

# **MINUTES OF THE COMMISSION FOR HUMAN RIGHTS**

**OCTOBER 26, 2006**

**A regular meeting of the Commission for Human Rights was held in the agency conference room on Thursday, October 26, 2006. Present at the meeting were Commissioners Dr. John Susa, Alton W. Wiley, Alberto Aponte Cardona, Camille Vella-Wilkinson and Iraida Williams. Absent were Commissioners Jean Stover and Randolph Lowman. The Chairperson called the meeting to order at 8:30 a.m. and present at that time were Commissioners Susa, Williams and Vella-Wilkinson who discussed Manfred. Vs. Facility Services, Inc. They found that the complainant did not prove discrimination on the basis of sexual orientation and did prove retaliation. A written decision will follow. After this discussion, Commissioners Wiley and Cardona entered the meeting.**

**A motion to approve the September 28, 2006 minutes was made by Commissioner Williams. The motion was seconded by Commissioner Wiley and carried. Commissioner Susa left the meeting at 9:10 am.**

**Status Report: Michael D. Évora, Executive Director-**

**Mr. Evora reported that Susan Gardner, Sr. Compliance Officer, with help from the interns, is handling the cases of Allison Cote and Tina Christy.**

**A written report was handed out. All new information will be in bold print.**

**Case Production Report - Attached**

**AGED CASE Report - Attached**

**Outreach Report - Attached**

**STATUS REPORT - COMMISSIONERS-**

**GENERAL STATUS: No report**

**OUTREACH: Commissioner Cardona reported that he helped to mediate some racial problems faced by the students at a Central Falls School when they were at a sporting event at Coventry High School. The**

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**problems were resolved by a public apology. Commissioner Williams reported that as President of the Alexander G. Bell Association she is working with Women & Infants Hospital to get hearing devices on**

**loan from parents who donate them to other parents. Women & Infants will take care of the maintenance.**

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

**LITIGATION: Report attached.**

**LEGISLATION: No discussion at this time.**

**REGULATIONS: No discussion at this time.**

**HEARING SCHEDULE: Discussed**

**DECISIONS: Discussion occurred at the beginning of the meeting.**

**The meeting adjourned at 10:40 a.m. The next regular meeting of the Commission is scheduled for Thursday, November 30, 2006 at 9:00 am.**

**Respectfully Submitted,**

**Michael D. Évora**  
**Executive Director**

**Notes taken by: B. Ross**  
**EXECUTIVE DIRECTOR'S**  
**REPORT TO COMMISSIONERS**  
**OCTOBER 26, 2006**

## **I. BUDGET**

**On September 8, 2006, I submitted the Commission's FY 2007 Revised and FY 2008 Budget Requests to the Governor. The particulars are as follows:**

	<b>FY 2007</b>	<b>FY 2007</b>	<b>FY 2008</b>
	<b>(Enacted)</b>	<b>(Revised)</b>	<b>(Request)</b>
<b>State</b>	<b>1,027,775</b>	<b>1,038,846</b>	<b>936,493*</b>
<b>Fed.</b>	<b>323,478</b>	<b>286,550</b>	<b>311,111</b>
<b>Total</b>	<b>1,351,253</b>	<b>1,325,396</b>	<b>1,247,604</b>

**The Governor's FY 2007 Recommendation, including the proposed reduction of 0.6 FTE, was passed. The Commission did not have the opportunity to present its case against the FTE reduction as the House Finance Committee did not hold a hearing.**

**\*The FY 2008 state revenue request represents a 15% reduction of the adjusted FY 2007 Enacted amount, which was calculated by the Budget Office: FY 2007 Enacted = \$1,027,775; once adjusted for, e.g., COLAs and anticipated changes in retirement rates, the figure is \$1,101,756. Per the Governor's directive, the Budget Office required each state agency to submit its FY 2008 state revenue request at a 15% reduction of the adjusted amount. ( $\$1,101,756 \times 0.85 = \$936,493$ .) Approximately 95% of the Commission's annual budget goes toward payroll costs and rent.**

## **II. FEDERAL CONTRACTS**

**EEOC – We successfully completed our EEOC FY 2006 contract (+1)! We will not receive our FY 2007 contract until February-March 2007.**

**HUD – For FY 07, according to HUD Project Director Angela Lovegrove, we have taken in 13 new housing charges, 12 of which are co-filed with HUD. Within this same time period, we have processed 13 housing charges, 11 of which were co-filed with HUD.**

## **III. PERSONNEL**

**Allison Cote, Sr. Compliance Officer, remains out of work on full Worker's Compensation. Her return date is uncertain.**

**Tina Christy, Sr. Compliance Officer, is on FMLA leave. She is**

**expected to return to work the first week in November.**

**IV. OUTREACH – Refer to attached report. (FY 2006 was a record year for outreach activities.)**

## **V. GENERAL STATUS**

**&#9679;Meetings with staff members – I continue to meet with individual investigative staff members on a monthly basis to monitor case production.**

