

Annual Report

2013 Fiscal Year

July 1, 2012 through June 30, 2013



Rhode Island Commission for Human Rights

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“The practice or policy of discrimination against individuals ... is a matter of state concern. Such discrimination foments domestic strife and unrest, threatens the rights and privileges of the inhabitants of the state, and undermines the foundations of a free democratic state. The denial of equal employment opportunities because of such discrimination and the consequent failure to utilize the productive capacities of individuals to their fullest extent deprive large segments of the population of the state of earnings necessary to maintain decent standards of living, necessitates their resort to public relief, and intensifies group conflicts, thereby resulting in grave injury to the public safety, health, and welfare.

It is hereby declared to be the public policy of this state to foster the employment of all individuals in this state in accordance with their fullest capacities ... and to safeguard their right to obtain and hold employment without such discrimination.

The right of all individuals in this state to equal employment opportunities ... is hereby recognized as, and declared to be a civil right.”

From R.I. Public Laws 1949, ch. 2181, by which
the Commission for Human Rights was created and empowered



STATE OF RHODE ISLAND
COMMISSION FOR HUMAN RIGHTS

November 22, 2013

Chair
Dr. John B. Susa

Commissioners

Iraida Williams
Camille Vella-Wilkinson
Alton W. Wiley, Jr., Esq.
Alberto Aponte Cardona, Esq.
Rochelle Bates Lee
Nancy Kolman Ventrone

Chair Emeritus
Marguerite A. Beaubien

Commissioner Emeritus
Joaquin F. Gomes

Executive Director
Michael D. Évora, Esq.

The Honorable Lincoln D. Chafee
Office of the Governor
State House, Room 222
Providence, RI 02903

Dear Governor Chafee:

It is with sincere pleasure that I submit to you the latest Annual Report of the Rhode Island Commission for Human Rights (Commission).

The Report conveys essential information on the program activities of the Commission during the 2013 fiscal year, including charge intake, charge investigation, administrative hearings and final case dispositions. In addition, the Report offers a summary of agency Decisions and Orders, an update on education/outreach efforts, a summary of enforcement/court actions undertaken by the Commission, and highlights of caseload accomplishments occurring during what has been an eventful year.

Through the diligent efforts of Commissioners and Commission staff, and with the assistance of student interns, the agency realized significant achievements during FY 2013. For the fifteenth consecutive year, the number of cases processed by the Commission exceeded the number of new cases taken in, thereby decreasing the number of open cases carried forward into a new fiscal year. The Commission, for a second consecutive year, also closed the fiscal year with no cases in its inventory considered "aged" under federal guidelines.

Consistent with the agency's statutory mandate to implement a comprehensive educational program, Commission staff members conducted over 30 education/outreach sessions in the community, reaching nearly 1,200 employers, housing providers and individuals and educating them about their rights and responsibilities under the state's antidiscrimination laws.

I hope that you find the Report informative and helpful as you (and the General Assembly) contemplate the resources to be devoted to this vital agency in the future.

Sincerely,

John B. Susa, Ph.D.
Chairperson

FY 2013 HIGHLIGHTS

INTAKE

The Commission took in 367 new charges of discrimination, representing an increase of nearly 17% over FY 12. Of the new charges, 80.9% were in the area of employment, 13.9% in housing and 3.0% in public accommodations. Charges of disability discrimination unrelated to employment, housing or public accommodations accounted for 2.2% of intake.

Claims of disability discrimination predominated, with 155 new cases, or 42.2% of cases taken in, containing an allegation of disability discrimination. Claims of sex discrimination followed, with 108 new cases, or 29.4%, containing sex-based allegations (including pregnancy discrimination and sexual harassment). Claims of age discrimination and race discrimination followed, with 87 and 78 claims respectively, representing 23.7% and 21.3%.

INVESTIGATIONS

For the fifteenth consecutive year, the Commission processed more cases than it took in (390 vs. 367).

- Probable Cause was found in approximately 6.7% of cases, representing a decrease from FY 2012 (8.3%);
- No Probable Cause was found in approximately 46.2% of cases, representing an increase from FY 2012 (39.9%); a substantial number of these cases resulted from a complainant's failure to pursue his/her charge;
- Approximately 19.2% of cases settled prior to a determination of Probable Cause or No Probable Cause, representing a slight decrease from FY 2012 (22.8%).

ADMINISTRATIVE HEARINGS

The Commission held administrative hearings in four cases in the fiscal year. In the Decision and Orders issued within the year, the Commission found that: 1) a male employee at a cleaning service failed to prove that he was discriminated against in respect to job assignments because of his sex; 2) a factory worker failed to prove that she was subjected to harassment, retaliation and termination because of her ancestral origin; and 3) a female pastry shop manager proved that she was subjected to discriminatory terms and conditions of employment, sexual harassment and retaliation by a supervisor.

THE COMMISSION AT THE COURTS

The Commission submitted briefs to the state Supreme Court in two cases raising questions as to the appropriate standards to be used in analyzing evidence in discrimination cases, and the Commission's Civil Prosecutor successfully settled three post-probable cause cases after suit had been filed in Superior Court.

CASELOAD ACCOMPLISHMENTS

- The Commission processed slightly fewer cases in FY 13 than in FY 12 (390 vs. 411).
- The Commission has realized a steady and significant decrease in the time taken to process cases. While the average age of a case at closure in FY 2003 was over three years, the average age of cases closed in FY 2013 was 329 days, a significant decrease from FY 12 (400 days).
- The Commission closed FY 13 with no cases considered "aged" by federal Equal Employment Opportunity Commission guidelines in its inventory. (By way of comparison, the Commission ended FY 2002 with approximately 160 "aged" cases in its inventory.)

OUTREACH

Commission staff members conducted 31 outreach/education sessions in the community, reaching nearly 1,200 employers, housing providers and individuals and educating them about their rights and responsibilities pursuant to state and federal antidiscrimination laws.

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Commissioners and Staff Members

Commissioners

John B. Susa, Ph.D., Chair
Alberto Aponte Cardona, Esq.
Rochelle Bates Lee
Camille Vella-Wilkinson
Nancy Kolman Ventrone
Alton W. Wiley, Jr., Esq.
Iraida Diaz Williams

Staff

Michael D. Évora, Esq., Executive Director
Cynthia M. Hiatt, Esq., Legal Counsel
Francis A. Gaschen, Esq., Legal Counsel
Angie V. Lovegrove, HUD Project Director
Marlene Colón Toribio, EEOC Project Director
Glenn C. Cardozo, Sr. Compliance Officer
Tina M. Christy, Sr. Compliance Officer
Allison G. Cote, Sr. Compliance Officer
VACANT, Sr. Compliance Officer*
Stephen W. Strycharz, Investigator
Jason Flanders, Investigator
Dina I. Quezada, Investigator
Betsy A. Ross, Chief Clerk
Zaida Rivera, Administrative Aide
Lynn Soccio, Administrative Aide

*This position was vacated in August 2009 and the Commission has not received authorization to fill it.

