

STATE OF ILLINOIS
THE DEPARTMENT OF HUMAN RIGHTS
THE HUMAN RIGHTS COMMISSION

CIVIL RIGHTS SUMMIT: 2020

DECEMBER 3, 2020

PRESENTERS

James L. Bennett, Director
Illinois Department of Human Rights
(IDHR)

Tracey B. Fleming, Executive Director
Illinois Human Rights Commission
(IHRC)

THE HUMAN RIGHTS ACT: ONE ACT, TWO AGENCIES

On December 6, 1979, Governor James R. Thompson signed into law the Illinois Human Rights Act, 775 ILCS 5/1-101 (IHRA) creating the broadest civil rights coverage for the people of Illinois in the history of the State.

- The IHRA, as amended, prohibits discrimination in Illinois with respect to:
 - employment, financial credit, public accommodations, and real estate transactions on the bases 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), unfavorable military discharge, and physical and mental disability.
 - It also prohibits sexual harassment in education, discrimination because of citizenship status in employment; discrimination based on arrest record in employment and real estate transactions, and discrimination based on familial status in real estate transactions.
- Fundamental to the protection of civil rights, the IHRA protects against retaliation.

The Illinois Human Rights Act (Act) created two separate administrative agencies with distinct functions regarding enforcement of the Act:

- the Illinois Department of Human Rights “IDHR” (investigative) and
- the Illinois Human Rights Commission “IHRC” or “Commission” (quasi-judicial).

IDHR: MISSION

- To secure for all individuals within the State of Illinois freedom from unlawful discrimination.
- To establish and promote equal opportunity and affirmative action as the policy of this state for all its residents.
 - To conduct neutral and fair investigations of discrimination in employment, real estate transactions, financial credit, public accommodations and sexual harassment in education.
 - To conduct outreach and provide training for state agencies, local units of government, and non-profit and private entities.
- To enforce the Human Rights Act.

IDHR: SELECT EDUCATION & OUTREACH INITIATIVES

- **IDHR's Institute for Training & Development:** The Training Institute offers a wide range of trainings related to the Illinois Human Rights Act ("IHRA") and workplace trends centered on issues of discrimination in the workplace.
 - Courses are designed to increase knowledge, awareness and prevention of discrimination and harassment issues and offer solutions to employers and employees on how to appropriately respond to situations.
 - Critical courses includes *Statewide Sexual Harassment Prevention Training* and soon *Implicit Bias* and *Fundamentals of Diversity, Equity and Inclusion (DEI)*.
 - In response to COVID-19, all courses have been moved to “virtual” training formats.
- **IDHR Guidance & Technical Assistance:**
 - Updated IDHR Procedures during COVID-19
 - Guidance Relating to Nondiscrimination in Medical Treatment for Novel Coronavirus 2019
 - COVID-19 Guidance Relating to Nondiscrimination in Healthcare Services in Illinois.
 - FAQ For Businesses Concerning Use of Face-Coverings During COVID-19
 - Guidance Relating to Nondiscrimination in Healthcare Services in Illinois
 - FAQ for Employers Under Section 5/2-108 (Reporting of Adverse Judgment or Administrative Rulings)

IDHR: UNLAWFUL DISCRIMINATION DESCRIBED

- **Discrimination Prohibited:** Employment, Housing, Financial Credit, Public Accommodations, and Sexual Harassment in Education.
- **Disparate Treatment:** unfair or unequal treatment of an individual (or group) based on that person's protected class.
- **Disparate impact:** employment policies, rules and/or practices that appear to be neutral but have a disproportionately negative impact on applicants or employees of a particular protected class.
- **Harassment:** behavior based on a protected class that becomes so severe or pervasive that it creates a hostile environment.
- **Retaliation:** a form of unlawful discrimination. This includes taking action against anyone who reports discrimination or participates in any way in an investigation of a charge of discrimination.

IDHR: PROTECTED CLASSES UNDER THE ACT

PROTECTED CLASSES	EXPLANATION
RETALIATION and COERCION	Retaliation - prohibited for a person to take action because a person engaged in protected conduct: <ul style="list-style-type: none"> • Filed a previous charge • Participated in an investigation under the IHRA • Opposed unlawful discrimination Coercion – to force another to violate the IHRA
RACE	White, Black/African American, Asian/Pacific Islander, and American Indian/Alaskan Native . <i>*note: Hispanic/Latino = Ethnicity or Ancestry</i>
COLOR	Light or dark skintone.
NATIONAL ORIGIN	Place where person or ancestors were born.
ANCESTRY	General ancestral background (e.g., Hispanic, European, etc.).
RELIGION	All aspects of religious observance, practice and belief unless undue hardship in an employment accommodation context.

