

MINUTES OF THE COMMISSION FOR HUMAN RIGHTS

July 25, 2008

A regular meeting of the Commission for Human Rights was held in the agency conference room on Friday, May 30, 2008. Present at the meeting were Nancy Kolman Ventrone, Rochelle Bates Lee and Camille Vella-Wilkinson. Absent were Commissioners Dr. John B. Susa, Iraida Williams and Alton W. Wiley, Jr. Commissioner Vella-Wilkinson called the meeting to order at 9:20 a.m. Commissioner Cardona arrived at 10:15 am.

A motion was made by Commissioner Vella-Wilkinson to approve the minutes of June 27, 2008. The motion to approve was seconded by Commissioner Ventrone and carried.

Status Report: Michael D. Évora, Executive Director

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

Case Production Report – Attached

Aged Case Report - Attached

Outreach Report - Attached

STATUS REPORT - COMMISSIONERS-

GENERAL STATUS: Commissioner Cardona was appointed Judge at the Municipal Court in Central Falls.

OUTREACH: Commissioner Cardona reported that he attended the RI Hispanic Law Enforcement Officers Association picnic in June.

Commissioner Meeting -2- July 25, 2008

STATUS REPORT - LEGAL COUNSEL, by Francis Gaschen

LITIGATION: Report attached.

LEGISLATION: Crucial bills were discussed. Report attached

REGULATIONS: No discussion at this time.

HEARING SCHEDULE: Discussed

DECISIONS: No discussion at this time.

The meeting adjourned at 10.45 a.m. There will be no Commissioner meeting held in August. The next regular meeting of the Commission is scheduled for Friday, September 26, 2008 at 9:00 am.

Respectfully Submitted,

**Michael D. Évora
Executive Director**

**Notes taken by: B. Ross
EXECUTIVE DIRECTOR'S
REPORT TO COMMISSIONERS
JULY 25, 2008**

I. BUDGET

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

	FY 2008	FY 2009	FY 2009	FY 2009
	(Final)	(Request)	(Gov. Rec.)	(Enacted*)
S	951,677	885,777	991,659	991,659
F	370,890	395,049	391,309	391,309
T	1,322,567	1,280,826	1,382,968	1,382,968

***Signed by Governor on 6/26/08. Per this budget, the Commission remains funded at the level originally recommended by the Governor, including our full 14.5 FTEs.**

II. FEDERAL CONTRACTS

EEOC – For federal FY 2008, according to EEOC Project Director Marlene Toribio, we have closed 177 co-filed cases. Our 2008 EEOC contract is for 246 cases; we must close an additional 69 co-filed cases by September 30 (23 per month) to meet the contract.

HUD – For FY 08, according to HUD Project Director Angela Lovegrove, we took in a record 59 new housing charges, 52 of which were co-filed with HUD. Within this same time period, we processed 47 housing charges, 43 of which were co-filed with HUD and one of

which was deferred to HUD.

For FY 09, we have taken in two new housing charges, both of which are co-filed with HUD. Within this same time period, we have processed one housing charge which was co-filed with HUD.

III. PERSONNEL

●E-Verify: The Commission is obligated to utilize this federal system to verify the work eligibility of future hires in compliance with Governor Carcieri's Executive Order. While the Commission remains opposed to the mandatory use of the E-Verify system by Rhode Island employers (and has testified against bills which would mandate the use statewide), Cynthia, Betsy and I completed the requisite on-line training program to ensure that we were in compliance with the Governor's Order.

***On May 19, I sent a letter to Mr. Bucci, with a copy to the Governor, seeking his input on what I consider to be a defect in the language of one of the notices required by the federal government to be posted by all agencies using the E-Verify system. I have not received a response to date.**

IV. OUTREACH – Refer to attached report

On July 15, Tina Christy, Senior Compliance Officer, and Susan Pracht, Investigator, sent out letters to over 250 city and state departments and agencies offering information on the Commission's fair employment/fair housing education and outreach program. (Copy of letter attached.) Tina has already received requests for E&O sessions from the Police Departments in Central Falls, West Warwick and Coventry; she also has received a request from the Town of Burrillville.

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 7/17/08, we had a total of 374 cases in inventory; 41 of those cases were pending assignment.