Agency Overview

The Rhode Island Commission for Human Rights (Commission) was created by the Rhode Island General Assembly in 1949 and is one of the oldest state anti-discrimination agencies in the country. In establishing the Commission, the General Assembly declared that “[t]he practice or policy of discrimination against individuals ... is a matter of state concern”, and observed that “... discrimination foments domestic strife and unrest, threatens the rights and privileges of the inhabitants of the state, and undermines the foundations of a free democratic state”. R.I.G.L. § 28-5-2. Through impartial investigation, formal and informal resolution efforts, predetermination conferences and administrative hearings, the Commission seeks to ensure due process for both complainants (charging parties) and respondents, to provide redress for victims of discrimination, and to properly dismiss cases in those instances in which charges of discrimination lack evidentiary support.

The Commission enforces Rhode Island anti-discrimination laws in the areas of employment, housing, public accommodations, credit and delivery of services. The employment and public accommodations statutes prohibit discrimination based on race, color, sex, disability, ancestral origin, religion, sexual orientation, gender identity/expression and age. The housing statute, in addition to prohibiting discrimination on these bases, also prohibits discrimination based on marital status, familial status, status as a victim of domestic abuse, housing status and association with members of a protected class. The credit statute, in addition to prohibiting discrimination on the bases covered by the employment law, also prohibits discrimination based on marital status and familial status. Discrimination in the delivery of services on the basis of disability is prohibited.

The Commission’s major program activities include intake, investigation, conciliation, administrative hearings, enforcement, outreach and education.

The Commission was created and empowered by Title 28, Chapter 5 of the General Laws of Rhode Island (the Fair Employment Practices Act) and has statutory responsibility to enforce the following laws:

- Fair Employment Practices Act (R.I.G.L. § 28-5-1, *et seq.*)
- Fair Housing Practices Act (R.I.G.L. § 34-37-1, *et seq.*)
- Hotels and Public Places Act (R.I.G.L. §11-24-1, *et seq.*)
- Prevention and Suppression of Contagious Diseases—HIV/AIDS Act (R.I.G.L. §§ 23-6.3-11 and 23-6.3-12)
- Civil Rights of People with Disabilities Act (R.I.G.L. § 42-87-1, *et seq.*)
- Equal Rights of Blind and Deaf Persons to Public Facilities Act (R.I.G.L. § 40-9.1-1, *et seq.*)

The Commission is overseen by seven Commissioners who are appointed by the Governor with the advice and consent of the Senate. The Commissioners are not compensated for the services they render to the agency.

In addition to enforcing state laws, the Commission has contractual agreements with the Equal Employment Opportunity Commission (EEOC) and U.S. Department of Housing and Urban Development (HUD) to assist in the enforcement of the following federal laws: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act; and Title VIII of the Civil Rights Act of 1968.

Given the agency’s limited resources, keeping the Commission resilient and effective has been a task shared by the entire staff, Commissioners, interns and volunteers.

PROTECTED CATEGORIES UNDER STATE AND FEDERAL LAW

	Employment		Housing		Public Accommodations	Credit
	State	Federal	State	Federal	State	State
Race	√	√	√	√	√	√
Color	√	√	√	√	√	√
Religion	√	√	√	√	√	√
Ancestral Origin	√	√	√	√	√	√
Sex[1]	√	√	√	√	√	√
Disability[2]	√	√	√	√	√	√
Age[3]	√	√	√		√	√
Sexual Orientation[4]	√		√		√	√
Gender Identity or Expression[5]	√		√		√	√
Familial Status			√	√		√
Marital Status			√			√
Status as a Victim of Domestic Abuse			√			
Housing Status[6]			√			

1 Includes sexual harassment and discrimination on the basis of pregnancy status.

2 Includes physical and mental disabilities.

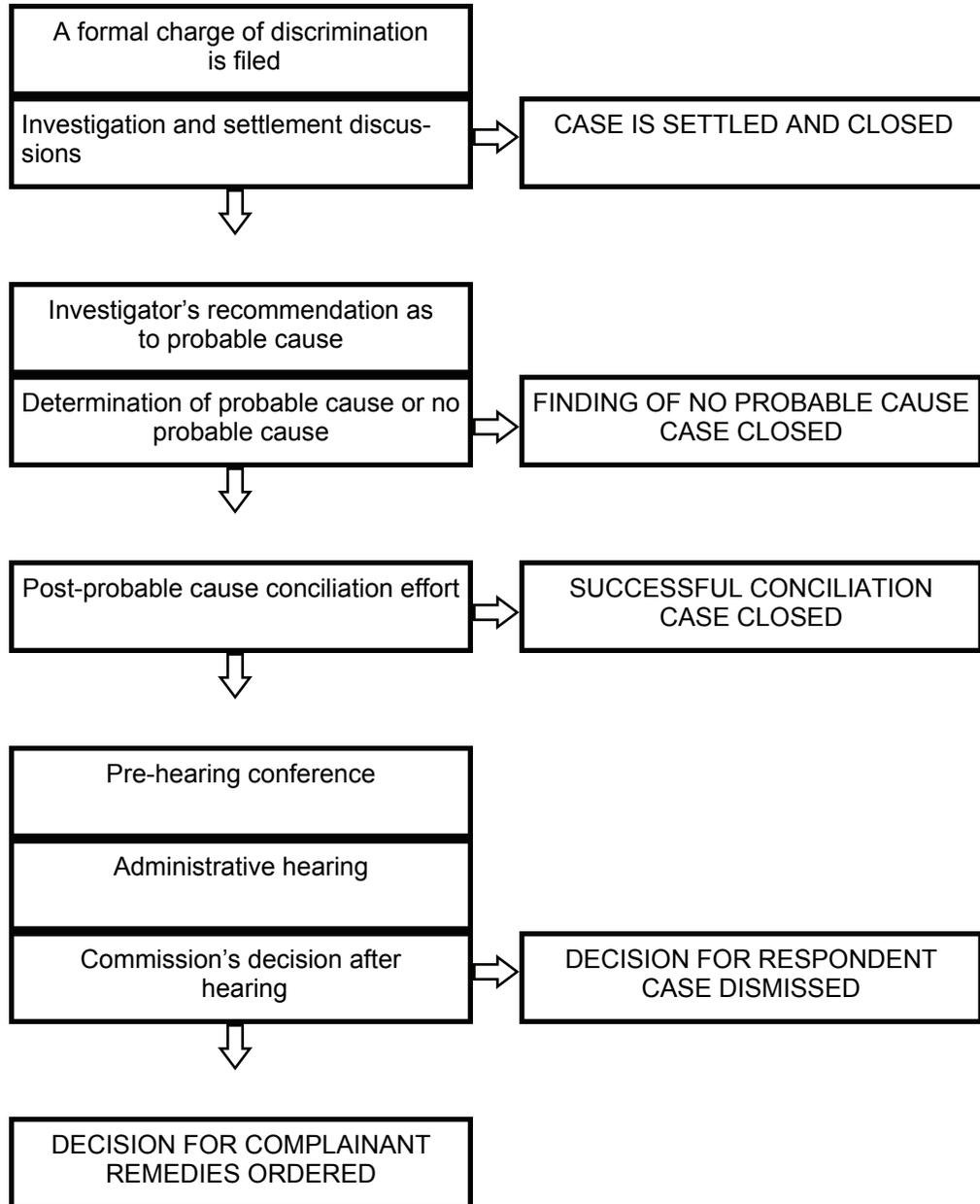
3 Protects individuals 40+ years of age in Employment; protects individuals 18+ years of age in Housing, Public Accommodations and Credit.

