

MINUTES OF THE COMMISSION FOR HUMAN RIGHTS

April 27, 2012

A meeting of the Commission for Human Rights was held in the agency conference room on Friday, April 27, 2012. Present at the meeting were Commissioners Dr. John B. Susa, Chair, Commissioners Alberto Aponte Cardona, Iraida Williams, Rochelle Bates Lee and Camille Vella-Wilkinson. Absent were Commissioner Nancy Kolman Ventrone, Alton W. Wiley, Jr. Commissioner Susa called the meeting to order at 12:45 p.m.

A motion was made by Commissioner Lee to approve the minutes of March 30, 2012. The motion to approve was seconded by Commissioner Cardona and carried.

Status Report of 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:

STATUS REPORT:

There has been no response from Governor Chafee's Office on Commissioner reappointments. Cynthia Hiatt, Legal Counsel, reported that transcripts will be sent out to Commissioners via e-mail so two or three Commissioners can read them at the same time.

OUTREACH:

Commissioner Williams reported that the Department of Motor Vehicles is starting a new route for road test for hearing impaired individuals. Commissioner Vella-Wilkinson reported that

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Commissioner Lee reported that the Urban League of Rhode Island office is having voter ID registrations at their office. Commissioner Vella-Wilkinson reported that she was the keynote speaker for the Regional Disabled Veterans which was held at the Leadership RI conference held at the Crowne Plaza in Warwick.

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

LITIGATION: Report Attached.

LEGISLATION: Went over bills as they related to the Commission.

REGULATIONS: Legal Counsel reported that an intern drafted some regulations for the Commission and Michael Evora and Francis Gaschen will go over them.

HEARING SCHEDULE: Discussed.

DECISIONS: The status of decisions was discussed.

The meeting adjourned at 2:05 p.m. The next regular meeting will be on Friday, May 25, 2012 at 12: 30 pm.

Respectfully Submitted,

**Cynthia M. Hiatt
Legal Counsel**

Notes taken by: B. Ross

**EXECUTIVE DIRECTOR'S
REPORT TO COMMISSIONERS**

27 April 2012

I. BUDGET

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

	FY 2012	FY 2012	FY 2012	FY 2013	FY 2013
	(Request)	(Enacted)	(Supp.)	(Request)	(Proposed)
S	1,204,098	1,154,038	1,149,126	1,241,593	1,161,717
F	301,532	301,532		277,069	325,992
T	1,505,630	1,455,570	1,416,195	1,567,585	1,487,709

On June 17, House Finance approved a budget allotting the Commission's full 14.5 FTEs for FY 2012. The General Assembly authorized the Commission budgets for FY 11 and FY 12 as indicated above.

The Commission's FY 12 Revised and FY 13 Proposed Budget Requests were submitted to the Governor, the State Budget Office and other designated officials on October 4. On November 18, I met with representatives of the State Budget Office and the Governor's Policy/Legal staff to discuss the Commission's FY 12 revised and FY 13 proposed budgets and answer questions regarding our budget submissions.

House Finance is now contemplating a bill containing the Commission's revised/supplemental revenue for FY 2012, as well as proposed revenue for FY 2013. The figures are noted above in bold. The bill proposes funding for the Commission's currently filled 14 positions as well as for the 0.5 vacant position (Sr. Compliance Officer), which the Commission does not currently have authorization to fill.

On March 29, the Commission's FY 12 (Revised) and FY 13 budgets were heard before the House Finance Subcommittee on General Government/Public Safety. Legal Counsel Francis Gaschen attended the hearing, gave a brief presentation on the Commission's accomplishments and challenges, and answered questions.

II. FEDERAL CONTRACTS

EEOC – For federal FY 2012 (beginning October 1, 2011), according to EEOC Project Director Marlene Toribio, we have closed 104 co-filed cases. Our contract with EEOC for FY 2012, received and signed by me on April 23, is for 228 cases, a decrease from our FY 11 (revised) contract amount. EEOC has increased the per-case payment from \$600 to \$650. The FY 12 contract amount (less travel and training funds) is $228 \times \$650 = \$148,200$.

