

RHODE ISLAND COMMISSION FOR HUMAN RIGHTS

RE: RHODE ISLAND DEPARTMENT OF ADMINISTRATION
(PETITION FOR DECLARATORY ORDER)

DO-2019-01

DECISION AND ORDER DENYING PETITIONER'S
REQUEST FOR A DECLARATORY ORDER

Background

This petition for Declaratory Order ("Petition") was filed by the Rhode Island Department of Administration ("DOA" or "Petitioner") pursuant to R.I. Gen. Laws § 42-35-8 and Commission Rule 515-RICR-10-00-2.20. R.I. Gen. Laws § 42-35-8 mandates that every state agency provide by rule for the filing and disposition of petitions for a declaratory order which "... interprets or applies a statute administered by the agency or states whether, or in what manner, a rule, guidance document, or order issued by the agency applies to the petitioner". Commission Rule 515-RICR-10-00-2.20, which implements R.I. Gen. Laws § 42-35-8, provides as follows:

- A. Petition for Declaratory Order. A petition for a Declaratory Order must be in writing, submitted to a Commission attorney and include the following information:
 1. The name and address of the petitioner;
 2. A statement identifying the statute, Regulation, guidance document or Order at issue;
 3. A detailed statement of all facts relied upon by the petitioner;
 4. A copy of any and all documents relied upon by the petitioner;
 5. A statement requesting a Declaratory Order, and further indicating whether petitioner seeks:
 - a. an interpretation or application of a statute administered by the Commission; and/or,
 - b. clarification as to the manner in which a Regulation, guidance document or Order issued by the Commission applies to the petitioner.

- B. Consideration and Disposition. The Commission shall consider the Petition as provided in the Administrative Procedures Act.
1. The Commission may, at its discretion:
 - a. issue or decline to issue the Order; or,
 - b. schedule the matter for further consideration.
 2. A petitioner may appeal the Commission's final disposition of the Petition for a Declaratory Order as provided by the Rhode Island Administrative Procedures Act.

Facts

The within Petition, in form and substance, satisfies the procedural requirements of 515-RICR-10-00-2.20(A) and seeks three distinct orders. Because of the manner in which the Petition is disposed, this Decision need not recite the facts alleged, arguments presented, and conclusions requested in the Petition, as they are not material to the ruling.

Orders Requested

The DOA requests the following:

1. "...[A] Declaratory Order addressing how the statute (R.I. Gen. Laws § 28-5-13) (1) grants jurisdiction to the RICHR to investigate a charge containing only claims based on federal law, after a federal investigation has been completed with no finding of probable cause, and a Dismissal and Notice of Rights issued to the parties, and (2) grants jurisdiction for the RICHR to hear a charge containing only claims based on federal law after a federal investigation has been completed with no finding of probable cause, and a Dismissal and Notice of Rights issued to the parties"; and,
2. "...[A] Declaratory Order as to how the regulatory language in 515-RICR-10-00-2.25(A) applies to the Petitioner, where the EEOC has already completed its investigation with no finding of probable cause, and

issued a Dismissal and Notice of Rights to the parties;
and,

3. "...[A] Declaratory Order as to how the regulatory language in 515-RICR-10-00-2.13(A) applies where there has been no finding of probable cause against the Petitioner".

Discussion

The caselaw on the issues raised in this Petition for Declaratory Orders is settled. In a case dealing with the powers of the state insurance commissioner, the Rhode Island Supreme Court explained that "Section 42-35-8 is an administrative counterpart of the Declaratory Judgments Act ...". *Ligouri v. Aetna Cas. and Sur. Co.*, 384 A.2d 308, 313 (R.I. 1978).

Because the grant of declaratory relief under the Uniform Declaratory Judgments Act ("UDJA") is purely discretionary, [see *Lombardi v. Goodyear Loan Co.*, 549 A.2d 1025, 1027 (R.I. 1988) (citing *Employers' Fire Ins. Co. v. Beals*, 240 A.2d 397, 401 (R.I. 1968))], it follows that the grant of declaratory relief by this agency is also purely discretionary.

The seminal case on the question of whether discretion should be exercised in a proceeding brought under the UDJA is *Berberian v. Travisano*, 332 A.2d 121 (R.I. 1975). The issue in *Berberian* was whether a Superior Court judge had erred when she declined to exercise her discretion to issue declaratory relief under the UDJA in a criminal case that questioned a sentencing issue. In upholding the declination by the judge of the Superior Court, the Supreme Court outlined some of the factors that should be considered in the determination of whether declaratory relief should be granted:

In the determination of whether declaratory relief will be granted, the following are some of the factors to be considered, namely, the existence of another remedy, the availability of other relief, the fact that a question may

readily be presented in an actual trial, and the fact that there is pending, at the time of the commencement of the declaratory action, another action or proceeding which involves the same parties and in which may be adjudicated the same identical issues that are involved in the declaratory action.

Id. at 123.

The Petitioner has filed a motion to dismiss the charge in a proceeding pending before the Commission. In its motion, Petitioner maintains that the Commission has no jurisdiction to continue its investigation in the pending matter for the same reasons which form the underlying basis of its request for the first two Declaratory Orders. The Petitioner has also filed a motion to quash a subpoena issued by the Commission during its investigation in the pending charge, the grounds for which are the same as it has set forth in this Petition. In sum and substance, the arguments raised by the DOA are the same in its motions as in its Petition.

Disposition

The factors explicated in *Berberian* support this agency's determination that the issuance of the Declaratory Orders petitioned for here would be inappropriate. Because the administrative proceeding has commenced, the attempt by any party to utilize a declaratory order petition must be carefully reviewed to determine if the same issues are raised in the petition as are raised in the charge. The Commission finds that the issues are the same; therefore, the request for the Declaratory Orders in this Petition are more properly decided in the context of the pending case.

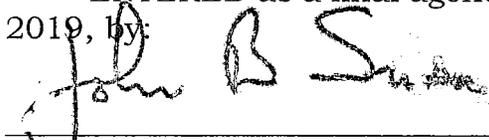
The Commission's Decision and Order on the DOA's motion to dismiss and motion to quash must necessarily address the same questions underlying this Petition. The motions, however, will be decided in the context of the ongoing investigation and consideration of the arguments against dismissal that were raised by the complainant

and applicable law. The relief sought by the DOA in its motions in the pending matter, dismissal of the charge and quashing a subpoena, provide another satisfactory remedy to the Petitioner. For these reasons, this Petition should be denied.

After careful consideration of all the facts and circumstances, and the arguments presented by the Petitioner, it is hereby Ordered as follows:

The Petition for Declaratory Orders is DENIED.

ENTERED as a final agency Order, this 21st day of March, 2019, by:



Commissioner