IDHR: PROTECTED CLASSES UNDER THE ACT

PROTECTED CLASSES	EXPLANATION
AGE (40+)	Relating to persons age 40 and over
SEX SEXUAL HARASSMENT SEXUAL ORIENTATION / GENDER IDENTITY	Status as male or female. Includes an unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature. Generally 2 types: 1. "Hostile Environment" 2. "Quid Pro Quo" Actual/perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth.
MARITAL STATUS	Legal status of married, single, separated, divorced, or widowed.
ORDER OF PROTECTION STATUS	A person's status as being a person protected under an order of protection existing in Illinois Law, including but not limited to the Domestic Violence Act.

IDHR: PROTECTED CLASSES UNDER THE ACT

PROTECTED CLASSES	EXPLANATION
DISABILITY (Physical/Mental) PREGNANCY	Physical or Mental condition Actual, Perceived or History of a condition. Pregnancy, childbirth or medical or common conditions related to pregnancy or childbirth; there is a duty to accommodate pregnancy and pregnancy related conditions including breastfeeding.
MILITARY STATUS UNFAVORABLE DISCHARGE from MILITARY	Active duty, Veteran, or Member of Reserves Includes RE-3 classification, but not RE-4 or dishonorable discharge.

IDHR: PROTECTED CLASSES UNDER THE ACT

PROTECTED CLASSES	EXPLANATION
<p>EMPLOYMENT SPECIFIC</p> <p>Citizenship Status</p> <p>Language</p> <p>Arrest Record*</p> <p>Immigration-Related Practices</p>	<p>Born/naturalized U.S. Citizen, U.S. national, or documented immigrant.</p> <p>Any language use where not related to job duties.</p> <p>Arrests not leading to conviction; a juvenile record; or criminal history record information ordered expunged, sealed or impounded.</p> <p>Request for more or different documents than are required by federal law, Refusal of documents that reasonably appear to be genuine, or Taking adverse action against an employee without following procedures of the federal E-Verify program.</p>
<p>HOUSING SPECIFIC</p> <p>Familial Status</p> <p>Arrest Record*</p>	<p>Families with children under the age of 18, expectant mothers, and persons seeking legal custody of any individuals under the age of 18.</p> <p>*See the definition for Arrest Record provided in the employment section above.</p>

IDHR: PROTECTED EMPLOYEES & NONEMPLOYEES DESCRIBED

“Employee” includes:

- any individual performing services for remuneration within this State for an Employer
- an apprentice or applicant for apprenticeship
- an unpaid intern where sexual harassment is alleged
- Domestic workers

“Employee” does not include:

- elected public officials or immediate personal staff
- principal administrative officers of government

(775 ILCS 5/2-101(A))

Inclusion of "Nonemployees":

- not otherwise an "employee"
- performs services pursuant to a contract (i.e. contractors, consultants, gig workers)
- Protection from harassment

(775 ILCS 5/2-102(A-10))

IDHR: JURISDICTION OVER EMPLOYERS DESCRIBED

- Any person employing 1 or more employees in Illinois during 20 or more calendar weeks within the year of or preceding the alleged violation
 - Effective July, 2020, this definition changed from a person employing 15 or more employees to include any person employing 1 or more employees in Illinois during 20 or more calendar weeks within the year of or preceding the alleged violation for all protected bases;
 - Both prior to and after July, 2020, any person employing 1 or more employees if allegation is based on disability, sexual harassment, pregnancy or retaliation;
- The State, any political subdivision, municipal corporation or other governmental unit or agency (not federal entities);
- Any party to a public contract; or
- Any employment agency, labor organization, joint apprenticeship or training committee.

(775 ILCS 5/2-101(B))

IDHR: FILING A CHARGE OF DISCRIMINATION

- Charges may be taken in person, by fax, regular mail or email. (56 Ill. Adm. Code Ch. II, §2520.40)
- No filing fee or legal representation required for complainants; support available to eliminate language barriers; no knowledge of law necessary.
- *Illinois Sexual Harassment & Discrimination Helpline* as a resource.
- Time to File Charges of Discrimination (775 ILCS 5/7A-102(A); 7B-102(A))
 - **Non-Housing charges** (Employment, Financial Credit, Public Accommodations, and Sexual Harassment in Education): must be filed within 300 days from the alleged violation; and
 - **Housing charges:** must be filed within 1 year (365 days) from the alleged violation.

