

Illinois Human Rights Commission: Quarterly Newsletter

A NOTE FROM THE DIRECTOR

WOW — What an amazing 10 months at the Illinois Human Rights Commission (Commission)! When I joined the Commission as Executive Director in June 2018, the Commission had several issues that needed immediate attention: a decade-long backlog of cases before the Commission, a dearth of resources and structure, and a need for a strategic plan to address how the Commission communicates and delivers important services to its residents under the Illinois Human Rights Act.

Despite the Commission’s essential role in adjudicating cases of discrimination with the efforts of its hard-working staff and Commissioners, it had fallen short on its efforts to provide timely resolutions to participants. With a sense of urgency to stem the tide, the Commission understood early on that the problems with the backlog weren’t solved by merely hiring additional personnel. In fact, cultural change was necessary. There had to be major improvements in accountability and work processes. Under a new leadership team, those improvements have been made, and led directly to a substantial reduction in the backlog. By the end of 2018, the Commission reduced its backlog of cases by 44%.

To date, we have reduced the backlog by more than 60%, and plan to meet the goals outlined in Executive Order 2018–08 to eradicate the backlog by December 2019, if not earlier! We have also hired additional staff, both temporary and permanent; instituted a monthly Motion Call Panel to increase efficiency; updated the Commission brochure and frequently asked questions in English, Spanish, and Polish; increased the frequency of Commissioner public hearings to once a week; and developed a strategic plan to “rebrand” the Commission. *Our Mission is threefold: To fight discrimination:* promote freedom from unlawful discrimination as defined by the Illinois Human Rights Act. *To resolve complaints:* make impartial determinations of unlawful discrimination as defined by the Illinois Human Rights Act. *To educate & inform:* provide information to the public about the Illinois Human Rights Act and the Commission.

Our quarterly newsletter — this being our inaugural issue — marks one of our most anticipated ways to inform YOU of changes the Commission will implement to achieve our mission. We look forward to your input, ideas, and suggestions! We are looking forward to building relationships with stakeholders and the community. We are working more efficiently and streamlining the process so that it works better for those involved in the hearing process. We are excited for YOU to get to know what we have been doing at the Commission.

Phil Dalmage
Executive Director

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ILLINOIS HUMAN RIGHTS COMMISSION CELEBRATES WOMEN’S HISTORY MONTH

Meet the Commissioners:

MICHAEL BIGGER

Hon. Michael Bigger has been a State Farm Insurance Agent for 35 years, operating the only full time State Farm Insurance agency ever in Stark County, Illinois, with an office in Wyoming, Illinois. In addition to Mr. Bigger's extensive small business ownership experience, he has also had significant civic and community experience. Mr. Bigger is the former Chairman of the Stark County Board, having served on the Board from 2000-2012, and serving as Chairman from 2004-2012. Mr. Bigger also founded and chaired the Stark County Economic Development Partnership Group, a public private collaborative county-wide economic development apparatus serving all of Stark County, Illinois. Mr. Bigger is also the former President of the Wyoming Chamber of Commerce and Wyoming Lion's Club.

In August of 2012, Mr. Bigger was named Illinoisan of the Day by the Illinois State Farm Museum Board. This award is based on volunteerism and community service and involvement.

Mr. Bigger was appointed to the Commission in October 2015, and reappointed in March 2019.

On March 29, 2019, the Commission celebrated Women’s History Month by honoring three women activists. In the words of our Interim Chair, Cheryl Mainor, “Their tireless efforts, commitment, creativity and continuous fight to eradicate discrimination in Illinois makes these women ‘trailblazers’ in the fight against violations of an individual’s civil rights.”

The Commission’s **Millennium Activist Award** recognizes a young, inspirational leader who has demonstrated an unyielding commitment to protecting civil and human rights in the State of Illinois and individuals who have demonstrated a dedication in educate, advocate, and raise awareness of human rights issues to ensure the protection of equality and opportunity for all. This award was presented to **Jasmine-Marie Cruz**, a nineteen-year-old freshman at Roosevelt University, who lead the efforts in organizing the first ever Young Women’s March to coincide with Women’s March events around the country. Cruz began working toward the rally after learning Women’s March Chicago would not be holding a march this year because she believed it was important for Chicago to be represented in the national movement. She believes she can make an impact within the next generation, inspiring them to continue the fight for humanity, equal rights, equal pay, and the fight against hate, racial, and gender discrimination.

“Their tireless efforts, commitment, creativity and continuous fight to eradicate discrimination in Illinois makes these women ‘trailblazers’...”

