



ILLINOIS HUMAN RIGHTS COMMISSION: QUARTERLY NEWSLETTER

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A Note from the Executive Director Tracey B. Fleming

Dear Reader,

As I write this note, we find ourselves on the cusp of Spring, but also on the cusp of a new phase of the COVID-19 pandemic, where we might begin to think of returning to some semblance of normalcy in our professional and personal lives.

The Illinois Human Rights Commission (Commission) continues to navigate our changed world resulting from COVID-19, while continuing our focus on serving the residents of Illinois to the best of our collective abilities.

We are joined anew in this work by Commissioner Elizabeth A. Coulson and Commissioner Janice M. Glenn, who you will hear more about from Chair Ferg-Cadima later in this issue. I will simply add my congratulations to them on their appointment and my delight in getting to know them and their dedication to the residents of Illinois.

In the staff ranks, I would like to note with gratitude, the efforts and service of Acting Chief Administrative Law Judge William J. Borah, who has stepped in to temporarily fill the vacancy caused by the retirement of former Chief Judge Evans which I mentioned in my last newsletter. I would also note the retirement of former Commission CFO, Dr. Ewa I. Ewa, who we wish well after a 13-year career at the Commission.

Change has not been limited to those of us who work at Commission. Over its more than 40-year lifespan, the Illinois Human Rights Act (Act) has evolved to reflect the now-current perspective of the legislature and Governor, and to expand the protections afforded under the Act to the residents of Illinois. The latest example of this took effect on March 23, 2021 when Governor JB Pritzker signed into law, SB 1480. This legislation extends additional protections to any Illinois resident with a conviction record. Under this new law, Illinois employers can no longer disqualify a job applicant or employee with a conviction record unless it is substantially related to the job.

The Commission looks forward to working with our colleagues in the Illinois Department of Human Rights (IDHR) to expand public understanding and knowledge of the Act, including these most recent changes. We remain available online, by phone and in person to address any questions or concerns.

I will close by noting that I have recently joined Chair Ferg-Cadima and General Counsel Kellee Chube in testifying before the Illinois General Assembly on our proposed FY22 budget. I would like to express our gratitude to the members of the legislature for their interest in and support of the work of Commission.

With best wishes for the Spring and beyond.

Sincerely,

Tracey B. Fleming,
Executive Director

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A Note from the Chair James A. Ferg-Cadima

Through this quarterly newsletter, we have some well-earned farewells and two warm welcomes to offer here at the Commission.

In mid-January 2021, the Honorable Steven A. Andersson of Geneva – a lawyer, former Illinois state representative, and former Republican floor leader – completed his appointment on the Commission. State law changes from 2018 reconstituted the Commission from 13 part-time members to seven full-time office holders, with the first cohort of new commissioners staggered over different terms. Commissioner Andersson, who chaired Panel A, brought legal rigor, genuine collegiality, and sound temperament to the matters before him. He will be missed, but the Commission's loss is the people of Illinois' gain as he returns to state-level policy work.

ELIZABETH A. COULSON



In late January 2021, Governor JB Pritzker appointed the Honorable Elizabeth A. Coulson of Glenview to fill the seat vacated by Commissioner Andersson. She joins the Commission for a four-year term. Commissioner Coulson, much like her predecessor, served in the Illinois General Assembly. Her legislative work from 1997 to 2011 focused on health care, civil rights, education, seniors, children, and people with disabilities and has been widely recognized. By way of example, she received the Legislative Award from Equality Illinois, the Paul Simon Public Service Award from the Illinois Campaign for Political Reform, and the Legislator of the Year Award from the Illinois Nurses Association.

Her public service extends beyond the Statehouse. Commissioner Coulson, prior to the Commission, served on numerous charitable boards. She also served as an associate professor for 22 years and a Department Chair at Rosalind Franklin University of Medicine and Science in North Chicago. Commissioner Coulson, moreover, remains the Chairman of the board of directors of the University.

Commissioner Coulson is an alumna of Wellesley College and has a B.S. from the University of Kansas. She holds an Advanced Certificate in Physical Therapy from Northwestern University Medical School, an MBA in Business Administration from Keller Graduate School of Management and did studies in School of Public Health at the University of Illinois/Chicago in Health Policy Administration.

A Note from the Chair James A. Ferg-Cadima continued...

JANICE M. GLENN



In early February 2021, Governor JB Pritzker appointed Janice M. Glenn of Homewood to a four-year term on the Commission. She fills the seat held by the Honorable Manuel Barbosa – the original Chair of the Commission forty-plus years ago and a recently retired federal bankruptcy judge – who passed in late 2019.

