Illinois Human Rights Commission

Fiscal Year
1996
Annual Report

STATE OF ILLINOIS

Human Rights Commission

James R. Thompson Center
100 W. Randolph Street, Suite 5-100
Chicago, Illinois 60601

June 11, 1997

To The Honorable Jim Edgar
Governor of the State of Illinois
and the Honorable Member of
The General Assembly

I hereby transmit to you a report of the activities of the Illinois Human Rights Commission for Fiscal Year 1996.

Respectfully submitted,

Manuel Barbosa
Chairperson

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COMMISSIONERS AND COMMISSION RESPONSIBILITIES

Overview—

On December 6, 1979, the then Governor James R. Thompson signed into law the Illinois Human Rights Act, which created the broadest and deepest civil rights coverage for the people of Illinois in the history of the state. The Act created a bifurcated enforcement apparatus: a Department to investigate charges and a Commission to adjudicate complaints of civil rights violation in housing, employment, public accommodations and financial credit. Such charges may be brought to the Department by individuals, groups and/or in certain circumstances, the Director of the Department of Human Rights. Complaints can come to the attention of the Commission via the Department, or the complainant within a prescribed timeframe.

The Commission consists of thirteen Commissioners and a staff of nineteen including an Executive Director, a General Counsel, a Chief Administrative Law Judge, Hearings and Motion Judges and support staff. As of July 1, 1995, all of the thirteen Commission seats were filled. The Commissioners were:

Manuel Barbosa, Chairperson	-	Elgin
Dolly Hallstrom	-	Evanston
Wallace Heil	-	Taylorville
Dr. Sakhawat Hussain	-	Frankfort
Mathilda Jakubowski	-	Downers Grove
Rose Jennings	-	Chicago
Grace Kaminkowitz	-	Chicago
Sylvia Neil	-	Glencoe
Jane Hayes Rader	-	Cobden
Randall Raynolds	-	Springfield
Rev. Rudolph Shoultz	-	Springfield
Vivian Stewart Tyler	-	Chicago
Isiah Thomas	-	Calumet Park

Wallace Heil resigned from the Commission during the fiscal year and Reverend Clyde Brooks was appointed on January, 1996 to replace him.

There are basically two types of Commission meetings: the Panel Meetings wherein three Commissioners review and rule on Recommended Orders and Decisions, Terms of Settlement and Requests for Review as well as miscellaneous motions from parties whose cases are pending before the Commission; and Full Commission Meetings wherein all the Commissioners consider and rule on requests of review of panel decisions. The Full Commission will only review a panel decision if the case presents a unique issue of law or if two Commission panels have issued conflicting rulings on the same question of law.

In FY96, the General Assembly passed a maintenance appropriation for the Commission which included continued funding of the Assistant General Counsel position through the Equal Employment Opportunity Commission Special Project Fund which is administered by the Department of Human Rights. In FY96, the Commission reduced its caseload by 7.5%. The number of Recommended Orders and Decisions produced by the Administrative Law Judges increased more than 13% over the number produced in FY95 and the Commission Orders served increased by 7%. Although the number of complaints field with the Commission by the Department of Human Rights was slightly down from the previous fiscal year, the number of settlements the Department presented to the Commission for approval was up by almost 50%. The total number of complaints filed with the Commission in FY96 was 571: 252 of them were filed by the Department of Human Rights; 306 were filed by complainants; and 213 were remanded either from the Commission or a higher court.

Despite the above described increases in production, at the end of FY96, the waiting period between the time parties are ready for hearing and the actual date of the earliest available hearing date remained over eighteen months. As in the previous fiscal year, this was indicative of the continued impact of the increased caseload from previous fiscal years and the one-third reduction in staff which occurred in FY93.

Significant Legislative Changes—

The General assembly did pass two house bills that significantly amended the Human Rights Act: House Bills 741 and 1797 which later became Public Acts 89-370 and 89-348 when Governor Edgar signed them into law. The aim of both amendments were to expedite the investigation of charges and adjudication of complaints. Public Act 89-370 was an initiative of the Management Associations of Illinois and included many of the proposals which were in a Commission initiated bill, House Bill 2338. The provisions of the two house bills are as follows:

Public Act 89-370:

- For charges filed with the Department of Human Rights after December 31, 1995, expands the time period for investigation of charges by the Department from 300 to 365 days. Thereafter, however, the Department is *prohibited* from filing a complaint. The complainant has a 39 day "window" period after the expiration of the 365 day period to file his or her own complaint with the Commission. If nothing is done by day 395, the case is over. This means that an employer and complainant are assured that at the end of 395 days, they will either be in the Commission adjudicating the complaint or the case will be over. This amendment also shorten the time frames for other activities during the investigation period;

- Established an alternative hearing procedure which allows the parties to choose to have complaints adjudicated under simplified rules of discovery. Cases are heard by an Administrative Law Judge, and his or her ruling is final;

- Clarifies that although an employer cannot discriminate based on the "fact of an arrest," it may discriminate based on evidence that the employee or applicant actually violated the law;

- Puts into the Act the definition of "substantial evidence" that has been used by the courts.

- Mandates that the Commission prepare a joint plan with the Department of Human Rights for automated electronic case tracking/management and mandates that the plan be completed by December 31, 1996.

- Mandates that the Commission include in its training for Administrative Law Judges computer skills, including but not limited to work processing and document management;

- Clarifies that parties have standing to protest subpoenas directed to non-parties. (Taken from House Bill 2338.);

- Clarifies that parties may settle their cases privately without Commission approval. (Taken from House Bill 2338.);

- Prohibits an Administrative Law Judge from setting a cut-off for summary decision motions more than 60 days before the scheduled public hearing;

- Clarifies that the Commission must schedule, but need not conduct a hearing within 90 days after service of the complaint. (Taken from House Bill 2338);

- Clarifies to parties that they must follow Commission rules, not the Code of Civil Procedure, regarding discovery. (Taken from House Bill 2338.);

- Clarifies how complaints can be amended. (Taken from House Bill 2338.);

- Clarifies when the Commission can close a file in housing cases if the parties have elected to go to federal court. (Taken from House Bill 2338.)

Public Act 89-348:

- Provides if no exceptions are filed to a recommended order, that it automatically becomes the order of the Commission.
- Enables the Commission to decline the review of a recommended order even if exceptions are filed, thus the recommended order becomes the order of the Commission

- Provides for direct appellate review of interlocutory orders of the Commission in accordance with Supreme Court Rule 308.

ANNUAL REPORT OF THE ADMINISTRATIVE LAW SECTION

The Administrative Law Section (ALS) of the Illinois Human Rights Commission is charged under Sections 8A-102 and 8B-102 of the Illinois Human Rights Act with the responsibility of conducting public hearings on complaints of discrimination filed by the Department of Human Rights or by individual complainants. In FY'96 this mandate was carried out by a professional staff of 7.6 administrative law judges, all licensed attorneys, consisting of a chief judge, a Chicago motions judge, three Chicago hearings judges, one part-time Chicago judge assisting with motions and two Springfield judges who handled both motions and hearings. In accordance with Sections 8A-102(B) and 8B-102(C) of the Act, the public hearings were held at a location that is within 100 miles of the place at which the civil rights violation is alleged to have occurred. As a consequence, the administrative law judges traveled in the course of FY'96 to sites throughout the state as necessary. Approximately two-thirds of the hearings were heard by administrative law judges based in the Commission's Chicago office with most of them conducted in Chicago and the remainder in north central and northwestern Illinois. The balance of the hearings were heard by the administrative law judges based in Springfield with most of them convened in Springfield and the others at sites distributed throughout central and southern Illinois.

Because of the complex nature of the relevant law, substantial preparation by the parties, including discovery proceedings and motion practice, is generally necessary for public hearings. As a consequence, all parties are encouraged to obtain legal representation, and at public hearings both parties are generally represented by legal counsel. Public hearings are in essence trials; they are formal and conducted in accordance with the rules of evidence used in the courts of Illinois and typically last two days. They may, however, take less than half a day at one extreme or several weeks at the other.

After the transcripts of the hearing has been received from the court reporter and then the post-hearing briefs have been completed by the parties, the administrative law judge prepares a recommended decision, which includes findings of fact, conclusions of law, a proposed disposition, and a discussion of the applicable statutory provisions, court and Commission decisions, and other relevant authority. In FY '96, these recommended decisions then went to the Commission for review. Parties have the opportunity to file written exceptions to administrative law judges' recommended orders and to present oral arguments for and against them. The reviewing panel of three Commissioners has the options of adopting, reversing, remanding for further hearing or modifying a recommended decision. A party dissatisfied with a panel's decision has the right to seek rehearing before the full Commission.

In addition to holding hearings on complaints, in FY '96 the Commission's administrative law judges were on occasion called upon to hold evidentiary hearings and make factual findings to assist the Commissioners in deciding requests for review of the Department of Human Rights' dismissals of charges for lack of substantial evidence or for lack of jurisdiction or for refusal to accept a full-relief settlement. The administrative law judges may also hear disputes regarding the alleged failure to comply with the terms of settlements.

The number of administrative law judges remained the same in FY' 96 as the prior year due to continuing budget restrictions. The carryover caseload of the ALS, however, was reduced in the course of FY'96 for a third year in a row; the FY'94 carryover reduction had been the first reduction in the ALS caseload since FY'86. FY '95 continued the downward trend and FY'96 caseload reduction by 240 charges is an agency best. In FY'96 the 7.6 administrative law judges issued a total of 811 dispositions. This compares well with the 825 dispositions of FY'95, which was the highest year in the history of the Commission, even exceeding the prior record high dispositions of 795 in FY'94. The prior highest output had been the 707 dispositions in FY'91 when there were 14 administrative law judges.

