



STATE OF ILLINOIS
ILLINOIS HUMAN RIGHTS COMMISSION
Martin R. Castro, Chairman
N. Keith Chambers, Executive Director

**ILLINOIS HUMAN
RIGHTS
COMMISSION
2013
ANNUAL
REPORT**

THE HONORABLE PAT QUINN, GOVERNOR

OUR MISSION

The **Illinois Human Rights Commission** is dedicated to promoting freedom from unlawful discrimination as defined by the **Illinois Human Rights Act** and to provide a neutral forum for resolving complaints of discrimination filed under the **Act**.

The **Act** forbids...

discrimination with respect to employment, financial credit, public accommodations and real estate transactions on 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. The **Act** also prohibits sexual harassment in education, discrimination because of citizenship status and arrest record in employment, and discrimination based on familial status in real estate transactions.

Our primary responsibility...

is to make impartial determinations of unlawful discrimination as defined by the **Illinois Human Rights Act**, and to furnish information to the public about the **Act** and the **Commission**.

The core values of the Commission are to provide professional, competent, efficient and effective service to everyone who seeks information from or who has a case before the Commission.



Letter to the Honorable Governor Pat Quinn, Members of the General Assembly, and the People of Illinois:

The Illinois Human Rights Commission hereby submits to you our Annual Report for Fiscal Year 2013. With the continued support of the Office of Governor Pat Quinn and our State Legislature, this year we continue to successfully meet our mandate to ensure that all Illinoisans have a fair and impartial forum to address the claims of those who have suffered or have been accused of discrimination as defined in the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.

This year our nation and our state observed important milestones in the history of the struggle for civil and human rights. We celebrated the 150th anniversary of President Abraham Lincoln's issuance of the Emancipation Proclamation, and we also observed the 50th anniversary of the Rev. Dr. Martin Luther King, Jr.'s historic March on Washington. These two events are inextricably related to the birth of, and the continued mission of the Illinois Human Rights Commission. The promise of these historic events, by many measures, remains incomplete; hence the work of the Commission remains important to ensure the realization of the dream of equality. For example, this year we continued to help train the next generation of human and civil rights lawyers through our Gov. Edward Coles Fellows, honoring Gov. Coles' stance to keep Illinois a Free, rather than a Slave state.

The Commission has also set forth a reputation of best practices in the protection of civil and human rights, which resulted this year in visits from various foreign government officials seeking to model their systems of discrimination adjudication after ours. The Commission has this year continued our emphasis on community outreach and looks forward to expanding these efforts in the new fiscal year with the establishment of a formal Community Outreach Committee.

We have also continued to provide administrative support to the Torture Inquiry and Relief Commission, as described at the end of this report. On behalf of the Commission, we thank you for your strong and continued support.

A handwritten signature in black ink, appearing to read "Martin R. Castro".

Martin R. Castro, Chairman, Human Rights Commission

CASE SYNOPSIS NO. 1

Michael Hardy & Florence Hardy vs. U.S. Bancorp, et al.

(Request for Review: Discriminatory
Financing Based on "Perceived" Race)

The Complainants, who are African American, sought to purchase a home in a Chicago neighborhood that was demographically and historically associated with middle-class African Americans. They applied to the Respondents for a loan. The Complainants alleged the entire loan process was done via telephone. The loan application reflected the race of the Complainants as being "White." The Respondents denied the loan, in part allegedly because the Respondents questioned the intent of the Complainants to use the property as their primary residence. The Complainants alleged the Respondents denied them the loan because the Respondents assumed they were White, and further assumed that White individuals would be purchasing the property in the predominantly African-American community for investment purposes only.

The Illinois Department of Human Rights dismissed the Complainant's charge for lack of jurisdiction. In response to the Complainants' request for review, the Department argued that perceived race is not a protected class under the Illinois Human Rights Act ("HRA").

However, the Complainants argued that the legislative intent behind the Fair Housing Laws demonstrated that a trier of fact's focus should be on the motivation behind a Respondent's actions, rather than on a Complainant's actual status in a targeted group.

The Commission determined that the allegations may have triggered the protections of the HRA, in that it was essentially alleged that the Respondents' financing decision may have been motivated by race. Therefore, the Commission determined the charge warranted investigation by the Department, and determined that the Department's dismissal should be vacated.

THE ILLINOIS HUMAN RIGHTS COMMISSION



On December 6, 1979, former 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, higher education, and financial credit. Charges of Discrimination may be brought to the Department by individuals, groups and/or in certain circumstances, the Director of the Department of Human Rights. Either the Department or the Complainant may file a Complaint of Civil Rights Violation with the Commission. Such complaints are adjudicated pursuant to Sections 8A-102 and 8B-102 of the Act.

