



STATE OF ILLINOIS ILLINOIS HUMAN RIGHTS COMMISSION: QUARTERLY NEWSLETTER

JANUARY—MARCH

March 11, 2022

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A Note from the Executive Director Tracey B. Fleming

Dear Friends,

When I penned my note for this newsletter last December, Illinois and the entire world found itself in the midst of yet another wave of increased COVID-19 infections and hospitalizations.

Fast-forwarding to now, the end of the first quarter of 2022, thanks to the dutiful efforts of medical professionals and other leaders across State and local government, we seem to be on the cusp of a new phase of life where some, if not all, of the mitigations we have had to deploy over the past two and a half years may be relaxed.

For this, we can be grateful.

For my part, I would like to thank the Commissioners and Staff of the Human Rights Commission for their work throughout the pandemic to, in the words of Curtis Mayfield, “keep on keeping on” to serve all those who live and work in Illinois and to enforce the rights afforded under the Illinois Human Rights Act.

In furtherance of gratitude, I would like to note two special transitions at the Commission.

First, I would like to welcome our new Chief Administrative Law Judge, Brian Weinthal. Chief Weinthal joined us in January 2022 from Burke, Warren, MacKay & Serritella, P.C. after a 20-year-plus legal career, including service in the U.S. Navy’s Judge Advocate General’s Corps. He has thrown himself into building on the excellent work of his new colleagues and helping further position the Commission as the premier forum of choice for litigating claims of discrimination under the Act.

I would also like to congratulate our departing General Counsel, Kellee M. Chube, who is leaving us to join a new state agency, the Illinois [Commission on Equity and Inclusion \(illinois.gov\)](https://www.illinois.gov/commission-on-equity-and-inclusion). This newsletter is one of her many substantial and lasting contributions to the Commission over the past three years and we wish her well and continued success.

We have hit the ground running with a number of informative Lunch and Learn seminars this year, which I would recommend to anyone interested in discrimination law. As a recipient of this newsletter, you should be receiving those invitations separately, but go to our website at www.illinois.gov/ihrc for the latest details on these events and to sign up for our mailing list if you haven’t already done so.

I will conclude by noting with appreciation the opportunities the Commission has to present its proposed FY 2023 Budget to the Illinois General Assembly as we look to build capacity to achieve our mission over the next year and beyond. We thank the members of the legislature for their interest and support.

As we emerge from a long winter, we at the Commission wish you all a joyous spring and much time to enjoy a new season, nature and all those you hold dear.

Case Note: *State v. Arlene's Flowers, Inc.*

441P.3d1203 (Wash.2019)

Katherine Plaster, Coles Fellow

In *State v. Arlene's Flowers, Inc.*, two men, Robert Ingersoll and Curt Freed attempted to purchase floral arrangements for their wedding from Arlene's Flowers. The owner of Arlene's Flowers, Barronelle Stutzman, denied service to the couple, stating that making floral arrangements for a same-sex wedding would violate her Christian faith.

Ingersoll, Freed, and the State of Washington filed suit against Stutzman and Arlene's Flowers under the Washington Law Against Discrimination (WLAD), which prohibits discrimination based on sexual orientation in public accommodations. In her defense, Stutzman asserted that her denial of services to Ingersoll and Freed was protected by the freedoms of religion, speech, and association in the Washington and federal constitutions. The trial court found for the plaintiffs and the Supreme Court of Washington affirmed the trial court's ruling. Stutzman petitioned the United States Supreme Court for a *writ of certiorari*, which was granted. The Supreme Court vacated the original judgment and remanded it for further consideration in light of its decision in *Masterpiece Cakeshop*, a similar case involving a bakery that refused to sell a wedding cake to a same-sex couple due to the owner's religious beliefs. *Masterpiece Cakeshop v. Colo. Civ. Rts. Comm'n*, 138 S. Ct. 1719, 1727 (2018).

On remand, the Supreme Court of Washington held that *Masterpiece Cakeshop* did not impact its original decision in *Arlene's Flowers*. The court explained that in *Masterpiece Cakeshop*, the Supreme Court ruled in favor of the bakery owner on the narrow grounds that the Colorado Civil Rights Commission, the agency responsible for the neutral adjudication of the state antidiscrimination statute, failed to adjudicate neutrally because two commissioners made disparaging comments about the bakery owner's religion and the Commission did not treat similarly situated parties equally. In contrast to *Masterpiece Cakeshop*, the court in *Arlene's Flowers* scoured the record for signs of bias and found none; thus, there was no reason for the court to alter its original opinion.

