

MINUTES OF THE COMMISSION FOR HUMAN RIGHTS

OCTOBER 25, 2007

An informational meeting of the Commission for Human Rights was held in the agency conference room on Thursday, October 25, 2007. Present at the meeting were Nancy Kolman Ventrone and Iraida Williams. Absent were Dr. John B. Susa, Chair, Alton W. Wiley, Jr., Camille Vella-Wilkinson, Rochelle Bates Lee and Alberto Aponte Cardona. The meeting was called to order at 9:25 a.m.

The minutes of September 27, 2007, the special minutes of August 23rd and the special minutes of September 10th were not approved as there was no quorum.

Status Report: Michael D. Évora, Executive Director

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

Case Production Report – Attached –

Aged Case Report - Attached

Outreach Report - Attached

STATUS REPORT - COMMISSIONERS-

GENERAL STATUS: No Report at this time.

OUTREACH: No Report at this time.

Commissioner Meeting -2- October 25, 2007

STATUS REPORT - LEGAL COUNSEL, Cynthia M. Hiatt

LITIGATION: report attached.

LEGISLATION: No discussion at this time.

REGULATIONS: No discussion at this time.

HEARING SCHEDULE: Discussed

DECISIONS: No discussion at this time.

The meeting adjourned at 10:25 a.m. The next regular meeting of the Commission is scheduled for Thursday, November 29, 2007 at 9:00 am.

Respectfully Submitted,

**Michael D. Évora
Executive Director**

**Notes taken by: B. Ross
EXECUTIVE DIRECTOR'S
REPORT TO COMMISSIONERS
OCTOBER 25, 2007**

I. BUDGET

The Commission formally submitted its FY 2008 Revised and FY 2009

Budget Requests to the Governor on September 14. The particulars are as follows:

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

	FY 2008	FY 2008	FY 2009
	(Enacted)	(Rev. Req.)	(Request*)
S	984,197	984,197	885,777
F	404,743	379,190	395,049
T	1,388,940	1,363,387	1,280,826

***The Commission's FY 2009 Budget Request contains a 10% general (state) revenue reduction, as required by the Governor. The anticipated impact of this reduction, if it is implemented, is the loss of 2 investigative positions effective July 1, 2008, leaving the Commission at 12.5 FTEs. I incorporated into the budget submission impact statements attesting to the devastating effect such a loss would have on the Commission's ability to carry out its mission. We must now wait and see how the Governor and General Assembly will act on the submitted budgets.**

II. FEDERAL CONTRACTS

EEOC – For federal FY 2007, according to EEOC Project Director

Marlene Toribio, we met our EEOC contract of 259 cases. This month begins the new FY 2008 contract year; we likely will not receive official word on our contract until February 2008.

HUD – For FY 08, according to HUD Project Director Angela Lovegrove, we have taken in 17 new housing charges, 16 of which are co-filed with HUD. Within this same time period, we have processed 12 housing charges, 11 of which were co-filed with HUD.

III. PERSONNEL

The Commission awaits word from the Governor’s Office as to State positions that will be subject to elimination in the Governor’s effort to address the state budget deficit. The list of affected employees is expected to be released on or around November 15.

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 63% in federal FY 2007 (from 8 to 3 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. 355 cases in inventory. As of 10/15/07, we had a total of 361 cases in inventory.

●National Fair Housing Training Academy (NFHTA) –Frank Gaschen (Housing Supervisor) and Susan Gardner (Housing Backup) will be attending their final week in the Winter/Spring. Susan Pracht (Housing Backup/Housing Outreach), Jason Flanders (Housing Outreach) and Zaida Rivera (Housing Outreach) successfully completed Week One of this five-week course and will be attending Week Two in the next few months.

●EEOC Training – The Commission’s investigative and intake staff, along with Frank Gaschen and Zaida Rivera, attended EEOC-sponsored (and funded) training on Race/Color and Religious Discrimination in Phoenix, AZ during the month of October. Staff attended these two-day training sessions in groups of 2-3 throughout the month, so as not to disrupt the office operation.

●Annual Report – A draft of the Commission’s FY 07 Annual

Report is expected to be completed by mid-November, with the goal of sending it to the printer by the end of that month. Susan Pracht is working with me to complete the report.

●Commissioner Photographs – New Commissioners Lee and Ventrone had their photographs taken in September. As soon as they select from among the proofs, the Commission will order the photographs for presentation in the Hearing Room.

Respectfully submitted,

Michael D. Évora

Executive Director

Attachments

To: Commissioners

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: October 25, 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. Discovery is on-going.