The Commission’s **Activism Award** is bestowed to individuals who embody excellence in activism in defending human rights and individuals who have demonstrated a dedication to the fight against discrimination and injustice by utilizing, developing, or leveraging programs or activities to advocate, promote, and protect the citizens of the State of Illinois. This award was presented to **Bonnie Allen**, Executive Director at the Chicago Lawyers’ Committee for Civil Rights. Previously, Allen served as Development Director at the Mississippi Center for Justice, Executive Director of the Center for Law and Renewal at the Fetzer Institute, Co-Director of the Project for the Future of Equal Justice at the National Legal Aid and Defender Association, and Director of the ABA Center for Pro Bono.

The Commission’s **Foundation Award** is bestowed to individuals who embody excellence in activism in defending human rights and individuals who are fearless, optimistic, and enthusiastic in leading equal rights efforts by utilizing, developing, or leveraging programs or activities to advocate, promote, and protect an individual’s human rights covered by the Illinois Human Rights Act. This award was presented to **Alexandra Sossa**, advocate for the Farmworker and Landscaper Advocacy Project (FLAP) since 2001. Through this project, Sossa has educated low-income immigrants about their rights in the United States, developed working relationships with various organizations in Illinois and supported attorneys providing legal assistance to countless numbers of immigrants and migrant, and seasonal workers in the area. Sossa has more than 30 years of experience and has also worked for nearly a decade with the Attorney General’s Office.

RECENT CIVIL RIGHTS CASE LAW

Gates v. Board of Education of the City of Chicago, 916 F.3d 631 (7th Cir. 2019)

The Seventh Circuit recently published an opinion clarifying requirements for a plaintiff to prove that he or she was subjected to a racially hostile work environment by a supervisor. Fred Gates, a building engineer with the Chicago Board of Education, filed a charge of discrimination with the Illinois Department of Human Rights and the Equal Employment Opportunity Commission. He was issued a notice of right to sue by the EEOC and filed a complaint in the Northern District of Illinois alleging age and race discrimination and retaliation. The only allegations relevant to the Seventh Circuit's opinion are those relating to race-based harassment.

Gates alleged that his supervisor made multiple comments related to Gates's race during the time they worked together. Specifically, Gates stated that his supervisor (1) made a "joke" in which he referred to Gates using the N-word; (2) threatened to write Gates's "black ass up"; and (3) stated in a meeting with Gates that he was "tired of you people" and again referred to Gates using the N-word.

The Board of Education moved for summary judgment, and the District Court granted their motion as to all counts. Regarding the racial harassment charges described above, the Court ruled that Gates could not establish that he was subjected to a racially hostile work environment. The Court relied on prior case law stating that in order to be actionable, the plaintiff must prove that the workplace was "hellish," and that Gates had not established that his supervisor's harassment was severe or pervasive.

In reversing the District Court's decision, the Seventh Circuit first took issue with the lower court's use of the "hellish" workplace standard. The Court stated that requiring a workplace environment to be "hellish" contradicts the U.S. Supreme Court's ruling in *Harris v. Forklift Systems, Inc.*, which found harassing conduct to be actionable "before the harassing conduct leads to a nervous breakdown." 510 U.S. 17, 22 (1993).

After holding that the "hellish" standard was not the appropriate standard to apply, the Court then analyzed Gates's allegations to determine whether the conduct was sufficiently severe or pervasive to alter the conditions of his work environment. Here, the Court focused on the fact that the harassing conduct came from a supervisor, and not merely a coworker. While the District Court found that the three incidents of harassment were too isolated to be actionable, the Seventh Circuit held that conduct "as severe and direct" as alleged by Gates, when perpetrated by a supervisor, cannot as a matter of law, be deemed insufficiently severe or pervasive. The Court also stated that if Gates were making the same allegations against a coworker, rather than a supervisor, it would likely have come to a different conclusion.

There are two main takeaways from this case: first, that plaintiffs should not be held to the difficult-to-prove "hellish" work environment standard, but rather courts should follow the guidance given by the U.S. Supreme Court in *Harris* and keep in mind that "[a] discriminatorily abusive work environment, even one that does not seriously affect employees' psychological well-being, can and often will detract from employees' job performance." Second, harassing conduct from a supervisor is to be evaluated more stringently than from a coworker, and conduct that may not be actionable from a coworker can be actionable from a supervisor.

MEET THE COMMISSIONERS:

PATRICIA BAKALIS YADGIR

Hon. Patricia Yadgir is Vice President of Schools and Community Relations for American Quality Schools, a not-for-profit educational management organization that operates charter and private schools in the Midwest. Ms. Yadgir has over 25 years' experience in the field of education, previously serving as a counselor and instructor at the College of DuPage in Glen Ellyn, Illinois.