IDHR: THE INVESTIGATIVE PROCESS

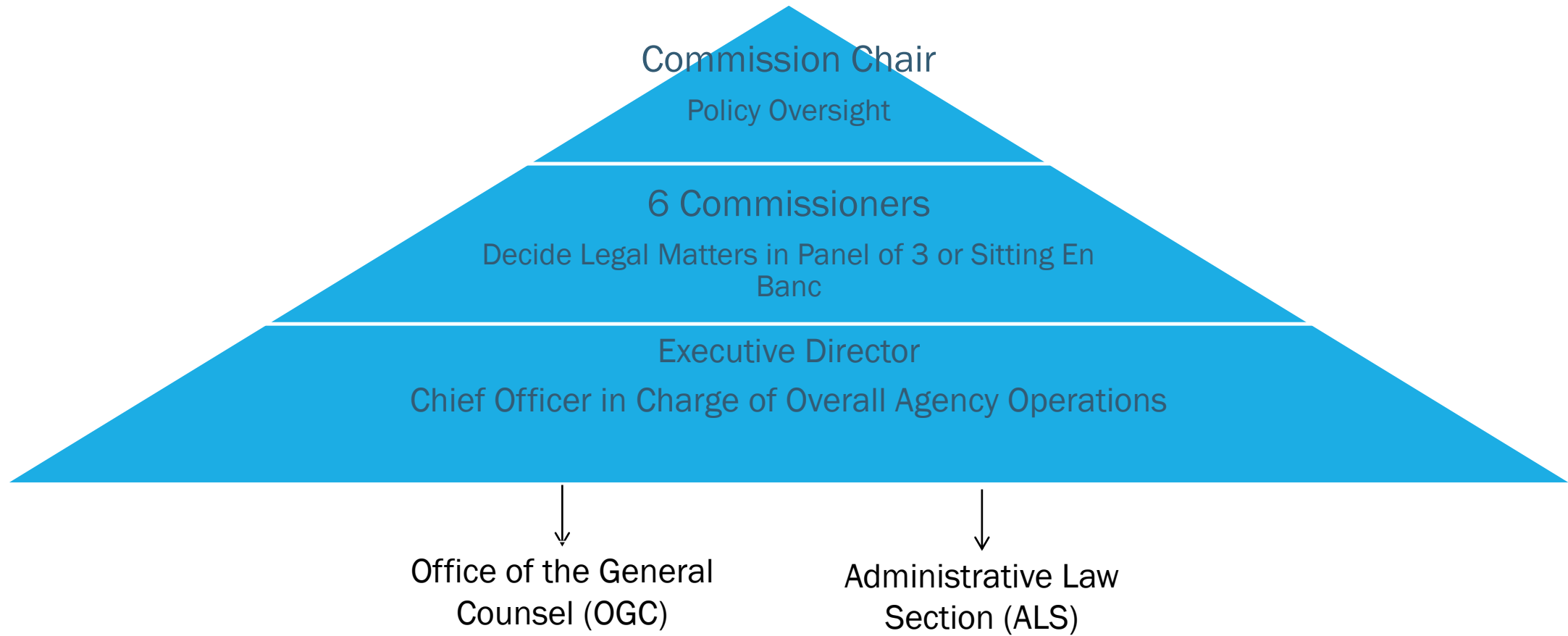
- IDHR serves notice of charge on the parties
- Mediation is offered to the parties prior to assignment to an investigator for investigation.
- Complainant can elect to “opt out” of the IDHR’s investigation and receive the right to file directly in circuit court
- Investigator will :
 - Interview relevant witnesses, Obtain relevant documents, Conduct a Fact Finding Conference in non-Housing matters unless waived by both parties
 - Attempt voluntary resolution
 - Write a report with conclusions based on investigation
- Non-Housing: IDHR has 365 days to complete its investigation for non-Housing matters (unless parties agree to extension) and 100 days for Housing matters (unless it is impracticable to do so).
- Possible findings include Substantial Evidence, Lack of Substantial Evidence, Lack of Jurisdiction, Failure to Proceed, Default Finding against Respondent.

(775 ILCS 5/7A-102; 7B-102)

IHRC: MISSION

- Fight Discrimination by promoting freedom from unlawful discrimination as defined by the Illinois Human Rights Act.
- Resolve complaints by making impartial determinations of unlawful discrimination as defined by the Illinois Human Rights Act.
- Educate and Inform by providing information to the public about the Illinois Human Rights Act and the Commission.