4 Protects individuals who are heterosexual, homosexual or bisexual.

5 Includes an individual's actual or perceived gender, as well as an individual's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, whether or not that gender identity, gender-related self-image, appearance or expression is different from that traditionally associated with that individual's sex at birth.

6 "Housing Status" means the status of having or not having a fixed or regular residence, including the status of living on the streets or in a homeless shelter or similar temporary residence.

CHARGE PROCESS SUMMARY



NOTE: Rhode Island law expressly provides that, under certain circumstances, complainants and/or respondents may elect to terminate proceedings before the Commission and have the case heard in Superior Court.

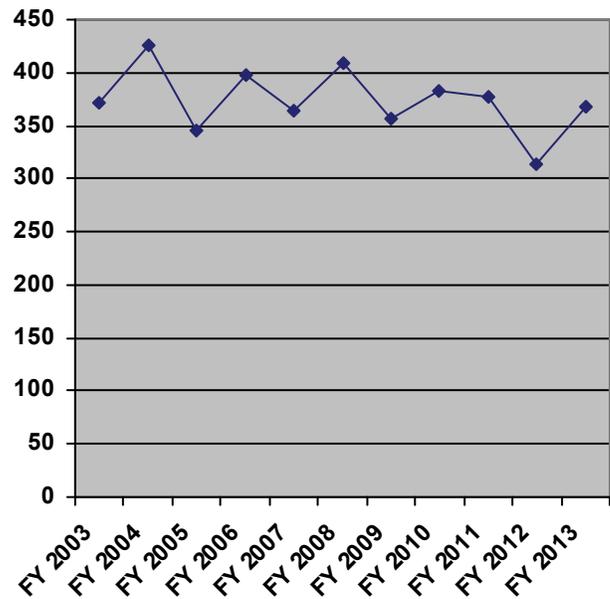
Intake

Inquiries are received and evaluated. If jurisdictional requirements are met, a formal charge of discrimination is filed and forwarded to the respondent.

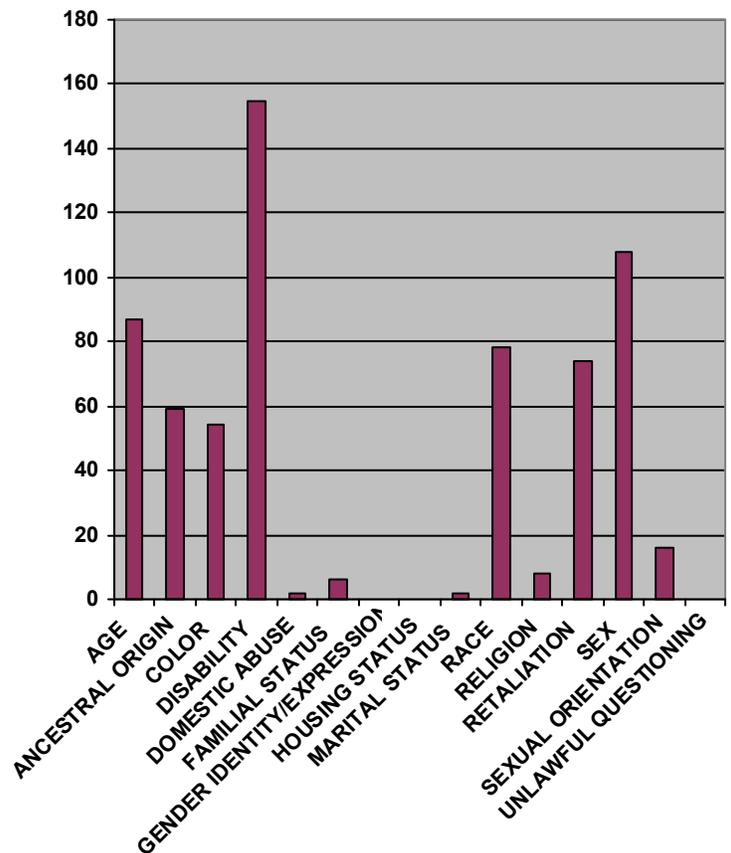
The intake process usually begins with a telephone call or visit to the Commission. Each year the agency receives thousands of telephone and walk-in inquiries from individuals requesting information or wanting to pursue a charge of discrimination. The majority of these inquiries do not come within the jurisdiction of the Commission and these are referred to other agencies or organizations. In those cases in which the inquiry presents a claim within the Commission’s jurisdiction, an intake officer assists the individual in filing a formal charge of discrimination.

The Commission took in a total of 367 cases in the fiscal year, representing a nearly 17% increase from FY 2012 (314). As in past years, disability claims predominated in this year’s intake, with a total of 155 new cases, or 42.2%, containing an allegation of disability discrimination. Sex-based claims followed in number, with a total of 108 cases, or 29.4%, containing an allegation of sex discrimination (including pregnancy and sexual harassment claims). Age-based claims and race-based claims followed at 87 and 78 (23.7% and 21.3%), respectively.

INTAKE BY FISCAL YEAR



FY 13 INTAKE BY BASIS



FY 2013 INTAKE BY AREA

	Number	Percent of Total
Employment	297	80.9
Housing	51	13.9
Public Accommodations	11	3.0
Individual with Disability*	8	2.2
Credit	0	0
TOTALS	367	100

FY 2013 INTAKE BY BASIS AND AREA**

	Employ- ment	Housing	Public Accom.	Ind. with Disab.*	Credit	To- tals
Age	86	1	0	NA	0	87
Ancestral Origin	45	11	3	NA	0	59
Color	41	10	3	NA	0	54
Disability	116	26	5	8	0	155
Familial Status	NA	6	NA	NA	0	6
Gender Identity or Expression	0	0	0	NA	0	0
Housing Status	NA	0	NA	NA	NA	0
Marital Status	NA	2	NA	NA	0	2
Race	64	10	4	NA	0	78
Religion	8	0	0	NA	0	8
Retaliation	73	1	0	NA	0	74
Sex***	102	4	2	NA	0	108
Sexual Orientation	14	2	0	NA	0	16
Status as Victim of Domestic Abuse	NA	2	NA	NA	0	2
Unlawful Questioning	0	0	0	0	0	0

*Figures reflect charges filed solely under the Civil Rights of People with Disabilities Act.