Ms. Yadgir is a strong advocate of social/emotional and anti-bullying education in the schools, and in 2009, she designed and implemented a charter education curriculum that teaches diversity, anti-bullying and tolerance to students. She is also the author of a children's book; "Hooty Learns What's Right - A Child's First Look at Character Education".

Ms. Yadgir holds her Bachelor's and Master's degrees in Education from Northern Illinois University. She is an active member of NIU's Executive Alumni Board where she chairs the Scholarship and Student Engagement Committee.

Ms. Yadgir was appointed to the Commission in June 2011.

**MEET THE
COMMISSIONERS:**

STEVE KIM

Hon. Steve Kim is currently the Managing Partner at RKJ Global LLC/RK Law Group LLC. In that role, he serves as general counsel and president of an international development company and general counsel of an international renewable energy company.

Mr. Kim was previously the Vice President of Government and Public Affairs at Time Warner Cable, where he coordinated all aspects of media and community relations. In 2010, Kim was elected as the Illinois Republican Nominee for Attorney General and was elected as the Illinois 10th Congressional Delegate for Mitt Romney for President.

Mr. Kim earned his bachelor's degree in political science and J.D. from Loyola University. He lives in Deerfield.

Mr. Kim was appointed to the Commission in June 2015 and re-appointed in August 2017.

COMMISSION NEWS

This year the Human Rights Commission celebrates its 40th anniversary. On December 6, 1979, then Governor James R. Thompson signed into law the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* The Act created the broadest 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 of discrimination, and a Commission to adjudicate complaints of civil rights violations in housing, employment, public accommodations, and financial credit.

Citizens of the State of Illinois enjoy some of the most expansive civil rights protections in the nation, and the Commission has been proud to be a leader in civil rights for the past 40 years. On June 20, 2018, Governor Bruce Rauner issued Executive Order 8, calling for a multi-agency collaborative effort to eliminate, within 18 months, the growing backlog of cases pending before the Commission, and to further improve how our state communicates and delivers important services to its residents under the Illinois Human Rights Act.

To help achieve these goals and to maintain efficiency in the years to come, the Commission will be implementing a number of new programs in the coming year. Most importantly to our continuing efficiency, the Commission is in the process of upgrading its case management system. The Commission will also be unrolling a new, more user-friendly website within the next 60 days. The Commission also has new regulations awaiting approval by the Joint Committee on Administrative Rules (JCAR), which will aid in applying the recent changes to the Illinois Human Rights Act. And finally, keep an eye on the website for information regarding our upcoming Juneteenth celebration, where the Commission will be honoring local leaders for their service to the community.

BEFORE THE COMMISSION

On April 3, 2019, a three-member panel of the Illinois Human Rights Commission heard the contested matter in *Meggan Sommerville v. Hobby Lobby Stores, Inc.*, ALS No. 13-0060C. Ms. Sommerville, a transgender woman, is an employee of Hobby Lobby. She alleged that Hobby Lobby's refusal to allow her to use the women's bathroom in its Aurora store violated the employment and public accommodation provisions of the Illinois Human Rights Act.

On February 2, 2016, Administrative Law Judge William Borah ruled that Hobby Lobby violated the IHRA and awarded Ms. Sommerville \$220,000 in emotional distress damages. On July 28, 2017, the Commission adopted ALJ Borah's finding that Hobby Lobby violated the IHRA but remanded the case to ALJ Borah to justify his recommended emotional distress award. ALJ Borah issued a Supplemental Recommended Order and Decision further explaining his recommendation.

At the April 3, 2019, Commission meeting, Interim Chair Cheryl Mainor and Commissioners Michael Bigger and Patricia Bakalis Yadgir declined to review the Supplemental Recommended Order and Decision, thereby affirming ALJ Borah's recommendation. The Commission issued a final order in this matter on April 10, 2019.

NOTES FROM AN ADMINISTRATIVE LAW JUDGE

By Chief Administrative Law Judge Michael Evans

For the first issue of the HRC Newsletter, Judge Evans has some (very) basic principles for practicing in front of the HRC's Administrative Law Section.

1. Virtually everything you need to practice before the Human Rights Commission is available from the Commission itself. You can (and should) obtain copies of the Human Rights Act (775 ILCS 5/1-101 *et seq.*) and the Commission's procedural rules (56 Ill. Admin. Code, Ch. XI, Section 5300 *et seq.*). Most of your basic questions can be answered simply by reading through one or both of those documents, which are available on our website.
2. The Human Rights Commission and the Department of Human Rights are **separate state agencies**. The Department serves as the "investigatory" agency and the Commission serves as the "adjudicatory agency for violations under the Human Rights Act.
3. Put the ALS number on all filings. If you leave that off, you increase the time it takes for a document to find its way into our record files. If it's worth your time to prepare and file a document, you probably want that document to get before the judge.

