

**STATE OF ILLINOIS TORTURE INQUIRY
AND RELIEF COMMISSION**

Meeting of the Torture Inquiry and Relief Commission

April 11, 2011

3:00 p.m.

James R. Thompson Center
Conference Room 9 – 031
100 W. Randolph Street
Chicago, Illinois

MINUTES

PRESENT:

Commissioners

Chairman Patricia Brown Holmes
Leonard Cavise
Doris Green (Alternate)
Hipolito Roldan
Marcie Thorp (Alternate)
Neil Toppel
Rob Warden

Absent Commissioners

Bernetta D. Bush (Alternate)
Daniel Coyne
Janette Wilson (Alternate)
Andrea Zopp

Staff

David C. Thomas

Attendees

Human Rights Commission

Harriet Parker, General Counsel
Ewa Ewa, Chief Fiscal Officer
Michael Evans, Chief Administrative Law Judge
LaNade Bridges, Private Secretary
Donyelle Gray

Members of the Public:

Mike Elliott
Ted Pearson
Mark Clements
Rachel F. Sifuentes

NOTICE:

Open and Closed Meetings of the Illinois Torture Inquiry and Relief Commission are audio recorded.

I. Call to Order

On April 11, 2011, at 3:16 p.m. Chairman Patricia Brown Holmes called to order a meeting of the Illinois Torture Inquiry and Relief Commission, ("TIRC").

Pursuant to the Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.*, it was determined that a quorum of the public body was present at the meeting without the physical presence of Commissioners' Coyne, Bush, Wilson and Zopp. Prior to the meeting, Commissioners Coyne, Bush, Wilson and Zopp gave notice (and good cause as defined by the Illinois Open Meetings Act) to the Executive Director David Thomas that they would be unable to attend the April 11, 2011 meeting.

Chairman Holmes entertained a motion to allow the Chair to appoint alternate Commissioners to substitute for Commissioners who are absent. Motion to accept made by Commissioner Cavise and seconded by Commissioner Toppel. Motion carried 6-0.

Chairman Holmes appointed Alternate Commissioner Thorp to serve in place of Commissioner Zopp. Chairman Holmes will excuse herself from the meeting at 4:00 p.m. in order to take a scheduled flight. Chairman Holmes asked Commissioner Cavise to substitute as Chairman in her absence.

II. Consideration of the Minutes

February 28, 2011

The TIRC voted to approve the minutes of the February 28, 2011, meeting as submitted. Motion to approve the minutes made by Commissioner Toppel and seconded by Commissioner Cavise. Motion carried 6-0. Chairman Holmes announced the minutes will be published on the website.

III. Executive Session

Pursuant to the Open Meetings Act (5ILCS 120/2(c) (1)), the Commissioners voted to close a portion of the public meeting at 3:21 p.m. in order to discuss an internal personnel matter. Motion made by Commissioner Toppel, seconded by Commissioner Warden. Motion carried 6-0.

At 3:28 p.m. the open meeting resumed.

IV. Budget

Dr. Ewa Ewa reports that the TIRC budget for FY 2012 (FY 2012 runs from July 1, 2011, through June 30, 2012) has been approved for \$600,000. The goal is to have the appropriate staffing and equipment necessary to operate. The e-par for the Staff Attorney position as of yet has not been approved. A multifunctional printer has been ordered.

V. Short Term Goals

A. Media Inquiries

Executive Director David Thomas introduced Ms. Rosa Martinez as the new Private Secretary for the TIRC. He thanked Harriet Parker and LaNade Bridges for their time and efforts in support the work of the TIRC. Chairman Holmes also stated that the HRC has gone beyond the call of duty.

Executive Director Thomas reported that the TIRC has a press person. The Office of the Governor has assigned Anjali Julka as the media liaison. All media inquiries should be directed to Ms. Julka. Executive Director Thomas will accept press calls directed to him from Commissioners and will direct them to Ms. Julka. Commissioners Warden and Toppel objected to this policy and the censoring of any conversation they may have with the media. A lengthy conversation ensued regarding media statements and the fact that the Governor's Office was not trying to censor the Commissioners' speech.

Chairman Holmes stated that Commissioners who choose to speak to the media, as a courtesy, are requested to inform the Chair and the Executive Director.

B. Resignation of Alternate Commissioner Acton and Vacancies on Commission

Chairman Holmes stated Alternate Commissioner Robert Acton has resigned because he moved out of state. The following vacancies have to be filled: Member of the Public for Commissioner, Member of the Public for Alternate, Criminal Defense Attorney for Alternate, and Former Public Defender for Alternate. If any individuals are interested in filling the vacancies, they should be directed to Chairman Holmes. Current Commissioners are advised to remember when their terms expire. If they are interested in renewing their term, they should inform the Executive Director as soon as possible.

VI. Long Term Goals

A. Status of Rule Making

Executive Director Thomas explained the procedures set forth in the Illinois Administrative Procedure Act. After an agency drafts its rules, those draft rules are then subjected to a first notice. These proposed rules are published by the Secretary of State's Office in a publication called Illinois Register. There is a minimum 45 day waiting period for public comment on the proposed rules after the first notice. When the first notice period is over, the proposed rules proceed to the second notice, which begins with a filing of the proposed rules with JCAR (Joint Committee on Administrative Rules). JCAR oversees compliance with the Administrative Procedure Act on behalf of the General Assembly. The second notice period lasts for a maximum of 45 days, unless the agency and JCAR agree to extend the period. When JCAR approves the proposed rules, a final notice of adoption is issued and the rules are then published in the Illinois Administrative Code.