**Figures reflect the fact that most charges filed allege more than one basis of discrimination. Example: if a charge alleged discrimination on the bases of age, race and color, it is reflected in the figures for all three categories.

***Includes allegations of pregnancy discrimination and sexual harassment.

Investigations

Upon assignment, an investigator conducts an impartial investigation of the allegations and, after analyzing all elements of the case, makes a recommendation to a Preliminary Investigating Commissioner.

After the intake phase is completed and a formal charge of discrimination is filed, each case is assigned to an investigator. The average time from the filing of a charge to assignment to an investigator was six weeks or less. Most of the Commission's personnel resources are devoted to the investigation process. **Approximately 21% of case closures in FY 2013 resulted from settlements or conciliations, representing a slight decrease from FY 2012 (24.8%).**

For those cases which do not settle, investigators use a variety of techniques to investigate the case. Often the investigators hold Predetermination Conferences where both complainants and respondents can present evidence to support or refute the allegations. The conferences are held before a Preliminary Investigating Commissioner. A case may involve the collection and analysis of comparative, statistical and/or direct evidence. Investigators may need to travel on-site to collect information and testimony pertinent to the charge. Not all investigations are alike. The individual characteristics of each case will influence an investigator's approach. **In furtherance of the investigative process, the**

Commission issued multiple subpoenas in the fiscal year to compel the production of documents and witness testimony.

In FY 2013, a determination of "Probable Cause" was rendered in approximately 6.7% of cases, reflecting a decrease from FY 2012 (8.3%) While the percentage of Probable Cause cases may seem low, it should be noted that many potential Probable Cause cases settle prior to a formal determination as to Cause and some cases in which the complainant requests a right to sue may be Probable Cause cases. **During the fiscal year, the Commission settled 75 cases (19.2% of total cases processed) prior to a determination as to whether Probable Cause existed.**

A "No Probable Cause" determination was rendered in approximately 46.2% of cases, reflecting an increase from FY 2012 (39.9%). A significant number of these No Cause findings resulted from the complainant's failure to pursue her/his charge by responding to requests for information.

For the fifteenth consecutive year, the Commission processed more cases than it took in (390 vs. 367), resulting in a continued decrease in the number of cases carried forward to the next fiscal year. "Processed" cases include cases in which a determination of Probable Cause is rendered. Although such cases are not yet closed, they are included in the list of case dispositions to provide an accurate view of the Commission's work.

Case Dispositions

TERMS AND DEFINITIONS

Administrative Closures	Includes cases closed for failure to locate a complainant, complainant's failure to cooperate, no jurisdiction, charges withdrawn without benefits, receiverships, and bankruptcies.
Conciliation	Case settled after a finding of probable cause.
Decision and Order	Commission makes a finding after a hearing before the agency. If the decision is for the complainant, remedies are ordered. If it is for the respondent, the case is dismissed.
Negotiated Settlement	Case formally settled prior to a finding of Probable Cause or No Probable Cause.
No Probable Cause	Insufficient evidence exists to support the probability that the complainant was a victim of discrimination.
Probable Cause	Sufficient evidence exists to support the probability that the complainant was a victim of discrimination.
Right to Sue	Complainant is issued a Notice enabling her/him to take the case to court, and the Commission closes the case internally.
Withdrawal with Benefits	Complainant withdraws the case upon receiving a settlement from the respondent.

Status of Probable Cause Cases FY 2013

Probable Cause cases	26
Respondent's Election to Superior Court	14
Complainant's Election to Superior Court	1
Joint Elections	0
Conciliation	3
Open as of 6/30/13 [pending administrative hearing or other closure at the Commission]	8

Case Dispositions FY 2013

Type of Disposition	Number
Decision and Order	3
Probable Cause	26
No Probable Cause	180
Conciliation*	7
Negotiated Settlement	12
Withdrawal with Settlement	63
Right to Sue	63
Administrative Closure	36
Total	390

*Includes conciliation of cases in which probable cause was found in a prior fiscal year.

Administrative Hearings

After a “probable cause” ruling, a Commissioner conducts an administrative hearing during which sworn testimony is taken before a stenographer. A Decision and Order is rendered thereafter.

The administrative hearing process begins after the Preliminary Investigating Commissioner finds probable cause and the parties are unable to conciliate. (The parties have the statutory right, after a finding of probable cause, to elect to have the matter heard and decided in the Superior Court; in cases in which no such election is made, the agency’s administrative hearing process commences.) One Commissioner conducts the hearing with the assistance of Legal Counsel. At the hearing, which is less formal than a court trial, witnesses present sworn testimony and relevant exhibits are accepted. A stenographer makes a record of the entire proceeding. After the parties present all their evidence, three Commissioners decide the case and issue an order.

A typical hearing lasts from one to three days. For all parties involved, including the Commission, the administrative hearing can be a costly and time-consuming activity. Despite receiving no reimbursement for services rendered, Commissioners routinely held hearings.

Commission Hearings and Closures FY 2013

Cases in which Hearings were Held	4
Number of Hearing Days	6
Closures of Cases in Hearings	
Total Decision and Orders	3
Decision for Complainant	1
Decision for Respondent	2
Written decisions on motions (These include motions to dismiss, discovery motions and motions on damages and attorney’s fees.)	19

The following are summaries of the Decision and Orders issued by the Commission in FY 2013:

Craig Krause v. Arlette Dumais d/ b/a Maids ‘N More (July 18, 2012)

The Respondent employed the Complainant as a cleaner. The Complainant alleged that the Respondent discriminated against him with respect to job assignments because he was male. The Complainant alleged that his supervisor told him that he would be assigned to work with only one female cleaner because the other cleaners had boyfriends or husbands who would be jealous if the Complainant worked with them. The Commission found that the Respondent did not discriminate against the Complainant with respect to job assignments because of his sex. The Commission found that the Complainant was assigned to work with one particular experienced cleaner because she was assigned as his trainer during his probationary period. The Commission found that the Complainant did not prove that the Re-

spondent discriminated against him because of his sex.