Much like her predecessor, Commissioner Glenn is no stranger to the Illinois Human Rights Act. Commissioner Glenn previously headed the Illinois Department of Human Rights (Department), our sister agency, from 2016 to 2018, overseeing its investigative operations, budget, strategic goals, and management priorities.

She is particularly proud of helping launch the Department’s sexual harassment and discrimination helpline and website tools and helped shape the Act to afford greater protections for domestic workers facing sexual discrimination.

Commissioner Glenn, along with Commissioner Coulson, are poised to bring additional perspectives to the current Commission. She received her Bachelor of Arts in Political Science from Roosevelt University and her Associate Degree from Catherine College.

Commissioner Glenn has a strong commitment to public service, most recently working as the Campus Administrator at the Parkview Christian Church. She is well versed in civil rights, having also previously worked in the Office of the Illinois Governor as the Director of Diversity and Recruitment and EEO/AA Officer and as the Director of Programs at Leadership Greater Chicago. Last, Commissioner Glenn will continue to serve as the Vice Chair of the auxiliary board at Christ The King Jesuit College Preparatory High School and as an advisory board member at Future Leaders of Chicago, a nonprofit serving young people in metropolitan Chicago.

Sincerely,

James A. Ferg-Cadima

Chair, Illinois Human Rights Commission

A Note from the Chief Administrative Law Judge William Borah

New Discovery Procedure: A new case management procedure has been in operation since February. Instead of numerous ongoing status hearings, a set period for discovery is calendared, with a short, written mid-term “Discovery Report.” The “Final Status Hearing” is primarily dedicated to discussing either a briefing schedule for a dispositive motion or to bracket Public Hearing dates. During this period, any relevant motion is filed as an issue becomes ripe. Briefing schedules and decisions are sent by mail, avoiding an additional hearing.

Standard Discovery Requests. A new discovery rule will soon be implemented that will obligate the parties to exchange certain documents and information. It will be in the form of standard interrogatories and requests for documents. These expected disclosers should greatly assist the pro se litigant and lessen the necessity of filing motions to compel. The Circuit Court has similar statutes. (e.g. S. Ct. Rule 222 and S. Ct. Rule 213)

Public Hearings: Public Hearings were postponed during the COVID-19 pandemic and will soon begin again. The parties can use the Commission’s hearing rooms, which are CDC compliant or arrangements can be made for larger space in the Thompson Center.

Video Conferencing: I have modified and consolidated the relevant Supreme Court Rules on video conferencing to be considered for the Commission’s Rules and Regulations.

Section 5300.30 Service of Pleadings

a) Manner of Service. Unless otherwise provided, all motions, orders, notices, and other pleadings required to be served under the Illinois Human Rights Act (Act) or this Part shall be served either personally, or by first-class mail, or by paid shipping carrier, or electronically at HRC.NEWS@illinois.gov to the Commission, receipt acknowledged.

Section 5300.40 Filing

a) All documents and pleadings required by the Act or this Part to be filed with the Commission shall be deemed filed when received in the Commission’s Chicago or Springfield office. And item properly received by mail shall be deemed to have been filed on the date specified in the applicable proof of mailing....

Remote Hearings Procedure

a) The administrative law judge, upon request, or on his/her own order, may allow a case participant to partake remotely in non-testimonial hearing, including by telephone or video conference. Participants include any individual involved in the case, including the judge, parties, lawyers, and court reporters.

b) The record of court proceedings may be taken by stenographic means or by an electronic recording system, including video conferencing services, approved by the administrative law judge.

c) The administrative law judge, upon request or on its own order, for good cause shown and upon appropriate safeguards, may allow a case participant to testify or otherwise participate in a Public Hearing or evidentiary hearing, by video conferencing, from a remote location. Where the Commission or case participant does not have video conference services available, the judge may consider the presentation of the testimony by telephone conference in compelling circumstances with good cause shown and upon appropriate safeguards.

d) Some case participants may appear by telephone, some by video, and some in person all on the same case.

Appearances: Make sure your contact information on the filed Appearance is current.

Request for Review: Public Accommodation Definition

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

ALS No. 18-0063

Affirmed 2020 IL App (1st) 191783-U

In August 2016, Straw filed a charge of public accommodation discrimination with the Illinois Department of Human Rights (“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.

Request for Review: Constructive Discharge

Smith v. Butterfield Health Care Group

ALS: 19-0545

In 2017, Smith filed a charge with the Illinois Department of Human Rights 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.

