dues by temporary employees (Jay Flanders and Susan Pracht). Both grievances were denied after a third-level hearing (held on October 19). The Union has appealed the denial of the second grievance; arbitration is scheduled to be held in October.

Respectfully submitted,

Michael D. Évora
Executive Director

Attachments

OUTREACH – FY 05

RI COMMISSION FOR HUMAN RIGHTS

DATE TRAINER(S) TOPIC LOCATION/

GROUP NUMBER

ATTENDING

7/27/04

Swindell

Pracht Fair Housing Crossroads

N. Kingston 2 reps

7/28/04

Évora

Lovegrove

Toribio Commission Overview

(Fair Empl./Fair Hsng.) Progreso Latino

Institute for Labor Studies & Research 3 reps

8/3/04

Swindell

Pracht Fair Housing Urban League –

Transitional Program. for Teens 6

8/31/04

**Lovegrove Fair Housing Winchester Park Hsng. Devel. – East
Providence 8 (6 residents, 2 HRC staff)**

9/2/04

Palazzo Commission Overview

(Fair Empl./Fair Hsng.) WOON Radio Listening Audience

9/13/04 Swindell

**Pracht Fair Housing Q and A Welcome Arnold Shelter—RICH Housing
Locator System Presentation (Cranston) 6**

9/14/04

Exhibition Fair Housing/Equal Employment “Bringing Housing and

Employment Together”—Providence (sponsored by RICH) 100

9/21/04 Lovegrove

**Pracht Fair Housing Shelter and Housing Providers
Network—Providence 25**

9/25/04 Lovegrove

**Swindell Employment and Housing Discrimination RI Heritage
Festival – State House Lawn Visitors to Info. Table**

9/27/04

Swindell

Pracht Fair Housing Welcome Arnold Shelter—Cranston 14

9/28/04 Swindell

**Pracht Fair Housing Macaulay Village—Providence 6 (5 residents,
1 staff)**

11/16/04

Lovegrove

Pracht Fair Housing Housing Network of RI—Providence 15 (1 staff)

11/23/04

Gardner

Pracht Fair Housing Kent Center-

Warwick 10

12/13/04

Gardner

Pracht Fair Housing Welcome Arnold Shelter--Cranston 7

1/10/05 Lovegrove Fair Housing

(Consolidated Plan—City of Providence) Fox Point Boys and Girls Club—Providence

2/18/05 Christy Sexual Harassment Loans for Homes—East Greenwich, RI 25

4/04/05 Lovegrove Coffee Cup Salute NBC 10 Viewing Audience

4/04/05 Lovegrove Jim Vincent Show Cox Cable Public Access Viewing Audience (8 airings on Public Access)

4/06/05 Christy RI College School of Social Work (Sexual Harassment)—“Social Work and the Law” class—Professor Laureen D’Ambra RI College—Providence, RI 20

4/16/05 Evora Cape Verdean Community Conference (Equal Employment/Fair Housing) Tolman High School—Pawtucket, RI 300

4/22/05

Gaschen 18th Annual Labor & Employment Law Conference – Presentation on benefits of filing with Commission & pursuing case under state (vs. federal) law W. Alton Jones Campus - URI +/- 120

To: Michael Évora

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: June 30, 2005

Recent developments are in bold.

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

The respondent appealed the decision in favor of complainants and moved for a stay of the Commission decision and order. The parties agreed to a consent order that the enforcement of the Commission order would be stayed during appeal and that respondent would not dispose of its assets during appeal. The decision on attorney's fees issued. The Commission has filed the administrative record with the court. The parties now have a consent order that sets a briefing schedule. The respondent's brief is due July 19. The complainants' brief and the brief of the Commission are due August 17.

Babbitt v. Crescent Park Manor, et al.

The Commission will be filing a motion to intervene as a party plaintiff in this case. Plaintiff's counsel has no objection to the motion.

