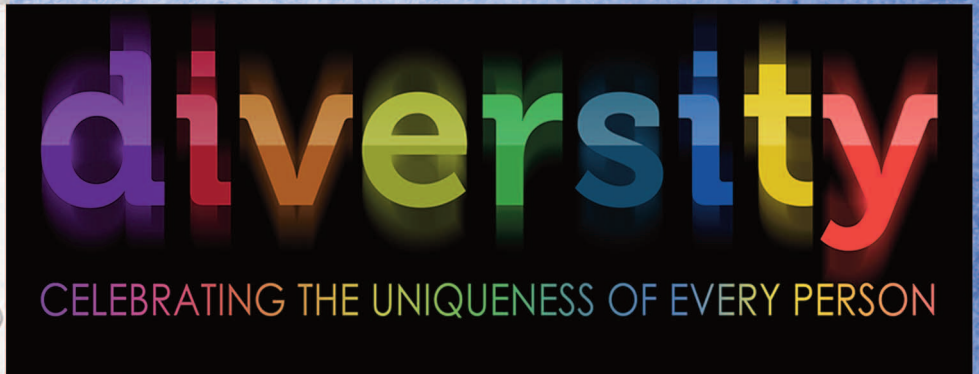




STATE OF ILLINOIS
ILLINOIS HUMAN RIGHTS COMMISSION

2020 ANNUAL REPORT



OUR MISSION

The Illinois Human Rights Commission (hereinafter referred to as “Commission” or “IHRC”) is dedicated to promoting freedom from unlawful discrimination as defined by the Illinois Human Rights Act (Act) and to providing a neutral forum for resolving complaints of discrimination filed under the Act.

The Act forbids...

discrimination with respect to employment, financial credit, public accommodations and real estate transactions on the basis of race, color, religion, sex (including sexual harassment), national origin, ancestry, military status, age (40 and over), order of protection status, marital status, sexual orientation (including gender-related identity), pregnancy, unfavorable military discharge, and physical and mental disability. The Act also prohibits sexual harassment in education, discrimination because of citizenship status and arrest record in employment, and discrimination based on familial status in real estate transactions.



Our primary responsibility...

is to make impartial determinations of unlawful discrimination as defined by the **Act**, and to furnish information to the public about the **Act** and the **Commission**.

The core values of the Commission are to provide professional, competent, efficient, and effective service to everyone who seeks information from or who has a case before the Commission.





ILLINOIS HUMAN RIGHTS COMMISSION

December 15, 2020

Honorable JB Pritzker, Governor
Members of the Illinois General Assembly
Citizens of Illinois

Consistent with Illinois law and in furtherance of public transparency, I am honored to submit the Annual Report for Fiscal Year 2020. This year's report – covering July 2019 through June 2020 – highlights both a *new era* at the Commission and *new ways* of doing business necessitated by major state law reforms, the COVID-19 pandemic, and the calls of social justice shaping much of 2020.

In July 2019, under Governor JB Pritzker's leadership, the Commission transitioned from 13 part-time commissioners of varied backgrounds to seven (7), full-time commissioners with statutorily specified professional experience. Collectively, the Commission crossed a major milestone, eliminating a decade-long backlog of 2000-plus Request-for-Review cases in August 2019 and various complex legal matters in December 2019. The resolution of the backlog was a multi-agency effort, with recognition and thanks owed to the Central Management Services, IDHR, and the Department of Innovation and Technology. They, along with dedicated Commission staff and new and old Commissioners alike, worked the backlog while simultaneously maintaining the rigor of the decision-writing process and respecting the rights of those before the Commission. These efforts also necessitated significant modification of the Commission's internal processes, rules, and staffing, which are now aligned to serve as early warning indicators.

The Commission also enhanced (and modernized) its outreach efforts. To assist the general public and particularly self-represented parties, the Commission launched an overhaul of its website in 2019, including ongoing publication of our decisions. To better reach legal practitioners, the Commission established a "Lunch and Learn" series in 2019 (that is ongoing) and held a summit to celebrate the 40th anniversary of the Act in December 2019, providing opportunities for Illinois attorneys to obtain free continuing legal education credits.

Given the unprecipitated nature of the global pandemic in 2020, the Commission intensified sanitation measures at our two offices; transitioned to work-from-home while maintaining staggered, in-office schedules; adopted emergency rules for electronic filings; and transitioned to virtual Commission meetings consistent with gubernatorial disaster proclamations and executive orders. The tragic death of George Floyd and Breonna Taylor, as well as other African Americans, reminded us that the ideals on which our country is founded are far from the reality of many people's lives. As a quasi-judicial body, the Commission adjudicates disputes under the Act every day, but these impactful events of 2020 further enhanced our resolve to ensure the Commission is an accessible and impartial forum for the just resolution of civil rights and human rights disputes.

I would be remiss to not note the passing of the Honorable Manuel "Manny" Barbosa on November 25, 2019, the first chairman of the Commission, a pioneering bankruptcy judge, and my fellow commissioner who returned to the Commission in 2019 after retiring from the federal bench. Of his many talents mastered over his 72 years, storytelling was the one most often on display. Whether in legal rulings as a commissioner and then judge or an invitation into his office to hear a tale, Manny was ever the wordsmith. The Act became law over 40 years ago, with much of the early implementation shaped by Manny. We hope that in the next four decades, the Commission remains as committed to fairness, service, and partnership as Manny ever was.

Sincerely,

James A. Ferg-Cadima
 Chair *pending Senate confirmation – Fiscal Year 2020

THE ILLINOIS HUMAN RIGHTS COMMISSION

On December 6, 1979, Governor James R. Thompson signed the Act into law. The Act created a bifurcated apparatus: a Department of Human Rights (IDHR or Department) to investigate charges of discrimination, and a human rights commission (IHRC or Commission), to adjudicate complaints of civil rights violations in housing, employment, public accommodations, education and financial credit. Charges of discrimination may be brought to the Department by individuals, groups and/or in certain circumstances, the Director of the Department. Either the Department or the Complainant may file a Complaint of civil rights violation with the IHRC. Such complaints are adjudicated pursuant to Section 8A- 102 and 8B- 102 of the Act. This bifurcated-agency model, in place for 40-plus years, has uniquely situated Illinois when it comes to the resolution of civil rights disputes.

The IHRC maintains offices in Chicago and in Springfield. During FY2020 the IHRC “consisted of” seven full-time Commissioners, the Executive Director, the Chief Administrative Law Judge, four Administrative Law Judges, the Chief Fiscal Officer, the General Counsel, Deputy General Counsel, four Assistant General Counsels, and administrative support staff.

CASE STUDY NO. 1 **SEXUAL ORIENTATION AND DISABILITY** **DISCRIMINATION IN A PUBLIC ACCOMMODATION**

Illinois Human Rights Act, 775 ILCS § 5/5-102

Michael S. and Andrea E. on behalf of P.S., a minor v. Komarek School District #94

In their complaint, the Complainants alleged that the Respondent, a school district, discriminated against P.S., a minor student at one of the Respondent’s schools, on the basis of his sexual orientation, as related to his gender-related identity, male, and disability, gender-related identity dysphoria. Specifically, the Complainants alleged that the Respondent denied P.S. access to his school’s communal boys’ restrooms because of his gender-related identity and disability. The Complainants also alleged that the Respondent failed to provide P.S. with a reasonable accommodation by denying him access to his school’s communal boys’ restrooms.

P.S. first discussed being a boy with Andrea E., his mother, in late 2013, when he was seven years old. In January 2014, Andrea E. contacted his school’s social worker. At that time, P.S. began to outwardly manifest his gender-related identity at school by dressing and grooming as a boy, while still preserving his female name and birth sex affiliation.

A year later, on January 14, 2015, Andrea E. requested that the Respondent use P.S.’s male name along with its corresponding masculine pronouns. The Respondent soon agreed, knowing that the issue before it was P.S.’s gender-related identity, and not a dress code matter or a student being delusional, as exemplified by the social worker describing P.S. as a “gender-related identity non-conforming student,” and on at least two known occasions the Respondent’s superintendent emailing to numerous personnel about “our second grade transgender student.”

On February 11, 2015, the desire of P.S. to use the communal boys’ restrooms was communicated to the social worker. After some delay, a meeting was called by the Respondent for March 6, 2015. Andrea E. and a multitude of administrators attended the meeting, where she was told by the superintendent that P.S. would not be allowed access into the communal boys’ restrooms. P.S. was limited to the adult male faculty and staff restrooms, unless assigned to a classroom with its own unisex restroom. When the parents asked the Respondent to reconsider P.S.’s request to use the communal boys’ restrooms, both the superintendent and the school board president, independent of each other, denied their requests. The decision was understood to be “final.”

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REQUEST FOR REVIEW

When the IDHR dismisses a charge of discrimination, the Complainant may either file a Request for Review with the IHRC or file a Complaint with the appropriate circuit court within 90 days following issuance of the IDHR's Notice of Dismissal. When a Request for Review results in the IHRC sustaining the IDHR's dismissal, the Complainant may appeal the IHRC's decision in the Illinois Appellate Court. When the IDHR issues a Notice of Default against a Respondent to a charge of discrimination, the Respondent has 30 days to file a Request for Review. If the IHRC sustains the default, the Complainant may ask the IHRC to schedule a damages hearing before an Administrative Law Judge (ALJ) or the Complainant may commence a civil action in the appropriate circuit court.

FILING A COMPLAINT

If the IDHR finds substantial evidence of discrimination and issues notice, or if the IDHR fails to complete its investigation of the charge within 365 days, the Complainant has 30 days to ask the IDHR to file a complaint with the Commission. Otherwise, within 90 days, the Complainant must either: (1) file a Complaint of civil rights violation with the IHRC, or (2) commence a civil action in the appropriate circuit court.

Case Study #1, continued from page 5

On March 4, 2015, P.S. was formally diagnosed by his doctors with gender dysphoria. The diagnosis did not modify the Respondent's ban. No other student, whose gender-related identity was male or who had his disability, was banned from the communal boys' restroom.

ALJ William Borah entered a recommended order finding that the Respondent discriminated against P.S. on the basis of his sexual orientation and disability and granting summary decision in the Complainants' favor. After a damages hearing, ALJ Borah recommended that the Commission: 1) award the Complainants

emotional distress damages in the amount of \$55,000.00; 2) order the Respondent to allow P.S. to use its communal boys' restrooms; 3) order the Respondent to cease and desist from further acts of unlawful discrimination; 4) award the Complainants attorneys' fees in the amount of \$100,000.00; and 5) award the Complainants \$3,610.00 in litigation costs.

The Respondents filed no timely exceptions in this case, making ALJ Borah's recommended order the final order of the Commission. Moreover, the Respondent's failure to file timely exceptions foreclosed their ability to appeal the Commission's decision. In short, this decision is final and stands as Illinois law.