The intake of new charges at ALS was lower in FY'96 than in the prior year: a drop from 639 charges to 571 charges. This intake total is below 600 charges for the first time since FY'86. This intake total, clearly, reflects a continuing reduction in the number of complaints filed by the Department of Human Rights; the intake of charges from Department-filed complaints dropped from 855 in FY'92 to 788 in FY'93 to 379 in FY'94 to 278 in FY'95 to the present 252 in FY'96. The number of complainant-filed complaints, however, which are complaints filed under the provisions of Section 7A-102(G)(2) of the Act, remained fairly steady this year.

Section 7A-102(G)(2), which became effective for all charges filed after September 16, 1985 and was still effective in FY'96, permitted an aggrieved party to file a complaint with the Commission between the 301st and 330th days inclusive after the filing of a verified charge if the Department has not sooner filed a complaint or ordered that no complaint be issued. During FY'87, the first year in which such 300-day complaints" were authorized, 97 complaints containing 107 underlying charges were filed with the Commission. In FY'93, the intake of such charges was 281, making up approximately one-fourth of the total 1100 intake. In FY'94, the complainant-filed complaints comprised about 46% of the total number of incoming charges for ALS. In FY'95, the intake of such charges was 323 and for the first time ever complainant-filed complaints comprised the majority of the total number of incoming charges for ALS. This continued in FY'96 with 306 Complainant-filed charges compared to 252 Department-filed charges. This trend, however, should not continue. Due to an amendment of the Human Rights Act signed and enacted August 18, 1995, the "30-day window" period for complainants to file complaints between the 301st and 330th days after the filing of their charges no longer exists for all charges filed on or after January 1, 1996.

Although ALS achieved a continuing decrease in the its caseload in FY'94, '95 and '96, there had been a steady rise in influx of cases throughout the 1980's which became steeper in the early 1990's and caused a large caseload carryover. During the first year of its existence as part of the Human Rights Commission, for example, the ALS received 190 incoming charges, less than one-third of the 608 incoming charges of FY'88 and less than one-fifth of the FY'92 intake which exceeded 1200 charges. In response to the tremendous growth in caseload, the Commission has over the years made significant administrative changes designed to streamline ALS procedures. In November of 1984, the Commission opened an office in Springfield in order to increase access of downstate parties to the Commission and to provide a base of operation in central Illinois. The number of administrative law judges assigned to this office grew from one in 1984 to two in 1985 to three in 1990 to four in 1991. Unfortunately, due to a reduced budget, the number of Springfield office judges had to be cut back to two in FY'93 and remained at that through FY '96.

The administrative law judges assigned to the Springfield office are responsible for public hearings in which the alleged discrimination originated from Peoria southward.

The ALS also modified its procedures regarding handling motions to accommodate the its increased caseload. At the end of FY'85 the Commission's rules and regulations were amended to provide for an oral motion practice for cases in which the site of the alleged discrimination is located in Cook County. An oral motion call greatly expedites the prehearing phase of litigation before the Commission because it often produces immediate responses from the opponent of the motion as well as prompt rulings from the administrative law judge hearing the motion call. The importance and efficiency of the motion call continues to grow. In response to the great number of prehearing cases, the hours of motion call were expanded in FY'93 and remain so in order that more motions may be presented each week.

The following data represents a breakdown of the disposition of cases within the Administrative Law Section during the last several years of its operation under the Human Rights Act. The statistics in Table I and Table II are measured in charges rather than complaints. A charge is the working document filed by the complaining party with the Department. A complaint is a formal pleading, incorporating pending charge claims, filed with the Commission by the Department or directly by the aggrieved party if the Department failed to act on his/her charge within 300 days of the date of the charge's filing. The vast majority of the complaints heard in the ALS are based upon a single charge; it is not unusual, however, for a complaint to consolidate more than one charge. This may occur when a single complainant has filed more than one charge or because similar charges filed by several different complainants against the same respondent have been merged into a single complaint.

Table 1—Overview

	FY'96	FY'95	FY'94	FY'93	FY'92	FY'91
Charges from DHR	252	278	379	788	855	536
Complainant-filed charges	306	323	319	278	345	249
HRC remanded charges	13	38	19	34	12	9
Total entering ALS	571	639	717	1,100	1,212	796
Prior FY carryover	2,222	2,408	2,486	2,061	1,514	1,425
Total charges	2,793	3,047	3,161	2,726	2,221	1,917
Total dispositions	811	825	796	675	665	707
Carryover to next FY	1,982	2,222	2,408	2,486	2,061	1,514

Disposition of charges or output for the ALS is done in the forms of i) Final Orders And Decisions (FODs) which are orders dismissing a matter with prejudice based on the complainant's voluntary motion to dismiss; ii) Proposed Settlements which are settlement agreements of the parties sent on to a Commission panel for approval; and iii) Recommended Orders And Decisions (RODs) which are recommended decisions based on substantive motions or after hearings. A ROD may be for the complainant "on the merits," for the respondent "on the merits," for the complainant "not on the merits," for the respondent "not on the merits," or a split decision partially for the complainant and partially for the respondent. Those dispositions designated split decisions consist of complaints in which neither party prevailed on all aspects of the complaint. In some instances, for example, a complainant may have proven that she was denied a promotion because of her sex, yet failed to prove her claim that her discharge violated the Act. Another example of a mixed decision is a case in which race discrimination and retaliation were charged in

the same complaint, and the complainant prevailed as to one claim but not the other. In some instances more than one issue could be resolved for the same party in a single complaint based on a single charge, e.g., one complaint based on one underlying charge alleging both race discrimination and retaliation.

Decisions "not on the merits" are those that were rendered without a hearing on the facts underlying the claim of discrimination. These decisions arise in a variety of situations. A frequent cause is the failure by a party to proceed either to prosecute or to defend. A second frequent cause is the Commission's lack of jurisdiction over the complaint. Such lack of jurisdiction may be found, for example, where a complainant does not fall within a group protected by the Act or where he/she has failed to file a charge within the time limit provided by the statute or where he/she has filed a complainant outside the statutory "30-day window" period. In the last example, the complaint is dismissed without prejudice and the underlying charge remanded to the Department for continued proceedings.

An administrative law judge may close a case by means of a Final Order And Decision (FOD) where charges are withdrawn by the complainant because he/she decided not to pursue his/her claim before the Commission. Such withdrawals may occur for a variety of reasons. The most frequent cause is a decision by the parties to settle without presenting the settlement to the Commission for approval and without making the terms of settlement public. In some instances, the complainant has elected to proceed in federal court rather than to seek a remedy under the Act.

The ALS is an effective vehicle for settlement, as well as for resolution by means of hearing. Prehearing conferences have been used extensively at various stages in the processing of complaints. As a consequence, settlements have been reached after the filing of the respondent's answer, after rulings by the administrative law judge on crucial motions, after the completion of discovery, and even during or after preparation of the joint prehearing memorandum. It has also become the practice, whenever a second administrative law judge is available, to have an administrative law judge who will not be hearing the case conduct a voluntary settlement conference with the parties and their attorneys immediately prior to public hearing. These result in settlements just prior to hearing more than one-fourth of the time. In some cases, the parties have settled after the public hearing has begun or even after the hearing judge has issued a Recommended Liability Decision (RLD; formerly called an Interim Recommended Order And Decision).

Sections 8A-104(G) and 8B-104(D) of the Act provide the administrative law judge may recommend an award of reasonable attorneys fees and costs for prevailing complainants. The determination of the amount of these fees and costs generally require the participation of the administrative law judge who heard the case. In order to expedite this process, the Commission rules provide for an interim Recommended Liability Decision to be issued in cases where it is recommended that the complainant prevails. Upon issuance of the RLD, the prevailing complainant is granted time to file a petition for fees and costs and the respondent is granted time to file an opposition to the petition. Then the fees and costs are determined by the administrative law judge who issues a Recommended Order And Decision, which incorporates by reference the Recommended Liability Decision; this ROD is transmitted from the Administrative Law Section

to a Commission panel for review. As a result of this procedure, the Commission can review the merits of a matter and the recommended fees award at the same time and thus adjudicate the case more expeditiously.

In FY'96, the total 811 output of the ALS was comprised of 378 RODs, 427 FODs, 6 proposed settlements and 1 administrative closure.

While FY'96 was a highly productive year, the ALS still had a severe problem of too many cases for its staff to handle expeditiously. The number of charges entering the ALS doubled from 606 in FY '88 to 1212 in FY'92. To cope with this, the number of administrative law judges at the Commission was also increased. Subsequently, however, the number of judges was cut back although the overall caseload of the ALS continued to grow. The vast increase in intake in FY'92 and FY'93 over prior years combined with the drastic reduction in administrative law judges, from a high of 15 during part of FY'91 down to 7.6 in FY'93 and continuing thereafter, resulted in a dramatic increase in the "judge-to-caseload" ratio.

Table 2—BREAKDOWN OF ALS CASELOAD BY ALJ COUNT

END OF FY	ALS CASELOAD	# OF ALJS	ALJ/CASES RATIO
'88	689	7	98
'89	922	7	132
'90	1425	10	143
'91	1514	14	108
'92	2061	12	172
'93	2486	7.6	327
'94	2408	7.6	317
'95	2222	7.6	292
'96	1982	7.6	261

It is important to note that the ALS's caseload at the end of FY' 95 was nearly triple the caseload at the end of FY'88 while the number of administrative law judges in FY'94 was practically back to the FY'88 level. The increased caseload has necessarily affected the speed at which cases can proceed in the ALS and causes a substantial delay in hearing cases and rendering recommended decisions on the merits. An increase in staff as well as increased computer resources in FY'97 for the Commission is anticipated corresponding to such increases given the Department of Human Rights in FY'96. These anticipated increases are part of a four year plan to make significant reduction in the Department's and Commission's large caseloads and to reduce the amount of time a matter takes. Quicker disposition of civil rights cases will certainly be to the benefit of all parties.