Martha Benitez v. PYRAMID CASE COMPANY, Reynar Vazquez, Blanca Cruz and Mario Meletz (December 11, 2012)

The Complainant alleged that the Respondents discriminated against her with respect to harassment, terms and conditions of employment and termination of employment because of her ancestral origin and in retaliation for opposing unlawful employment practices. The Complainant was born in Ecuador. The Respondent supervisors were of Guatemalan ancestral origin. The Complainant worked for the Respondent in a sewing position. The Complainant testified that before 2007, her treatment was fine. In late 2007, the Complainant went to the President of Pyramid Case Company and told him that the Respondent supervisors had not requested that she receive a raise and that she thought that she had not received a raise because she was not Guatemalan. The President called a meeting with the Complainant and Respondent supervisors and decided that they would have the Complainant try other more complicated machines, which could result in her hourly wage being raised. The Respondents determined that the Complainant's operation of the more complicated machines did not work out. The Complainant was paid the same as twenty-four of her co-workers on the date that she requested a raise. She did not produce evidence of any worker who operated the machine that she did, the single-needle machine, who made more money than she did. While she testified that

her treatment by her supervisors, including allegedly ignoring her, preferring other workers, fixing the machines of other workers more quickly and changing her work station, was harassment, the Commission did not find that her treatment rose to a level of a hostile work environment. The Complainant was laid off in May 2008. The President testified that she was laid off because the type of work changed and they needed workers who could operate machines other than the single-needle machine. The Commission noted that the Complainant did not find any problems before 2007 and that after she complained, the Respondents gave her a trial on other machines which would have resulted in a higher hourly rate. The Commission found that the Complainant did not prove harassment, disparate terms and conditions of employment or discriminatory termination based on her ancestral origin or in retaliation for opposing unlawful employment practices.

Commissioner Camille Vella-Wilkinson concurred in part and dissented in part. She dissented from the finding that the Respondents did not discriminate against the Complainant with respect to compensation. She found that the actions of Respondent supervisors, who were of Guatemalan ancestral origin, in fixing the machines of other workers of Guatemalan ancestral origin before they fixed her machine, and requiring her to re-do work which other workers were allowed to discard, affected her production rate and ability to earn bonuses. She also found that the Respondent supervisors did not explain why they did not recommend a raise for the Complainant.

Melissa B. Korsak v. John Frigault
(January 28, 2013)

The Complainant alleged that the Respondent incited an unlawful employment practice and attempted to commit unlawful employment practices, that he subjected the Complainant to disparate terms and conditions of employment and sexual harassment because of her sex and retaliated against her because she opposed unlawful employment practices. The Complainant was working for a pastry shop as a server and was then promoted to manager. The Respondent, who introduced himself as the “security guy”, asked her out. When she refused, he told her that if she went out with him things would be different. He discussed with her his relationship with his wife. After her refusal to go out with him, he assigned the Complainant to perform numerous onerous tasks which he monitored or watched. At one point, after she had remedied all of the items on a 19 item list, he spent three hours on a review, writing her up for dust in the back of a soda cooler, criticizing her for muffins which were not lined up in a perfect line and talking to her in a loud voice in front of customers. He demonstrated to her how to scrub the floor and as she took a towel to dry the floor, he put his legs on either side of her. He told her that he treated her differently from another manager because the Complainant did not sleep with him. The Complainant ultimately left her job. The Commission found that the Respondent committed unfair employment practices and awarded \$75,000 in damages for pain and suffering and \$78,443 in damages for lost wages, plus statutory interest. In a later decision, the Commis-

sion also awarded attorney’s fees of \$10,197.50.

The Commission at the Courts

The Commission continues to take steps to enforce agency Decisions and Orders and to pursue litigation in court where statutorily authorized to do so. The following are highlights from Fiscal Year 2013:

RICHR vs. Colony Personnel Associates, Inc., et al.

On or about March 15, 2007, a former employee of Colony Personnel Associates, Inc., informed the Commission that the company, acting under the direction of its directors and officers, Elaine Atturio and Charles Atturio, were discriminating against applicants for employment by refusing to hire on the basis of the applicants’ disability. The witness alleged that employees of the company, located at 2845 Post Road, Warwick, were instructed when screening applicants for hire to mark their files “DNU”, meaning “DO NOT USE”, if the applicants had or appeared to have disabilities.

To verify the information from the witness, the Commission used testers. On or about April 4, 2007, a tester was sent to the premises of the company to apply for employment. This tester presented himself as a person with a disability. In all respects, the tester, a college graduate, was qualified to perform, without the need for any accommodation, the jobs for which he applied. On or about April 13, 2007, a different test-

er was sent to the company to apply for employment. The second tester presented himself as a person with no disability, and, like the first tester, was qualified to perform the jobs for which he applied without the need for any accommodation.

Within one week of his date of application, the second tester was offered employment, which he declined. Shortly thereafter, this tester was offered a second position, which he also declined. Although he had applied for employment earlier, the first tester was not offered the employment opportunities that were offered to and later declined by the second tester. The first tester was not offered any other employment opportunities at the time of the second tester's second declination of employment. Based on evidence of the aforementioned witness and the testing results, on June 29, 2007, the Commission initiated an employment discrimination charge against the company and its principals, alleging disability discrimination.

During the course of the investigation, the Commission sought voluntary production of certain documents and records from the respondents. When the respondents failed to comply, the Commission issued a subpoena to the company but its counsel filed a Motion to Quash the subpoena. A hearing was scheduled before the Commission on the Motion to Quash. After briefing on the issue and a hearing, the Commission upheld the subpoena with regard to almost all of the matters that remained unresolved between the parties. The respondents appealed to the Kent County Superior Court and, in a written decision, Judge Lamphaer up-

held the decision of the Commission, with one small exception. The respondents petitioned the Rhode Island Supreme Court for issuance of a Writ of Certiorari to review the decision from the Superior Court, but their petition was denied.

Rights to Sue were subsequently issued by the United States Equal Employment Opportunity Commission and the Commission and suit was brought by the Commission in federal court. The complaint alleged that the actions of the respondents were violations of law under Title I of the Americans with Disabilities Act of 1990, as amended, Title I of the Civil Rights Act of 1991, the Rhode Island Fair Employment Practices Act and the Civil Rights of People with Disabilities Act. The case was successfully mediated under the federal mediation program.

RICHR v. John Irwin and Redwood Management Corporation DBA Forest Park Mobile Homes

On December 31, 2010, Gloria Sigmon filed a charge against the respondents alleging that they had discriminated against her in housing by denying her request for a reasonable accommodation necessitated by disabilities. Ms. Sigmon alleged that she was eligible and qualified to obtain the reasonable accommodation of an exception to the respondents' policy of no pets in their trailer park in Middletown. Ms. Sigmon alleged that her comfort animal, a dog, was not a "pet" and therefore not subject to the "no pets" policy of the respondents. After an investigation and finding of probable cause by the Commission, the respondents elected to have the matter removed from the

Commission and heard in court. Pursuant to its agreement with the U.S. Department of Housing and Urban Development, the Commission filed an action in the Newport County Superior Court on behalf of Ms. Sigmon.

During the pendency of the lawsuit, Ms. Sigmon moved out-of-state and the respondents alleged her move made the case moot. As the state's primary law enforcement agency, the Commission has the statutory duty to protect the public interest. Not convinced that the discriminatory acts complained of would cease, the Commission continued to litigate. Settlement was ultimately reached wherein the respondents agreed to adopt a formal written policy for handling future requests for reasonable accommodations to the pet policy for persons with disabilities. Also, notice of the new policy, which was not to be amended for five years, was to be provided to all current residents of the trailer park. Lastly, the Commission was to be notified if the respondents sold the trailer park within five years of the date of settlement.