Brunelle, et al. v. Tracey McCue, et al.

The Order from the August, 2004, hearing has been filed, along with a judgment dismissing the case.

Gaffney v Town of Cumberland et al

The respondent appealed the Commission decision. The parties and the Commission filed briefs. The case was assigned to Judge Savage. Judge Savage held a status conference with the attorneys, including Commission counsel, on January 21. Judge Savage indicated that she is close to issuing a decision but wished to give

the parties an opportunity to discuss resolution. The attorneys for the complainants and respondents plan to discuss the case. Another status conference was scheduled with Judge Savage on February 14; it has been put on hold because Mrs. Gaffney was out of state. The complainant will be submitting an offer to the respondents soon. Counsel called complainant's attorney on 4/21. Counsel spoke to complainant's counsel in June, the parties are discussing offers.

Hiroi v. Bodell, et al.

On April 13, 1996, complainants filed a charge of familial discrimination in the rental of housing. The respondents elected and a Superior Court case was brought on behalf of the complainants by the Attorney General's office. That case was ultimately dismissed for want of prosecution on April 15, 2004. On April 14, 2005, we became aware of the dismissal. A motion to re-instate the case was filed. Both the AG and the Hiroi family were notified. The hearing was scheduled for 5-17-05. The defendants filed objections to the motion to re-instate. Commission Counsel Gaschen was added as co-counsel with the Attorney General on the case. The hearing was postponed to June 3. An attempt at settlement is being made by our office. The motion to re-instate was denied. We are waiting for entry of the Order to decide on appeal or a separate lawsuit. A copy of the transcript of the hearing has been ordered.

Joint v. DeMarkey and Rhode Island Commission for Human Rights

The individual respondent filed an appeal of the Commission Decision and Order. The Commission issued the decision on attorney's fees. The respondent filed an amended appeal to include its appeal of the Commission Decision on Attorney's Fees. The Commission filed the administrative record. The parties agreed to a briefing schedule, Mr. Joint's brief was due June 1. The Commission brief and the complainant's brief are due 30 days after we receive Mr. Joint's brief. Mr. Joint received an extension to file his brief; it is now due June 30.

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. 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 had planned to appeal. Counsel for the complainant decided that he would not appeal and the trial date has been rescheduled.

Moore v. Tri-Way Security

Respondent has filed for bankruptcy. Outstanding is a motion for legal fees to complainant's attorney. We will prepare this for ruling.

RICHR on behalf of Canlas v. Bay Management Co., Oxbow Associates & Tammy Nelson

Suit in the name of the Commission was brought in Newport County Superior Court on behalf of Mr. Francisco Canlas and his brother. The suit alleges they were discriminated against in housing because of race and ancestral origin. The Commission is the plaintiff because our contract with HUD provides that we bring suit if neither private counsel nor the AG will represent the plaintiff. All defendants were served with the complaint and a Request for Production of Documents. The defendants answered the complaint. Interrogatories were served. The case was settled; documentation is being prepared to dismiss the complaint. A follow-up was made to counsel for the respondent.

RICHR and Lovegrove v. Escolastico

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 3-24-05. Service of the complaint will be made once respondent can be located. Motion for extended time within which to serve to be filed.

RICHR and Morin v. Teofilo Silva, et al.

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 3-24-05. Service of the complaint will be made once respondent can be located. Motion for extended time within which to serve to be filed.

RICHR and Rossi v. Attruia

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 3-29-05. Defendant to be served. We are having some difficulties with service. Hearing on May 17, 2005. Defendant was served and a hearing was held at which time the Court continued the matter to July 12 to allow the respondent to speak to an attorney.

RICHR and Scurry v. C & H Investments, et al.