In comparison, last year's contract initially was for 241 cases and, after two upward modifications, was for 256 cases at \$600 per case,

for a total of \$153,600 (less travel and training funds).

HUD – For FY 11, according to HUD Project Director Angela Lovegrove, we took in 53 new housing charges, 50 of which were co-filed with HUD. Within this same time period, we processed 54 housing charges, 52 of which were co-filed with HUD.

For FY 12 (beginning July 1, 2011), we have taken in 32 new housing charges, 30 of which are co-filed with HUD. Within this same time period, we have processed 31 housing charges, 29 of which were co-filed with HUD.

III. PERSONNEL

No new information.

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.

We ended FY 2011 ahead of the prior fiscal year's case processing

rate. In FY 2010, we processed 402 cases; in FY 2011, we processed 422 cases (approx. 5% increase). For FY 2012 (as of March 31, 2012), we have processed 294 cases (compare to 306 cases in this same time period in FY 11).

●Aged Cases – Refer to attached report.

●Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 98. We ended FY 11 with 323 cases in inventory. As of 4/25/12, we had a total of 280 cases in inventory; 14 of those cases were pending assignment.

●Office Equipment – The Commission’s only functioning photocopier/printer is at the end of its useful life. The machine, which the Commission leased to own and now owns, has exceeded its recommended capacity of copies (1 million) but about 1 million copies; breakdowns have become fairly routine. The Commission received authorization from its Budget Analyst to enter into a new lease-to-own agreement for two new machines, including one for basic photocopying by staff and members of the public. A purchase order has been approved. The new machines were delivered on February 16.

Most of the Commission staff has been trained on the printing and copying functions of the new copiers. Additional training will be given on faxing and scanning when those functions go online.

●Performance Management Initiative – On May 3, 2011, I met with members of the Governor’s Policy Staff and State Budget Office to discuss the Governor’s Performance Management Initiative. As follow-up to that meeting, I completed and submitted the Commission’s response to a 20-question program performance survey on May 31, 2011. On August 10, 2011, I attended an introductory forum for state agency directors regarding the planned implementation of the Initiative. On November 18, 2011, I met with a representative of the Performance Management team to discuss appropriate performance measures for the Commission.

On April 24, I again met with representatives of the Performance Management Initiative Team for a final discussion on the appropriate performance measures/metrics to be reported by the Commission on a monthly basis. Pursuant to that meeting, the Commission will henceforth report monthly on the following metrics: number of cases taken in; number of cases processed; number of cases settled (WWS or Negotiated Settlement) prior to a finding of Cause/No Cause; average age of cases at closure; number of outreach activities.

●2012 EEOC/FEPA National Conference – We were advised this week that the conference will take place on May 29-June 1 in St. Louis, MO. Marlene Toribio, EEOC Project Director, and I will be attending.

●Information Technology – On April 25, Frank, Jason, Betsy and I met with representatives from the state Dept. of Information

Technology (DOIT) to discuss the Commission's relationship with DOIT, access to DOIT services, etc. DOIT will be conducting a review of the Commission's IT system in the near future.

Respectfully submitted,

Michael D. Évora

Executive Director

Attachments

To: Commissioners

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: April 27, 2012

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. An offer of \$2500 was made by counsel to the plaintiff to settle all of the claims against Cardinale and his companies. The offer was not satisfactory. A deposition may be scheduled soon.

Babbitt v. Crescent Park Manor, et al.

The Commission intervened as a party plaintiff in this case. The case has been transferred to Judge Stern before whom the matter will be heard, at some point.

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 Commission's Brief was filed on August 27, 2008. The Commission received the respondent's brief on December 5, 2008. In November 2010, the complainant filed a stipulation to assign the appeal for a written decision by the Superior Court. The appeal was assigned to Justice Netti Vogel.

BHDDH (MHRH) v. RICHR and the Estate of Dr. John Satti

BHDDH appealed the Commission decision that BHDDH retaliated against Dr. Satti and discriminated against him on the basis of his age. BHDDH filed its Brief on August 7, 2008. On October 21, 2008, the Commission filed the administrative record. On January 14, 2009, the Commission filed its brief. The complainant's brief was filed on April 19, 2012.