RICHR, on behalf of Timothy Wright v. Carolyn Izzi, NEW CANONCHET CLIFFS, LP and WILLIAM J. CANNING MGMT. CO.

Timothy Wright filed a charge with the Commission on April 24, 2009 alleging that he was discriminated against when he applied to be a resident of the premises owned and managed by the respondents. Mr. Wright alleged that the respondents had discriminated against him with respect to terms and conditions of rental because of his disability by denying him a reasonable accommodation to their pet policy so that

he could enjoy the opportunities of living in their housing with his comfort dog. The respondents' pet policy had a size/weight limit which was exceeded by "Teadles", Mr. Wright's black lab mix.

After completion of the Commission investigation and a finding of probable cause, the Commission brought suit on behalf of Mr. Wright against the respondents in Washington County Court. The case was settled for a payment to Mr. Wright in the amount of \$5,500.00 for damages.

McGarry v. Pielech, 47 A.3d 271 (R.I. July 6, 2012)

The Rhode Island Supreme Court held that evidence that interview materials were missing could give rise to an adverse inference that the missing materials were adverse to the employer and thus constitute evidence that the employer's given reason for failure to hire the plaintiff was a pretext for age discrimination. The Commission had submitted an amicus curiae brief in support of the position that the negligent or deliberate destruction of interview materials (spoliation) can be critical evidence on the issue of discrimination.

Carmella Bucci v. Hurd Buick Pontiac GMC Truck, Case No. SU-11-0163

The Commission submitted an amicus curiae brief relating to the standards for evaluating evidence of discrimination in deciding a motion for summary judgment. The case is pending oral argument and decision.

Fair Housing Overview

HOUSING CASELOAD

The population of Rhode Island in 2010 was 1,069,725. Under guidelines established by HUD, a state having a population of up to 1,500,000 residents should, on average, receive and process up to 15 fair housing complaints per year. **The Commission received 51 complaints and processed 50 complaints in FY 2013, which is equivalent to HUD's estimated average workload of a state having a population of over 5,000,000 residents.**

INTAKE AND DISPOSITIONS FIVE-YEAR VIEW

FY	INTAKE	PROCESSED
2013	51	50
2012	40	48
2011	53	54
2010	47	40
2009	63	71

CHARGE DISPOSITIONS

The Commission processed 50 housing complaints in FY 2013. Two cases (4%) resulted in a finding of Probable Cause, while 27 cases (54%) resulted in a No Cause finding. A settlement was achieved in 15 additional cases (30%), including four post-

Probable Cause cases (two of which the Commission had been prosecuting in Superior Court). Five cases (10%) were withdrawn by the complainant. In addition, one case (2%) was closed when complainant requested a Right to Sue in Superior Court.

Settlements: From the time a charge is filed and the investigation commences, the Commission seeks to amicably resolve all pending matters. Eleven cases were successfully settled during the investigative phase. Resolutions of these cases included respondents' agreement to: provide monetary settlements; discontinue eviction proceedings; approve transfer requests; expunge notices of noncompliance; grant reasonable accommodations for tenants with disabilities; attend sexual harassment training; and make a donation to a local "sober house" of complainant's choosing.

Noteworthy among the settled cases was one in which the Commission initiated a charge alleging sexual orientation discrimination and discriminatory advertising after learning of a rental advertisement on Craigslist which ended with the phrase "no gay people!!!!!!" After conducting testing on-site to determine the owner of the property, the Commission initiated the charge against the owner. During investigation, the Commission was able to obtain records verifying that the ad had been placed telephonically from near Atlantic City, NJ, where the owner had been vacationing at the time the ad was placed. The owner then agreed to a monetary settlement.

Post-Probable Cause Resolutions: The Commission successfully settled four

cases during the fiscal year following a finding of probable cause:

Moffitt v. Krazak, Kingstown Realty and Kingstown Mobile Home Park

In April 2012, Peter Moffitt filed a charge of retaliation against Kingstown Realty, Inc., Judy Krzak, and Kingstown Mobile Home Park and Sales, LLC alleging that the respondents retaliated against him because he aided another person in the exercise and enjoyment of his fair housing rights in an unrelated charge. The complainant alleged that the respondents interfered with his right to peaceful enjoyment of his premises by changing the terms and conditions of his residency after he testified at a predetermination conference on the unrelated charge. After a finding of probable cause, but before suit was instituted, the parties resolved the matter with the respondent landlord agreeing to give Mr. Moffitt a two-year lease at a stipulated rental, which allayed his fears of eviction.

Cissoko v. Velazquez

In December 2012, Ms. Khadidiatou D. Cissoko, individually and on behalf of her minor children, filed a charge of discrimination against five members of the Velasquez family of Pawtucket, RI. She alleged that the respondents discriminated against the complainants in denying rental of property that they owned on the basis of the complainants' race and color (black), and ancestral origin (non-Hispanic).

After seeing a sign on a property advertising an apartment for rent, the complainants were shown the third floor

unit by a Hispanic male and told the rent was \$700.00 per month. After indicating they wanted to rent the apartment, the complainants were told to return the following day with a security deposit, which they did. On that day, they were met by a Hispanic woman who refused to accept their deposit check and said that the apartment was no longer available. The Hispanic woman's son reminded her in Spanish of another available unit at a different location which complainants were then shown. The complainants agreed to the terms and conditions of rental but were told by the Hispanic woman that she had to consult with the property owner prior to renting it. The woman promised to call complainants the next day, but never did. Complainants left telephone messages for the woman, but the calls were never returned. At this time, complainants called the number that was on the sign for the first apartment and found that the apartment had not been rented, contrary to what they had been told. At all times the complainants were qualified to rent the premises for which they had applied.

After a finding of probable cause, but prior to the institution of suit, the four respondents who owned the property agreed to pay \$2,500.00 to the complainants and the matter was settled.

See also, discussions of [RICHR v. Irwin](#) and [Wright](#) cases at pp. 12-13.

RHODE ISLAND HOSTS FAIR HOUSING SYMPOSIUM

On April 10, 2013, the Commission, HUD and the Anti-Defamation League of New England cosponsored a Fair Housing Month Symposium in Newport

entitled *The Struggle for Civil Rights: Furthering Fair Housing*. A keynote address by Jonathan D. Sarna, Braun Professor of American Jewish History and Chair of the Hornstein Professional Leadership Program at Brandeis University, was followed by a panel discussion on the history and progress of the fair housing movement.

Legislative Update

On July 15, 2013, Governor Lincoln Chafee signed into law the so-called “Ban the Box” legislation. The law, which becomes effective on January 1, 2014, amends the state Fair Employment Practices Act to prohibit employers from inquiring before a first interview, either via an employment application or otherwise, whether an applicant has been convicted of a crime.* The following exceptions apply:

- The provision does not apply to applications for law enforcement agency positions or positions related to law enforcement agencies.