**&#9679;Case Closures – Refer to attached report.**

**&#9679;Aged Cases – Refer to attached report. Progress continues to be made on decreasing the aged caseload. The Commission successfully reduced the aged caseload by 86% in FY 2006 (from 14 to 2 cases).**

**&#9679;Lease – The Commission’s 5-year lease with Dorwest Associates/Capstone Properties is set to expire. Frank Gaschen and I are working with John Ryan, Deputy Chief/Public Buildings, to negotiate the new lease with Capstone. The State Fire Marshall’s Office conducted an inspection of the building and issued its report on October 16. All deficiencies noted were the responsibility of Capstone and not the Commission; they will be corrected within 30 days. Capstone had proposed an 8% increase in rent for the new**

lease period. We countered with 7.6% and that counter has been accepted. A few details remain to be worked out and then the matter will be scheduled for hearing before the State Properties Committee.

• Commissioner (Re)Appointments – General Assembly remains on recess. Commissioner Susa’s reappointment and Rochelle Lee’s (Gov. Carcieri’s nominee) appointment remain unaddressed.

• Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 98. That number has steadily decreased. We ended FY 06 with 387 cases in inventory. As of 10/18/06, we had a total of 361 cases in inventory.

• Annual Report – Susan Pracht and I are working on the Commission’s FY 2006 Annual Report. We expect to have a draft in November, with the goal of submitting it to be printed by December 1.

• Commission on Prejudice and Bias – I have been asked to join the Commission on Prejudice and Bias as a “permanent invited guest”. (Formal CPB positions are by appointment and all are currently filled.)

Respectfully submitted,

**Michael D. Évora**

**Executive Director**

**To: Commissioners**

**From: Cynthia Hiatt and Frank Gaschen, Legal Counsels**

**Re: Litigation**

**Date: October 26, 2006**

**Recent developments are in bold.**

**American Legion Bd. of Gov's. v. American Legion #12**

**The Board of Governors for the respondent filed a petition for Receivership. The Commission filed a Motion for Relief from Stay of Proceedings so that the Commission and the complainants could file a Petition to Enforce the Decision and Order of the Commission in the matter of Cote, et al. v. American Legion #12. The parties and the Commission have been trying to agree on enforcement of the Commission decision. Sales agreement for the property has been signed. Apology was printed in the South County Times. See copy.**

**Babbitt v. Crescent Park Manor, et al.**

**The Commission filed a motion to intervene as a party plaintiff in this case. Plaintiff's counsel had no objection to the motion. The motion was granted. Discovery has commenced.**

**Bagnall v. RICHR and WLWC et al.**

**The complainant has appealed the Commission Decision and Order. The Commission filed the administrative record on April 12, 2006. The parties are circulating a briefing stipulation.**

**Elaine Chao, Secretary of Labor v. International Union of Operating Engineers, Local 57**

**The defendant in this case has subpoenaed a Commission file in which it was a party. The Commission will be providing copies of the file with the exception of documents for which it claims a privilege.**

**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, 2005. Judge Savage indicated that she was close to issuing a decision but wished to give the parties an opportunity to discuss resolution. After a number of settlement attempts, it did not appear that resolution was near. On 1/4/06, I wrote a letter to the parties stating that if I did not hear from them by 2/6 that the case was close to resolution, I was planning to write Justice Savage to ask her to issue her decision. Not having heard from the parties, on 2/8/06, I wrote Justice Savage and asked her to render her decision as it did not appear to me that the parties would resolve the matter. CMH has drafted a letter asking Justice Savage to consider issuing a decision in the near future because of**

**Mrs. Gaffney's age. It was sent to the complainant's attorney on 8/29/06 so that it can be signed by him and Commission counsel. CP's attorney has not responded as of 10/25/06.**

**Horn v. Southern Union Co.**

**This is a case filed in federal District Court in Rhode Island. Judge Smith certified a question to the Rhode Island Supreme Court: What is the statute of limitations for the Rhode Island Civil Rights Act, Title 42, Chapter 112 of the General Laws of Rhode Island (RICRA). The RICRA prohibits discrimination in contracts, including discrimination in employment contracts. The Commission has agreed to join an amicus brief that will argue that the proper statute of limitations is three years. (There is an argument that the statute of limitations is one year.)**

**Idowu v. Rhode Island Commission for Human Rights and Cohoes Fashions of Cranston, Inc.**

**The complainant appealed the Commission Decision and Order. The respondent filed a motion to dismiss the appeal on the grounds that it was filed too late. The Commission filed the administrative record on May 17, 2006. Hearing on the respondent's motion to dismiss was held on June 6, 2006. Judge McGuirl appeared to be ready to rule for the defendants, but offered Mr. Idowu the opportunity to submit more information. He accepted the offer. He retained an attorney who filed a last-minute objection to the motion to dismiss and appeared at the hearing on July 11, 2006. On this date, Judge McGuirl appeared to**

see the merit of complainant's argument that, even though the decision was dated, the decision did not specifically say that the date was the mailing date. (A party must appeal within thirty days of the mailing date.) However, she did not seem to feel that the document that the complainant filed within thirty-one days of the mailing date was sufficient to constitute a complaint. She will consider the matter and issue a decision on the motion to dismiss from the bench at a later date.