IHRC: THE COMMISSION STRUCTURE



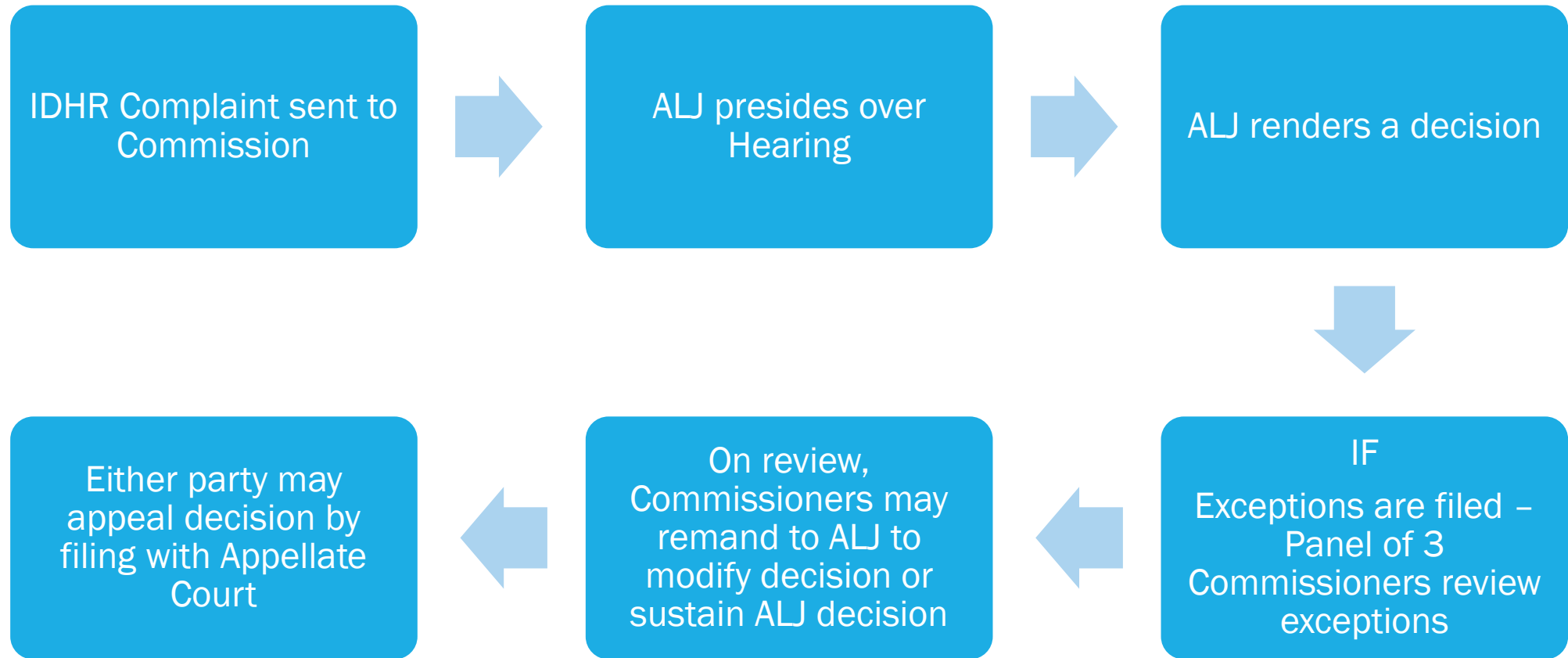
IHRC: SELECT EDUCATION & OUTREACH INITIATIVES

- Continuing Legal Education (CLE) including Lunch and Learn Series
- Updated User- Friendly Website
- Human Rights Commission Quarterly Newsletter
- Coles Fellows Program for Students attending Law School and High School Summer Intern Program
- Annual Civil Rights Summit and other initiatives to celebrate Human Rights Trailblazers in Illinois
- Enhanced commission documents for increased accessibility to the public
- Youth initiatives involving elementary and middle school students

IHRC: THE ADMINISTRATIVE LAW SECTION (ALS)

- The IHRC ALS is a quasi-judicial body that provides a neutral forum for the litigation of Complaints filed pursuant to the Act following the IDHR's investigation of the charge of discrimination. The IHRC is not a party to any litigation and cannot provide legal advice.
- Procedures for proceedings before the IHRC are found at 775 ILCS 5/Article 8. IHRC proceedings are also guided by its Rules and Procedures, found at 56 Ill. Admin. Code 5300 et al.
 - No-fee filing.
 - Proceedings before Administrative Law Judges (ALJs) are formal and adversarial. Parties may be represented by counsel or may proceed pro se.
 - Full range of written discovery. Mediation is also available to all parties.
 - Depositions are by permission of the ALJ.