STANDING ORDER RELATING TO PREHEARING MEMORANDA

All parties will jointly prepare and submit a prehearing memorandum to the presiding ALJ of the IHRC not less than 14 days before the hearing is scheduled to commence. The Complainant should prepare the first draft and submit it to the Respondent at least 14 days prior to the filing deadline. Those time frames may be altered by order of the presiding ALJ. The presiding ALJ may waive the preparation of the prehearing memorandum if any litigant is not represented by counsel. Attorney representation is strongly advised, but not required.

THE HEARING

The matter is set for hearing before an ALJ within 30 to 90 days after the complaint has been filed with the IHRC. Hearings can be delayed to allow the parties to take discovery. Hearings are conducted using the same procedures and evidentiary rules used in the circuit court. After the hearing, the ALJ issues a Recommended Order and Decision (ROD). If neither party objects to the ROD, it becomes the IHRC's final order after 30 days. If either party objects to the ROD, exceptions may be filed and the ROD will be reviewed by a three-member panel of Commissioners. The panel may adopt, reverse or modify the ROD, or remand the ROD back to the ALJ. If the ROD is adopted, it becomes the IHRC's final decision. The IHRC's final decision may be appealed in the Illinois Appellate Court.

CASE STUDY NO. 2 **DISABILITY DISCRIMINATION – FAILURE TO ACCOMMODATE** **775 ILCS §5/2-102**

Kendra Jones v. Cook County Sheriff Department of Corrections

Complainant worked as a deputy sheriff for Respondent. Complainant has a chronic asthmatic condition, and Respondent was aware of that condition. When subjected to various triggers, Complainant could suffer severe asthma attacks which could occur with only a few seconds' warning. The triggers for those attacks included cleaners, mold, mildew, dust, and smoke.

For a period of time, Complainant worked without incident in Respondent's Division 8 – Cermak Hospital. Later, however, she was reassigned to Division 3, where she suffered a severe asthma attack. Before Complainant was allowed to return to work, she was required to go through Respondent's "Return to Work" procedure, which included getting a medical assessment from the Cook County Department of Human Resources – Medical Division.

To avoid further problems, the parties agreed that Complainant would return to work in Division 11. That site had appropriate ventilation, so it should have been a safe place.

On Complainant's Return to Work form, Dr. Lee wrote, "AVOID WORK IN BUILDING WHICH CAUSED ALLERGIC REACTION. RE-EVAL IN 6 MOS." [emphasis in original] When presented with the form, Rosemarie Nolan, Respondent's director of personnel, refused to allow Complainant to return. Nolan told Complainant to have Dr. Lee modify the form to add that the disability was permanent. In response to that directive, Dr. Lee prepared a second Return to Work form which stated that Complainant's condition was permanent, but also added the comment, "AVOID WORK IN BUILDING WHICH CAUSED ALLERGIC REACTION. EMPLOYEE CAN WORK IN CERMAK HOSPITAL. RE-EVAL IN 6 MOS." [emphasis in original]

Despite the earlier agreement to assign Complainant to Division 11, Nolan refused to allow Complainant to return to work, as she interpreted Dr. Lee's reference to Cermak Hospital as an order, rather than a suggestion. She was



JUDICIAL REVIEW

A petition for review of the final order of the Commission must be filed with the appropriate Illinois Appellate Court within 35 days from the date that a copy of the decision sought to be reviewed was served on the party affected.

SETTLEMENTS

When a settlement is submitted by the IDHR, the Commission via a panel of three Commissioners shall determine whether or not to approve it. Parties may settle matters with or without Commission approval. However, if they wish the Commission to retain jurisdiction for enforcement, the settlement agreement must be reduced to writing and submitted to the Commission for approval. Approval is accomplished by an order approving the settlement and dismissing the case.

PUBLICATION OF OPINIONS

Decisions of the Commission or panels thereof, whether on requests for review or complaints, shall be made available on the Commission's website and to online legal research companies within 14 calendar days after publication by the Commission. Decisions of the Commission are available on the Commission's website at www.illinois.gov/ihr.

Case Study #2, continued from page 7

adamant that doctors could not dictate where their patients were going to work, as that was a management function. As a condition of returning Complainant to work Nolan demanded that the reference to Cermak Hospital be removed. Despite Complainant's repeated requests, Dr. Lee refused to modify the form, and Nolan refused to allow Complainant to return to work. Complainant was caught between the doctor's refusal to change the form and Nolan's refusal to accept the form as written. At no point did Nolan attempt to call Dr. Lee to clear up any possible confusion.

ALJ William Borah conducted a public hearing on Complainant's claim. He determined that Nolan's position undermined the interactive discussion of an employee's abilities that is required under the Illinois Human Rights Act. To the earlier agreement to assign Complainant to District 11, Nolan added a precondition that Complainant could not meet, despite her best efforts. In so doing, Nolan denied Complainant a reasonable accommodation for her disability.

Judge Borah recommended that Complainant be awarded \$50,000.00 to compensate her for the emotional distress

caused by Respondent's violation of the Human Rights Act. He also recommended that Respondent be ordered to cease and desist from future acts of unlawful discrimination and that Respondent pay over \$30,600.00 in attorney's fees. There was no recommended award of back pay because the complaint did not allege actual or constructive discharge. Since no exceptions were filed by the parties, Judge Borah's recommended order became the order of the Commission.



CASE STUDY NO. 3

EMPLOYMENT DISCRIMINATION BASED ON PERCEIVED DISABILITY, HIV-POSITIVE STATUS; EQUITABLE ESTOPPEL

Illinois Human Rights Act, 775 ILCS § 5/2-101

C. H. v. Andersen's Cafe

The Complainant filed a complaint against the Respondent, a local restaurant, alleging harassment and constructive discharge based on perceived disability, HIV-positive status.

Rumors began circulating among the Respondent's patrons that the Complainant was HIV-positive. The Respondent demanded the Complainant present proof of his negative status to combat the rumors, which the Respondent believed was affecting its business. The Complainant provided the Respondent with a medical report indicating his negative status.

One day the Complainant came into work and noticed patrons snickering at him. He discovered that the Respondent had posted his medical report on the Respondent's wall where all of the Respondent's patrons could view the report. The Complainant left before the end of his shift, embarrassed by the ridicule he was being subjected to by the patrons. He did not return to the workplace. He thereafter filed a charge of discrimination with the IDHR on September 26, 2008, alleging harassment and constructive discharge based on perceived disability.

The Respondent did not agree to extend the investigation time. Both parties must agree to extend IDHR's time to investigate a charge. However, a 300-day extension was entered into IDHR's system.

Thereafter, IDHR sent the Complainant a letter informing him that his 90-day timeframe to file a complaint with either the Commission or the circuit court would run from 7/24/10 to 10/21/10.

On July 29, 2010, IDHR sent the Complainant a letter informing him that its time to investigate had expired and he could file a complaint. On August 9, 2010, IDHR discovered that the Respondent had never agreed to the extension of time. Thereafter, IDHR sent the Complainant a new letter, which informed the Complainant his complaint had to be filed between 9/27/09 and 12/25/09, which dates had already passed.

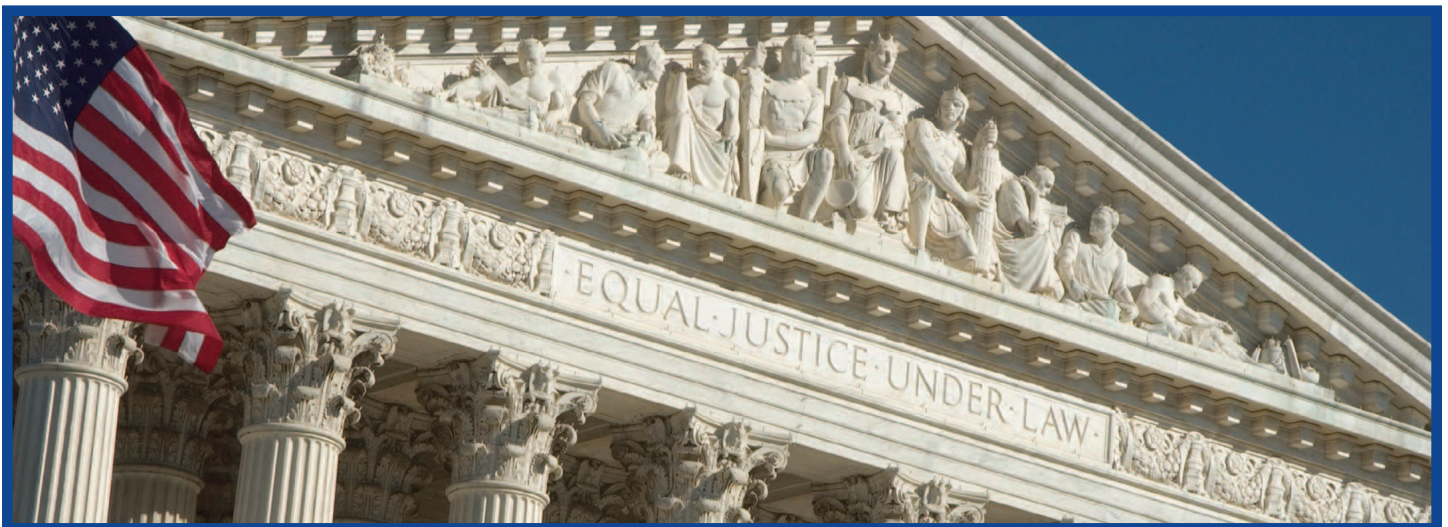
On August 17, 2010, the Complainant filed his complaint with the Commission.

Once before Commission ALJ Michael Robinson, the Respondent filed a motion to dismiss the complaint, arguing that the Commission lacked jurisdiction because the Complainant failed to file the complaint within 90 days following the expiration of the IDHR's time to investigate the charge. Applying the theory of equitable estoppel, the ALJ denied the motion.

Generally, equitable estoppel applies to prevent a litigant from being deprived of a right when the litigant has been misled by the other party. The timeframes in the Act are jurisdictional and usually equitable principles cannot be applied to extend the timeframes set forth in the Act. A narrow exception to this rule is applicable when a charge is untimely filed because of a party's misleading conduct.

The matter subsequently proceeded to a public hearing.

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Case Study #3, continued from page 9

Following the public hearing, the ALJ issued a ROD in favor of the Complainant. He addressed in detail the equitable estoppel issue. He determined that the Illinois appellate courts were split on the issue of whether or not equitable tolling principles should apply to the 90-day statutory timeframe in the Act for filing complaints. ALJ Robinson determined that based on U.S. Supreme Court case law, the Complainant had a protectable property interest in his discrimination complaint. He further determined that the case law cited by the Respondent in support of its position that equitable estoppel was inapplicable to the Act did not take that property interest into consideration. ALJ Robinson found the case law in support of the applicability of equitable tolling to the 90-day timeframe to be more compelling and also suggestive of the ultimate direction of courts and of the Commission's position. Therefore, he determined that equitable estoppel applied and, after considering other factors relevant to the equitable estoppel analysis, determined the Commission had jurisdiction over the complaint.