#### **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 briefs were filed. The appeal was assigned to Special Magistrate Joseph Keough. He rendered a decision on September 22, 2006. He held for the Commission on several procedural issues, but reversed the decision, holding that the complainant had not proved sex discrimination. He said that the respondent had waived his right to raise the issue that the charge was not timely filed. He held that the Commission complaint had given the respondent sufficient notice of the charges against him. He overturned the Commission determination that the respondent had discriminated against the complainant because of her sex, holding that it is not sex discrimination if a supervisor terminates an employee because their voluntary sexual relationship

has ended. The respondent sent Magistrate Keough a proposed Judgment and Order. There is a procedure for appealing a magistrate's Order to the Superior Court for review by a Superior Court judge. The time period for that appeal is short (48 hours), so the Commission filed that appeal on September 27. The matter was scheduled to be heard on the Formal and Special Cause calendar on October 4, 2006. Justice Rogers wrote the parties a letter stating that Chief Justice Williams, in a series of monthly letters, has conferred on Magistrate Keough all the powers of a Superior Court judge and that therefore, appeal was to the Rhode Island Supreme Court. Ms. DeMarkey's attorney drafted a Petition for Certiorari and Memorandum in Support and the Commission has joined in the Petition and Memorandum. The Petition and Memorandum will be filed shortly. In the meantime, Mr. Joint's attorney has filed a Motion for Attorney's Fees, asking that the Superior Court order the Commission to pay Mr. Joint's attorney's fees under the Equal Access to Justice Act.

**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. Ms. Hiatt has been

**subpoenaed to testify at the trial. Mr. King is seeking another continuance on the grounds of his health.**

#### **Laboy v. Stat Health Services**

**Counsel is trying to locate respondent's officers in order to ensure compliance with the Commission Decision and Order.**

#### **Ponte v. GTECH**

**The plaintiff filed a records subpoena for her case file, several named case files and any other disability charges against GTECH. The Commission provided copies of the complainant's cleared file. The Commission objected to providing any other records on the grounds that such dissemination would violate the Health Care Confidentiality Act and that redaction of the health care information would be burdensome. The plaintiff filed a motion to compel the Commission to produce the records. The Commission objected. The hearing on the motion was held on September 27. The motion of the plaintiff was granted, subject to substantial conditions for the Commission. An Order will be entered this week.**

#### **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. Judgment entered against Defendant. Seven payments on the judgment have been made on schedule.**

### **RICHR and Powell v. Cinotti**

**The respondent elected to have this housing matter resolved outside of the Commission. A notice was sent to the complainant regarding the election and he was advised of his rights and responsibilities. Suit was filed on behalf of the complainant and a copy of the complaint was sent to the attorney for the respondents who agreed to accept service. The Commission agreed to extend time for the respondents to answer the complaint. Answer filed and discovery to commence. Scheduling depositions of witnesses is ongoing. An offer of compromise has been made by respondents and sent to Powell. Respondents will call next week regarding offer.**

### **RICHR and Lovegrove v. Escolastico**

**Default was entered against the defendant. Judgment was obtained and sent to FL lawyer for collection. FL atty. is moving to have FL courts give full faith and credit to the decision of our Superior Court.**

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

**The defendants were defaulted and judgment entered. Judgment was obtained and sent to FL lawyer for collection. FL atty. is moving to have FL courts give full faith and credit to the decision of our Superior Court. Judgment has been recorded in FL courts.**

### **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. Motions for extended time within which to serve and for special service were filed. The motions were granted. Service has not been perfected yet.**

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

**Case resolved. Commission must annually monitor City training.**

**RICHR v. Warner, et al.**

**Superior Court action filed on behalf of RICHR as complainant declined to sue. Case settled. Awaiting final documentation.**

**South Kingstown School Committee et al. v. Stephen Alberghini and the Rhode Island Commission for Human Rights**

**The respondents have appealed the Commission Decision and Order.**

**Tucker v. Blue Cross**

**The complainant filed an administrative appeal of the Commission's finding of no probable cause. The administrative record was filed in Court.**

**Wilson v. Northwest Airlines**

**The complainant filed a charge alleging disability discrimination. During investigation, NWA filed for bankruptcy. The Commission continued its investigation post filing. NWA has filed a motion in the**

**Bankruptcy Court for the Southern District of NY to force the Commission to stop its proceedings until the bankruptcy is completed. The Commission is objecting to this motion.**