The court reiterated that Stutzman's refusal to sell floral arrangements for a same-sex wedding violated WLAD's prohibition on sexual orientation discrimination in public accommodations. Stutzman argued that she did not discriminate on the basis of sexual orientation, but rather marital status, a class not protected under WLAD public accommodations provision. The

court disagreed, citing numerous precedent cases rejecting the "status/conduct distinction" in discrimination claims.

The court also rejected Stutzman's numerous constitutional defenses. Stutzman argued that making floral arrangements is an artistic expression protected by freedom of speech. However, the court ruled that making floral arrangements is conduct, not speech, and that it did not fall under the "inherently expressive" conduct exception because making or refusing to make floral arrangements was not likely to convey any message to the public.

Stutzman also argued that her refusal to serve Ingersoll and Freed was protected by her constitutional right to free association. The court disagreed, stating that the Supreme Court has never recognized commercial enterprises that serve the general public as "expressive associations" for the purpose of First Amendment rights.

Further, Stutzman asserted that WLAD triggered strict scrutiny under the First Amendment free exercise of religion clause because it exempted religious organizations but not private businesses. The court disagreed.

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Case Note: *State v. Arlene's Flowers, Inc.* (continued)

The court explained that WLAD would burden religion and therefore trigger strict scrutiny if it allowed businesses to discriminate based on non-religious reasons but not religious reasons. However, that was not the case here, as WLAD does not allow businesses to discriminate for any reason. Since WLAD does not trigger strict scrutiny, it is subject to rational basis review and meets the standard because it is rationally related to the government's interest in ensuring equal access to public accommodations.

After the Supreme Court of Washington ruled in favor of the plaintiffs for the second time, Stutzman filed another petition for *writ of certiorari*, which was denied in July 2021. *Arlene's Flowers, Inc. v. Washington*, No. 19-333, 2021 WL 2742795, at *1 (U.S. July 2, 2021). Despite media coverage portraying *Masterpiece Cakeshop* as a major victory for religious freedom and a blow to LGBTQ rights, *Arlene's Flowers* and the subsequent denial of *certiorari* indicate just how narrow the ruling in *Masterpiece Cakeshop* was. Although Justices Thom-

as, Alito, and Gorsuch would have granted the petition for *certiorari*, for now, the principle remains that "while ... religious and philosophical objections [to gay marriage] are protected, it is a general rule that such objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law." *Arlene's Flowers*, 441 P.3d at 1215 (citing *Masterpiece Cakeshop*, 138 S. Ct. at 1727).

Helpful Links

Illinois Human Rights Act <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2266&ChapAct=775%c2%a0ILCS%c2%a05/&ChapterID=64&ChapterName=HUMAN+RIGHTS&ActName=Illinois+Human+Rights+Act/>

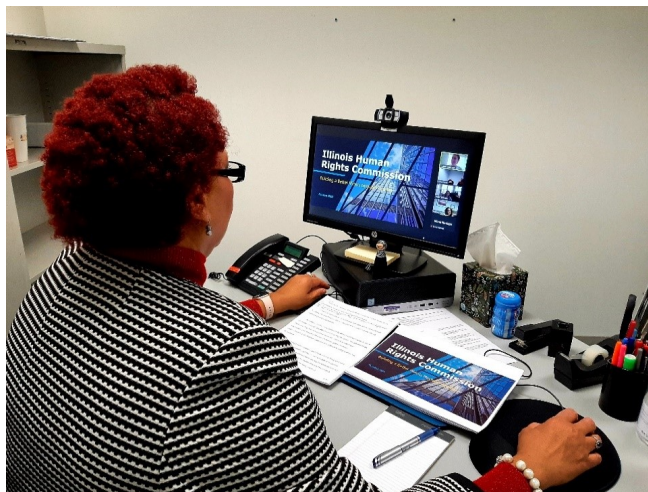
IHRC Rules and Regulations <https://www.ilga.gov/commission/jcar/admincode/056/05605300sections.html>