- An employer may inquire, on an employment application or otherwise, as to whether an applicant has ever been convicted of a specific offense(s) IF a federal or state law or regulation creates a mandatory or presumptive disqualification from employment based on an applicant’s conviction of one or more specified crimes.

Example: if a law or regulation prohibits an employer from hiring a person convicted of assault as a child care worker, the employer may inquire as to whether the applicant has ever been

convicted of assault (but may not generally inquire as to whether the applicant has ever been convicted of “a crime”).

- An employer may inquire, on an employment application or otherwise, as to whether an applicant has ever been convicted of a specific offense(s) IF a standard fidelity bond or an equivalent bond is required for the position in question AND an applicant’s conviction of one or more specified offenses would disqualify him/her from obtaining the bond.

Example: if a standard fidelity bond is required for a bank teller position and an applicant would be disqualified from obtaining such a bond if s/he had been convicted of embezzlement, the employer may inquire as to whether the applicant has ever been convicted of embezzlement (but may not generally inquire as to whether the applicant has ever been convicted of “a crime”).

- An employer may ask about an applicant’s conviction of any criminal offense (s) at or after an initial interview, in accordance with applicable state and federal laws.

***NOTE:** The new law applies to questions about **convictions** only. Under current law, an employer is already prohibited from inquiring as to whether an applicant has ever been **arrested for or charged with** a crime, except in cases of applications for law enforcement agency positions or positions related to law enforcement agencies.

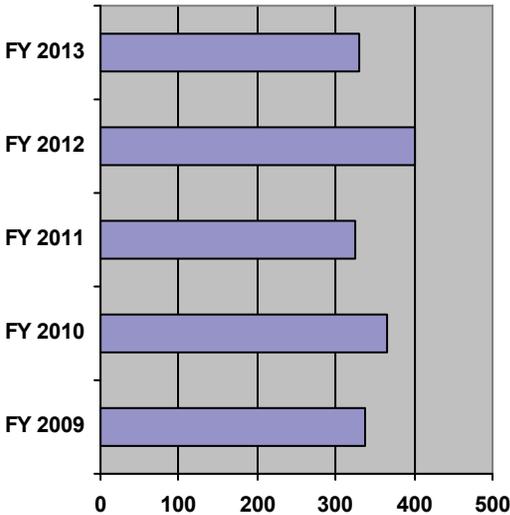
Caseload Statistics

For the fifteenth consecutive year, the Commission was able to process more cases than it took in (390 vs. 367). **The agency processed approximately 5.1% fewer cases in FY 2013 than it did in FY 2012 (390 vs. 411).**

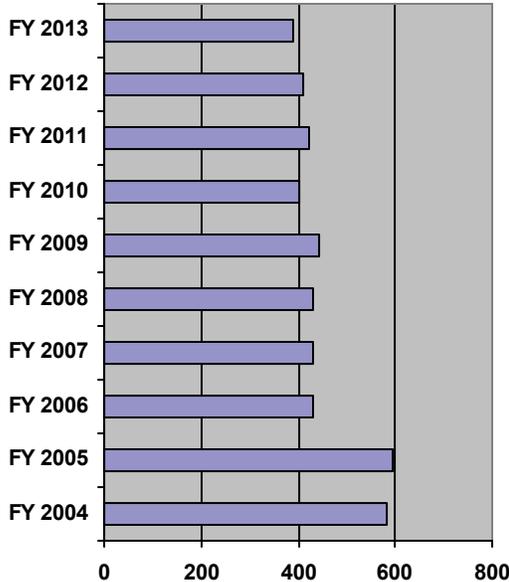
CASE PROCESSING TIME

In recent years, the Commission has labored to ensure more expeditious processing of cases. The “hands on” role Director Evora has taken in overseeing caseload management, concerted staff efforts and the use of the Commission’s subpoena power to expedite stalled investigations are among the tools used to achieve success in this area. The average age of cases closed in FY 2003 exceeded three years. By FY 2006, that time had been decreased to 423 days. **For FY 2013, the average age of a case at closure was 329 days.**

AVERAGE CASE AGE (DAYS) AT CLOSURE BY FISCAL YEAR



CASES PROCESSED BY FISCAL YEAR



AGED CASE REDUCTION

FY 2013 saw a continuing reduction in the number of cases considered “aged” under federal Equal Employment Opportunity Commission guidelines. Thanks to the diligent efforts of Commissioners, staff and interns, **the Commission closed FY 2013 with no aged cases in its caseload, a milestone in the agency’s history.**

CASE PROCESSING

Outreach

DATE	TOPIC	LOCATION/GROUP
8/2/12	Fair Housing	12 Acres, Smithfield (hosted by Goodman, Shapiro & Lombardi)
8/16/12	Fair Housing	Federal Hill House, Providence
8/29/12	Fair Housing	RI Minority Elderly Task Force, East Providence
9/11/12	Case Successes Working Jointly with HUD	Suffolk Law School, Boston, MA
9/13/12	LGBT Equal Access to HUD Programs and Cultural Competency	HUD – Boston Regional Office, Boston, MA
9/16/12	Fair Housing	RI Minority Elderly Task Force, East Providence
10/9/12	Overview/Sex Discrimination and Sexual Harassment	“Women in Politics” course, University of RI, Feinstein Campus, Providence
10/10/12	Overview/LGBT Discrim.	Youth Pride, Inc., Providence
10/10/12	Overview/Sexual Harassment	Family Services of RI, Providence
10/24/12	Fair Housing	Central Falls Housing Authority, Central Falls
10/24/12	Fair Housing	RI Minority Elderly Task Force, East Providence
11/8/12	Sexual Harassment	Salvation Army Supervisory Staff @ RICHR
12/11/12	Overview/Interactive Discussion on Discrimination – Pt. 1	YearUp, Providence
12/13/12	Overview/Interactive Discussion on Discrimination – Pt. 2	YearUp, Providence
12/20/12	Overview/Fair Employment/Fair Housing	NAACP, Providence Chapter, Providence
1/23/13	Fair Housing	RI Minority Elderly Task Force, East Providence
2/6/13	Overview/Intern Recruitment	Community Services Opportunities Fair, Brown Univ., Prov.
2/25/13	Fair Housing	Center for Hispanic Policy and Advocacy (CHisPA) Board Mtg.
2/26/13	Racial Profiling	Taping of ACLU cable show
3/11/13	New Developments in Employment Law	Labor Subcommittee, RI Bar Association, Providence
3/14/13	Overview/Sexual Harassment	Mental Health Consumer Advocates of RI, Providence
3/25/13	Overview/ Employment Discrimination	Roger Williams University School of Law, class on Employment Law
4/5/13	Marriage Equality – Civil Rights Implications	Warwick City Council, Warwick
4/8/13	Overview/Sexual Harassment	“Social Work and the Law” class, Providence College, Prov.
4/10/13	Fair Housing	“The Struggle for Civil Rights: Furthering Fair Housing” forum, co-sponsored by HUD, Newport
4/26/13	Fair Housing	Greater Providence Board of Realtors, Providence
5/28/13	Overview/Sexual Harassment	Lauren’s Restaurant, Warren
6/3/13	Overview/Sexual Harassment	Burger King, RI/MA/CT Store Managers, No. Kingstown
6/3/13	Overview/Sexual Harassment	Burger King, RI/MA/CT Asst. Store Managers, No. Kingstown
6/14/13	Fair Housing – Assistive and Comfort Animals	RI Bar Association Annual Meeting, Providence
6/14/13	Fair Housing and Sexual Harassment	Informational Table and handouts at Warwick Veterans’ Services Organization event, Warwick