ALJ Robinson further determined that the Complainant had proven the merits of his complaint by a preponderance of the evidence. ALJ Robinson recommended an award of \$1,650.00 in back wages, \$20,000.00 for emotional distress, reinstatement to the Complainant's position, clearing of the Complainant's

personnel record, and that the Respondent cease and desist from any further discrimination.

The Respondent filed exceptions to the ROD. A panel of three Commissioners declined review, making the ROD the final order of the Commission.

The Respondent filed a timely Notice of Appeal with the Illinois Appellate Court. The Respondent's primary argument concerned the applicability of equitable estoppel to the Act's 90-day timeframe for filing a complaint with the Commission. If the appellate court agreed with the Respondent that equitable estoppel did not apply, that would mean the Commission had never acquired jurisdiction over the complaint and the Commission's final order would be vacated.

However, that issue never reached the Appellate Court because the Respondent-Appellant failed to timely file its opening brief. As such, the Appellate Court dismissed the appeal for want of prosecution.

Therefore, the Commission's final order in the C.H. matter stands as undisturbed Commission precedent regarding the applicability of equitable estoppel to a situation where error by IDHR causes a litigant to be misled into missing a jurisdictional filing deadline under the Act.



CASE STUDY NO. 4
RACE AND DISABILITY DISCRIMINATION IN REAL ESTATE
REQUEST FOR REVIEW

Illinois Human Rights Act, 775 ILCS §§ 5/3-102(B) & 3-102.1(B)

Carol Butcher-Brack v. Twelve Oaks at Morningside
Condominium Association, Inc.

Carol Butcher-Brack, the Petitioner, who is African American, was a lessee of a condominium located at Twelve Oaks at Morningside Condominiums (Morningside). The Petitioner lived in the condominium unit with her daughter, who has a disability.

Morningside attempted to terminate the Petitioner's tenancy because it contended it had received complaints that residents were fearful due to the Petitioner's daughter sleeping in the lobby. Morningside also claimed the Petitioner had been belligerent to a maintenance man and that she had failed to provide a copy of her current lease to the Morningside's Board of Directors. It was the duty of the unit owner to provide the Board with a copy of the lease, which the unit owner subsequently provided.

The resident complaints were based on at least two instances where the Petitioner's daughter had fallen asleep while sitting on furniture in the building lobby and while sitting on a lounge chair by the swimming pool.

The Petitioner filed a charge of discrimination with the IDHR. The Petitioner alleged that the Morningside subjected her to discriminatory terms and conditions of tenancy because of her race (Count A), and because of her association with her disabled daughter (Count B). IDHR dismissed the charge for lack of substantial evidence, and the Petitioner filed a request for review of the IDHR's determination with the Commission.

In her request for review, the Petitioner argued that the record showed that she and her daughter had suffered heightened hysteria because of their race and her daughter's disability. The Petitioner argued that she was not treated the same as similarly situated residents outside her protected class who had a complaint lodged against them: those tenants were issued notices and given the opportunity to take corrective action, while she was immediately served with two notices of termination of tenancy. Additionally, the Petitioner presented evidence that the complaining residents based their complaints on her daughter's

manner of dress and appearance (on one occasion, she was wearing a hooded-sweatshirt), and that they made reference to her daughter's disability. The complaining residents also attempted to thwart her daughter's presence in the common areas by seeking to have the furniture removed.

In request for review proceedings before the Commission, IDHR is the Respondent. IDHR filed a response with the Commission, asking that its dismissal of the charge be sustained for lack of substantial evidence. IDHR argued there was no substantial evidence of a nexus between the adverse action (notices of termination of tenancy) and either the Petitioner's race or her daughter's disability.

The Commission reviews requests for review de novo, and decides independently, based on the evidence presented, whether or not substantial evidence of discrimination exists. "Substantial Evidence" is evidence which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla, but may be somewhat less than a preponderance.

In this case, the Commission found no Substantial Evidence of (Count A) race discrimination. However, the Commission found that there was Substantial Evidence to support the allegations of (Count B) disability discrimination. The Commission found it notable that the resident complaints which Morningside acted upon referenced the Petitioner's daughter's mental state in relation to her conduct. There was no proof that the Petitioner was otherwise in violation of the terms and conditions of her lease. The Commission found that there was Substantial Evidence that the lawful reason articulated by the Morningside for issuing the notices was pretextual, and that there was Substantial Evidence that the adverse action was in fact motivated in response to the Petitioner's daughter's disability.

Therefore, the Commission vacated IDHR's dismissal of Count B of the charge and directed IDHR to enter a finding of Substantial Evidence as to the Petitioner's disability discrimination claim.

CASE SYNOPSIS NO. 1

Straw v. Illinois State Board of Elections, et al.

ALS No. 18-0063

Affirmed 2020 IL App (1st) 191783-U

REQUEST FOR REVIEW: PUBLIC ACCOMMODATION DEFINITION

In August 2016, Straw filed a charge of public accommodation discrimination with the Department against the Illinois State Board of Elections (“Board”) alleging that the Board denied him the full and equal enjoyment of its services due to his disability. Straw’s charge alleged that on November 3, 2015, he filed nomination papers to be a candidate for congress in the Republican primary, and at this time, he asked the Board if he could collect e-signatures over the internet as an accommodation for his disability. Straw also alleged that he requested that he be allowed to submit fewer signatures than the required amount to get on the ballot. Straw alleged that the Board denied both of these accommodation requests, and his name was removed from the ballot.

The Department dismissed Straw’s charge for lack of jurisdiction, finding that the Board is not a place of public accommodation as defined in section 5-101(A) of the Act. Straw filed a Request for Review with the Commission. The Commission sustained the Department’s dismissal of Straw’s charge for lack of jurisdiction, agreeing with the Department that the Board is not a place of public accommodation. The Commission further held that even were the Board subject to the Act’s Article 5 protections, Straw had not alleged a denial of access to a place of public accommodation because it is undisputed that the Board allowed him physical access to the facility and accepted and reviewed his ballot petition under the applicable rules.

Straw filed an appeal with the Illinois Appellate Court, First District, arguing that not only did the Board qualify as a place of public accommodation under the Act, but also that its members qualified as “public officials” under section 5-101(C) of the Act. The First District affirmed the Commission’s order, applying the doctrine of ejusdem generis and finding that the Board is a government body charged with administering laws, which is unlike the physical locations specifically enumerated in the Act as places of public accommodation. The First District also found that the Board is not a place of public accommodation because it is not open to all members of the public, but rather exists to supervise the administration of election laws in Illinois for those who have met the specified qualifications. The First District further held that regardless of whether Board members qualify as public officials, their actions could still not be a denial of access to a public accommodation because the Board is still not a place of public accommodation. Finally, the First District affirmed the Commission’s finding that regardless of the jurisdictional question, Straw had not alleged that the Board had denied him the benefits of its services.



CASE SYNOPSIS NO. 2

In re Request for Review by: Craig Miller

ALS No. 19-0478

REQUEST FOR REVIEW: EMPLOYMENT DISCRIMINATION AND THE ILLINOIS COMPASSIONATE USE OF MEDICAL CANNABIS PROGRAM ACT

In October 2018, Miller filed a charge of employment discrimination with the Department against his employer Spartan Light Metal Products, Inc. ("Spartan") alleging that Spartan discriminated against him when it denied his request for a reasonable accommodation to continue working while taking medical marijuana. Miller also filed charges for a suspension and for unequal benefits that will not be discussed here.

Spartan employed Miller as a Machining and Assembly Technician, a position which entailed maintaining and repairing heavy equipment. In April 2018, Miller began taking synthetic marijuana for a medical condition. Spartan approved the use of this after Miller's physician stated that the synthetic marijuana would not alter his behavior. In June 2018, Miller was approved for a medical marijuana card, pursuant to Illinois's Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.). Miller began using medical marijuana without notifying Spartan.

Spartan learned of Miller's medical marijuana use through a random drug test in July 2018. Spartan expressed a willingness to allow Miller to continue working, but it required further information from Miller regarding his use of medical marijuana and the effects thereof. Spartan wrote up a questionnaire to be completed by Miller's physician. Miller attempted to submit the requested information three times, and each time Spartan denied the accommodation request based on the information submitted. Spartan denied the request the first time because the physician's statement did not sufficiently answer Spartan's questions, the second time because the responding physician was not licensed in Illinois and therefore could not prescribe medical marijuana, and the third time because the responding physician stated that medical marijuana was not medically necessary for Miller to perform the essential functions of his position. As of the time of Miller's charge, he had not provided medical documentation sufficient to meet Spartan's request.

The Department dismissed Miller's reasonable accommodation charges for lack of substantial evidence. Miller's Request for Review by the Commission argued that Spartan subjected Miller to disparate treatment when it required him to fill out the questionnaire that was designed exclusively for him. Miller also argued that the medical documentation he provided was sufficient, and Spartan's rejections of it singled Miller out in a discriminatory manner.

On the facts before it, the Commission determined that Spartan did not act unreasonably when it created a questionnaire for Miller's physician to complete regarding his medical marijuana use and subsequently denied Miller's request based on the responses to this questionnaire. Because Miller was the only employee seeking to use medical marijuana, Spartan was not targeting Miller by requesting additional information. The Commission's decision was further informed by the fact that the Human Rights Act allows an employer to "prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees." 775 ILCS 5/2-104(C)(3)(a). Finally, the Compassionate Use of Medical Cannabis Program Act also states that "Nothing in this Act shall prohibit an employer from enforcing a policy concerning drug testing, zero-tolerance, or a drug free workplace provided the policy is applied in a nondiscriminatory manner." 410 ILCS 130/50(b). Given these statutory provisions, and the lack of evidence in the record that Spartan applied its drug policy in a discriminatory manner, the Commission sustained the Department's dismissal for lack of substantial evidence.

CASE SYNOPSIS NO. 3

Gayle Freeman v. Rutledge Youth Foundation

ALS No. 19-0396

REQUEST FOR REVIEW: ARREST RECORD DISCRIMINATION

In 2018, Freeman filed a charge with the Department alleging that Rutledge, a child welfare agency, had discharged Freeman because of her arrest record. Freeman had been hired by Rutledge in 2012 as an office assistant; at that time, she informed her supervisor that in 2002 she had pleaded guilty to a narcotics offense. Because Freeman would not be working directly with children, her supervisor did not require her to undergo a background check before her hire.

However, in 2018, the Illinois Department of Children and Family Services issued new requirements that all of Rutledge's employees pass a criminal background check. Freeman's 2002 conviction appeared in her background check, and Rutledge discharged her because DCFS determined that she was ineligible for employment.

Freeman alleged that Rutledge discriminated against her based on her arrest record, which is prohibited by the Act. However, the Act only prohibits employers from using charges or allegations of criminal conduct to make employment decisions; the Act does not protect employees who actually committed the conduct for which they were arrested, or employees who were convicted of that conduct. Because Freeman had pleaded guilty to, and been convicted of, the narcotics offense, the Commission affirmed the dismissal of her charge.