ORDERS AND DECISIONS

Charges which come before the Commission through the Administrative Law Section are disposed of through the issuance of Orders and Decisions. In order to provide a consistent standard of measure, the statistics which follow are based on the number of charges disposed of, even though one complaint may contain several charges. By using charges as the standard of measure, it is possible to make valid comparisons between intake and disposition.

The term "disposition" means that after the issuance of the Order and Decision, the case is no longer pending review by the Commission. Charges which were remanded to the Administrative Law Section are counted as "disposed of" in this report. The reason for this is that the Administrative Law Section statistics show charges remanded by the Commissioners as "new" charges entering the Administrative Law Section. In order to give an accurate picture of the disposition of these "new" charges, it is necessary to count remands as "dispositions." Otherwise, a number of charges entering the Administrative Law Section would simply "disappear" without being accounted for in this report. Although this method of reporting gives a reliable picture of the workload of the Commission, it can cause confusion unless one understands that one charge filed at the Department of Human Rights may result in two or more dispositions at the Commission level. The total number of charges pending in front of the Commission comes from three main sources: Department of Human Rights complaints, complainant-filed complaints, and charges remanded from the Commission.

During FY'96, there was a significant change in the way Recommended Order and Decisions were processed at the Commission level. On January 1, 1996 Public Act 89-348 became effective. That law provided that if no exceptions were filed, a Recommended Order and Decision would automatically become the Order and Decision of the Commission without further review by a Commission panel. It also gave Commission panels discretion to summarily affirm Recommended Order and Decisions by declining review. The Commission interpreted the new law to apply to Recommended Order and Decisions which were issued after January 1, 1996. Because exceptions to Recommended Order and Decisions are due 30 days after service, the new law applied to approximately five months worth of Recommended Order and Decisions.

In order to allow for comparisons across fiscal years, we have grouped together Commission dispositions which adopt the Recommended Order and Decision because no exceptions have been filed, dispositions which adopt the Recommended Order and Decision because the Commission panel has declined review, and dispositions by means of formal opinions. All of these dispositions will be referred to as "Orders and Decisions." The number of dispositions by each of these methods will be detailed in the analysis which follows.

The total number of charges disposed of by way of Order and Decision in FY'96 was 340. In addition, four complainants asked for dismissal of their complaints after the issuance of the Recommended Orders and Decisions in their cases. Thus, a total of 344 charges were disposed of by way of final Commission level action after the issuance of a Recommended Order and

Decision. This is almost exactly the same disposition rate as FY'95 (345 charges). It represents a 52% increase over the disposition rate for FY'93 (226 charges).

The following chart shows the number of Orders and Decisions broken down by month and type of disposition:

	Jul	*Aug*	*Sep*	*Oct*	*Nov*	*Dec*	*Jan*	*Feb*	*Mar*	*Apr*	*May*	*Jun*	*Year*
Opinions	17	13	28	51	17	29	20	28	9	3	9	17	241
No Exceptions	0	0	0	0	0	0	0	9	32	20	24	11	96
Deny Review	0	0	0	0	0	0	0	0	0	1	1	1	3
Total	34	26	56	102	34	58	40	65	50	27	43	46	340

In previous fiscal years, no statistics were kept on the number of opinions which were written in cases where no exceptions were filed. Thus, no meaningful comparison can be made across fiscal years with respect to this category. In fact, a number of the opinions written from July through February were in cases where no exceptions were filed, but the Recommended Order and Decision was issued before January 1, 1996.

In previous fiscal years, the Commission tracked Orders and Decisions issued "on the merits." The term "on the merits" means that after consideration of the evidence, a finding was made that there either was or was not discrimination. As noted in previous annual reports, there is a problem in breaking down decisions in this way because it tends to diminish the importance of "non-merit" decisions. A decision based on the 180-day filing period may be longer, more complex, and may affect more people than a decision finding discrimination in a particular case. In addition, most cases settle. In FY'96 there were 441 charges which were disposed of by either a motion for voluntary dismissal or a Commission approved settlement. A Commission decision on a procedural issue may make it clear which party will win on the merits. If the parties settle, there will be no Order and Decision on the merits, even though the ultimate outcome of the case was determined by a Commission decision. Further, in some cases a charge may be disposed of based on a failure to proceed, but it is clear that the parties have actually settled the case. Finally, a great deal of the work of the Commission involves cases which reach the Commissioners through requests for review, certified questions and petitions for rehearing. Once again, based on these types of Commission actions, parties may reach settlements which will not be counted as dispositions on the merits.

In addition to the usual problems with analysis of the "on the merits" cases, the changes brought about by Public Act 89-348 have made it impossible to apply a consistent analysis across fiscal years. In the past, commissioners reviewed all Recommended Order and Decisions. If a Recommended Order and Decision was on the merits and if the Commission affirmed, the Order and Decision was considered "on the merits," even if no exceptions were filed. After the effective date of P.A. 89-348, however, Commissioners do not even see Recommended Orders and Decisions if there are no exceptions. Thus, the disposition cannot be considered "on the merits"

at the Commission level. Similarly, even where there are exceptions, if the Commissioners decline review, the disposition cannot be considered on the merits at the Commission level.

The problem can be illustrated by a hypothetical Recommended Order and Decision rendered on the merits on December 31, 1995. If no exceptions were filed, and if the Commission affirmed, the Order and Decision would be on the merits. If the same Recommended Order and Decision were issued after January 1, 1996, the Recommended Order and Decision would be affirmed automatically, and the disposition would not be on the merits. The reader should view the following statistics in light of all of the above stated caveats.

During FY'96, 96 charges were disposed of "on the merits." The 96 charges include cases which were disposed of by summary decisions and directed findings after the complainant's cases in chief. In most cases, the "on the merits" figure does not include situations in which a motion for summary decision was granted because there was no response filed. In a small number of cases, however, administrative law judges made extensive and detailed findings of fact based on uncontested evidence filed in a motion for summary decision. Where there has clearly been an extensive evaluation of the evidence presented, the resulting Order and Decision has been determined to be "on the merits." This report does not count Orders and Decisions in favor of the complainant based on the default of the respondent as decisions on the merits. There were 22 charges which were disposed of in favor of the complainant based on the default of the respondent. Thus, there were 118 charges disposed of during the year in which there was either a finding on the merits of the charge of discrimination or a finding that discrimination had occurred based on the default of the respondent. As noted, Recommended Orders and Decisions which were affirmed based on the failure of a party to file exceptions are not considered dispositions on the merits.
The charts below group the 96 charges decided on the merits in three ways: first by whether the decision favored the complainant, respondent or both; second, by the source of discrimination; and finally, by whether the Commission affirmed or reversed the administrative Law Judge's recommended order:

ORDERS AND DECISIONS

For Complainant	For Respondent	For Both
16	75	5

ORDERS AND DECISIONS BY SOURCE OF DISCRIMINATION

	Number		Percentage %	
	Fy'96	FY'95	FY'95	FY'95
Race	33	22	25.4%	20.6%
Color	0	1	0.0%	0.9%
Religion	2	3	1.5%	2.8%
Sex	20	16	15.4%	15.0%
Sexual Harassment*	4	5	3.1%	4.7%
National Origin	3	13	2.3%	12.1%
Ancestry	1	1	0.8%	0.9%
Age	18	15	13.8%	14.0%
Marital Status	3	2	2.3%	1.9%
Physical/Mental Handicap	30	12	23.1%	11.2%
Unfavorable Discharge	0	0	0.0%	0.0%
Retaliation*	16	16	12.3%	15.0%
Familial Status	0	0	0.0%	0.0%
Arrest Record	0	1	0.0%	0.9%
Citizenship Status	0	0	0.0%	0.0%
Military Status	0	0	0.0%	0.0%
TOTALS	**130** **	**107** **	**100.0%**	**100.0%**

*Although Sexual Harassment and Retaliation are separate violations of the Human Rights Act rather than particular types of "unlawful discrimination," they are listed here because they function much like traditional "bases" such as race or sex.

**The total is greater than the total number of charges on the merits because some charges alleged

ORDERS AND DECISIONS AS RELATED TO RECOMMENDED ORDER AND DECISIONS

RODs Affirmed	88
RODs Reversed	5
Affirmed in Part and Reversed in Part	3
TOTAL	96

The following chart breaks down the 145 charges disposed of on a basis other than the merits by the subject covered in the Order and Decision. There were no dramatic changes from last year in the percentage of Recommended Order and Decisions dealing with various subjects. Once again, the passage of P.A. 89-348 makes comparisons with past fiscal years impossible. There were 121 more charges in this category last year. The absolute number of charges is so small, that the addition of only a few more charges in a particular category would have a dramatic impact on the percentage change over last year.

Non-Merit Orders and Decisions by Subject of Recommended Order and Decision

Subject of ROD	Number		Percentage %	
	FY'96	FY'95	FY'96	FY'95
Failure to Proceed	53	94	36.6%	35.9%
30-Day Window Problems	13	34	9.0%	13.0%
Technical Problems with Cp filed complaints	0	0	0.0%	0.0%
Defaults	23	27	15.9%	10.3%
Exempt Rp.	1	2	0.7%	0.8%
180-Day Deadline Problems	4	5	2.8%	1.9%
Release or Other Bars to Prosecution	3	2	2.1%	0.8%
Failure to Respond to Motion	15	35	10.3%	13.4%
Failure to State Claim	10	34	6.9%	13.0%
Res Judicata	1	5	0.7%	1.9%
Remand for Further Proceedings	3	6	2.1%	2.3%
Cp Dies During Pendency of Case	1	3	0.7%	1.1%
Private Settlement	7	13	4.8%	5.0%
Failure to Serve Respondent with Complaint	0	2	0.0%	0.8%
Other	11	0	7.6%	0.0%
TOTALS	145	262	100.0%	100.0%

REQUESTS FOR REVIEW

The Commission is responsible for reviewing at the request of the complainant the investigation of all or part of any charge which has been dismissed by the Department of Human Rights. This includes an evaluation of the adequacy of the investigation and whether dismissal of each "count" of the charge is appropriate. The Commission may sustain the dismissals of all or some of the "counts" of the charge, remand to the Department for further investigation, or reverse the dismissal, for the filing of a complaint. In addition, a respondent may file a request for review of an order of default entered by the Department of Human Rights.