Federal Agreements

U.S. Equal Employment Opportunity Commission

The Commission has been certified by the U.S. Equal Employment Opportunity Commission (EEOC) as a Fair Employment Practices Agency since 1968. Consistent with Section 706 of the Civil Rights Act of 1964, the Commission is authorized to process charges of employment discrimination which fall under federal as well as state jurisdiction (co-filed). Each year, the Commission enters into a work-sharing agreement with EEOC under which the Commission is expected to investigate a predetermined number of cases. EEOC reimburses the Commission at a fixed rate for each case closed in compliance with the guidelines spelled out in the agreement. **This year, the Commission met its contractual obligation by closing 199 co-filed cases.**

U.S. Department of Housing and Urban Development

The Commission continued its relationship with the U.S. Department of Housing and Urban Development (HUD) as defined under the federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968. The Commission enters into an annual contract with HUD for fixed-rate reimbursement for the processing of housing cases filed under both state and federal law. **The Commission took in 51 charges of alleged housing discrimination, all of which were co-filed with HUD, and processed 50 charges, 47 of which were co-filed with HUD.**

FEDERAL FUNDING, FY 2013

EEOC*	Case Processing	\$129,350
	Training/ Transportation	\$1,900
HUD*	Case Processing	\$103,894
	Administrative Costs	\$10,000
	Training	\$11,500
	Amendment to FY 12 contract	\$3,203
TOTAL		\$259,847

*EEOC's fiscal contract year was October 1, 2012 to September 30, 2013. HUD's contract year was July 1, 2012 to June 30, 2013.

Equal Opportunity Commitment

The Commission's commitment to equal opportunity remains constant. In addition to promoting its internal affirmative action plan, the Commission routinely engages in endeavors geared to enrich and diversify the Rhode Island community. Staff members are available to participate in seminars and conferences that address equal opportunity as it relates to the Commission's work.

COMMISSION WORKFORCE PROFILE

	Employees	Percent
Total Employees	14	100
Women	9	64.3
Racial/Ethnic Minorities	7	50

Interns

Each year, high school, college, graduate students and recent graduates receive first-hand experience in the Commission's primary functions through the intern program.

Interns assist in investigations, conduct legal research, perform clerical duties and work independently through a structured program. For their work, interns may earn college credits, stipends through work-study grants, and/or receive compensation from the state Government Internship Program.

FALL 2012

Lauren Evans	Providence College
Dana Frascarelli	Salve Regina University
Peter Sarian	Providence College
Stephen Shea	Rhode Island College
Adam Staropoli	Providence College
Kathy Tucciarone	UMass Dartmouth Law School
Samantha Wood	Providence College

SPRING 2013

Dana Frascarelli	Salve Regina Univ.
Maria Jiminez	Brown University
Julia Longoria	Brown University
Mercy Morales	Rhode Island College
Peter Sarian	Providence College
Stephen Shea	Rhode Island College
Adam Staropoli	Providence College
Thaya Uthayophas	Brown University
Susan Wennermark	Rhode Island College
Chris Young	Roger Williams Univ. School of Law

SUMMER 2013

Lucas Caruso	Providence College
Sonia Chivalan	Community College of Rhode Island
Grace Fenton	Georgetown University
Jackson Golden	Brown University
Jonathan Grau	Roger Williams Univ. School of Law
Ben Howard	Home Schooled
Matthew Jordan	Royal Holloway College, Univ. of London
Oliver Ling	Brandeis University
Ashleigh McEvoy	Brown University
Domenic Merolla	Hobart College
Brooke O'Gara	Rhode Island College
Dori Rahbar	Brown University
Michael Ross	McGill University
Hannah Tickle	Univ. of Rhode Island
Molly Voigt	Hamilton College

Recognitions



Commissioner Camille Vella-Wilkinson initiated a program entitled “Homes for the Brave” in Warwick, RI, working with nonprofit and financial partners to identify foreclosed or abandoned homes in the city to be offered under special terms to veterans. A strong advocate for marriage equality, she also introduced a resolution in support of the state’s 2013 Marriage Equality legislation to the Warwick City Council; the resolution passed unanimously following a well organized public hearing. The Commissioner also worked with the Warwick Museum of Art and the Warwick Diversity Commission on an exhibit for Black History Month that highlighted the history, culture and art of Black Native-Americans. In addition, she was a Co-Founder of the Warwick Veterans Services Organization (WVSO), a touchstone for multi-generational veterans, reservists and active duty military members in the greater Warwick area. The WVSO provides direct services and advocacy for veterans within their local community in the areas of career and social transition, assistance in accessing benefits, claims follow-up and health/wellness workshops. She has also initiated a local chapter of Women Veterans of America to address healthcare issues for women veterans as well as prevention of sexual harassment and abuse. Commissioner Vella-Wilkinson also participated in the Warwick Citizens Police Academy, actual hands-on training based on the same training that police officers receive. She was elected as Alumni Co-President responsible for recruiting and training neighborhood watch groups.



Commissioner Nancy Kolman Ventrone resigned from her position as Co-President of the Jamestown Shores Association; in this position, she helped coordinate several “Meet the Candidates” forums during the 2012 election season. She volunteers with the American Red Cross in Jamestown and also participated in an after-school mentoring program in Riverview, Florida.



Commissioner Alberto Aponte Cardona received one of the New England Educational Opportunity Association’s (NEOA) Achiever of the Year awards. Each year, the NEOA bestows the awards on individuals who have received (at least) a bachelor’s degree, have made civic or professional contributions, are highly regarded within their profession, and whose participation in an educational opportunity program had a significant impact on their subsequent educational and professional success. (The Commissioner, a practicing attorney in Central Falls, is a graduate of Rhode Island College’s Upward Bound Class of 1982.)



On January 21, 2013, Executive Director Michael D. Évora received The Dr. Martin Luther King, Jr. State Holiday Commission’s *Community Service Award* “in recognition of his many contributions to the Rhode Island community in support of the vision of Dr. Martin Luther King, Jr.” The award was presented at the State Holiday Commission’s annual MLK program at the Ebenezer Baptist Church in Providence.