CASE SYNOPSIS NO. 4

Smith v. Butterfield Health Care Group

ALS: 19-0545

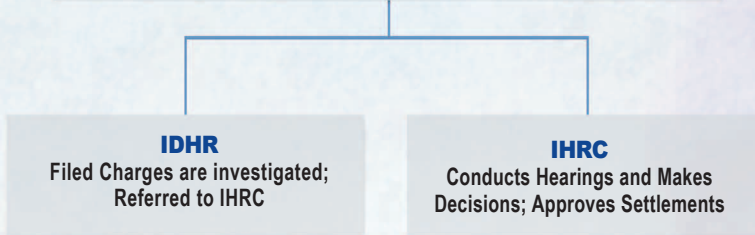
REQUEST FOR REVIEW: CONSTRUCTIVE DISCHARGE

In 2017, Smith filed a charge with the Department alleging that Butterfield had constructively discharged her based on her race, age, and sex. Smith had worked for Butterfield as its Human Resources Director. In 2017, Smith presided over a disciplinary meeting with another employee, Claire Gill; during this meeting, Gill told Smith that Gill did not appreciate being treated like she "was on a plantation." Smith was offended by Gill's comment, interpreting it as Gill implying that Smith was racist. Smith emailed Butterfield's chief financial officer about Gill's comment, and assumed that Butterfield would treat the email as a complaint of racial harassment.

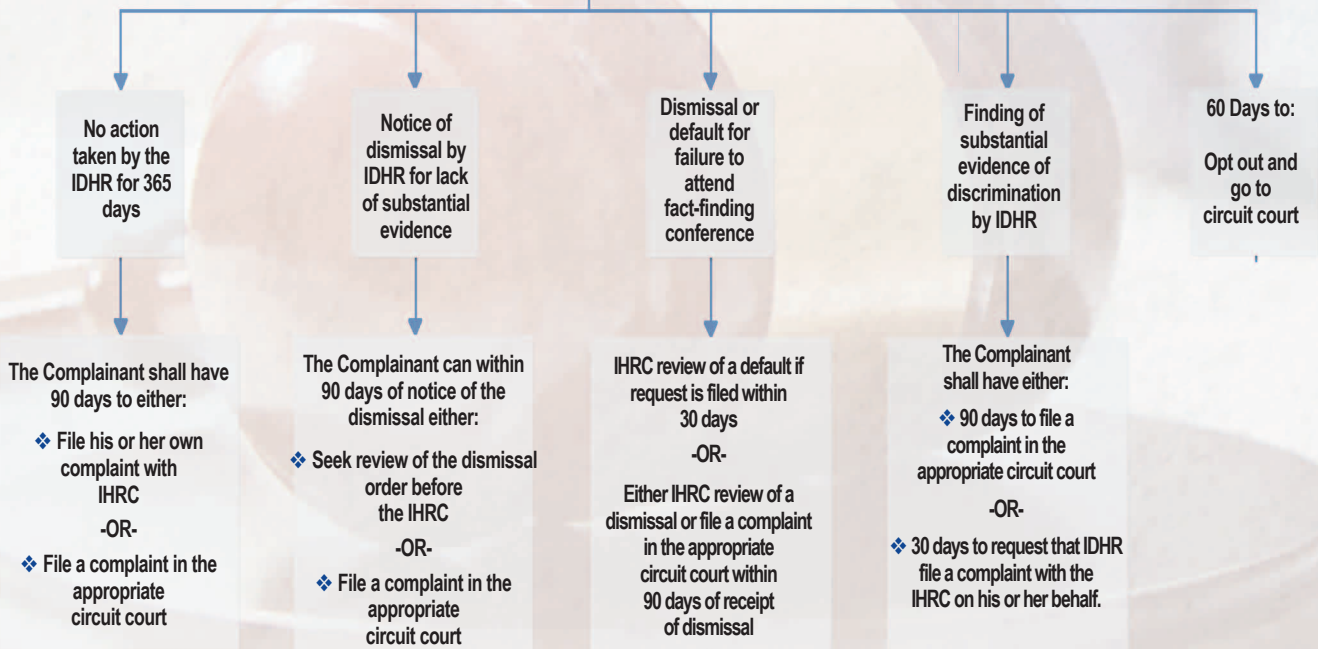
However, Smith later learned that Butterfield's executive team had not dealt with her allegation of racial harassment. Smith informed the executives that she expected them to deal with Gill in the following week; when they did not do so, Smith resigned.

The Commission held that Smith had not presented substantial evidence that Butterfield had constructively discharged her. Constructive discharge occurs when an employer has made working conditions so intolerable that a reasonable employee would feel compelled to resign. This is an even higher standard than an "ordinary" hostile work environment, because employees are generally expected to remain at a job in order to seek redress. The Commission took Smith's allegations as true, but noted that Gill's comment was isolated, and Smith did not allege that Gill had harassed her in any other way. Further, Butterfield's executive team did not take her allegation against Gill as seriously as Smith thought they should; Smith then abruptly resigned. Smith's working conditions were not so intolerable that a reasonable employee would have felt compelled to resign, so the Commission affirmed the dismissal.

ILLINOIS HUMAN RIGHTS ACT
One Act - Two Agencies



CHARGE FILED WITH IDHR



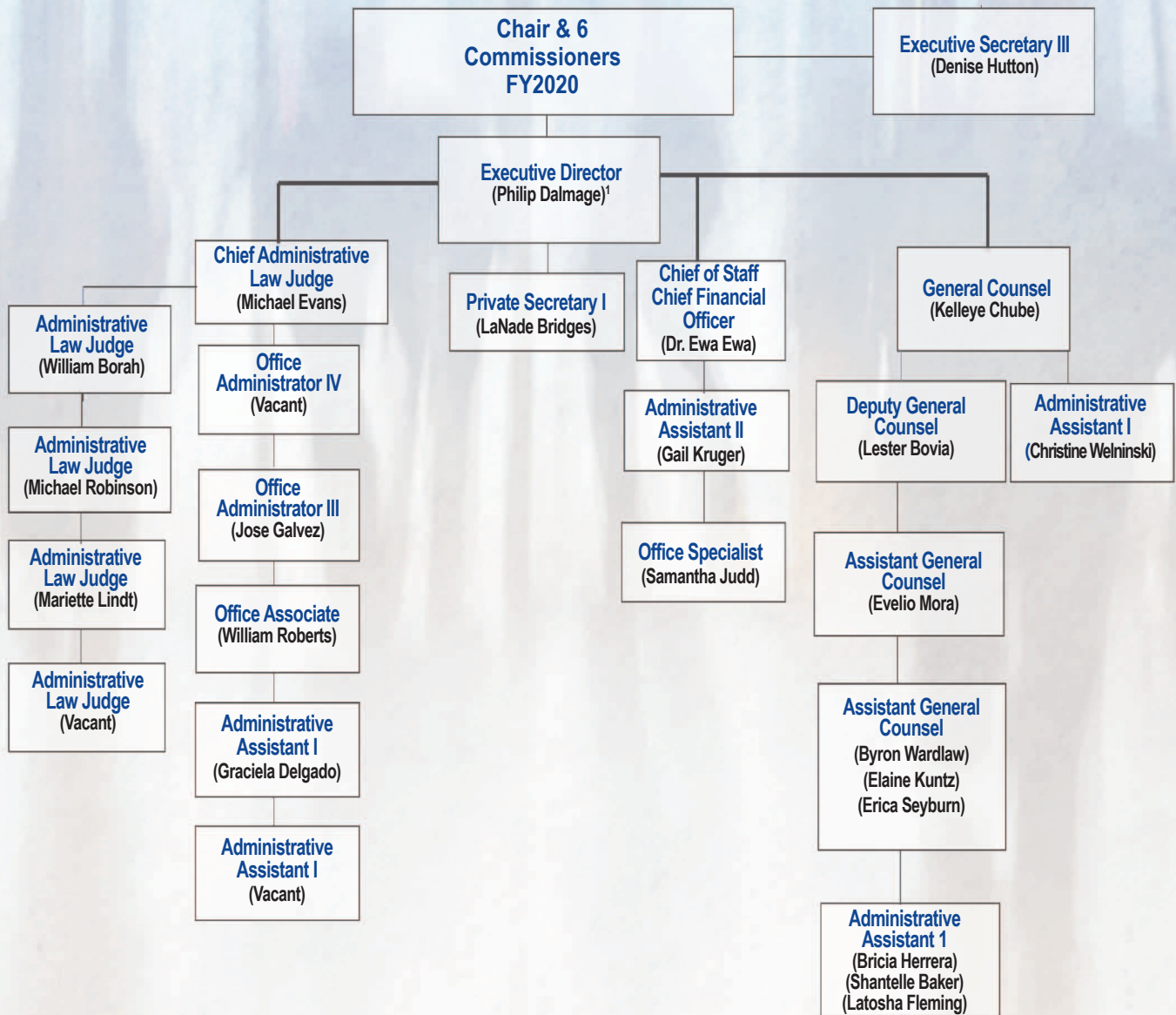
If the matter is reviewed by the IHRC and the dismissal is vacated, the matter will be remanded to IDHR.
If the matter is reviewed by the IHRC and the dismissal is affirmed, the matter may be appealed to the Illinois Appellate Court within 35 days of service of the IHRC's decision.

THE COMMISSION PROVIDES A NONPARTISAN FORUM TO RESOLVE COMPLAINTS OF UNLAWFUL DISCRIMINATION

For Fiscal Year 2020 the IHRC consists of a staff of 24 and seven Commissioners. The Commissioners are appointed by the Governor, with the advice and consent of the Illinois State Senate, and no more than four Commissioners may be appointed from the same political party. The Governor designates one of the Commissioners as Chair.

For Fiscal Year 2020 the staff and Commissioners reflect the rich diversity of the State of Illinois. The Commissioners are all attorney's formerly practicing a variety of different law and from different parts of the State. The Commissioners are diverse in race and ethnicity, religious faiths, gender and sexual orientation. By maintaining a diverse and non-partisan body of Commissioners, as well as a diverse staff, the IHRC strives to serve all people and entities throughout the State who seek a fair forum for the adjudication of complaints pursuant to the Act. *Currently all Commissioners are pending Senate confirmation.

ILLINOIS HUMAN RIGHTS COMMISSION ORGANIZATIONAL CHART



¹ The information contained in this chart is a representation of HRC's Fiscal Year July 2019-June 2020. As of August 17, 2020, Tracey B. Fleming is the Executive Director of HRC.