In FY'96, the Commission received 478 requests for review and served 530 orders disposing of requests for review. There is generally a built in delay of at least 60 days between the time that a request for review is received by the Commission and the earliest time that a

Commission order can issue. Under our rules, the Department of Human Rights has 30 days to file a response, and the party filing the request has 15 days to file a reply. After all of the material has been received, it is mailed to commissioners approximately 10 days in advance of the meeting at which the request will be considered. Thus, during any given fiscal year, the orders which will be entered will not necessarily relate to the requests which have been received during the same fiscal year. Thus, in FY'95, there were 78 more requests than dispositive orders, but in FY'96, there were 52 more dispositive orders than requests. During the past three fiscal years, there have been an average of 507 requests received and 529 dispositive orders.

Under Public Act 89-370, the Commission will not be considering requests for review in cases where the charge was filed after January 1, 1996. Because there were a significant number of uninvestigated charges pending at the Department of Human Rights on January 1, 1996, the new law had virtually no impact on the number of requests for review received by the Commission in FY'96. It is expected, however, that the number of requests for reviews received by the Commission will diminish in subsequent fiscal years.

SETTLEMENTS

The Commission is also mandated by the Act to review and approve all terms of settlement. The standard for review is that the terms of the settlement must be unambiguously drawn, not inconsistent with the Act, and knowingly and voluntarily entered into. During FY'96, the Commission received, reviewed and approved 816 terms of settlement received from the Department of Human Rights and 14 from the parties in cases where a complaint had already been filed at the Commission level. The 816 settlements received from the Department of Human Rights represent a 49% increase over FY'95.

In the case of *Vidal and St. Mary's Hospital of East St. Louis, Inc.*, Charge No. 1985SF0343 (August 1, 1995), the Commission took up for the third time the case of a black lab technician who was fired when he refused to remain at his post past the end of his shift after another employee called in sick. In the first case (*Vidal I*), the Commission had overturned the finding of its administrative law judge that the complainant was the victim of discrimination on the basis of his race and national origin. The appellate court overturned the Commission decision and remanded the matter for additional consideration. *Vidal* v. *Illinois Human Rights Comm'n*, 223 Ill. App. 3d 467, 585 N.E.2d 133 (1991). On remand, a Commission panel again found that there had been no discrimination. In an unpublished, Rule 23 Order, the appellate court reversed a second time and remanded the matter for reconsideration. The August 1995 Order and Decision of the Commission was the panel's response to the remand.

The third and final Order and Decision in the case is important because of its exploration of the distinction between unequal treatment between individuals of particular races and national origins and the kind of discrimination which is prohibited under the Human Rights Act. The panel found that it is not sufficient to show that individuals of a particular race or national origin were treated better than the complainant. The proof must establish that the reason for the unequal treatment is race, national origin or some other factor described in the Human Rights Act.

A similar issue was discussed in the case of *Jenkins and Illinois Industrial Comm'n*, Charge No. 1990CF1523 (August 1, 1995). The complainant, a black attorney, alleged that he was the victim of race discrimination because the Illinois Industrial Commission rejected his application in favor of a white female candidate who had never been to law school. The panel stated that in a disparate treatment case the question is not whether the decision-maker's perception of qualifications is accurate, but whether the decision-maker acted based on a good faith, non-discriminatory evaluation of the candidates. Although the white, female candidate was not a lawyer, she had worked personally with the chairman of the Industrial Commission. Under those circumstances, the Human Rights Commission found it was not against the manifest weight of the evidence to find that the chairman picked the white, female candidate because he believed that she was best qualified for the position, and not because of her race.

The case of *Simmons* v. *Illinois Department of Central Management Services*, Charge No. 1989SA0324 (August 1, 1995), gave the Commission the opportunity to discuss an aspect of the law concerning liability for sexual harassment which had never previously been the subject of a Commission decision. In oral argument before the Commission, the respondent argued that an employer would never be responsible for alleged sexual harassment if it took place in a cafeteria during the lunch hour or in bars after work. The Commission rejected an absolute rule on this subject. The Commission said that although it was possible to argue that activities which take place outside of work do not necessarily affect the working environment, that would not always be the case. Similarly, although an employee's presence in a cafeteria or bar after work hours is usually voluntary, there are occasions where it is important for an employee to be at a particular place after work hours for work-related reasons. The Commission said that it is clear

that important work information is often exchanged over lunch or after work over drinks. It went on to say that there may be significant work advantages to routine social interactions among members of a management team. The Commission concluded that it might be possible for a complainant to prove that his or her presence at a particular place after work was not truly voluntary and that the conduct observed in that location was unwelcome and created an intimidating hostile or offensive working environment.

In the case of *Thomas and Robert F. White and Co.*, Charge No. 1988CF0222 (October 6, 1995), the Commission explored the implications of the United States Supreme Court's decision in *St. Mary's Honor Ctr.* v. *Hicks*, ___ U.S. ___, 113 S.Ct. 2742 (1993), which was adopted for use in Illinois in *Cisco Trucking Co., Inc.* v. *Illinois Human Rights Comm'n*, 274 Ill. App. 3d 72, 653 N.E.2d 986 (1995). The U.S. Supreme Court had said that it is not sufficient for a fact-finder to determine merely that the employer's stated reason for an employment decision is untrue. The fact-finder must also find that the stated reason is a pretext for unlawful discrimination. In the *Thomas* case, the Administrative Law Judge had specifically found that the reason why a white individual received a promotion instead of the black complainant was that the white individual had complained to her manager about her position and threatened to leave the company if she did not receive a promotion to another department. There was no finding that the complainant had made a similar demand to leave or even that the decision-maker was aware of the complainant's desire for a promotion. Under those circumstances, it was irrelevant whether the stated reason for giving the white employee the promotion (she had better presentation skills) was true. The Administrative Law Judge's own findings made it clear that race was not the reason why the complainant was denied the promotion.

In the case of *Fritz and Illinois Department of Corrections*, Charge No. 1987SF0543 (October 17, 1995), the Commission moved that a single incident of sexual harassment might be sufficient to create a hostile working environment. The perpetrator in this case grabbed the complainant and squeezed her breast. It was the Commission's ruling that the one-time incident might be sufficient to impose liability against the perpetrator. On the other hand, the Commission ruled that the employer was not liable because it had no warning that such an incident would take place and conducted an adequate investigation afterwards. It was uncontested that the perpetrator never bothered the complainant again.

The case of *Combs and Barbara Coleman Co.*, Charge No. 1993CA0140 (October 23, 1995), was one of several dealing with preemption by the federal Employment Retirement Income Security Act of 1974 (ERISA). In that case we said that a complainant's allegation that he was denied severance benefits because of his age was not preempted by the federal law. The Commission pointed out that the allegations made by the complainant would constitute a violation of the federal Age Discrimination in Employment Act (ADEA). It was clear that if an action would constitute discrimination under federal anti-discrimination laws, then states were free to prohibit the same conduct, even though it may relate to severance benefits. Accordingly, the Commission refused to dismiss the complainant's case.

The thorny issue of the relevance of after-acquired evidence was the subject of the Commission's decision in *Battieste and C.E.Niehoff and Co.*, Charge No. 1989CF4075 (November 14, 1995). Although the Administrative Law Judge found that the complainant had

been fired because of his race, the recommendation to the Commission was that the complainant should lose because he had lied on his resume and the job application he had submitted to his employer at the time he was hired. Although the Administrative Law Judge's recommendation was supported by some prior Illinois precedent, there were appellate court decisions which appeared to go the other way. The Commission chose to follow the precedent set by the United States Supreme Court in the case of *McKennon* v. *Nashville Banner Publishing Co.*, ___ U.S. ___, 115 S.Ct. 879 (1995), which held that after-acquired evidence is not sufficient to constitute a complete defense to a discrimination claim. The Commission also ruled, however, that the after-acquired evidence may be legitimately considered with respect to the question of the amount of damages the complainant is entitled to by reason of the proven discrimination. In other words, an employer may never take race or any other prohibited characteristic into consideration when firing an employee, even though after-acquired evidence ultimately shows that the employee deserved to be fired for legitimate, non-discriminatory reasons.

An important, but little discussed issue was the subject of the Commission's decision in *Wesley and Dana Tank Container, Inc.*, Charge No. 1987CF2276 (January 8, 1996). The respondent in the case had defaulted. Accordingly, the Administrative Law Judge recommended an award of over $51,000 in backpay. At that point, the respondent argued that despite the fact that it had defaulted, the Commission had no jurisdiction because it had fewer than 15 employees in the state of Illinois and was, therefore, not an "employer" within the meaning of the Human Rights Act. The Commission found that there was a flaw in the respondent's argument. The charge was not brought pursuant to the Article II employment provisions of the Act, but rather pursuant to Article VI, which makes it illegal for a "person" to retaliate against a "person" because that person has filed a charge of discrimination. It was the opinion of the Commission that small business enterprises are exempt from the employment discrimination provisions of the Act, but if an employee does file a charge of discrimination against a small business, the respondent is not given free reign to retaliated against that employee.