●Arbitration – On April 30, an arbitration hearing was held on the union grievance in respect to the nonpayment of union dues by Susan Pracht and Jason Flanders during the period in which they served as Interns (before they were employed by the Commission). The Commission/State was represented by Dept. of Administration attorney Pamelee McFarland. Attorney McFarland submitted her brief to the Arbitrator on July 18. The parties may or may not choose to submit reply briefs. A decision is expected by the end of the summer.

●National Fair Housing Training Academy (NFHTA) – Susan Gardner (Housing Outreach) will attend Week Five in the Fall. Jason Flanders (Housing Outreach) successfully completed Week Two in May and plans to attend Week Three in August. Attendance for NFHTA courses is fully funded by HUD. Jay is awaiting approval from Purchasing/ DOA to attend the August session.

●Letterhead – per the request of the Commissioners at last month's meeting, new letterhead, reflecting the current Commissioners, has been ordered.

Respectfully submitted,

Michael D. Évora
Executive Director

Attachments

To: Commissioners

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: July 25, 2008

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.

Atturio v. Évora

This is an appeal of a Commission decision that granted in part and denied in part a motion to quash a Commission subpoena. The administrative record before the Commission was filed with the Superior Court; a briefing schedule will be established shortly.

Babbitt v. Crescent Park Manor, et al.

The Commission intervened as a party plaintiff in this case. Discovery is on going. I called both attorneys for an update on this case.

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. On April 22, 2008, the complainant's attorney filed his brief. The parties have filed a stipulation that provides that the Commission and the respondent will file our briefs on or before August 29, 2008.

Gaffney v Town of Cumberland et al

The respondent appealed the Commission decision. The parties and the Commission filed briefs. On November 2, 2007, the Commission received Judge Savage's Decision. Judge Savage held that the Commission had jurisdiction over the allegations and that the complainants were not required to appeal the Zoning Board decision before coming to the Commission. Judge Savage held that the Commission had made an error of law when it held that the Cumberland Planning Board had the authority to waive the frontage requirements. She held that the way the process should have worked is that the Gaffneys should have gotten conditional approval from the Planning Board, gone to the Zoning Board of Appeals with a request for a variance, received conditional approval from the Zoning Board and then returned to the Planning Board for final approval. Judge Savage did not reverse the Commission Decision; she remanded it for the Commission to determine how the Commission would evaluate the evidence, given knowledge of the proper procedure. Judge Savage also asked the Commission to re-assess its Order which ordered the Zoning Board of Appeals to either grant the

subdivision of the property or pay the complainants their expenses from going through the process, as the Zoning Board of Appeals may or may not have had the authority to provide subdivision approval. Justice Savage suggested that the parties consider whether Mrs. Gaffney should re-apply for subdivision of her property, following the proper procedure. Counsel wrote to the attorneys for the parties, given them several alternative steps and asked them how they would like to proceed. The respondent's attorney has said that it would like Mrs. Gaffney to re-apply for subdivision under certain conditions. An associate of Mrs. Gaffney's attorney phoned to say that Mr. Haupt is not well and to ask what needs to be done. I faxed him the November letter. He did not reply to it. I sent a letter to both parties on Jan. 17, asking them to notify the Commission by Jan. 31 if they agreed on a course of action or if they were requesting an additional evidentiary hearing. The letter stated that if they did not reply by Jan. 31, the Commission would set dates for them to submit memoranda and then reconsider the Commission decision in light of Judge Savage's decision. On January 30, 2008, I was contacted by Mr. Haupt's law office; Maureen Gemma will be taking over the case. She requested and has been granted a thirty day extension to reply to the Commission's letter, the due date to respond has been extended to March 3. Ms. Gemma's office called and requested that their time to respond be extended to March 27, 2008. Ms Gaffney has been in the hospital. I agreed and they will send a letter confirming that with a copy to Mr. Heffner. The complainant's attorney has not sent the letter to Mr. Heffner, but she has talked to me over the past few weeks

and represented that the complainant's response is being reviewed by the complainant and should be mailed to the Commission shortly. Counsel has informed Mr. Heffner of the status. On May 19, 2008, Counsel called and left a message for the complainant's attorney to call back. On May 27, 2008, the Commission received a copy of a letter from the complainant's attorney to the respondents' attorney. The letter is a settlement proposal from the Mrs. Gaffney. Counsel called the complainant's attorney on 7/7 - attorney has not heard back from the respondent. Counsel has been trying to reach respondent's attorney.

