

MINUTES OF THE COMMISSION FOR HUMAN RIGHTS

March 29, 2013

A meeting of the Commission for Human Rights was held on Friday, March 29, 2013 in the agency conference room. Present at the meeting were Commissioners John B. Susa, Chair, Camille Vella-Wilkinson, Rochelle Bates Lee and Alberto Aponte Cardona. Commissioners Alton W. Wiley, Jr., Iraida Williams and Nancy Kolman Ventrone were not present. The meeting commenced at 12:40 p.m.

Michael D. Evora, Executive Director has reviewed and approved the minutes of the Commission meeting held on February 15, 2013. The Commissioners reviewed the minutes with no amendments.

Status Report of Michael D. Evora, Executive Director

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

Case Production Report – Attached

Aged Case Report – No aged cases to report.

Outreach Report – attached

STATUS REPORT – COMMISSIONERS

STATUS REPORT: Commissioner re-appointments still have not been made as of yet. The Commissioners discussed the Commission's policy on cameras in the hearing room during administrative hearings and decided to think about this and do more research on the subject. The Commissioners are moving the starting time for the meeting of May and June to 9:30 a.m. There is no meeting in April, 2013.

OUTREACH: Commissioner Vella-Wilkinson testified before the Senate Judiciary Committee on the Marriage Equality Bill at 4:30 a.m. on March 22, 2013. Commissioner Vella-Wilkinson has sponsored a resolution to support marriage equality which will be considered by the Warwick City Council. The Commissioner also had a second session with the Warwick Citizens Academy regarding traffic stops. Dr. Susa will be attending an Emergency Medical Service Managers' Conference.

Commissioner Meeting -2- March 29, 2013

STATUS REPORT – LEGAL COUNSEL by Cynthia Hiatt and Francis Gaschen

LITIGATION: Report Attached. Discussion of pending litigation in which the Commission has a role.

LEGISLATION: Commissioners and staff discussed pending legislation.

The Commissioners discussed language on a proposed amendment to the Fair

Housing Practices Act relating to assistive animals (attached).

Commissioner

Vella-Wilkinson moved to re-arrange the language in the proposed Amendment

and approve it. The motion was seconded by Commissioner Lee and carried.

REGULATIONS: Draft revisions to Commission Regulations are still pending.

Commissioner Susa moved to approve the economic impact statements for

Commission procedural Regulations 7-12. Commissioner Lee seconded

the motion and the motion carried.

HEARING SCHEDULE: Discussed

DECISIONS: No decisions were discussed at this time.

The meeting adjourned at 2:12 p.m. The next regular meeting will be on

Friday, May 31, 2013 at 9:30 a.m. The Commissioner meeting set for April 26, 2013 has been cancelled.

Respectfully Submitted,

Michael D. Evora

Executive Director

Notes taken by B. Ross

EXECUTIVE DIRECTOR'S

REPORT TO COMMISSIONERS

29 March 2013

I. BUDGET

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

	FY 2013	FY 2013	FY 2013	FY 2014	FY 2014	FY 2014
	(Enacted)	(Rev. Req.)	(Supp.)	(Unconstr.)	(Constr.)	(Recomm.)
S	1,137,768	1,137,768	1,133,129	1,192,069	1,121,778	1,150,785
F	325,992	306,689	306,688	258,638	301,405	308,638
T	1,463,760	1,444,457	1,439,817	1,450,707	1,423,183	1,459,423

The Commission's FY 13 (Revised) and FY 14 (Proposed) Budgets were submitted to the Governor on September 25. The submission included a Budget Impact Statement detailing the consequences to be realized should the seven percent general revenue decrease requested of all state agencies be implemented for the Commission [see Constrained Budget above]. On November 2, I met with representatives of the Budget Office to discuss the Office's pending recommendation to the Governor. On January 22, a bill was introduced which included the above supplemental budget for FY 13 and recommended budget for FY 14. The bill included authorization for the Commission's full 14.5 FTEs for FY 14.

On February 27, I attended the Senate Finance Committee's hearing on the Commission's FY13 and FY14 budgets. On March 13, I attended the hearing on the Commission's FY13 and FY14 budgets before the General Government Subcommittee of House Finance. Both Committee's seemed to respond favorably to the Governor's budget recommendation.

II. FEDERAL CONTRACTS

EEOC – For federal FY 2012 (beginning October 1, 2011), according to EEOC Project Director Marlene Toribio, we closed 237 co-filed cases.

Our contract with EEOC for FY 2012 was for 235 cases. For federal FY 2013 (beginning October 1, 2012), we have closed 76 co-filed

cases. Our contract with EEOC for FY13 is as yet unknown.

HUD – For FY 12, according to HUD Project Director Angela Lovegrove, we took in 40 new housing charges, 37 of which were co-filed with HUD. Within this same time period, we processed 45 housing charges, 43 of which were co-filed with HUD. For FY13 (beginning July 1, 2012), we have taken in 35 new housing charges, all of which are co-filed with HUD. Within this same time period, we have processed 31 cases, 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 2012 slightly behind the prior fiscal year's case processing rate. In FY 2011, we processed 422 cases; in FY 2012, we processed 411 cases (approx. 3.5% decrease). For FY13 (as of

February 28, 2013), we have processed 238 cases (compare to 260 cases in this same time period in FY12).

●Aged Cases – There are no aged cases in the Commission’s inventory for federal fiscal year 2013 (beginning October 1, 2012).

●Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 1998. We ended FY 11 with 323 cases in inventory, and FY 12 with 255 cases. As of 3/27/13, we had a total of 294 cases in inventory; 24 of these cases were pending assignment.