In January of 1996, the Commission issued what may be considered a companion decision to the *Combs* Order and Decision, described above. Once again, the issue was preemption under ERISA. In the case of *Hillel v. The Northern Trust Company,* Charge No. 1989CA2763 (January 8, 1996), however, the complainant alleged that she had been denied long-term disability leave, even though she qualified for such payments pursuant to the respondent's plan. In this case, unlike *Combs*, the allegations in the charge would not state a cause of action under analogous federal anti-discrimination law. The most closely analogous statute, The Americans With Disabilities Act (ADA) applies only to those individuals who do possess the ability to do the job in question despite their disabilities. Ms. Hillel, however, was arguing the opposite; she contended that the employer was erroneously viewing her as able to do the job in question, despite the fact that she was "disabled" within the meaning of the respondent's disability plan. Thus, the complainant's only claim for relief was under an employee benefit plan, and this brought the charge squarely within the preemption provisions of ERISA.

In the case of *Parrott-Hamilton and Illinois Department of Human Rights,* Charge No. 1993CF0569 (April 23, 1996), a Commission panel raised questions regarding the way employers decide whether dependents of employees are eligible for group health insurance benefits. The complainant alleged that the respondent school board would not cover her husband because of his

physical handicap. It appeared clear that under certain circumstances, the policy offered by the employer would allow the addition of dependents only if they were in "good health." The panel pointed out that the policy in question did not merely exclude pre-existing conditions; it appeared to exclude dependents with handicaps from coverage for all risks, even those risks which were unrelated to the handicapping condition. The panel referred the matter to an administrative law judge for a hearing into the reasons for the absolute exclusion of those who were not in "good health" from coverage.

In the case of *Kvarsten and Cotter & Co.*, Charge No. 1991CA3492 (May 29, 1996), the full Commission was faced with the technical question whether a complainant's failure to serve a copy of his or her complaint on the Department of Human Rights on the same day that the complaint was filed with the Commission deprived the Commission of jurisdiction over the complaint. The full Commission ruled that the requirement was technical, not jurisdictional, and therefore the Commission had the discretion to consider complaints which were not served on the Department of Human Rights on the same day they were filed with the Commission.

The case of *G.S. and Baksh*, Charge No. 1987CP0113 provided the Commission the occasion to issue two important orders in June of 1996. The first (June 26, 1996) concerned the question whether a cause of action survives the death of the complainant where most, if not all of the damages originally requested by the complainant, are for emotional distress. The Commission ruled that a cause of action under the Human Rights Act was a type of property recognized by Illinois law. This property would become part of the decedent's estate, and therefore the estate of G.S. could continue to prosecute the matter.

The Order and Decision in the case (June 27, 1996) found that a dentist's office was a place of public accommodation. It further found that refusing to treat a patient who was HIV positive was the denial of the full and equal enjoyment of a place of public accommodation on the basis of a handicap. Accordingly, the Commission adopted the recommendation of the Administrative Law Judge that the complainant's estate be awarded substantial compensation for emotional distress and attorney's fees and costs.

FLOWCHARTS OF THE PROCEDURES OF THE HUMAN RIGHTS COMMISSION FOR COMPLAINTS AND CHARGES FILED PRIOR TO JANUARY 1, 1996

CHART I - INVESTIGATION

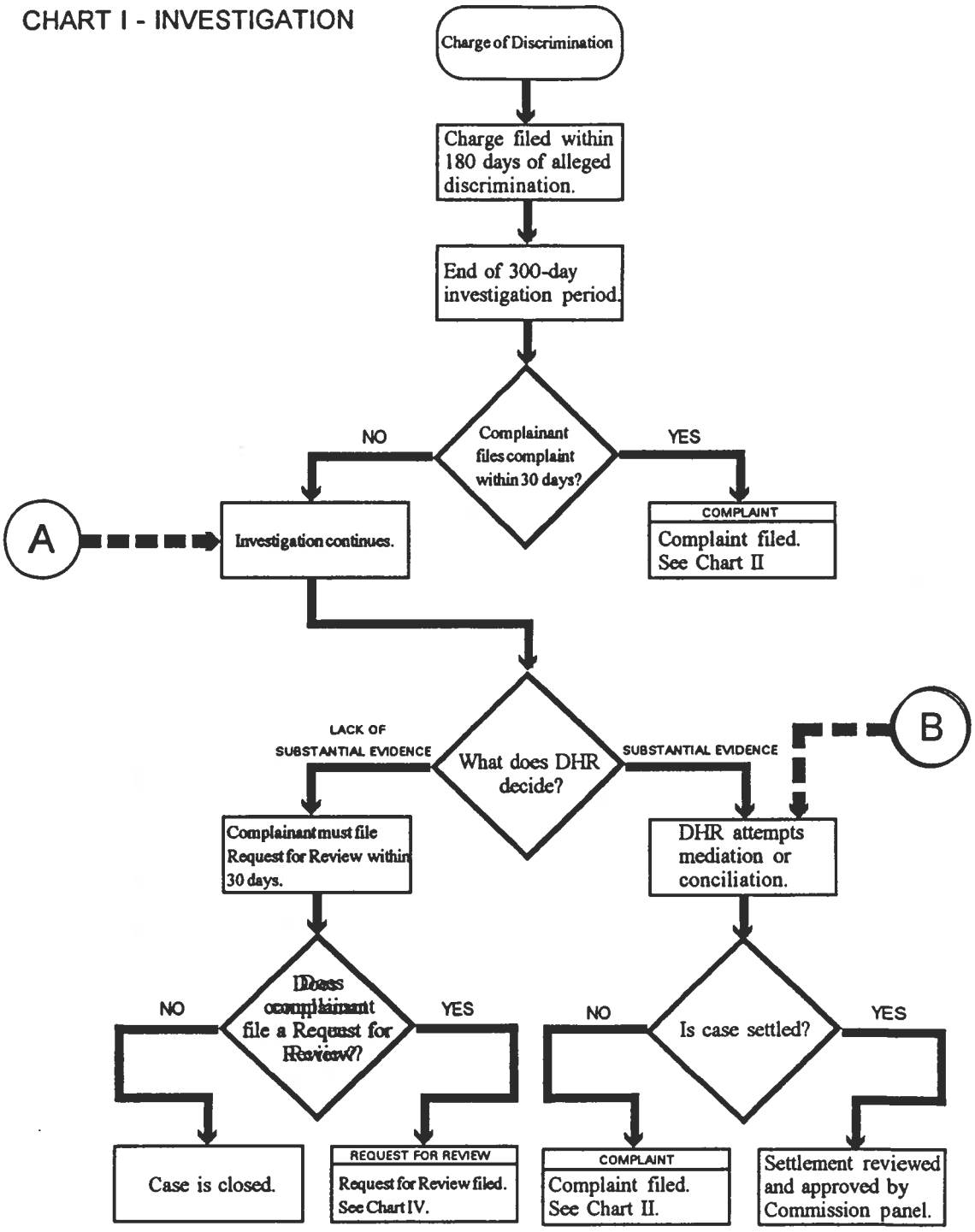


CHART II - COMPLAINTS

(Note: At anytime a complainant may file a voluntary *Motion to Dismiss*; this will be granted by an ALJ in a Final Order and Decision, which closes the case.)

*Appeal is possible only on Final Orders.