THIS QUARTER IN CIVIL RIGHTS HISTORY

June 3, 1946: In *Morgan v. Virginia*, 328 U.S. 373 (1946), the United States Supreme Court ruled a Virginia law unconstitutional requiring that interstate bus passengers be segregated by race. Irene Morgan (who was employed making B-29 Marauders) was traveling between Virginia and Maryland when a bus driver ordered her to give up her seat to white passengers. She refused, tearing up the arrest warrant and throwing it out the window, and was charged with violating Virginia's segregation law and resisting arrest. Morgan, represented by the NAACP, challenged her conviction and won. The Supreme Court found that the law violated the Interstate Commerce Clause.

April 1949: The first National Wheelchair Basketball Tournament was held in Galesburg, Illinois. The University of Illinois Gizz Kids (from their new satellite campus for students with disabilities) competed against the Kansas City Bulldozers, the Hannibal Rockets, the Minneapolis Rolling Gophers, the Evansville Rolling Rockets, and the Chicago Cats.

May 17, 1954: In *Brown v. Board of Education*, the U.S. Supreme Court unanimously ruled that segregation of public schools "solely on the basis of race" denies black children "equal educational opportunity" even though "physical facilities and other 'tangible' factors may have been equal. Separate educational facilities are inherently unequal." Thurgood Marshall argued the case before the Court and later went on to become the first African American appointed to the Supreme Court.

MEET THE COMMISSIONERS:

CHERYL MAINOR

Cheryl N. Mainor is President of The Mainline Group Consulting. Founded in 1998, The Mainline Group is a full-service consulting firm specializing in Issue Advocacy, Coalition Building, Community Outreach, Third-Party Engagement, Association Management and Event Management.

Formerly, Ms. Mainor served as President and Publisher at Main-Line Media Group, LLC, the publisher of the largest circulated publication targeting Black health issues.

Ms. Mainor has been recognized for her work by the Congressional Black Caucus, National Institutes of Health HIV Vaccine Awareness, The National Medical Association, OIC of America, and the National Association of Negro Women. In 2014, she became the President and Publisher of the historic Chicago Defender Newspaper.

Ms. Mainor was appointed to the Commission in March of 2017, and reappointed in March 2019.

HAPPENINGS AT THE COMMISSION

Commission Honors Amazing Women in our Community During Women's History Month

(l-r) Dr. Ewa Ewa (Commission CFO), Cheryl Mainor (Interim Commission Chair), Alexandra Sossa, Jasmine Cruz and Bonnie Allen (Award Recipients), Sol Flores (Deputy Governor), and Philip Dalmage (Executive Director).



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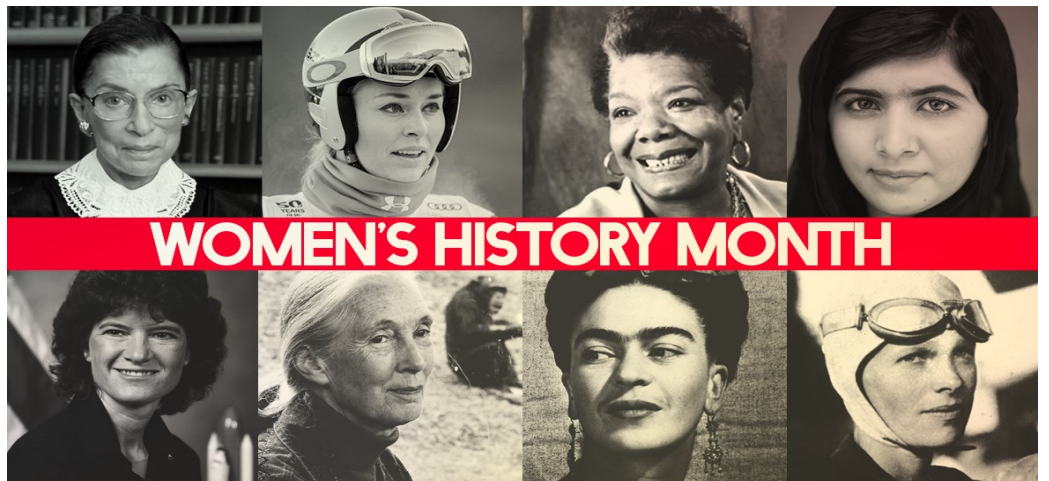
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*Please join us in celebrating Juneteenth on June 19, 2019,
at James R. Thompson Center at 12:-30—1:30 pm.*