FY 2019 COMMISSIONERS

Proud To Serve the Public

1. **James A. Ferg-Cadima, Chair** – Appointed July 1, 2019

James A. Ferg-Cadima has built a public service career on shaping and enforcing civil rights protections at the federal, state, and local levels. Prior to being appointed to the Commission, he worked for the City of Chicago's Office of Inspector General as an Associate General Counsel to a recently created Public Safety Section that audits Chicago's police and police accountability functions. He was also the Acting Deputy Assistant Secretary for Policy at the Office for Civil Rights at the U.S. Department of Education, where he coordinated the Obama Administration's schools- and college-related federal regulatory interpretations prohibiting discrimination based on race, color, national origin, sex, and disability. Prior to this, Ferg-Cadima headed a regional office of the Mexican American Legal Defense and Educational Fund and worked at the ACLU of Illinois, pressing units of government and covered private entities for more than minimal construction of education, employment, immigration, open records, privacy, and voting laws. He has also served as a judicial clerk for the Northern District of Illinois. Ferg-Cadima earned his law degree from the American University Washington College of Law. He has also been active in Chicagoland civic life. Ferg-Cadima served on the board of directors of Free Spirit Media, a nonprofit providing opportunities for emerging digital content creators from Chicago's West and South sides, and the Chicago Mosaic School, a nonprofit school dedicated to the comprehensive study of mosaic arts. He is also a member of the ADA25 Advancing Leadership Network, a pipeline of emerging leaders with disabilities in the greater Chicagoland region. Last, he is a native Washingtonian, child of an undocumented Latina immigrant, openly gay, and a person with a non-apparent disability.

2. **LeDeidre R. Turner, Vice Chair** – Appointed July 1, 2019

Prior to joining the Commission, LeDeidre S. Turner served as an Assistant Commissioner of Prosecution and Adjudication in the Chicago Department of Business

Affairs and Consumer Protection. In this role, she provided guidance, direction, and training to attorneys and law clerks in the division. She also co-managed labor relations for the department and assisted all divisions with labor-management issues. Prior to joining the City, Turner was an Assistant State's Attorney with the Cook County State's Attorney's Office, working in the Child Support Enforcement Division, Child Protection Division, Delinquency Division, and Felony Review Unit. Turner received a Bachelor of Arts in Sociology from Spelman College and a Juris Doctor from The John Marshall Law School.

3. **Manuel (Manny) Barbosa (In Memoriam)** – Appointed July 1, 2019

Manny Barbosa was a retired US Bankruptcy Judge who served for 15 years in the Northern District of Illinois before retiring in 2013. He served as Chairman of the Illinois Human Rights Commission upon its creation under Governor Thompson and under Governor Edgar. He started his legal career as a Kane County Assistant State's Attorney and was in private practice in Elgin for twenty Years. Barbosa obtained his bachelor's degree in Literature from Illinois Benedictine University. He received his Juris Doctor from John Marshall Law School in 1977.

4. **Steven A. Andersson** – Appointed July 1, 2019

Steven A. Andersson has been a licensed attorney for almost three decades. Prior to being appointed to the Commission, he was a partner at the law firm of Mickey, Wilson, Weiler, Renzi & Andersson, P.C. and the Elder Law Center, P.C. Andersson was also the State Representative for Illinois' 65th legislative district from 2015 to 2019 where he served as Republican floor leader in 2018. During the 99th General Assembly, Andersson was a leader of the Republican coalition that joined with the Democratic caucus to end the longest state budget impasse in U.S. history. He has also been a strident defender of the rights of all people, including being the chief co-sponsor for the ERA, a two-time sponsor of the Equal Pay Act, and chief co-sponsor of the LGBTQ curriculum bill. Prior to joining the Illinois House of Representatives, Andersson served his community as a Trustee on the Geneva Library District Board for approximately five years, including serving two years as treasurer. Andersson is a Past President of the Kane County Bar Association.

5. Barbara R. Barreno-Paschall – Appointed July 1, 2019

Barbara R. Barreno-Paschall was appointed to the Commission in 2019 and has experience in the private, government, and non-profit sectors. Prior to her appointment, she was a Senior Staff Attorney with the non-profit organization Chicago Lawyers' Committee for Civil Rights in the Housing Opportunity Project and previously worked as an Employment and Labor Associate at the law firm Sidley Austin LLP, where she received the firm's highest pro bono honor for her representation of immigrants seeking asylum. Commissioner Barreno-Paschall is a recipient of the Hispanic National Bar Association's 2019 Top Lawyers Under 40 Award, *Negocios Now's* 2018 Latinos 40 Under 40 Award, and Chicago Scholars' 2018 35 Under 35 Young Leaders Making an Impact Award. She received her Juris Doctor from Vanderbilt Law School, where she was Executive Editor of the *Vanderbilt Law Review* and Chair of the National Latina/o Law Student Association, her Master of Public Policy from the University of Chicago Harris School of Public Policy, and her Bachelor of Arts in Social Studies from Harvard College.

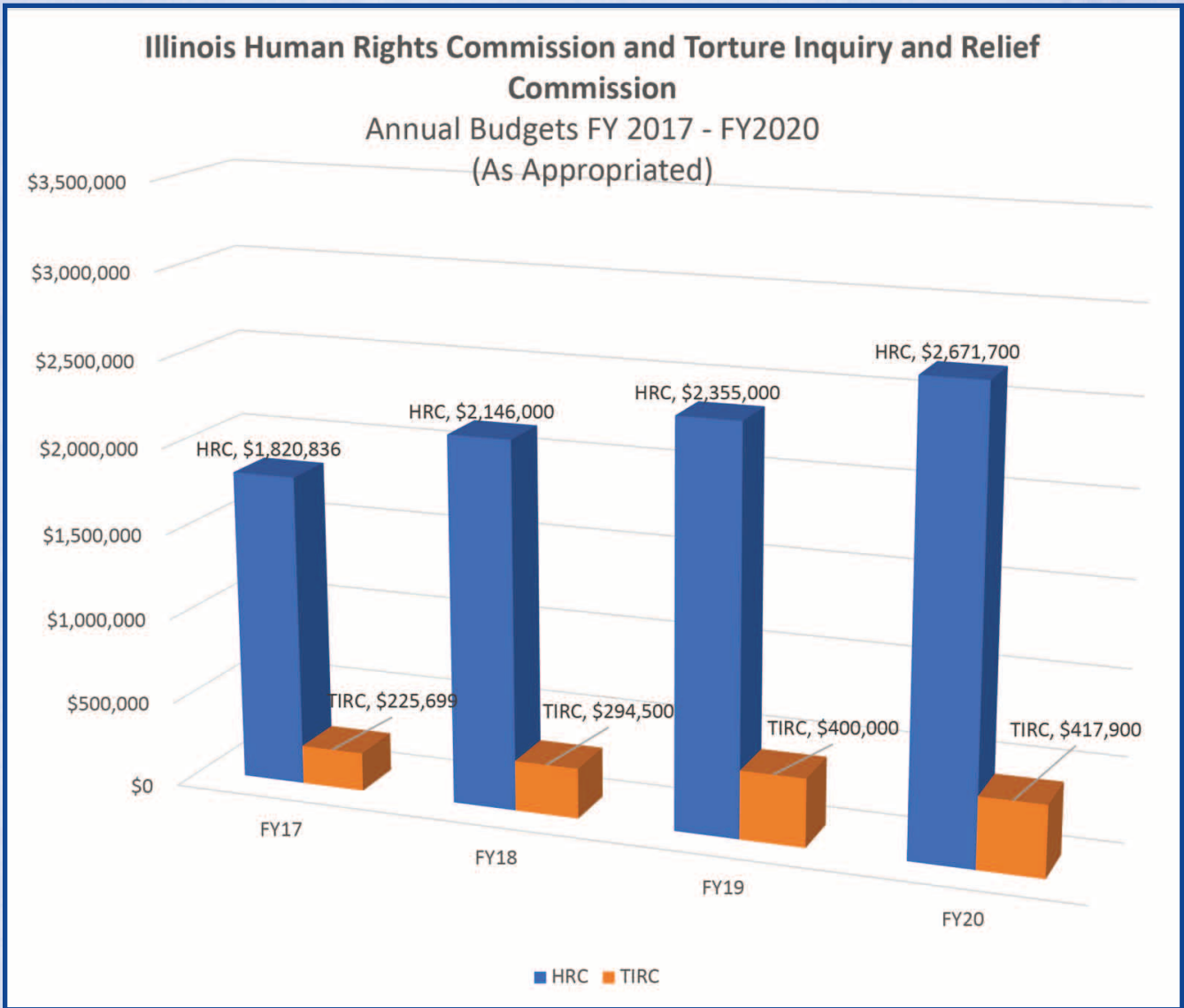
6. Robert A. Cantone – Appointed July 1, 2019

Robert A. Cantone has devoted much of his professional life to representing the rights and interests of Illinois residents. After obtaining his Bachelor of Arts in psychology and history from DePaul University, and his law degree from Lewis University College of Law, Cantone soon began practicing law as an Assistant Public Defender of Cook County. In his more than five years representing individuals charged with traffic, misdemeanor, and felony offenses, he gained considerable knowledge and experience in dealing with the issues that individuals face in society. He next joined a plaintiff's personal injury law firm in downtown Chicago. There, Cantone obtained extensive litigation experience by spending over twenty-five years enthusiastically representing hundreds of persons injured both physically and financially, due to motor vehicle accidents, slip and fall accidents, construction accidents, product defects, and medical malpractice. In 2013, Cantone established his own law firm, concentrating in plaintiff's personal injury, workers' compensation, and collection claims. He had also been engaged as an Arbitrator for the Cook County

Mandatory Arbitration program since 1990. Cantone was first appointed as a part-time Commissioner of the Illinois Human Rights Commission in 2011, then reappointed in 2015. Reappointed in 2019, he now looks forward, as a full-time Commissioner, to continuing with the Commission's role to promote freedom from unlawful discrimination across the State of Illinois.

7. Jeffrey A. Shuck (In Memoriam) – Appointed July 1, 2019

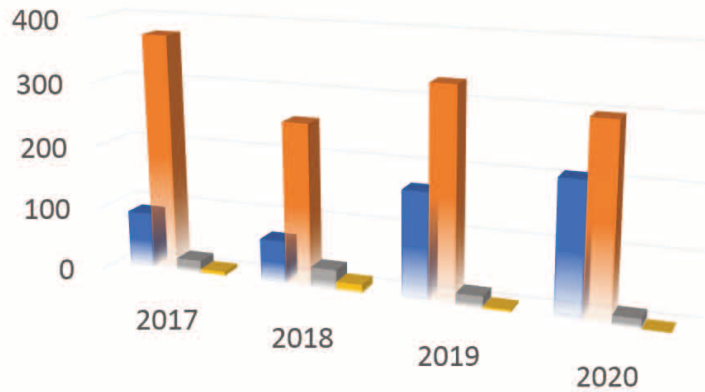
Prior to his appointment, Shuck served Attorneys General Kwame Raoul and Lisa Madigan as a Senior Assistant Attorney General in the Springfield General Law Bureau since 2016. In that role, he represented state officials, state agencies and state employees in a variety of civil litigation in state and federal courts. His work included cases alleging discrimination, retaliation and civil rights violations. Shuck also served as an Assistant Attorney General earlier in his career, from 2000 to 2003 under Attorneys General Jim Ryan and Lisa Madigan. Before rejoining the Attorney General's Office, he twice served the Department of Central Management Services as its Deputy General Counsel for Personnel. In that role, Shuck was responsible for advising the governor's office, agency directors and general counsels on employment law matters, interpreting applicable statutes, rules and case law and establishing legal policy in personnel matters. While at CMS, Shuck was appointed by Governor Quinn to serve as Chairman of the Task Force on Inventorying Employment Restrictions. The Task Force was created to review the statutes, administrative rules, policies, and practices that restrict employment of individuals with a criminal history and to report to the governor and the General Assembly those employment restrictions and their impact on employment opportunities. Shuck also twice served at the Illinois State Board of Education, first as an Assistant Legal Advisor and later as Chief of Labor Relations. Throughout his career, Shuck has held a particular interest in preventing and addressing disability discrimination, including by being a role model of capability as a paraplegic since an automobile accident in 1982. Shuck received his Bachelor of Science in Liberal Arts & Sciences from the University of Illinois in Urbana-Champaign, and his Juris Doctor, cum laude, from Southern Illinois University School of Law.