Recent Amendment to the Illinois Human Rights Act

Tuesday, March 23, 2021, Governor JB Pritzker signed Senate Bill 1480 into law amending the Illinois Human Rights Act (IHRA) extending IHRA’s protections to any Illinois resident with a conviction record. Under this new law, Illinois employers can no longer disqualify a job applicant or employee with a conviction record unless it is substantially related to the job. The law becomes effective upon signature. The Illinois Department of Human Rights (IDHR) has developed a comprehensive FAQ. Please visit IDHR’s website here for more information-[IDHR’s website](#) .

The Health and Wellness of our Guests and Staff is our First Priority!

During the COVID-19 outbreak the Illinois Human Rights Commission will remain open with certain services being provided remotely

The Commission will continue to service the residents of the State of Illinois as follows:

- ⇒ **Complaint and Request for Review Filing:** Effective April 7, 2020 and throughout the duration of the Gubernatorial Disaster Proclamation all motions, orders, notices and other pleadings required to be served under the Illinois Human Rights Act or the Commission Procedural Rules shall be served by in-person, by first-class U.S. mail, or by electronic mail. Commission Procedural Rule Section 5300.30(a). **For the health and safety of Illinois residents and the Commission staff while COVID-19 protocols are in place filing at the Commission by U.S. Mail or electronically is strongly encouraged.**
- ⇒ **Filing by U.S. Mail:** An item properly received by mail shall be deemed to have been filed on the date specified in the applicable proof of mailing. Proof of mailing shall be made by filing with the Commission a certificate of the attorney, or the affidavit of a person who is not an attorney, stating the date and place of mailing and the fact that proper postage was prepaid. The certificate or affidavit shall be filed with the Commission at the same time the item to which it refers is filed. If the certificate or affidavit does not accompany an item filed by mail, an item received by mail shall be deemed to have been filed when postmarked, properly addressed and posted for delivery. Commission Procedural Rule Section 5300.40(a). Service by mail shall be deemed complete 4 days after mailing of the document, properly addressed and posted for delivery, to the Person to be served. Commission Procedural Rule Section 5300.40(c).
- ⇒ **Filing Electronically:** **Filing electronically will be completed by filing all required documents at HRC.NEWS@illinois.gov.** A document submitted by electronic mail shall be considered timely if submitted before midnight (in the commission's time zone) on or before the date on which the document is due, unless it is submitted on a Saturday, Sunday or legal State holiday, in which case, it is deemed filed on the following business day. Filing electronically at the Commission will remain in place while the [Gubernatorial Disaster Proclamation](#) is in place.
- ⇒ **Weekly Request for Review Commissioner Panel Meetings:** Weekly Request for Review Commissioner Panel Meetings have been cancelled through April 17, 2020. Please check the HRC website (www.illinois.gov/ihr) for details regarding panel meetings beginning the week of April 20, 2020.
- ⇒ **Administrative Law Section (ALS) Hearings:** Until further notice all ALS public hearings have been rescheduled. If you have questions regarding your appearance at a hearing, please contact the Judges' clerk by calling 312-814-6269.
- ⇒ **ALS Briefing and Motion Deadlines:** Effective April 3, 2020 and throughout the duration of the [Gubernatorial Disaster Proclamation](#) all post-hearing briefing deadlines and motion deadlines will be extended by 30 days. If you have questions regarding your briefing and motion deadlines, please contact the Judges' clerk by calling 312-814-6269.
- ⇒ **ALS Motion Call, Settlement Conferences and Status Hearings:** ALS Motion Calls, Settlement Conferences and Status Hearings will be conducted telephonically. If you have questions, please contact the Judges' clerk by calling 312-814-6269. The electronic filing system is not intended to handle voluminous filings. If you wish to file a motion with the Administrative Law Section (ALS) with extensive supporting documentation, you can file the motion itself electronically (meeting any applicable deadlines), but you should send hard copies of the supporting documents to the Commission through U. S. mail.

Questions: For any questions please contact the Commission by calling 312-814-6269 or by email at HRC.NEWS@illinois.gov.

Please Let's Keep Each Other Safe!



Lunch & Learn via WebEx

Please visit www.illinois.gov/ihrc for WebEx information

CLE Credit: One hour of general CLE credit for Illinois attorneys (pending)

April 20, 2021

Presenter: Jessica O'Leary, Assistant Attorney General
Crime Victim Services Division
Office of the Illinois Attorney General

Topic: Illinois Address Confidentiality Program

May 2021 - TBD

Presenter: Esther Franco-Payne, Executive Director and Cynthia Cornelius, Legal Director
Cabrin Green Legal Aid

Topic: Housing

June 2021 - TBD

Presenter: Gray Mateo-Harris, Partner
Fox Rothschild LLP

Topic: TBD

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