

MINUTES OF THE COMMISSION FOR HUMAN RIGHTS

JULY 26, 2007

A regular meeting of the Commission for Human Rights was held in the agency conference room on Thursday, July 26, 2007. Present at the meeting were Dr. John B. Susa, Chair, Nancy Kolman Ventrone, Alton W. Wiley, Jr. and Rochelle Bates Lee. Absent were Alberto Aponte Cardona, Iraida Williams and Camille Vella-Wilkinson. The meeting was called to order at 9:15 a.m.

A motion was made to approve the June 28, 2007 minutes. The motion was made by Commissioner Wiley, seconded by Commissioner Kolman Ventrone and carried.

Status Report: Michael D. Évora, Executive Director-

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

Case Production Report – Attached –

Commissioner Kolman-Ventrone made a motion to give Angela Lovegrove a letter of commendation for her work on housing cases. The motion was seconded by Commissioner Wiley, Jr. and carried.

AGED CASE Report - Attached

Outreach Report - Attached

STATUS REPORT - COMMISSIONERS-

GENERAL STATUS: No Report

OUTREACH: Commissioner Susa reported that he was invited to the Liberian Independence Celebration. Commissioner Lee reported that she attended a press conference for the Minority Legislative Caucus. Commissioner Lee also met with members of the Providence Human Relations Commission and PERA (Providence External Review Authority) to discuss issues.

Commissioner Meeting -2- July 26, 2007

STATUS REPORT - LEGAL COUNSEL, Michael Evora and Francis A.

Gaschen

LITIGATION: report attached.

LEGISLATION: discussed

REGULATIONS: No discussion at this time.

HEARING SCHEDULE: Discussed

DECISIONS: No discussion at this time.

The meeting adjourned at 10:00 a.m. The next regular meeting of the Commission is scheduled for Thursday, September 27, 2007 at 9:00 am.

Respectfully Submitted,

**Michael D. Évora
Executive Director**

**Notes taken by: B. Ross
EXECUTIVE DIRECTOR'S
REPORT TO COMMISSIONERS**

JULY 26, 2007

I. BUDGET

S = State/General Revenue; F = Federal (EEOC/HUD)

	FY 2007	FY 2007	FY 2008	FY 2008
	(Rev. Req.)	(Revised)	(Request)	(Recomm.)
S	1,038,846	989,630	936,493	984,197
F	286,549	323,679	311,111	404,743
T	1,325,395	1,313,309	1,247,604	1,388,940*

***The Commission's original FY 2008 Budget Request contained a 15% cost reduction, as required by the Governor, which would have resulted in the loss of 2.5 positions, leaving the Commission at 12 positions. The budget request before the General Assembly funds the Commission for the full 14.5 positions to which the agency currently is entitled.**

In May, the Governor submitted his recommended amendments to the FY 2008 Appropriations Plan to the General Assembly. We are unaffected by the amendments and remain fully funded at 14.5 FTEs. The General Assembly passed the Commission's budget intact over the Governor's veto.

II. FEDERAL CONTRACTS

EEOC – For federal FY 2007, as of 6/30/07, according to EEOC Project Director Marlene Toribio, we have closed 187 co-filed cases. Our FY 2007 contract with EEOC is for 259 cases; we must close 72 more co-filed cases by September 30 to meet the contract. Each case is now payable at \$550.00. Depending upon the number of July closures, we may have to request a downward modification of our contract; we have until July 31 to assess and decide.

HUD – For FY 07, according to HUD Project Director Angela Lovegrove, we took in 43 new housing charges, 39 of which were co-filed with HUD. Within this same time period, we processed 45 housing charges, 42 of which were co-filed with HUD.

For FY 08, we have taken in seven new housing charges, all of which are co-filed with HUD. Within this same time period, we have processed one housing charge, one of which was co-filed with HUD.

III. PERSONNEL

No activity to report.

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.

●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).

●Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 98. We ended FY 07 with approx. 350 cases in inventory. As of 7/11/07, we had a total of 362 cases in inventory.