●Information Technology – DoIT has conducted a review of the Commission’s server/IT system and determined that the server will end its useful life in 2014. DoIT has recommended the purchase of a service agreement through Dell to cover the server until January 2014. That service agreement has been purchased. The Commission has opted not to connect to the state’s “virtual” server and has ordered a new server to be installed in February. The new server was installed on March 23-25 and is up and running; the old server will now be used as a backup. Special thanks to Frank and Jay for their roles in overseeing this project and being present at the Commission on the weekend to facilitate the installation process.

●Performance Management Initiative – On February 1, I met with the Governor’s Performance Management Team to discuss the

Commission's agreed-upon performance goals. The Team noted that the Commission is one of the only state agencies that consistently complies with the Performance Management Directive in a complete/timely manner. These meetings will occur quarterly.

●Budget Analyst – Theo Toe, the agency's Budget Analyst for the past 17 years, has left the Budget Office for a new position in state service. We were recently notified of the Budget Office's selection of a new analyst for the Commission, Ryan Gardiner. Mr. Gardiner visited the office on March 27 and, after a tour of our facilities, met with me and Betsy to discuss our working relationship going forward.

●HUD Fair Housing Month Event – HUD, the Commission and the Anti-Defamation League of New England are cosponsoring a Fair Housing Month event at the Touro Synagogue and Colony House in Newport on April 10, 2013. The event, from 1:00 to 4:00 p.m., will feature keynotes and a panel presentation. A draft agenda is attached for your review.

Respectfully submitted,

Michael D. Évora

Executive Director

Attachments

To: Commissioners

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: March 29, 2013

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. The case has been assigned for trial; it is awaiting a date from court.

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.

Benitez v. Pyramid Case Company, Reynar Vazquez, Mario Meletz, Blanca Cruz and the R.I. Commission for Human Rights

The Commission recently found that the Complainant did not prove that the Respondents discriminated against her with respect to ancestral origin discrimination or retaliation. The Complainant's attorney has appealed. The Commission has stipulated to service and agreed on dates for filing memoranda. The Commission has filed the administrative record. The parties have stipulated to later dates for filing memoranda.

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. On June 20, 2012, the appeal was assigned to Judge Daniel Proccaccini.

Bucci v. Hurd Buick Pontiac GMC Truck LLC et al

In this case, 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 briefs for the Plaintiff (and the Commission) were due January 31, 2013. The Plaintiff requested an extension. The Commission moved to file an amicus brief and conditionally filed the amicus brief on January 31, 2013. On March 4, 2013, the Plaintiff filed her Brief and Appendix. On March 19, 2013, the Commission moved to file an amended amicus brief and conditionally filed the amended brief. The Commission moved to file an amended brief so that the Commission's discussion of the evidence in the Brief could contain references to the Plaintiff's Appendix which contained the critical materials submitted to the Superior Court.

K_____ v. N_____

A complainant at the Commission also had pending Workers' Compensation cases. The respondent's attorney on the Workers' Compensation cases subpoenaed documents from the Commission file. The Commission objected. The respondent's attorney on the Workers' Compensation case moved to compel production. The Commission objected on the grounds of law enforcement privilege – that documents from a pending investigation can be determined to be privileged if production would interfere with the investigation. Counsel for the Commission and the attorney for the respondent on the Workers' Compensation case agreed that certain documents would be produced and others would not, but disagreed as to whether the complainant's statements needed to be produced. On

March 27, 2013, Workers' Compensation Judge Janette Bertness ruled that the Commission must produce the complainant's statements, holding that their production would not impede the Commission investigation.

Kuznetsov v. Évora, Lovegrove and Susa

Dr. Kuznetsov filed a Superior Court suit against Michael Évora, Angie Lovegrove and Commissioner Susa. Matthew Shaw of the Attorney General's Office represents the defendants. The Court dismissed Dr. Kuznetsov's complaint, for failure to state a claim upon which relief could be granted, but provided that Dr. Kuznetsov could file an amended complaint. An amended complaint was filed and the Attorney General will handle the case. The amended complaint was also dismissed, this time with prejudice.

Medeiros v. R & D Roofing and Roger Pratas

The Commission found for the Complainant in this case. He filed a Petition to Enforce the Commission Order. Respondent Pratas appeared and Judge Carnes continued the matter until 11-13-12 to allow Mr. Pratas to obtain legal counsel. Mr. Pratas has told the Complainant's attorney that he has no assets.

RICHR (Évora) v. Atturio, et al.

This matter is almost concluded.

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 the near future.

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 the near future.

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 (Oliveira) v. Furniture Warehouse, et al.

A Petition to Enforce was filed in December 2012. Service has been made on most of the defendants.

RICHR (Pellerano) v. Kuznetsov

A complaint was filed to enforce the May, 2012 Decision of the Commission. The petition for enforcement was granted. Judgments will be entered. The respondent has made two payments to all complainants in the amount of \$1.00 each.

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 not settled after filing; deposition being scheduled.

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

The Commission found probable cause and the respondents elected in this housing case. The complainant 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. Motion to default defendants has been filed.

RICHR v. McElroy

This case was filed in the Providence County Superior Court to enforce a negotiated settlement and the defendant was defaulted. Execution levied on property of 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) v. Selvidio and Évora

Payment of a settlement was made to the complainant. The respondent has represented that it has complied with the training and posting parts of the Decision and will be sending the Commission confirmation on the training.

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. The parties have filed their 12A memos. If the case proceeds to full argument, the Commission may want to file an amicus brief.