Funding is appropriated annually from the state budget to cover all of the Human Rights Commission's statewide services to the people of Illinois.

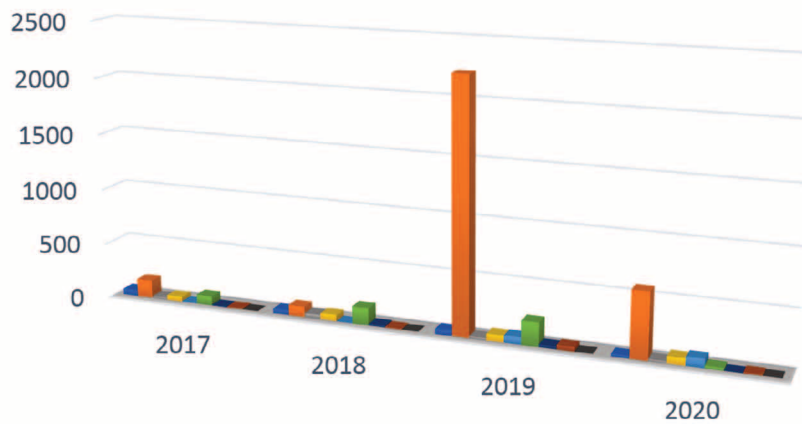
The source of this information can be found at: <https://illinoiscomptroller.gov/agencies/resource-library/appropriation-inquiries/>

Commission Total Incoming Docket



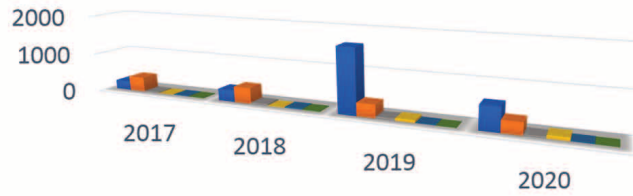
	2017	2018	2019	2020
Complaints	89	68	169	209
R4R - Requests For Review	375	256	331	298
Settlements	20	32	19	15
Defaults	7	14	4	0

Commission Decisions



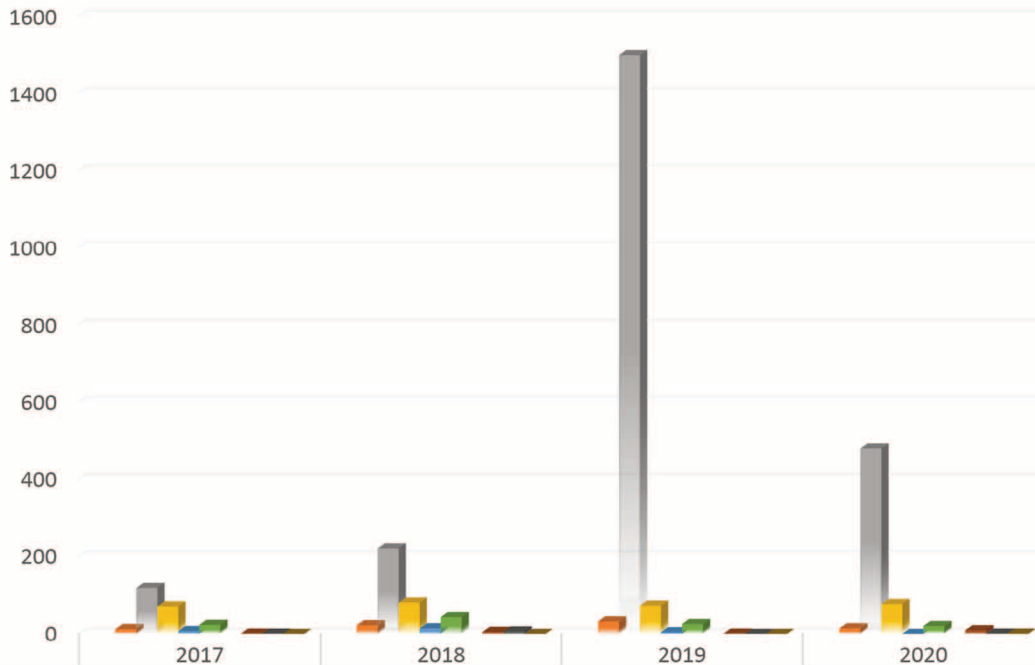
	2017	2018	2019	2020
RODs- Recommended Orders and Decisions	53	44	47	23
R4Rs-Requests for Review	161	94	2226	584
Settlements	19	37	19	19
FODs-Final Orders and Decisions	43	55	61	64
Appeals	5	1	65	80
Notices of No Exceptions	83	154	213	22
Defaults	7	15	25	0
Contested Matters	8	8	40	10
Total Disposition Rate	82%	95%	489%	133%

Office of the General Counsel Services



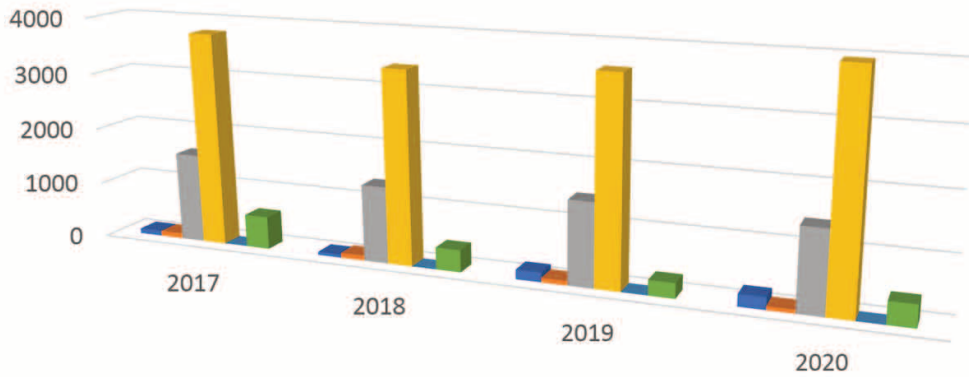
	2017	2018	2019	2020
■ Panel Matters	233	300	1631	590
■ RFR Log Ins	375	400	331	298
■ Panel Hearings	19	40	46	37
■ Appellate Appeals	5	10	65	80
■ En Banc Mtgs.	12	24	10	11
■ Outreach	8	15	2	4

General Counsel Panel and En Banc Matters

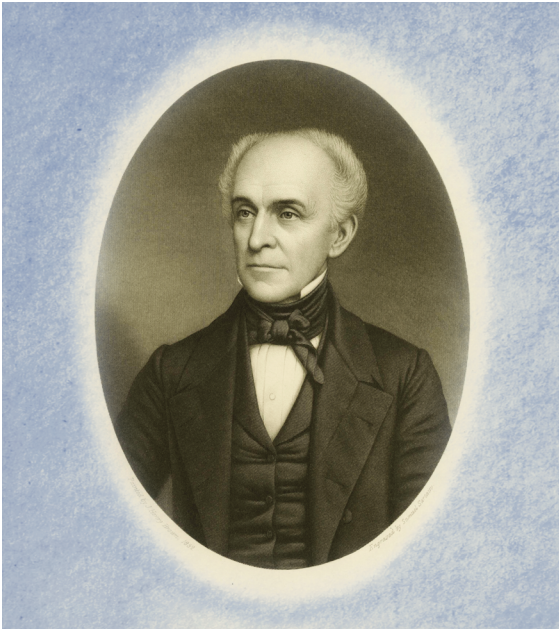


	2017	2018	2019	2020
■ Panel Matters				
■ Contested	12	22	32	14
■ R4R-Requests For Review	119	220	1498	479
■ Motions	70	80	72	76
■ Defaults	7	14	4	0
■ Settlements	23	43	25	20
■ En Banc Matters				
■ Petition Rehearings	1	5	1	9
■ Certified Questions	1	6	0	1
■ Interlocutory Appeals	0	0	0	1

Administrative Law Section Services



	2017	2018	2019	2020
■ Complaint Log Ins	89	57	168	209
■ ALJ Motion Calls	89	87	81	67
■ Office Visits	1583	1352	1463	1420
■ Service Calls	3775	3396	3588	3953
■ Outreach	4	1	4	1
■ Total Docket Count	581	390	264	386



**2020 COLES FELLOWS
AND INTERNS**
October 2019 - May 2020

High School Intern

Aman Zulfiqar

Mather High School, Law Academy

Lissette Santiago

Mather High School, Law Academy

Leah Martinez

Jones College Prep, Law Academy

Brian Guan

Jones College Prep, Law Academy

Summer Coles Fellows 2020

Kara Krause

University of Illinois

Rachel Lee

Northwestern University

Marlee Rich

Northwestern University

COLES FELLOWSHIP
PROMOTING CIVIL RIGHTS LAW PRACTICE

GOVERNOR EDWARD COLES FELLOWSHIP

The Governor Edward Coles Fellowship is named in honor of Edward Coles (1786-1868) who served as the second Governor of Illinois between 1822-1828.

Decades before the Civil War, the new State of Illinois was a political battleground in the fight to end slavery. Governor Edward Coles defeated a hotly contested effort to change free Illinois into a slave state. Although his abolitionist positions meant political suicide, Coles passionately expounded the proposition that all people are created equal, regardless of race. Governor Coles was primarily responsible for Illinois remaining a free state before the Civil War.

IHRC Governor Edward Coles Fellowship is a year-round internship program for first (summer only), second and third year law students interested in civil rights and administrative law. Fellows assist the IHRC in advancing the anti-discrimination protections and policies of the Act. Fellows are uncompensated.

The program is modeled after traditional summer associate programs found at many major law firms. The program offers students the opportunity to work on complex civil rights litigation under the guidance of subject matter experts and gives students the opportunity to view the inner workings of the state's tribunal system.

ON FUTURE INITIATIVES

For more than forty years, the Act has stood to promote freedom from unlawful discrimination as defined by the Illinois Human Rights for all residents of the State of Illinois. The role of the Commission in adjudicating claims of discrimination under the Act has evolved over that same period and our structures and processes have changed, but the mission of Commission to fight discrimination, resolve complaints and educate and inform the public, remains unchanged.

However, like all of Illinois, IHRC has had to adjust in our operations to deal with the reality of the impact and dangers of Coronavirus Disease 2019 (COVID-19).