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 9-1-04. Defendants were

served on 9-13-04. No answer was filed, the defendants defaulted and judgment entered. Counsel has spoken with an attorney to resolve this claim. The attorney does not represent the Costas but is a friend who was acting as a conduit for settlement negotiations. The offer was sent to the complainants, they rejected it. An Exemplified copy of the Judgment was obtained. Action will be brought against the respondents in Florida as they refuse to comply with the Decision. Further legal action is being taken to collect the judgment. A follow-up has been sent to the cooperating Attorney.

RICHR and Solis v. Lombardo

The respondents filed an appeal of the Commission decision that found discrimination. The Commission filed the administrative record. The parties agreed on a briefing schedule. The respondents' appeal was dismissed for lack of action. A petition to enforce the Decision of the Commission was filed, answer for defendants filed and the matter was scheduled for hearing and then continued. The complainant was paid and we are in the process of negotiating resolution of relief to the Commission. Hearing on May 17, 2005. The hearing was postponed to July 12 to allow us more time to have the agreement signed by all parties. A follow-up has been sent to Attorney for respondents.

RICHR and Texeira v Biernacki

Judge Clifton dismissed the respondent's appeal as untimely filed. The R.I. Supreme Court denied a petition for certiorari. The complainant's attorney and the Commission filed a Petition to Enforce as a new case. The respondent was served. Petition for Enforcement granted on September 22, 2004. The Judgment was stipulated to, with terms of payment in the accompanying Order. Payment was due to the State of Rhode Island on October 11. While the CP has been paid, the Commission has not yet been paid. Negotiations on extended payment plan commenced. Execution ordered as respondent failed to comply with agreement. Service of execution upon the respondent has been difficult to effectuate. Further legal action is being taken to collect the judgment.

RICHR v Biernacki, et al.

The Commission filed suit to collect the judgment from the above case that was never paid. An additional claim was filed, alleging that the defendants had engaged in a fraudulent transfer of real property to avoid paying that judgment. We are in the process of negotiating settlement of the case.

RICHR and Zeigler v. Laura Sitrin, Finance Director of the City of Newport

The Commission found discrimination in 1988. The respondent filed an appeal but did not take action on the appeal. Since the court dismisses cases in which no action has been taken in five years, it

appears that the appeal has been dismissed. The Petition for Enforcement was filed and discovery requests have been drafted. Service of suit was accepted by counsel for city. Answer filed. The matter was assigned to January 14, 2005. Negotiations with the city are ongoing to resolve its compliance with the Decision of the Commission. The complainant was paid. All remaining issues were resolved in Court on 4-15-05, and the City has been ordered to conduct training. The respondent objected to the Order and we are going to schedule a hearing to determine if the City must conduct the training.

Tucker v. Blue Cross

The complainant 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 had represented that the parties were discussing settlement. 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. Two reminders sent to the other attorney. The administrative record was filed in Court.

DeCamp v. Dollar Tree Stores, __ A.2d __, 2005 R.I. LEXIS 118 (June 14, 2005)

In this case, the Supreme Court held that the complainant could go to trial on her allegations of sex discrimination, but upheld the lower court's dismissal of her disability claim. This decision provided that

a plaintiff could demonstrate gender-based harassment by presenting evidence of a number of instances in which the respondent supervisor acted in a hostile and angry way towards her. The complainant had presented statements from respondent officials indicating that they knew that this supervisor was harsher to women than to men. The Supreme Court found that the plaintiff had not established sufficient evidence that she had a disability in that her evidence showed that her depression only limited her in working for a particular supervisor. The Court held that she did not establish that her disability limited her in a broad class of jobs. The Court further found that she was not a qualified individual with a disability as her physician had said that she was unable to return to work at the defendant's workplace.

Spector v. Norwegian Cruise Line U.S. Supreme Court June 6, 2005

The US Supreme Court held that the ADA covers foreign-owned cruise ships that dock in US ports and have US passengers. However, it appears that, in most cases, the ships will not be required to make significant structural changes to accommodate passengers with disabilities. The Court was split on the standards for determining whether significant structural changes would need to be made.