●Commission-Initiated Charge – On June 29, I filed a charge on behalf of the Commission against an employment agency. The charge alleges discrimination on the bases of disability, race, color and ancestral origin.

Respectfully submitted,

**Michael D. Évora
Executive Director**

Attachments

To: Commissioners

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: July 26, 2007

Recent developments are in bold.

Aquidneck Island v. RICHR, et al.

This suit was brought by the plaintiff against multiple parties, alleging that liens have been placed on its property improperly. All liens were against Norman Cardinale not Aquidneck. Case is moot now.

Babbitt v. Crescent Park Manor, et al.

The Commission intervened as a party plaintiff in this case. Deposition scheduled for July.

Bagnall v. RICHR and WLWC et al.

The complainant appealed the Commission Decision and Order. The Commission filed the administrative record on April 12, 2006. The parties are circulating a briefing stipulation. The complainant's attorney has represented to the Commission that he will file a brief and give the RICHR and respondents whatever reasonable amount of time they would like to file briefs in opposition.

Brown University v. RICHR

Brown University was seeking a stay of disclosure of Commission records. The hearing date was May 11, 2007. Brown and the complainant reached a resolution on that issue, so the Motion for a Stay was passed.

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, CMH wrote a letter to the parties stating that if she did not hear from them by 2/6 that the case was close to resolution, she was planning to write Justice Savage to ask her to issue her decision. Not having heard from the parties, on 2/8/06, CMH wrote Justice Savage and asked her to render her decision as it did not appear that the parties would resolve the matter. On November 30, 2006, after seeking signatures from the other parties which could not be obtained, CMH sent a letter asking Justice Savage to consider issuing a decision in the near future because of Mrs. Gaffney's age. New Town Solicitor, Tom Heffner, wrote a letter to Judge Savage on April 25, 2007, asking if she could assist in settlement. Mr. Heffner has now determined that settlement is not feasible and wrote a letter to

the Judge, dated June 26, 2007, to tell her that he is no longer requesting a settlement conference. Counsel Hiatt sent a letter to the Judge on 6/29/07 to ensure that she knows that the parties are awaiting her decision.

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 stated that she would consider the matter and issue a decision on the motion to dismiss from the bench at a later date. On February 22, 2007, the complainant filed a Supplemental Memorandum of Law relating to the Motion to

Dismiss in Superior Court. On February 28, 2007, the respondent filed a Response to complainant's Supplemental Memorandum. On April 12, 2007, Justice McGuirl issued a bench decision denying respondent's Motion to Dismiss. Justice McGuirl held that the appeal was timely because the date on the decision did not give a pro se complainant sufficient notice of the mailing date and he therefore could rely on the later date on the envelope, that the "Stipulation" he submitted was sufficient to constitute a complaint and that notice of the appeal was timely. She also raised questions about the credibility determinations of the Commission. She set dates for filing briefs. Mr. Idowu filed his brief on May 11. The Commission filed its brief on May 24 and Cohoe's filed its brief on May 25. She set the matter down for further hearing on June 8. On June 8, the Clerk said that the hearing would be held at a later date and that she would notify RICHR counsel of the date. The date for the decision is July 31.

Joint v. DeMarkey and Rhode Island Commission for Human Rights

The individual respondent filed an appeal of the Commission Decision and Order and 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. Ms. DeMarkey and the Commission filed a Petition for Certiorari and Memorandum in Support. In the meantime, Mr. Joint's attorney 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. The parties agreed that this matter would pass until the Supreme Court acted on the Petition for Certiorari. The parties also agreed that the Commission would delay discovery, on the issue of Mr. Joint's eligibility to claim attorney's fees, until after the Rhode Island Supreme Court acted on the Petition. Mr. Joint filed for a third extension of time to file his objection to the Petition. The Commission received Mr. Joint's Objection to the Petition for Certiorari and Memorandum in Support of Objection on February 13, 2007. On June 22, 2007, the Petition for Certiorari was denied. On July 16, 2007, Counsel filed a Motion to Dismiss the claim against the Commission for respondent's litigation expenses. The Commission argued that the Equal Access to Justice Act does not apply to it. Hearing on the Motion is scheduled for September 18, 2007.