Through the dedicated efforts of our Commissioners and Commission staff, we have modified our operations to allow for the continued adjudication of matters brought before the Commission in a safe and effective manner.

The Commission will continue to look for ways to build on our existing processes to facilitate continued and an increased tempo of operations for adjudicatory proceedings, while maintaining the safest possible environment for our staff and those coming before the Commission.

With the support and leadership of Governor JB Pritzker and his administration, the Commission has developed its first formal Diversity, Equity and Inclusion goals and will be implementing them over the course of the coming weeks and months with the intent to provide increased access to the resource that is the Commission for underrepresented groups across Illinois.

While the elimination of the Request for Review backlog by the Commission is worthy of note, we are singularly focused on our continuing effort to ensure timely consideration of all matters brought before the Commission. This work does not end and as of this report, we will soon be implementing the first upgrades to our internal case management system in more than twenty years. This is a prelude to our continuing efforts to increase access to the public for details on proceedings they may be part of, via the Internet.

Although adversely impacted by the COVID-19 pandemic, the Commission has and will continue to implement and participate in outreach activities and events in our continuing efforts to increase knowledge of and access to the Act. In addition to continuing our "Lunch and Learn" series, which we have transitioned to a wholly online format and our quarterly newsletter, this year, we initiated our first presence on social media. Going forward, we will continue to build on our use of social media and a recent major upgrade to the Commission website, as tools to increase awareness of the Illinois Human Rights Act. We will also continue to implement opportunities for high school and college students to become further aware of the Act and learn about the work of the Commission.

Tracey B. Fleming,
Executive Director

Outreach Activities and Events

2020 Annual Report - Outreach Activities

(July 1, 2019-June 30, 2020)

As part of our outreach efforts, the IHRC hosted a number of events celebrating the wide diversity of civil rights advocates in Illinois. IHRC also began disseminating a Quarterly Newsletter and hosting a Lunch & Learn series of free Continuing Legal Education (CLE) seminars for attorneys in Illinois. The Quarterly Newsletter and Lunch & Learn seminars were positively received, incredibly successful and well-attended! Commissioners were busy as well, participating in a wide range of outreach activities to provide information to Illinois residents regarding the IHRC and the coverage provided under the Act. Below is a month by month highlight of IHRC Outreach Efforts:

July 2019

- The Illinois Human Rights Commission delivered a speech to a group of twenty students visiting from Mexico with the National Autonomous University of Mexico (UNAM) on the role of the Commission and the Illinois Human Rights Act.
- The Commission hosted a Lunch & Learn on the topic of “Epic Systems Corp. v. Lewis: How the U.S. Supreme Court Just Changed the Landscape for Arbitration Agreements Between Employers and Employees”. The guest speaker was, Jeffrey Rudd, Principal, Jackson Lewis P.C.

August 2019

- The Commission hosted a Lunch & Learn on the topic of “Unlawful Discrimination in the Workplace: An Employee Advocate’s Perspective”. The guest speaker was, Lonny Ben Ogus, Law Office of Lonny Ben Ogus.

September 2019

- The Commission hosted a Lunch & Learn on the topic of “Workplace Bullying: Legal Implications and Exposure”. The guest speaker was, Alisa Arnoff, Partner, Scalabrino & Arnoff, LLP.

October 2019

- The Commission awarded its IHRC Diamond Award during LGBT History Month on October 10, 2019. October is Lesbian, Gay, Bisexual and Transgender (LGBT) History Month in the United States. It was first observed in 1994. October was selected because it coincides with National Coming Out Day on October 11, and because it is the month of the first March on Washington for Lesbian and Gay Rights in 1979. During LGBT History Month the IHRC presented three IHRC Awards to Joseph R. Varisco, a public programming producer focused on HIV within underrepresented and underserved populations; Imani Rupert-Gordon, the Executive Director of Affinity Community Services. Affinity is a social justice organization that works to support and provide resources for all LGBTQ+ individuals, with a particular emphasis on Black LGBTQ+ women; and the Honorable Patricia M. Logue, for her deep understanding of constitutional law and brilliant strategic thinking that made her a leading voice of the LGBTQ civil rights movement.

- The Commission hosted a Lunch & Learn on the topic of “Emerging Trends in Disability Discrimination in Employment”. The guest speaker was Mark Weber, Professor of Law, DePaul University, College of Law.
- IHRC Commissioner Andersson led a Human Rights Workshop that was hosted by State Representative Anna Moeller in Elgin (Kane County).
- Commissioners Cantone and Andersson had an informational table at a job fair in Grayslake (Lake County) hosted by State Representative Sam Yingling.
- Commissioner Barreno-Paschall attended the Mayor’s Office for People with Disabilities’ Annual Summit for Youth/Young Adults with Disabilities in Chicago (Cook County) and Commissioner Shuck attended the Quincy Tri-State Homeless Veterans Stand Down event (Adams County).

November 2019

- On November 12, 2019, the IHRC hosted an inaugural summit (Summit) to celebrate 40 years of the Act. At the Summit, the IHRC honored four trailblazers in the field of human rights, participated in a discussion on the “History of Civil Rights in Illinois” by social justice advocate Jonathan L. Jackson, and held panel discussions on a host of issues front and center in the Illinois human rights debate, such as race and disability and policing, LGBTQ+ discrimination in Illinois, and sexual harassment in the workplace. Two hours of CLE credit were approved for Illinois attorneys attending panel discussions.

The IHRC presented the IHRC Trailblazer Award to four individuals who live, work, and reside in Illinois for their tireless efforts, commitment, creativity and continuous fight to eradicate discrimination in Illinois. The IHRC Trailblazer Award is bestowed to individuals who embody excellence in activism in defending human rights. This award recognizes individuals who are fearless, optimistic, and enthusiastic in leading equal rights efforts and who have dedicated their careers to advancing peace and freedom for Illinois residents, workers, and community members in the fight against discrimination and injustice by utilizing, developing, or leveraging programs or activities to advocate, promote, and protect the human rights covered by the Act. At the Summit the IHRC honored Linda D. Friedman, Esquire, a founding partner of Stowell & Friedman, Ltd., a civil rights law firm dedicated to advancing the rights of women and people of color across the United States; the Honorable David Cerda, Retired Illinois Appellate Court Justice- the first Latino to become a judge in Illinois; Camilla B. Taylor, Esquire, the Director of Constitutional Litigation for Lambda Legal, the oldest and largest national legal organization committed to achieving full recognition of the civil rights of all lesbians, gay men, bisexuals, transgender people and people with HIV; and Reverend Jesse L. Jackson Sr., a prominent civil rights activist and political leader.

- The Commission hosted a Lunch & Learn on the topic of “The Impact of Immigration Status in Employment Law” featuring Chirag G. Badlani, Partner, Hughes Socol Piers Resnick & Dym, Ltd.
- Vice Chair Turner and Commissioner Barreno-Paschall gave a presentation on the Commission to over 50 Kenwood Academy High School students in Chicago (Cook County) as part of the school’s “KenTalk” series.

December 2019

- The Department in partnership with the IHRC, celebrated the 40th Anniversary of the Act. The celebration intentionally coincided with the United Nations International Human Rights Day to bring attention to the historic Universal Declaration of Human Rights. During a widely attended reception at the Chicago Regional Carpenters Hall, IDHR Director James L. Bennett, IHRC Chair Jim Ferg-Cadima and Governor JB Pritzker presented the inaugural Illinois Human Rights Award to Illinois General Assembly veteran Barbara Flynn Currie - the chief legislative architect of the IHRA - for exemplary service advancing human rights.

January 2020

- The Commission hosted a Lunch & Learn on the topic of “On Account of Sex: An Update on the Equal Rights Amendment, possible passage, and its impact on Human Rights in Illinois” featuring IHRC Commissioner Andersson.

February 2020

- The Commission hosted a Lunch & Learn on “Providing Culturally Responsive Legal Services for LGBT Elders”. The guest speaker was, Elizabeth, Hieber of the Center for Disability & Elder Law.

May 2020

- Administrative Law Judge Michael Robinson was appointed to the Executive Board of the Illinois Bar Journal to review articles and propose concrete actions on pending articles issues before the legal bar.



Illinois Torture Inquiry and Relief Commission

2020 ANNUAL REPORT

Alternate/Acting Chair Kathleen Pantle
Robert Olmstead, Executive Director

STATE OF ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

HISTORY

The Illinois Torture Inquiry and Relief Commission (“TIRC”) was created by statute in 2009 to address the problem of coerced confessions by the Chicago Police Department that were related to former Chicago Police Commander Jon Burge. The Illinois General Assembly was responding to the fact that a number of people convicted in that era were exonerated, and certain claims of torture that were disregarded at the time had been shown to be true.

Torture Commission staff members investigate claims of torture and formulate a recommendation to its eight-member, unpaid volunteer Commission. The Torture Commission, which is not bound by the staff’s recommendation, determines whether there is sufficient evidence of torture to merit judicial review of a conviction, or whether the claim should be denied. At least five votes are necessary to refer a claim to court for further judicial review; a minimum of four are necessary to dismiss it.

If the Torture Commission finds that a claim is sufficiently credible to merit judicial review, the claim is referred to the Circuit Court of Cook County where a judge is assigned to hold a hearing on the issue of whether the convicted person’s confession was coerced. This enables convicted persons to get appropriate relief if they were convicted due to a confession that was obtained by torture – even if their appeals and regular post-conviction proceedings would otherwise be exhausted.

If a judge rules a confession was coerced, the judge can order a new trial, at which the prosecution must prove the defendant’s guilt without use of the coerced confession.

Torture Commissioners were first appointed in late 2010. Activities of the Torture Commission were delayed in part by organizational and funding issues. In 2012 and 2013, the Torture Commission was defunded and mothballed for approximately 9 months. Nevertheless, the Torture Commission adopted initial rules, hired staff, obtained the assistance of pro bono counsel, and began obtaining documents and reviewing claims. In late 2013, the Torture Commission hired a new Executive Director and a Staff Attorney, who began work in January, 2014. Executive Director Barry Miller resigned at the end of July, 2015, and Staff Attorney Rob Olmstead acted as interim executive director until his formal hiring as Executive Director on January 20, 2016.

In 2016, the legislature and governor passed Public Act 99-688, broadening the Torture Commission’s jurisdiction and extending the claim period until August 10, 2019. The Act removed the requirement that claims of torture had to be related to Burge, and allowed any defendant convicted in Cook County to apply.

At the time of the Act’s passage in 2016, the Torture Commission had remaining approximately 210 adjudicated claims. However, only about 80 were believed to be within the jurisdiction of the original Act. Most of the claims (approximately 130) were non-Burge claims that had been held in abeyance while court cases confirmed the Torture Commission’s jurisdictional reach. The Torture Commission had anticipated that those claims would be subject to summary dismissal under its rules. When, as anticipated, the Illinois Appellate Court ruled that those non-Burge claims were beyond the jurisdiction of the Commission, the legislature and governor passed Public Act 99-688.