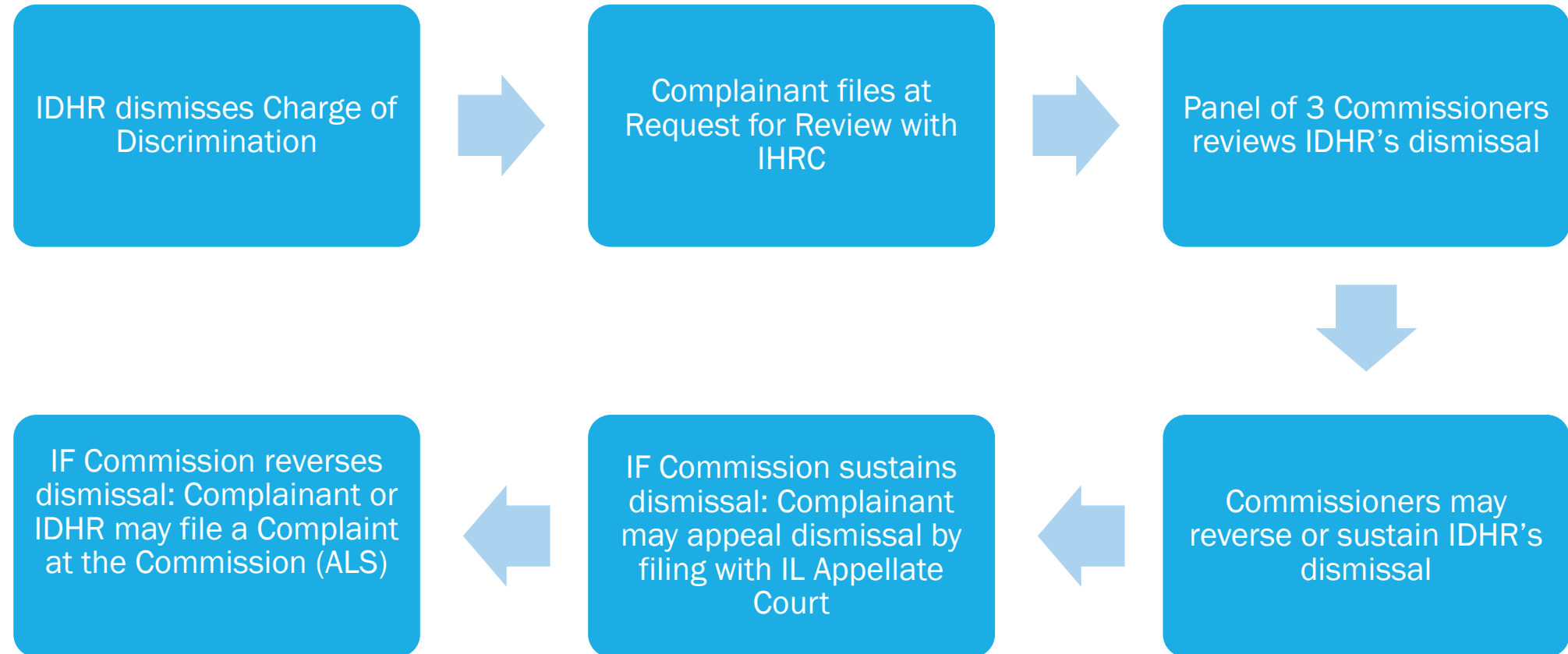
IHRC: OVERVIEW OF THE HEARING PROCESS



IHRC: THE PROCESS FOR REQUEST FOR REVIEW (OGC)

- The IHRC also hears and determines Requests for Review of the IDHR's Notices of Dismissal or Default.
 - The IDHR completes its investigation of a charge of discrimination and dismisses the Complainant's charge for Lack of Substantial Evidence, Lack of Jurisdiction, or Failure to Proceed; OR,
 - The IDHR may issue a Notice of Default against a Respondent for Failure to File a Verified Response to the Charge, or Failure to Attend a Fact-Finding Conference.
- The Complainant may elect to either file a Request for Review with the IHRC within 90 days following service of the Notice of Dismissal, OR file a complaint in Circuit Court.
- The Respondent has 30 days to file with the IHRC a Request for Review of the Notice of Default.

IHRC: OVERVIEW OF THE REQUEST FOR REVIEW PROCESS



On behalf of
the Department and the Commission,
THANK YOU!