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. The trial had been rescheduled to late September. The plaintiff was going to request another continuance; it has been granted. The complainant's attorney has told the Commission that there is a calendar call on September 14, 2007 and that the trial may be scheduled in September or October.

Laboy v. Stat Health Services

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

Pilkington US AGR Auto Glass Replacement and Theroux v. D'Alessio and RICHR

Pilkington and Mr. Theroux have filed an appeal of the Commission Decision and Order. They made a motion to stay the Commission Order. The Court denied the motion to stay with respect to the Commission's order that the respondent post the Commission poster. The Court granted the motion to stay with respect to the rest of the Order, but Commission Counsel's request that the respondent be ordered to post a bond of \$300,000 was granted. Briefs and the administrative record were due to be filed in court by May 17, 2007.

The administrative record was filed May 16, 2007. The due dates for the briefs have been extended. The respondent filed its brief on June 7. The due date of the briefs of the complainant and the Commission were extended to August 9, respondents' reply brief is due September 10.

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. Case not settled, so RICHR got an extension from Court to comply with Order. Compliance commenced. Notice has been given to the complainants whose files were subpoenaed and they have until June 4, 2007 to raise objections to disclosure of their health care information. One objection has been filed. Complainant's attorney to review Commission files.

Rederford v. US Airways, Inc.

On July 6, 2007, the complainant appealed the Commission Decision that conditionally granted respondent's Motion to Dismiss. The respondent has filed a Motion to Dismiss the appeal, arguing that it was not timely filed.

RICHR and Butler v. Kong

The complainant elected to have this housing matter resolved outside of the Commission so RIHCR has brought suit. Discovery responded to. Offer to compromise has been sent and I am to receive a response shortly. Depositions to be scheduled as no response to settlement demand was made. Case settled; waiting for payment.

RICHR and Rossi v. Attruia

A complaint for enforcement was filed and judgment entered against Defendant. Payments on the judgment are now made directly to individual complainant. Counsel to seek review of payment Order.

RICHR v. Cardinale

Justice Thunberg has entered a Decision for RICHR on a Petition for Enforcement. Negotiating language of Order with defendant's attorney. Will be filing Motion for Entry of Order for hearing in July. Order entered and execution will be obtained.

RICHR v. Cardinale, et al.

A complaint alleging a transfer of real estate in violation of the Uniform Fraudulent Transfers Act was filed against Norman Cardinale, Mary Cardinale, Newport Developments LLC, AEGIS Lending and MERS. A lis pendens was filed in the Land Evidence Records for the town of Scituate. Discovery commenced. Motion to dismiss the complaint has been filed by AEGIS and MERS; hearing in August. Working on resolving our issue with Aegis. Motions

pending.

RICHR v. Cardinale, et al.

A complaint alleging a transfer of partnership interests in real estate in violation of the Uniform Fraudulent Transfers Act has been filed against Norman Cardinale, Mary Cardinale, Onorato Cardinale, Rebecca Anthony and Aquidneck Island Developments, LLC. Discovery commenced.

RICHR and Powell v. Cinotti

The respondent elected to have this housing matter resolved outside of the Commission. Respondent made offer to settle and the complainant agreed. Settlement paid; case to be dismissed.

RICHR and Lovegrove v. Escolastico

RI judgment was obtained and sent to FL lawyer for collection. The FL attorneys have determined that defendant has very few assets and a small salary. Case settled and monthly payments have commenced.

RICHR and Morin v. Teofilo Silva, et al.

A complaint for enforcement 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. Notice sent to the city regarding the annual training.

Seymour v. Harvard Pilgrim Health

Motion of the defendant to dismiss the complaint for failure to comply with discovery was down for hearing on May 7, 2006. Plaintiff produced discovery, case is moving forward in Court. Case settled.

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.

The parties have agreed that the Commission will delay filing of its record until motions pending before the Commission have been decided. The complainant died on May 20, 2007.

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.