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 filed an administrative appeal. Its appeal was amended to include an appeal of the Commission's Decision on Damages and Attorney's Fees. The Commission filed the administrative record with the Court on February 14, 2008. The filed a stipulation, the respondent's brief is due June 2, 2008 and the brief of the complainant and the Commission is due on July 1, 2008. The respondents' brief has not yet been filed. Respondents' counsel expects that their brief will be filed shortly. He will circulate a new stipulation relating to the due date for the briefs of the Commission and the complainant which will give us sixty (60) days to file the brief after his brief is filed.

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. 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 complainant and the Commission filed a Petition for Certiorari, Mr. Joint objected. 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. On December 21, 2007, Mr. Joint filed a

Motion for Summary Judgment, asking that attorney's fees be awarded to him. The Commission's objection and memorandum in support of its objection was filed. Commission Counsel drafted a Motion for Summary Judgment and Memorandum in Support which Jim Lee of the Attorney General's Office reviewed and supplemented with additional arguments. The Commission's Motion for Summary Judgment and Memorandum in Support, signed by Commission counsel and Jim Lee, were filed on January 23, 2008. The hearing on both motions was heard on scheduled for April 8. Justice Hurst decided that the Commission is subject to the EAJA, but that it was substantially justified in its actions and therefore Mr. Joint was not entitled to attorney's fees. The parties must agree on an order to be submitted for her approval. Counsel for Mr. Joint and for the Commission have conferred. Commission Counsel has drafted and circulated the Order and will shortly mail it out. It appears at this point that neither party will appeal.

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. The trial will not be held during the week of April 28; a new date has not yet been set.

Laboy v. Stat Health Services

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

MHRH v. Rhode Island Commission for Human Rights and the Estate of Dr. John Satti

MHRH has appealed the Commission decision that MHRH retaliated against Dr. Satti and discriminated against him on the basis of his age. The Commission will file the record of the Commission proceeding.

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

The respondents appealed the Commission Decision and Order. The complainant died on May 20, 2007. The School Committee and Mr. Daly agreed to be trained, as required by the Order. Commission

Counsel attended a Superior Court status conference on November 14, 2007. At that conference, Dr. Haley's lawyer indicated that Dr. Haley would attend training if Judge Thompson ordered it. Judge Thompson ordered it. The parties signed a dismissal stipulation of the appeal, providing that the Commission may enforce its order that anti-discrimination signs be posted and that training take place. The School Committee has asked for and received the anti-discrimination posters. The Commission has received a letter certifying that the training was done for the School Committee. Counsel for the School Committee has sent a letter to the School Committee to inform them of the protected classes omitted from the training; it needs one more clarification. Counsel also stated that she would try again to convince Mr. Daly and Dr. Halley to be trained. Commission Counsel has written to respondent counsel about the needed clarification on the School Committee training and to ask whether the training of Mr. Daly and Dr. Halley has been completed. Respondents' counsel reports that Mr. Daly and Dr. Halley were trained at the end of June, 2008.

RICHR and Rossi v. Attruia

A complaint for enforcement was filed and judgment entered against Defendant. Payments on the judgment are made directly to complainant. All counsel are attempting settlement. The respondent has agreed to pay the Commission the fine due to the State of RI and a court hearing is scheduled for 7-2-08. Consent Order to enter.

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. Suit against Aegis and Mers was voluntarily dismissed. Default was entered against all remaining defendants but later removed by Court. Motions to compel discovery were granted.

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 defendants. Discovery commenced. Motions to compel will be filed.

RICHR and Lovegrove v. Escolastico

RI judgment was obtained and sent to FL lawyer for collection. Lovegrove to pay FL counsel to attach wages of Escolastico. Action brought to foreclose mortgage on property Escolastico owns in FL. I have notified our FL counsel. Waiting for Lovegrove to forward funds to FL counsel to begin Supplementary Proceedings.

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.

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. Training completed for 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. Nothing has been done since appeal filed in 2004.