**This part of the chart assumes a "final" Order.

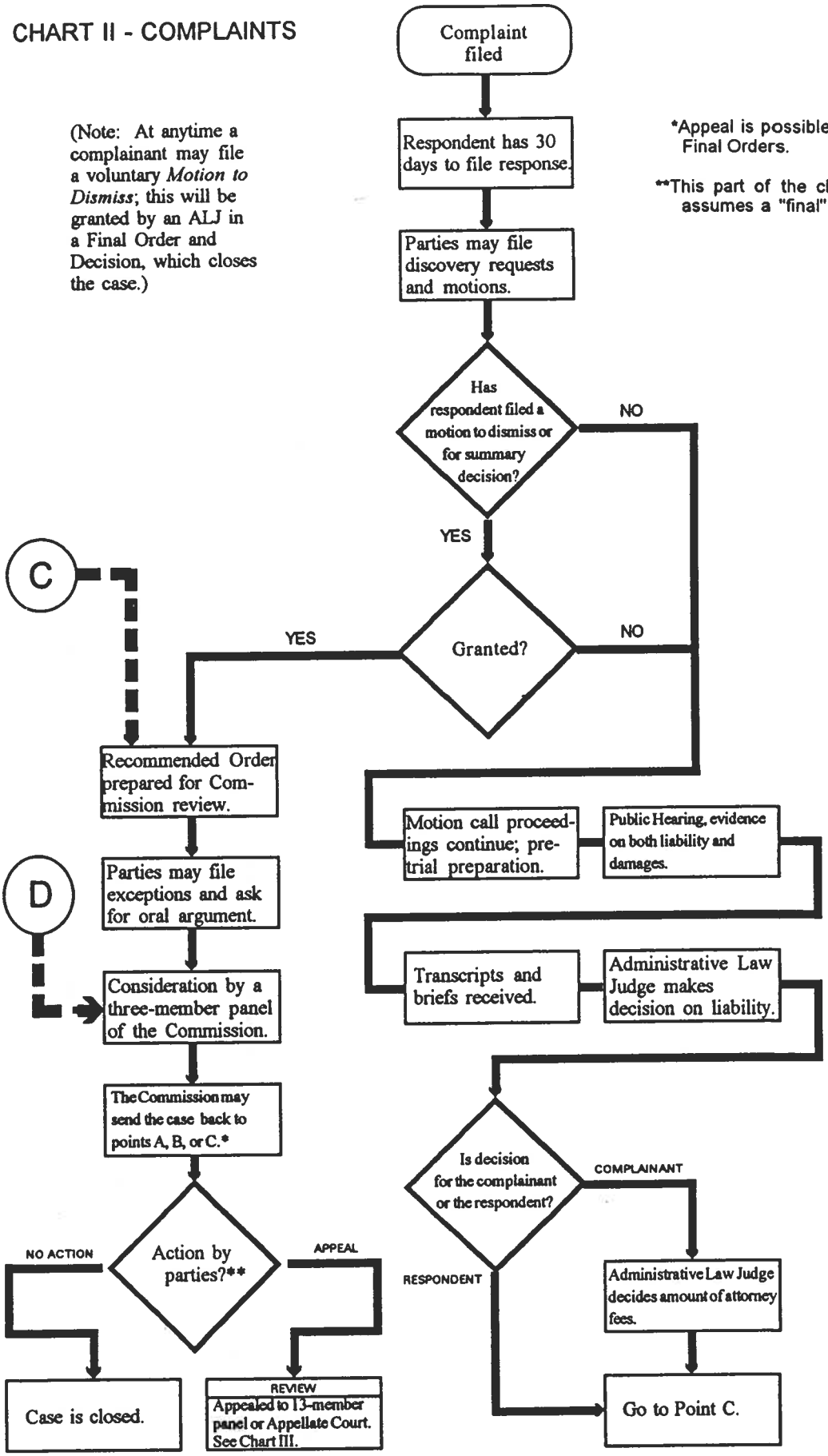
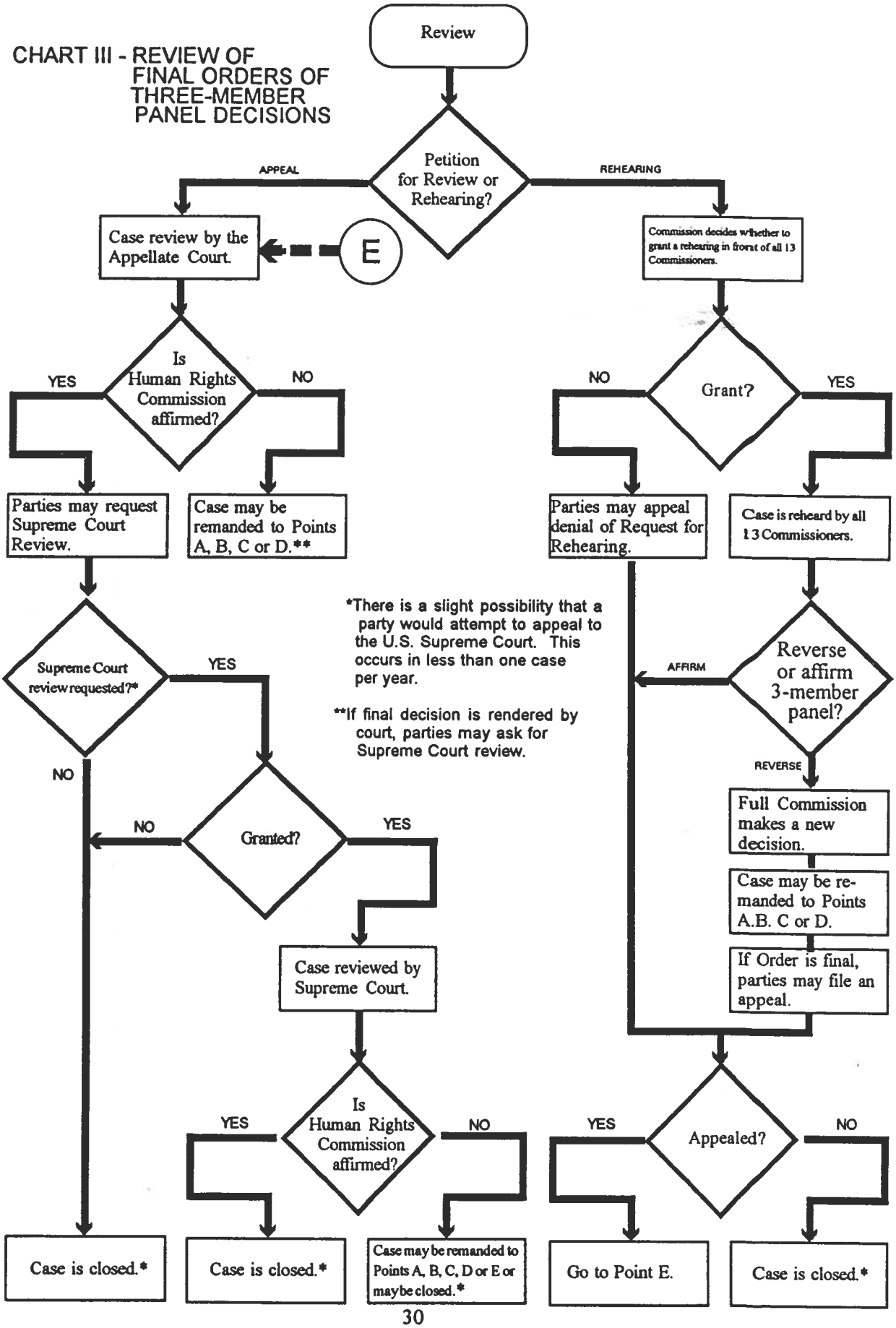


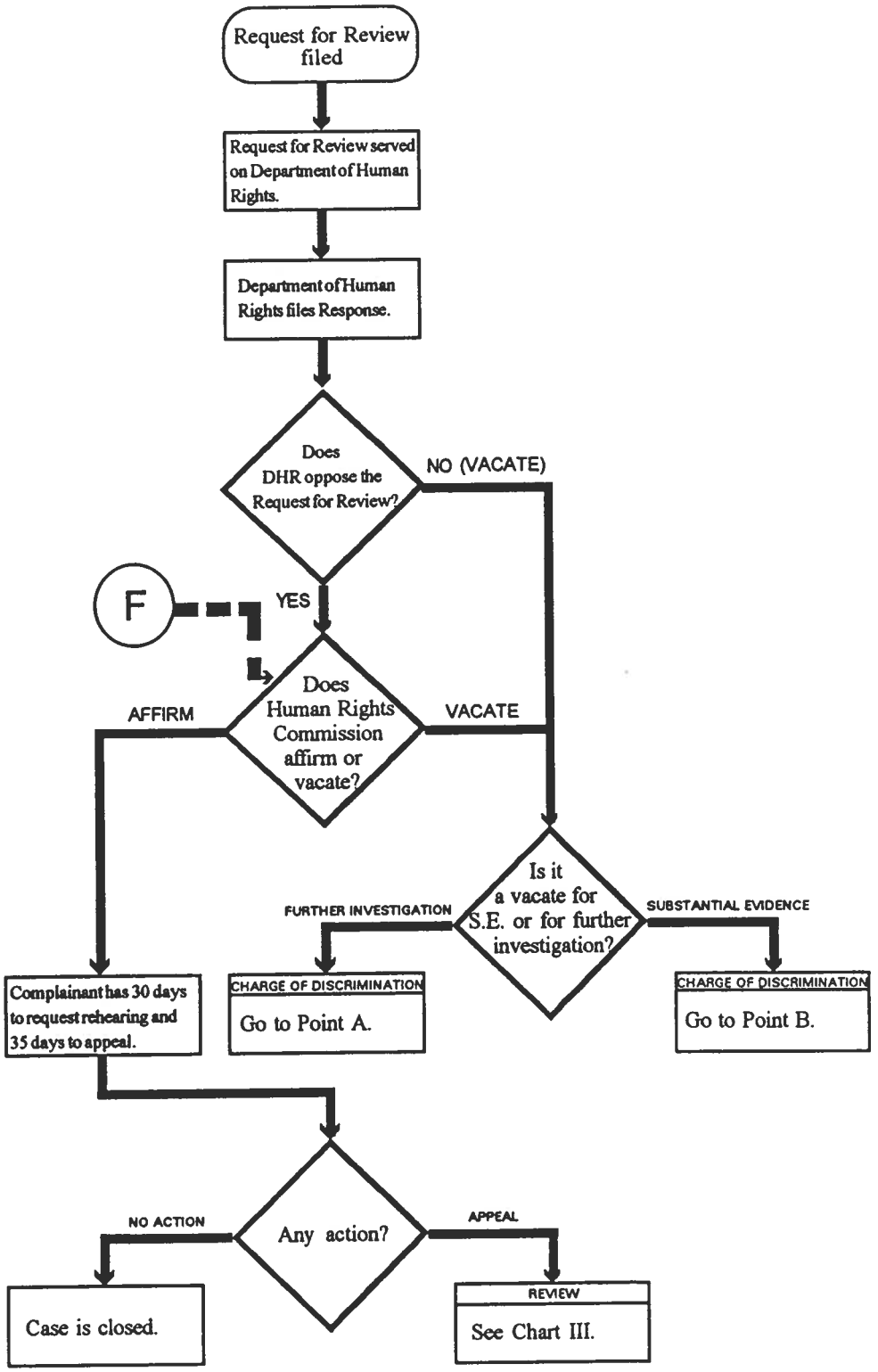
CHART III - REVIEW OF FINAL ORDERS OF THREE-MEMBER PANEL DECISIONS



*There is a slight possibility that a party would attempt to appeal to the U.S. Supreme Court. This occurs in less than one case per year.