Bucci v. Hurd Buick Pontiac GMC Truck LLC et al

The Commission has agreed to consider filing an amicus brief with the Rhode Island Supreme Court with respect to this case in which

the Superior Court granted summary judgment to the employer even though the employer had given inconsistent reasons for the employee's termination and there was evidence that impaired the employer's credibility. The appeal has been filed. Counsel has received copies of the parties' briefs below. Legal Extern, Amelia Kohli, has worked on summarizing the facts and the legal issues. The employee's 12A Brief (a short summary of the issues which is given to one justice of the R.I. Supreme Court) is due shortly.

DeAngelis v. Antonelli et al.

On November 5, 2008, the Commission entered a Decision on damages in the case of DeAngelis v. Antonelli, et al. Thereafter Mr. Antonelli filed for bankruptcy. Mrs. DeAngelis filed a suit in the Bankruptcy Court against Mr. Antonelli to have her award from the Commission non-discharged and the Court decided the issue in her favor, finding that the discriminatory acts of Mr. Antonelli were intentional. The complainant has now filed a Petition to Enforce the Commission Decision in Rhode Island Superior Court which will be heard in May.

Gaffney v Town of Cumberland et al

The respondent appealed the Commission decision. In November, 2007, Judge Savage remanded the Commission Decision for the Commission to determine how the Commission would evaluate the evidence, given the conclusions reached in her decision. Judge Savage also asked the Commission to re-assess its Order. After

numerous efforts to reach a resolution between the parties, and submissions by the parties in the winter and spring of 2009, the case was taken under consideration by the Commission. A decision in the case issued on March 12, 2010. On April 14, 2010, the respondents appealed. The administrative record was filed in early July, 2010. Justice Gale assigned the new appeal to Justice Savage, in accordance with her order on the previous appeal. The Town filed its brief on February 18, 2011. The Commission filed its brief on April 8, 2011. Mrs. Gaffney's attorney decided that he would not file a separate brief; he filed a statement indicating that Mrs. Gaffney supports the arguments made by the Commission. The Town filed its reply brief on May 26, 2011. Mrs. Gaffney's counsel wrote Justice Savage to tell her that the case is ready for review. Mrs. Gaffney died in February 2012.

J.J. Gregory and Sons v. RICHR 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 appeal. Its appeal was amended to include an appeal of the Commission's Decision on Damages and Attorney's Fees. The Commission filed the record on February 14, 2008. Respondent filed its brief on January 5, 2009. The complainant filed her brief on January 29, 2009. The Commission filed its brief on February 9, 2009.

On February 10, 2009, the appeal was assigned to Judge Judith Savage for decision. On March 10, 2011, Justice Savage issued a decision upholding the Commission's finding of discrimination. The

complainant's attorney has drafted an Order for Justice Savage, which was entered. On January 13, 2012, the complainant filed a motion for supplemental attorney's fees in the Superior Court to compensate the complainant for the time expended by her attorney on the appeal of the Commission Decision. A hearing on the motion was held on February 27, 2012. The attorney's fees were granted, the Commission Decisions affirmed and judgment entered.

Laboy v. Stat Health Services, et al.

Counsel is trying to locate respondent's officers to bring a suit to enforce the Commission Decision. Corporate charter revoked and the individual defendant cannot be located.

Mc Garry v. Marilyn Pielech (in her capacity as Treasurer and Finance Director of the Town of Cumberland) et al.

This age discrimination and retaliation case was heard before a jury in the Superior Court and the jury found for the plaintiff. The Superior Court Judge granted a judgment as a matter of law for the defendants, overturning the jury's verdict. In his decision, the Judge held that there was insufficient evidence to support the jury verdict. In particular, he determined that the complainant should not have been able to rely on an adverse inference against the defendants which had been based on the fact that interview records in the defendants' control had gone missing. The Judge set a higher

standard for use of an adverse inference in these circumstances and required some extrinsic evidence that the missing records would have supported the plaintiff's claim of age discrimination. The Commission filed an amicus brief on December 16, 2011. The Commission's amicus brief focused primarily on the importance of such interview records to a determination of discrimination and the logic of drawing an adverse inference when such records are missing. The defendants filed their brief on January 18, 2012. Oral argument on the case was held on March 6, 2012. Staff members Cynthia Hiatt, Michael Évora, Stephen Strycharz and Tina Christy attended.