IHRC website <https://www.illinois.gov/ihrc>

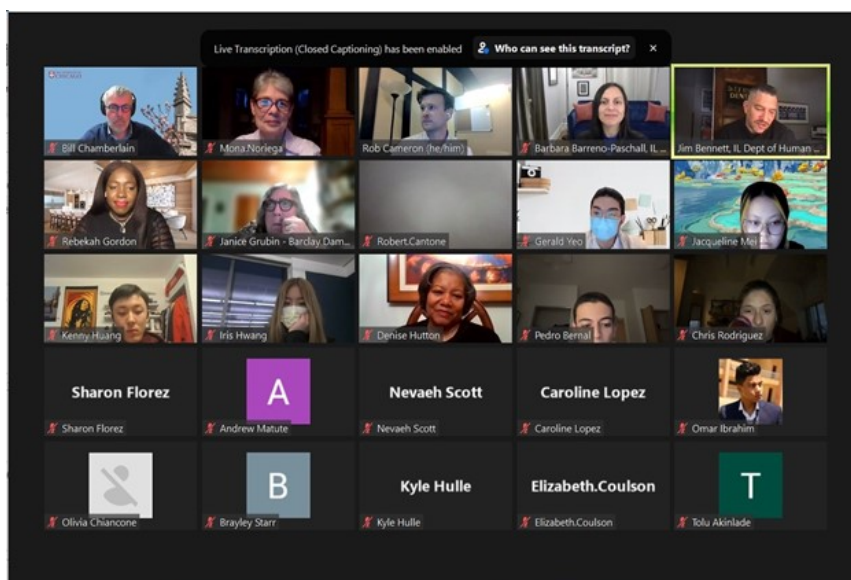
IHRC events (including Lunch and Learn) <https://www2.illinois.gov/sites/ihrc/about/Pages/Events.aspx>

Commissioner Outreach

Our Commissioners have been busy this quarter, speaking at law schools, universities, and the Chicago Bar Association about the Illinois Human Rights Act and the role of the Commission.



Commissioner Janice Glenn, University of Illinois Chicago School of Law Virtual Info Session, January 21, 2022



Chair Mona Noriega, Commissioners Barbara Barreno-Paschall, Robert Cantone, and Elizabeth Coulson, University of Chicago, Diversity + Inclusion Summit, Understanding Your Rights in the Workplace, February 3, 2022

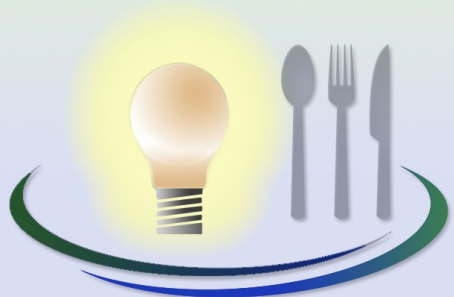
The Health and Wellness of our Guests and Staff is our First Priority!

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.
- ⇒ **En Banc and Panel Meetings:** Please check the HRC website (www.illinois.gov/ihr) for details regarding these meetings.
- ⇒ **ALS Motion Call and Status Hearings:** ALS Motion Calls and Status Hearings will be conducted telephonically or virtually. 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



LUNCH —AND— LEARN CLE

CLE Credit:
One hour of general CLE
credit for Illinois attorneys
12:00 PM—1:00 PM

Lunch & Learn via WebEx

<https://www2.illinois.gov/sites/ihrcc/about/Pages/Events.aspx>

Upcoming Lunch and Learn CLE

Date	Topic	Presenter
March 17, 2022	Legal Movement for Reparation in Illinois	Joey L. Mogul, Partner People's Law Office
April 13, 2022	Workplace Bullying 2022: The Legal Impact of #BLM, Covid-19, DEI, Politics & More	Alisa Arnoff, Partner Scalambrino & Arnoff, LLP
May 3, 2022	Recent Updates in Employment Law	Rachel Bossard, Partner Burke, Warren, MacKay & Serritel-
June 14, 2022	An Update on the Law and Emerging Issues	Allison K. Bethel, Clinical Professor of Law and Director of the Fair Housing Legal Clinic University of Illinois Chicago School

CONTACT US:

Chicago

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

Tel: 312-814-6269

Fax: 312-814-6517

CONTACT US:

Springfield

Human Rights Commission
1000 E. Converse
Suite 1232N
Springfield, Illinois 62702

Tel: 217-785-4350

Fax: 217-524-4877

TDD: 217-557-1500

Email: HRC.NEWS@illinois.gov

Website: www.illinois.gov/ihrcc