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. Counsel will be forwarding a letter to confirm that the matter is resolved.

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 later determined that settlement was not feasible and wrote a letter to the Judge, dated June 26, 2007, to tell her that he was no longer requesting a settlement conference. Counsel Hiatt sent a letter to the Judge on 6/29/07 to ensure that she knew that the parties are awaiting her decision. On September 11, 2007, Counsel Hiatt met with Judge Rodgers, Presiding Justice of the Superior Court, who said that he would contact Judge Savage, obtain an estimated time of decision and let the parties know the status of the case. Judge Savage's clerk contacted Counsel Hiatt on 9/19/07 and said that the decision would issue in October. At the clerk's request, Counsel Hiatt informed the other parties.

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. The first 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. On July 31, Judge McGuirl dismissed the appeal. The complainant's attorney said that he would be appealing to the Rhode Island Supreme Court. Cohoe's attorney received the transcript of the Judge's decision on 9/24/07. She submitted a proposed Order to the Judge on October 15, 2007. Judge McGuirl's clerk indicated to Cohoe's attorney that she would like the proposed Order to be modified. The parties will have a conference with Judge McGuirl on October 26.

J.J. Gregory and Sons v. RI Commission for Human Rights and Brenda Zeigler

The Commission found that J.J. Gregory and Sons discriminated against Brenda Zeigler because of her sex. J.J. Gregory and Sons has filed an administrative appeal. The Commission will be filing the record with the Court.

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 who 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. Mr. Joint filed an Objection to the Motion to Dismiss and a supporting memorandum on September 4, 2007. On September 18, Judge Patricia Hurst denied the Commission's Motion to Dismiss. She interpreted the Equal Access to Justice Act (EAJA) exemption, which exempts agencies "charged by statute with investigating complaints", to exempt those agencies which are required to investigate and interpreted the FEPA, R.I.G.L. 28-5-17, to provide that the Commission may, but is not required to, investigate charges of discrimination, and therefore determined that the Commission is not exempt from the EAJA. Counsel and the Director have consulted with Jim Lee and Rebecca Partington of the Attorney General's Office and are considering further action.

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. Counsel now says that the trial will be scheduled at a later date. On October 23, 2007, Counsel for Mr. King said that the trial would probably take place during the week of January 21. Counsel Hiatt is under subpoena for the trial.

Laboy v. Stat Health Services

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

North 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. The School Committee has agreed to conduct training, as required by the 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. The administrative record was filed May 16, 2007. 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 was due September 10. In the meantime, the parties agreed to a stipulation which would encompass a settlement for Mr. D'Alessio, training for Pilkington's supervisors and dismissal of the case. The stipulation has been signed by the parties and was filed October 23, 2007. On or before April 24, 2008, respondent should be submitting to the Commission verification of training of supervisors on anti-discrimination laws.

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. The files are ready for counsel to copy except for one file in which an objection has been raised. Counsel will notify us if she wants to come to the Commission to review the files.

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 scheduled as no payment of settlement demand was received. Depositions rescheduled as attorney for respondents states settlement check to be sent.

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. Case continued as defendant failed to appear at first hearing. Defendant agreed to Order and matter was scheduled for status review on November 21, 2007.

RICHR v. Cardinale

Justice Thunberg entered a Decision for RICHR on a Petition for Enforcement. Filed Motion for Entry of Order for hearing in July. Order entered. Execution levied on property. Cardinale filed an appeal with the Supreme Court. Mediation was held.

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 granted. Depositions scheduled. Defendant faxed a letter on the Friday before Columbus Day indicating he could not attend the depositions on Tuesday and asked for them to be rescheduled. Suit against Aegis and Mers dismissed.

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 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. Monthly payments continue rather regularly.

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.

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.

Zisiades v. The RI Airport Corporation et al.

The complainant in this case, who had alleged disability discrimination, subpoenaed a Commission file in another case, involving some of the same parties, which involved allegations of sex

discrimination. On October 17, 2007, the motion to quash and motion for a protective order, which had been made by the attorneys in the sex discrimination case, were heard. The Commission took no position on the motions and was present to answer questions. Justice Susan McGuirl said that she was leaning toward granting the motions as she did not see the relevance of the sex discrimination case to the Zisiades case because the bases were different and defendant's counsel had cited cases that hold that discovery of other discrimination charges is not allowable in most circumstances if the bases are different. She gave Michael Pushee, Mr. Zisiades' attorney, the opportunity to file a memo. He said that he would either submit a memo, one week before the scheduled court date of November 8, 2007, or notify the parties that he could not find case law in support of his position