On March 29, 2011 an assignment in the Illinois Administrative Code was received for the TIRC's rules in Title 2 and Title 20. Reformatted proposed rules were submitted to JCAR before publishing the first notice to anticipate any issues or objections. This should obviate or reduce issues or objections arising during the 45 day waiting period. Depending on JCAR's response, the TIRC can proceed to publish for the first notice review. Executive Director Thomas expects a reply from JCAR within the next week. Conversation ensued about the process and review of the proposed rules by JCAR.

Executive Director Thomas explained the reformatted provision in Title 2, section 3500.210, entitled Commission Records. The official records should include pleadings, notices, subpoenas, evidence received, photographs, computer disks, transcripts, briefs, reports, memoranda, orders, as well as findings of fact, decisions, and amendments to any of the above. Commissioner Toppel raised the subject whether subsection B should include a reference to FOIA. Conversation ensued regarding FOIA and it was agreed to add a reference in subsection B to FOIA. It was also agreed to modify the rule to state that copies of any documents available for inspection will be made available as provided by law.

The Commissioners then discussed the proposed rule on Summary Referral of cases and the accompanying memorandum regarding Illinois Law on Judicial Evidentiary hearings on post-conviction torture claims. Commissioner Toppel indicated a concern that the propose rule was ambiguous regarding whether the Commission was making a finding that the claim of torture in the case was credible. Commissioner Cavise indicated concern that the proposed rule, in referring to the Executive Director's "informal screening", was not clear that the Commission would be making the ultimate decision whether to forgo a formal inquiry. Executive Director Thomas

agreed to modify the proposed rule and submit the modifications to the Commission before the proposed rule is filed with the Secretary of State's Office.

Chairman Holmes discussed a modification of the proposed rules to provide for a procedure to summarily decline to accept a case, where the claim form is incomplete or demonstrates the Commission has no jurisdiction over the asserted claim. Executive Director Thomas indicated he will draft a proposed modification in terms of the Commission's discussion and submit it to the Commission before it is filed with the Secretary of State's Office.

Commissioner Roldan brought up the recent United States Supreme Court ruling holding that prosecutors in criminal cases are not liable to defendants for monetary damages, even if the prosecutors have suppressed evidence in the criminal cases which was favorable to defendants. Executive Director Thomas stated he was aware of the decision and did not feel it impacted the Commission's rulemaking because Commission proceedings are not criminal prosecutions, and the proposed rule on records provides that all the relevant evidence and documents will be made available for public inspection once the Commission makes its final decision in the case. The Commission has a right to expect its employees will follow the rule.

B. Letters to Potential Claimants

Executive Director Thomas reported that the letter to potential claimants providing information about the Commission, and the form for filing a claim of torture with the Commission, are available on the website. A master list of potential claimants has been formulated based on the Special Prosecutor's Report and various other sources. The Commission has currently received two letters from potential claimants. Letters have been mailed to approximately fifteen potential claimants. A lengthy conversation ensued about how to define who is a potential claimant and the requirements to file a claim. Executive Director Thomas stated that he used the definition in section 5(1) of the statute.

VII. New Business

Chairman Holmes informed the Commissioners that it is State law that every State Commission has an Ethics Officer. Executive Director Thomas has been temporarily appointed as the Commission's Ethics Officer. Once the Staff Attorney has been hired, that person will be appointed to this position.

Statements of Economic Interest forms were given out to Commissioners. Executive Director Thomas stressed that the forms must be filed no later than May 2, 2011. If

filed after this deadline, there is a late fee and/or penalty which become the responsibility of the Commissioner who files late.

VIII. Statements from the Public

Mr. Ted Pearson, of the Chicago Alliance against Racist and Political Repression, expressed his appreciation to the Commission for all the work being done. Mr. Pearson offered his assistance and participation. Commissioner Cavise suggested that distributing the news about the TIRC and its operations would be helpful. Mr. Pearson will give Executive Director Thomas a list of names his organization is aware of who might be potential claimants. Conversation ensued about whether the Commission could file an *amicus* brief in the Wrice case before the Illinois Supreme Court on the issue whether a coerced confession is subject to harmless error analysis. Executive Director Thomas stated that he would find out whether this was a permissible activity for the Commission and report back.

Mr. Mike Elliott, of the Jail Jon Burge Coalition, emphasized the importance of giving these prisoners the opportunity of being afforded a hearing to publicly state their cases again. Mr. Elliott stated there is frustration with how slow the Commission has been moving, but he understands all the process and work needed to get the Commission fully functional.

Mr. Mark Clements, of the Chicago Alliance against Racist and Political Repression, expressed his concern whether the Attorney General's Office must legally represent the TIRC, which he thought creates a legal conflict of interest. The Commissioners assured Mr. Clements that the Attorney General would not be representing the Commission if an *amicus* brief is filed. The Commission would be represented by private counsel who would undertake representation *pro bono*.

IX. TIRC Twelve Month Calendar

The Calendar of Meetings for the TIRC, to be held in room 09-031, for the remainder of 2011 is:

- June 20, 2011 3:00 p.m.
- August 23, 2011 3:00 p.m.
- October 18, 2011 3:00 p.m.
- December 6, 2011 10:00 a.m.

X. Adjournment

The meeting was adjourned at 4:47 p.m. Motion made by Alternate Commissioner Green and seconded by Commissioner Warden. Motion carried 5-0.

Respectfully submitted,

Patricia Brown Holmes, Chairman
Torture Inquiry and Relief Commission