**If final decision is rendered by court, parties may ask for Supreme Court review.

CHART IV - REQUEST FOR REVIEW



FLOWCHARTS OF THE PROCEDURES OF THE HUMAN RIGHTS COMMISSION FOR COMPLAINTS AND CHARGES FILED AFTER JANUARY 1, 1996

CHART I - INVESTIGATION

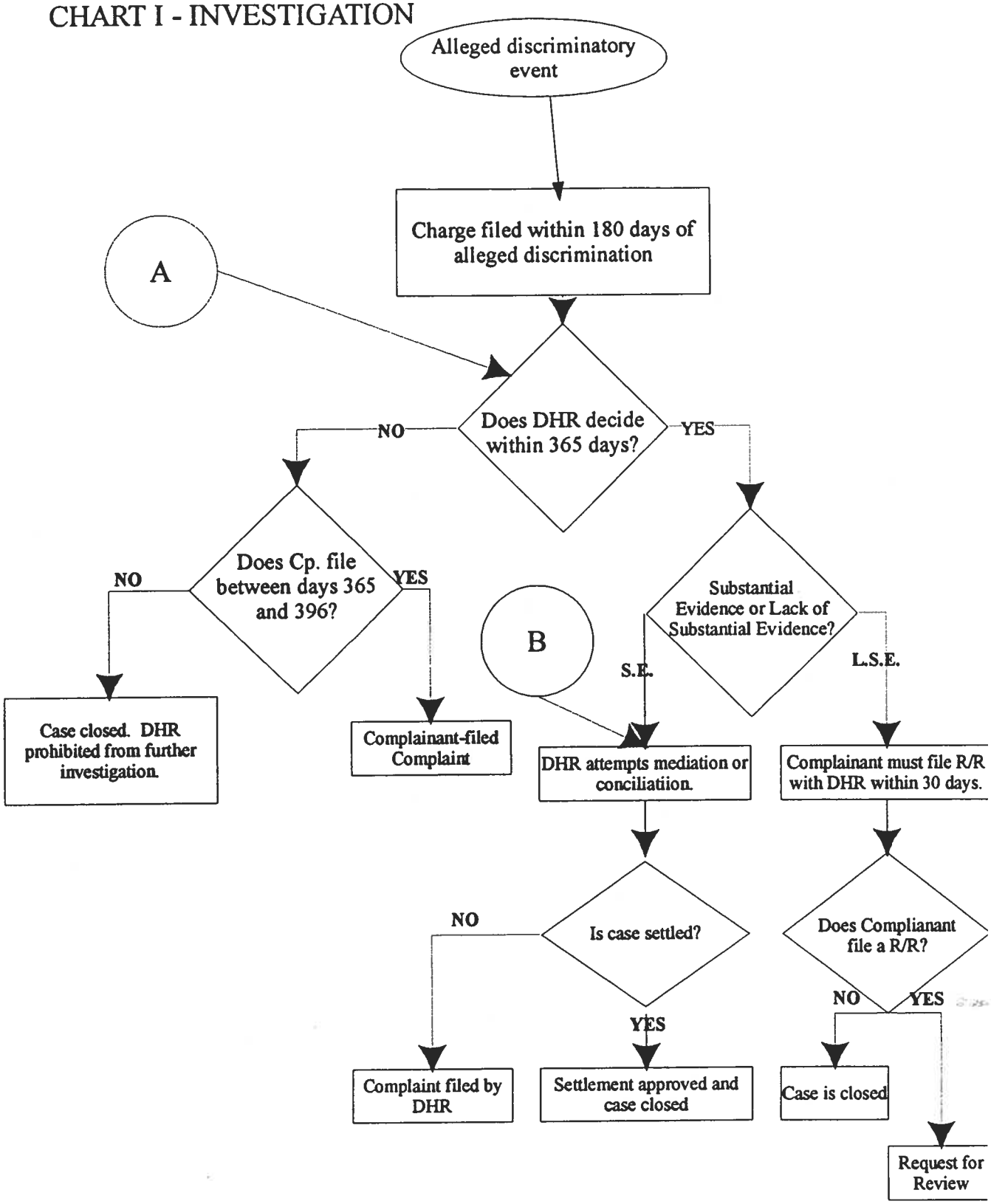


CHART II - COMPLAINTS

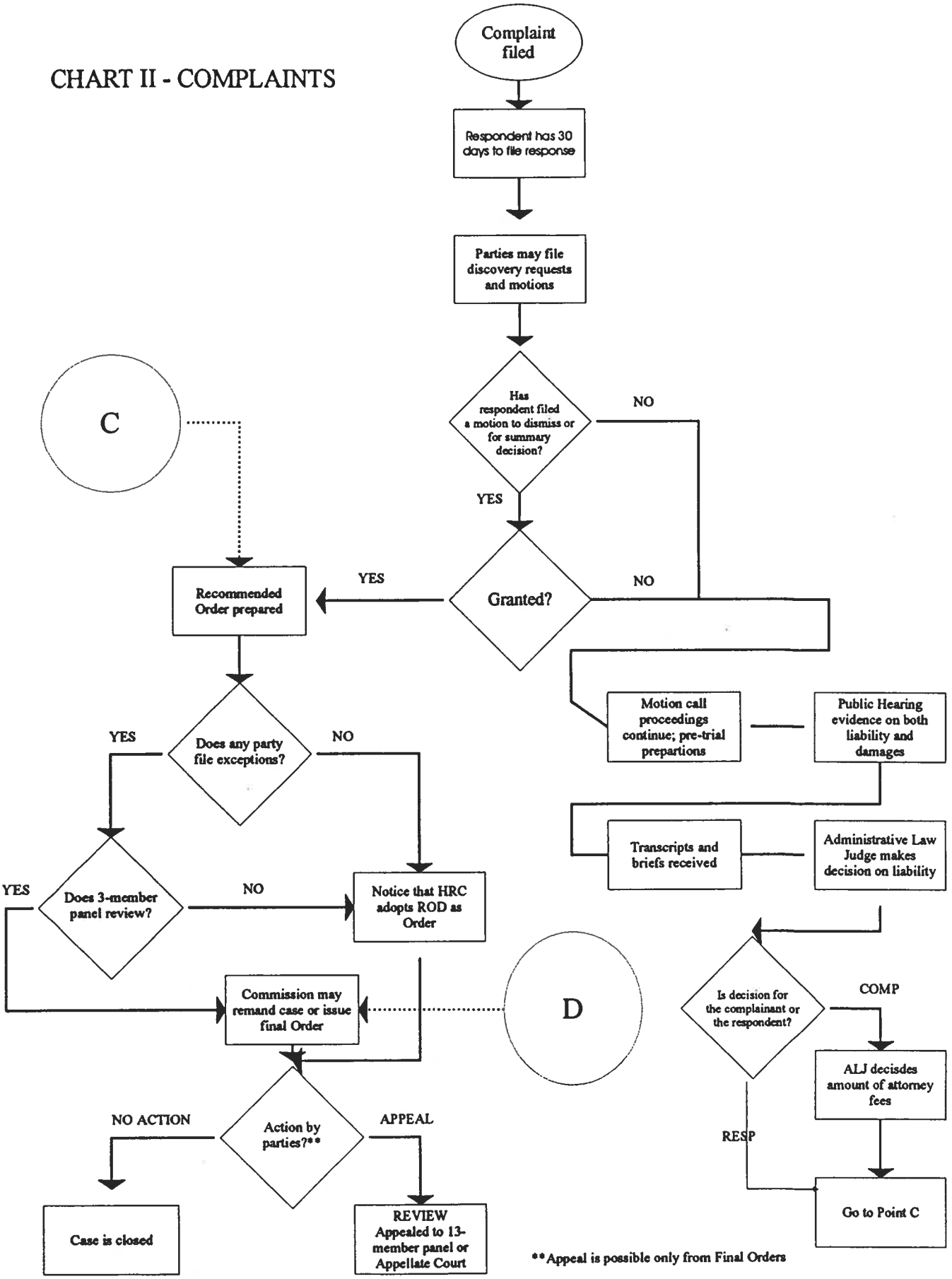


CHART III - REVIEW OF FINAL ORDERS OF THREE-MEMBER PANEL DECISIONS

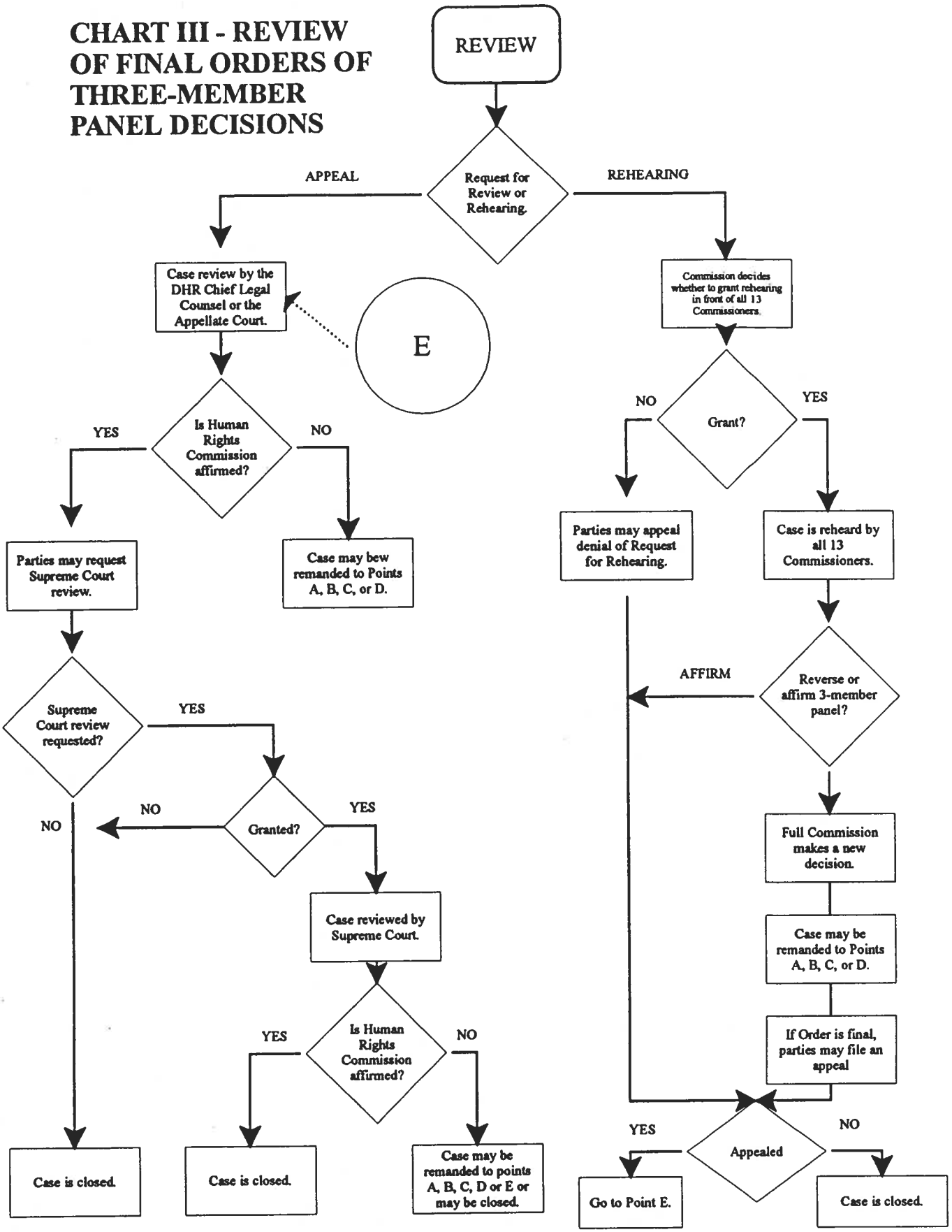
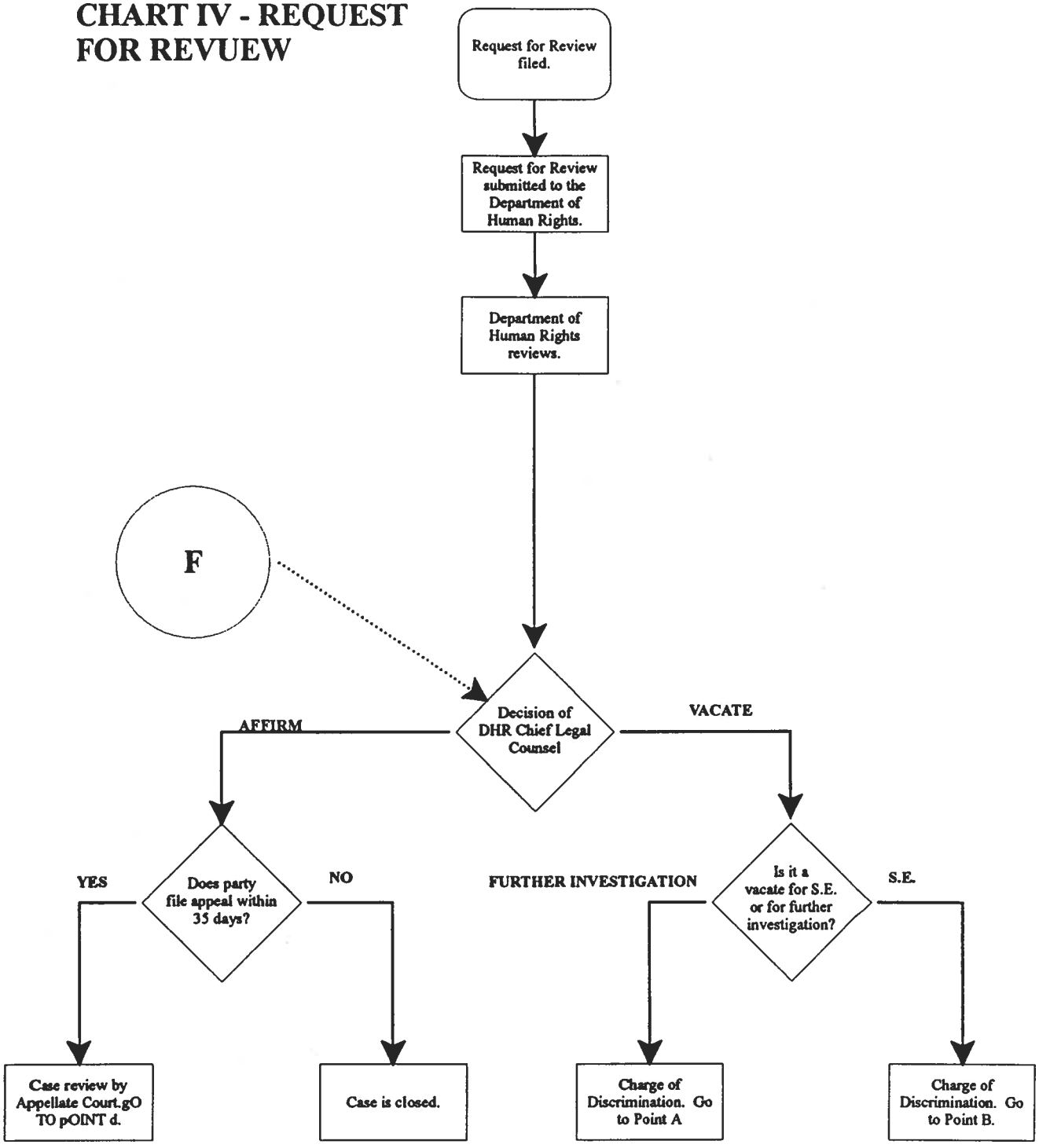


CHART IV - REQUEST FOR REVUEW



DEFINITIONS OF TERMS COMMONLY USED IN HRA PROCEEDINGS

ALJ: Administrative Law Judge

Charge: This is the initial allegation of discrimination. It must be filed within 180 days of the date of the discrimination. It is often confused with a "complaint", which is the document which starts proceedings at the Commission level.

Complainant-Filed Complaint: This is the same as a 300-day complaint.

Complaint: This is the initial pleading at the Commission level. This is the allegation of discrimination after it has gone through the DHR process. It should not be confused with the "charge", which is the initial allegation of discrimination brought to the DHR.

DHR: The Department of Human Rights.

EEOC: The Federal Equal Employment Opportunity Commission. This is the agency which enforces Title VII and other federal anti-discrimination laws.

Final Order and Decision: This is a decision by an ALJ dismissing a case based on the request of the complainant. In most instances the ALJ cannot issue a final decision. The usual role of the ALJ is to make a recommendation to the Commission. Where, however, the complainant asks that his or her case be dismissed, the ALJ has the power to dismiss the case by way of FOD.

FOD: Final Order and Decision.

HRA: The Human Rights Act.

HRC: The Human Rights Commission.

Lack of Substantial Evidence: (*See 'Substantial Evidence'*) If the Department finds after an investigation that the substantial evidence standard has not been met, it will dismiss out the charge without a hearing based on a "lack of substantial evidence".

LSE: *See* **Lack of Substantial Evidence**

Motion Call: When a complaint is first filed with the HRC, it is not assigned to a hearing judge. Instead, all of the cases that are not ready for hearing are assigned to the motions judge. If a party has a motion, he or she sets it up on a schedule. On the designated day, all of the parties who have motions, argue their motions orally to the motions judge. This is known as the motion call or "the call". Currently, there is about a two-month wait to get a motion heard on the motion call.

O&D: Order and Decision.

Order and Decision: This is the final decision of a three-member panel of the Commission on the merits of a case. In most instances, the O&D is the first enforceable order issued under the HRA.