The immediate effect of Public Act 99-688 was to bring those 130 claims within the purview of the Torture Commission.

In addition, the Act also re-opened the claim period, and the Torture Commission soon received an avalanche of new claims. That claim period closed August 10, 2019. As of November, 2020, the Torture Commission had 518 total pending claims.

RECENT DEVELOPMENTS

To deal with the backlog of claims, the Torture Commission requested and received an increase in its FY 2021 budget. The legislature and governor increased the FY 2020 budget of \$418,900 to \$959,200. The new funds were allocated to bring aboard five temporary contract attorneys who would work on nothing but claims; an attorney to both investigate claims and provide support to the Torture Commission's pro bono partners, who have taken over investigation of approximately 60 claims; an attorney to both investigate claims and to supervise the contract attorneys; and a paralegal.

Even before the new funds became available July 1, TIRC completed new position descriptions to submit (through the Human Rights Commission, which handles the Commission's administrative support) to Central Management Services and to the Civil Service Commission for review and approval. Once approved, the Torture Commission began interviewing candidates in late October and extended offers for five contract attorneys, a supervising attorney, a pro bono liaison attorney, and a new Staff Attorney/General Counsel. Those three employees and two of the five contractors are scheduled to begin training December 16, 2020 and begin casework before the end of the year. The three additional contract attorneys will start in January, 2021. The Torture Commission also attempted to fill its Staff-Grant Attorney position in Fall 2020, but two offers for the position were declined and the position will be reposted in December, along with the new paralegal position. With new staff on board and an attorney dedicated to supporting and tracking our pro bono partners, the Torture Commission expects to complete 75-100 claims in calendar year 2021.

In 2020, the Torture Commission:

- Was on pace as of November 2020, to resolve by year's end 17 claims – above the Commission's overall yearly average of 15.5, but below last year's all-time high of 22 dispositions. The decline was due to three major factors – Delays caused by COVID-19 and working remotely, the departure of the Commission's Staff Attorney, and the diversion from casework to onboarding new staff.
- Broached the relatively new topic of sleep deprivation as a form of torture under the TIRC Act in the case of *In re: Jesus Morales*, which it referred to the court for further proceedings. In *Morales*, state witnesses acknowledged obtaining a confession from a suspect after knowingly keeping him awake for 27-28 hours straight with no opportunity for significant sleep. Although the Commission did not definitively conclude that Morales had been tortured, it found sufficient evidence that such sleep deprivation might constitute torture to refer the matter to court for further proceedings. The Commission's decision reviewed the confusing Illinois case law on what amount of sleep deprivation constitutes a coerced confession, as well as how national and international governmental and medical authorities view sleep deprivation and its effects upon voluntariness in confessions. In addition to the referral to court, the Commission exercised its authority under Section 45(d) of the TIRC Act to refer the case and the matter of sleep deprivation generally to the Cook County State's Attorney's Office and the Chicago Police Department. In its referral, the Commission noted that no clear guidelines exist to instruct police or prosecutors on what length of time an interrogation may be conducted without sleep before it constitutes coercion or torture, and that such guidelines may need to be established.

- Saw the culmination of some previous Commission determinations in the courts in 2020. Among other cases disposed of in the courts in 2020, Jackie Wilson, whose case the Commission referred to court in 2015, was retried for a murder after a judge, acting on TIRC's referral, suppressed his confession on the grounds that it was coerced. In the middle of Wilson's retrial in 2020, special prosecutors dropped all charges against Wilson after admitting that a Cook County State's Attorney had lied on the stand about discussions with them about a key state witness. In all, the Commission has referred 34 claims to court for further judicial review over the course of 9 years. Of those cases referred, three had their confessions suppressed by the trial court or appellate court and subsequently had their charges dropped. Four claimants pled guilty to the same or reduced charges in exchange for shortened sentences. Another six claimants had their charges dropped either before, during or after a hearing on whether their confessions were coerced. Four claimants had their confessions and convictions upheld by the court after circuit court proceedings; some are appealing. Seventeen claimants are awaiting hearings or rulings or in the process of having hearings on their confessions conducted.
- Took advantage of a slowdown in business in the private legal sector to recruit new pro bono partners. Large law firms looking for pro bono opportunities during the slowdown took on approximately 60 cases for the Commission in 2020.
- Proactively revised its administrative rules to codify its conflict of interest policy for Commissioners. Although Commissioners were already operating under an informal policy of recusing themselves from claims where there may have been an appearance of a conflict of interest, the new administrative rules formalized that process and gave Commissioners concrete guidelines to follow in future instances.
- Revised its administrative rules to increase the recruitment of attorneys to represent claimants, who must be represented before a formal TIRC inquiry can begin into their claims. The revision addresses a major chokepoint in the Commission's process, and should significantly speed proceedings in 2021. After filing those revisions, the Commission issued solicitations for new attorneys to represent claimants and received dozens of applications. Those applications were evaluated and, in late November and early December, new attorneys were contracted for claimants waiting for representation. Those attorneys will also provide a ready stable of attorneys to appoint to other claimants as they become needed and eliminate the chokepoint of finding attorneys for claimants.

While much was accomplished in 2020, the delayed, but nearly completed, onboarding of additional staff and additional pro bono partners should exponentially increase case dispositions in 2021. Unlike a judge, who is presented with materials and the facts of the case by adversarial parties, TIRC must itself obtain court and police records, investigate both sides of a claim, and reach an objective determination. It is also responsible for crime-victim notification responsibilities, which recent audits showed TIRC is performing flawlessly. In short, TIRC is, at once, investigator; both defense and prosecutor; judge; and crime-victim advocate. Its mission is to fairly evaluate claims of torture and ensure that Defendants' Due Process and Fifth Amendment Rights are respected. It is also committed to rejecting meritless claims where convictions were soundly reached without use of a coerced confession.

The Commission does not anticipate that its work in 2021 will require additional funding for other agencies.

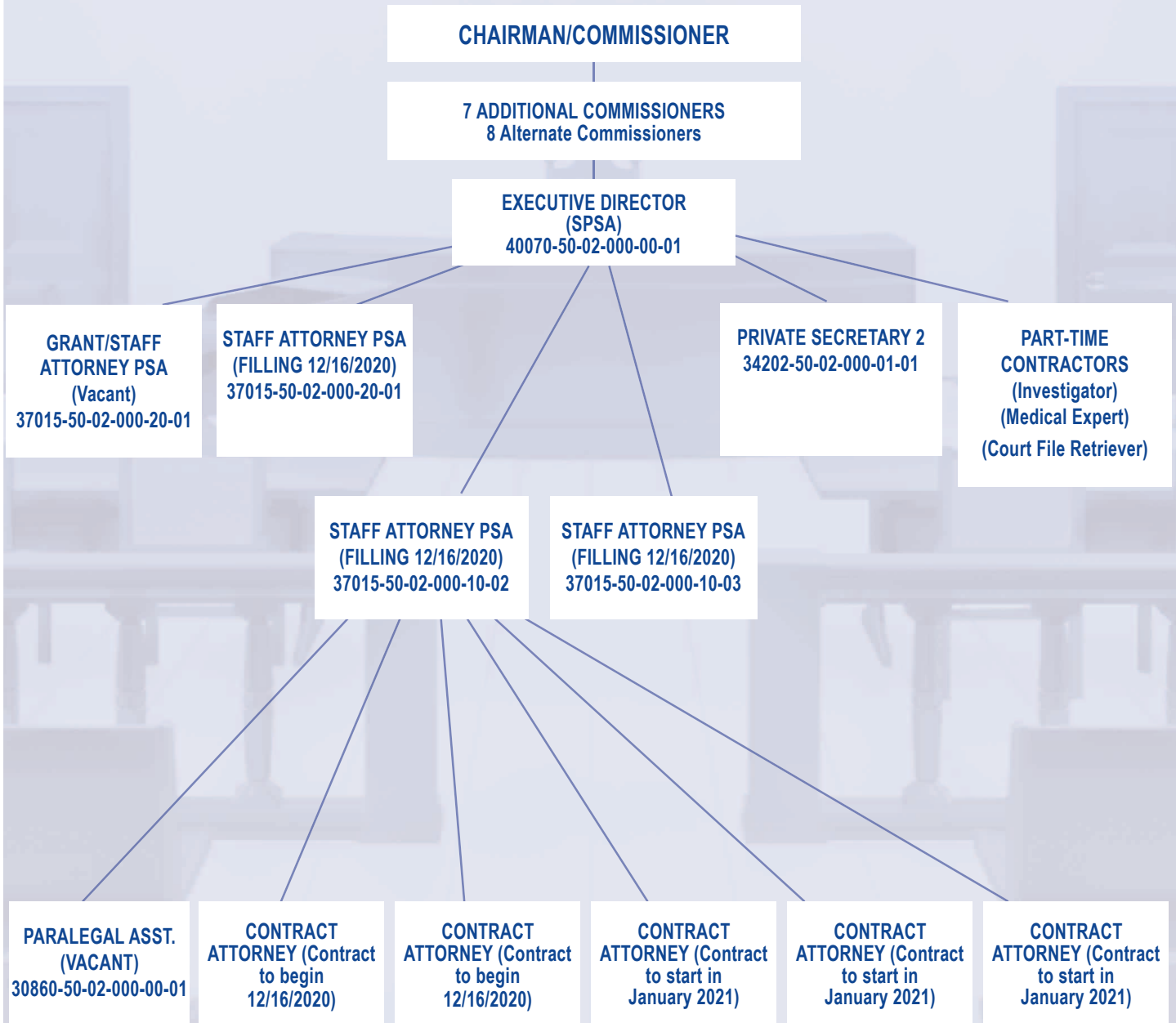
ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION BOARD MEMBERS

Commissioner Positions[°] (775 ILCS 40/20)	Official Filling Position
Retired Circuit Court Judge	(vacant)
Former Prosecuting Attorney	Barry Miller ⁺
Law School Professor	Robert Loeb [◊]
Practicing Criminal Defense Lawyer	Steven Miller ^{◊∞}
Member of the Public	Stephen Thurston [◊]
Member of the Public	Marilyn Baldwin [◊]
Member of the Public	Tim Touhy [◊]
Former Public Defender	Jim Mullenix [◊]

Alternate Commissioner Positions	Official Filling Position
Retired Circuit Court Judge	Kathleen Pantle ⁺
Former Prosecuting Attorney	(vacant)
Law School Professor	Craig Futterman [◊]
Practicing Criminal Defense Lawyer	(vacant)
Member of the Public	Autry Phillips [◊]
Member of the Public	(vacant)
Member of the Public	(vacant)
Former Public Defender	(vacant)

[°] All Commissioners are unpaid, ⁺ Commissioner awaiting Senate Confirmation, [◊] Commissioner serving after expired term,
[∞] Commissioner Steven Miller resigned December 9, 2020

**ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION
ORGANIZATIONAL CHART**



WE ARE HERE TO SERVE YOU. PLEASE CONTACT US ANYTIME.

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James A. Ferg-Cadima, Acting Chair
Tracey B. Fleming, Executive Director

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