RICHR (Lovegrove) v. Escolastico

A Rhode Island judgment was obtained and sent to a Florida lawyer for collection. Counsel is waiting for Ms. Lovegrove to forward funds to the Florida counsel to begin Supplementary Proceedings against Mr. Escolastico.

RICHR (Martin) 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, et al. Motions for Entry of Default were granted. An offer of \$2500 was made to the plaintiff to settle all of the claims against Cardinale. The offer was not satisfactory. A deposition may be scheduled in March.

RICHR (Martin) v. Cardinale, et al.

A complaint alleging a transfer of partnership interests in real estate in violation of the Uniform Fraudulent Transfers Act was filed against defendants. Motions to compel will be filed. An offer of \$2500 was made to the plaintiff to settle all of the claims against Cardinale. The offer was not satisfactory. A deposition may be scheduled in March.

RICHR (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 (Robinson) v. Geruso, Flagship Management, et al.

After a finding of probable cause, a complaint against six defendants was filed in Superior Court alleging racial discrimination in a failure to rent case. The case was settled and HUD notified. RICHR will monitor the case for three years. The second report, due March 19, 2011, was received.

RICHR (Sigmon) v. Irwin, et al.

After a finding of probable cause, a complaint against two defendants was filed in Newport County Superior Court alleging a refusal to grant a reasonable accommodation to a pet policy because of a disability was discriminatory. The case was “settled” but since the parties could not agree on the language of the Negotiated Settlement, suit was filed. The case was not settled after filing; discovery has commenced.

RICHR (Wright) v. New Canonchet Cliffs, et al.

The Commission found probable cause and the respondents elected in this housing case that alleges failure to give a reasonable accommodation regarding a support animal (the respondents claimed that the dog was too big for a pet). Suit was filed in Washington County Superior Court. Discovery has been sent to respondents' counsel.

RICHR v. Shear Pleasure

This case was filed in the Providence County Superior Court to enforce a negotiated settlement and the defendant was defaulted. Execution was returned unserved as sheriff could not locate the officer of the defendant. A complaint to pierce corporate veil was filed and served upon the individual defendant. The defendant has been defaulted. An execution has been requested as Commission counsel could find no evidence of the filing of a bankruptcy petition on behalf of the individual defendant.

RICHR (Zeigler) v. Laura Sitrin, Finance Dir. of Newport

The case is resolved. The Commission will annually monitor City training. Training was completed for 2012.

T.G.I. Fridays (Carlson Restaurants Worldwide) v. Selvidio and Évora

The respondent appealed the Commission decision and order in favor of Mr. Selvidio and moved for a stay of the Commission Order in

Court. Complainant filed a Motion for Enforcement with the Commission. The respondent objected to the Motion and asked the Commission to stay its Decision. The Commission gave the complainant time to respond to respondents' response and Motion and also gave the respondents a date for responding to complainant's future response. When the respondent filed its responses with the Commission, they also moved for a stay in Superior Court. The Commission filed the administrative record with the Court. The Superior Court denied the Motion to Stay and remanded the case to the Commission to resolve remaining issues. A status conference was held here on April 18, 2012. The parties wish to submit additional memoranda and then have the Commission determine whether it will grant the motion to stay.

Weeks v. 735 Putnam Pike

A Superior Court judge ruled that the plaintiff in this discrimination case must proceed in arbitration rather than in Superior Court. The Judge based her decision on the fact that the complainant was a member of a union which had a collective bargaining agreement with the employer. While the U.S. Supreme Court has held that a plaintiff is limited to arbitration if a collective bargaining agreement specifically provides that statutory discrimination claims must be arbitrated, the collective bargaining agreement in this case did not specifically require that statutory discrimination cases be subject to arbitration. The Superior Court's decision appears to contradict U.S. Supreme Court precedent. The plaintiff has appealed the case to the

R.I. Supreme Court and the case is now in mediation at the R.I. Supreme Court. If it proceeds to full argument, the Commission may want to file an amicus brief.