Petition for Rehearing: Most of the work of the Commission is done by 3-member panels. Final orders of the Commission can be reheard by all 13 Commissioners. The losing party files a "petition for rehearing". There is no right to a rehearing. It is rarely granted. When there is a rehearing, the Commissioners listen to arguments on legal issues. They do not retry the case.

Petition for Review: This is a document which starts an appeal to the Appellate Court. It should be distinguished from a "Request for Review", and a "Petition for Rehearing".

Recommended Liability Determination: This is the title of an order containing the liability recommendation of the ALJ which supports the Complaint or portions thereof and/or which determines that a party is entitled to an award of attorney's fees and costs and directs that party to file a petition for such award. This order is subsequently incorporated into the final Recommended Order and Decision entered in the case by the ALJ. This type of order was formerly called an Interim Order and Decision or IROD.

RLD: *See* **Recommended Liability Determination:**

Recommended Order and Decision: This is the title of the recommendation of the ALJ to the Commission as to how the case should be decided. The findings of fact of the ALJ must be given substantial deference, but the legal conclusions are merely advisory.

Request for Review: After the Department has dismissed out a case for lack of substantial evidence, the complainant has 30 days to request a review of the decision. The request for review is directed to the Human Rights Commission. The HRC looks at the request for review, the investigation reports, and the DHR response to the request for review. The decision of the Commission is based on the paper presented. There is no "retrial" of the case. The Commission then decides whether there is substantial evidence. If the DHR issues a notice of default, the respondent has a right to file a request for review of that decision.

ROD: *See* **Recommended Order and Decision**
SE: *See* **Substantial Evidence**

Substantial Evidence: Enough evidence of discrimination so that a reasonable person might infer a discriminatory motive. This is the standard used by the Department to decide if a case should be dismissed without a hearing at the Human Rights Commission.

Three-Hundred Day Complaint: This is a complaint filed by a complainant after the DHR has failed to act within 300 days after the filing of the charge. The complainant has 30 days to file his or her own complaint (*See 'Window'*). If the complainant files a proper 300-day complaint, the DHR stops investigating the charge. The HRC treats such complaints in the same way as complaints filed by the DHR.

Title VII: Refers to Title VII of the Federal Civil Rights Act of 1964. This is the main federal law which outlaws discrimination in employment.

Window Complaint: This is the same as a 300-day complaint.

Window: This is the term used to designate the thirty-day period provided for 300-day complaints.