The Human Rights Commission (HRC) maintains offices in Chicago and in Springfield. The HRC consists of thirteen Commissioners; the Executive Director; the Chief Administrative Law Judge, Deputy Chief Administrative Law Judge and seven Administrative Law Judges; the Chief Fiscal Officer; the General Counsel, Deputy General Counsel, and Assistant General Counsel, and Administrative Support Staff.



CASE SYNOPSIS NO. 2

Ronald Smith vs. the University of Illinois at Chicago

(Request for Review: Employment Discrimination Based on Sexual Orientation)

The Complainant alleged in his charge that the Respondent discharged him because of his sexual orientation, homosexual. The Illinois Department of Human Rights dismissed the charge for lack of jurisdiction. The Department determined the Complainant's charge was not timely filed within the 180-day statutory time following the alleged civil rights violation/adverse action, as required by Section 7A-102(A)(1) of the Human Rights Act.

In the request for review he filed with the Commission, the Complainant challenged the Department's decision to use the notification date of his discharge as the date of the alleged civil rights violation. Rather, the Complainant argued the Department should have used the actual date of termination (last day of employment); from there, the Complainant argued, would commence his 180 days. The Complainant further argued that using the notification date instead of the date of termination allowed the Respondent to operate under a different set of rules, and gave the Respondent an unfair advantage.

The Commission sustained the dismissal of the charge for lack of jurisdiction. The Commission determined the adverse action had occurred when the Respondent's *Notification of Appointment* informed the Complainant of his final date of employment. At that time, the Complainant knew or should reasonably have known of the alleged civil rights violation/adverse action, i.e., that he was no longer going to be employed by the Respondent. As such, the Commission found that the Department had correctly determined the actionable date for purposes of identifying when the 180 days commenced.

REQUEST FOR REVIEW

When the Illinois Department of Human Rights (DHR) dismisses a charge for lack of substantial evidence of discrimination, the Complainant may file a Request for Review with the HRC or file a Complaint in the Circuit Court within 90 days after receipt of the Notice of Dismissal. When the DHR dismisses a charge for failure to attend a fact-finding conference the Complainant may either file a Request for Review with the HRC or file a complaint in the Circuit Court within 90 days of receipt of the Notice. The HRC's decision may be appealed in the appropriate Appellate Court.

FILING A COMPLAINT

If the DHR finds substantial evidence of discrimination and issues notice, in order to advance the case, the Complainant must either: (1) File a complaint in the appropriate Circuit Court within 90 days of receiving the notice, or (2) Request the DHR file a complaint with the HRC on the Complainant's behalf within 30 days of receiving the notice. If the DHR does not complete its investigation within 365 days, or any agreed extension, the Complainant then has 90 days to either: (1) File a Complaint with the HRC or (2) File a Complaint in the appropriate Circuit Court.

STANDING ORDER RELATING TO PREHEARING MEMORANDA

All parties will jointly prepare and submit a prehearing memorandum to the presiding Administrative Law Judge (ALJ) of the HRC not less than 14 days before the hearing is scheduled to commence. The Complainant should prepare the first draft and submit it to the Respondent at least 14 days prior to the filing deadline. The presiding ALJ may waive the preparation of the prehearing memorandum if any litigant is not represented by counsel. Attorney representation is strongly advised.



THE HEARING

The matter is set for hearing before an ALJ within 30 to 90 days after the complaint has been filed with the HRC. After the hearing, the ALJ issues a Recommended Order and Decision (ROD). If either party objects to the ROD, exceptions may be filed and the ROD will be reviewed by a three-member panel of Commissioners. The panel may adopt, reverse or modify the ROD, or remand the ROD back to the ALJ. If the ROD is adopted, it becomes the HRC's final decision. The HRC's final decision may be appealed in the appropriate Appellate Court.

JUDICIAL REVIEW

A petition for review of the final order of the Commission must be filed with the appropriate Appellate Court of Illinois within 35 days from the date that a copy of the decision sought to be reviewed was served on the party affected.

SETTLEMENTS

When a settlement is submitted by the Department, the Commission via a panel of 3 Commissioners shall determine whether or not to approve. Parties may settle matters with or without Commission approval. However, if they wish the Commission to retain jurisdiction for enforcement, the agreement must be reduced to writing and submitted to the Commission for approval. Approval is accomplished by an order approving the settlement and dismissing the case.

PUBLICATION OF OPINIONS

Decisions of the Commission or panels thereof, whether on requests for review or complaints, shall be published within 120 calendar days of the completion of service of the written decision on the parties. Decisions of the Commission are available on the Commission's website at www.state.il.us/ihr.

CASE SYNOPSIS NO. 3

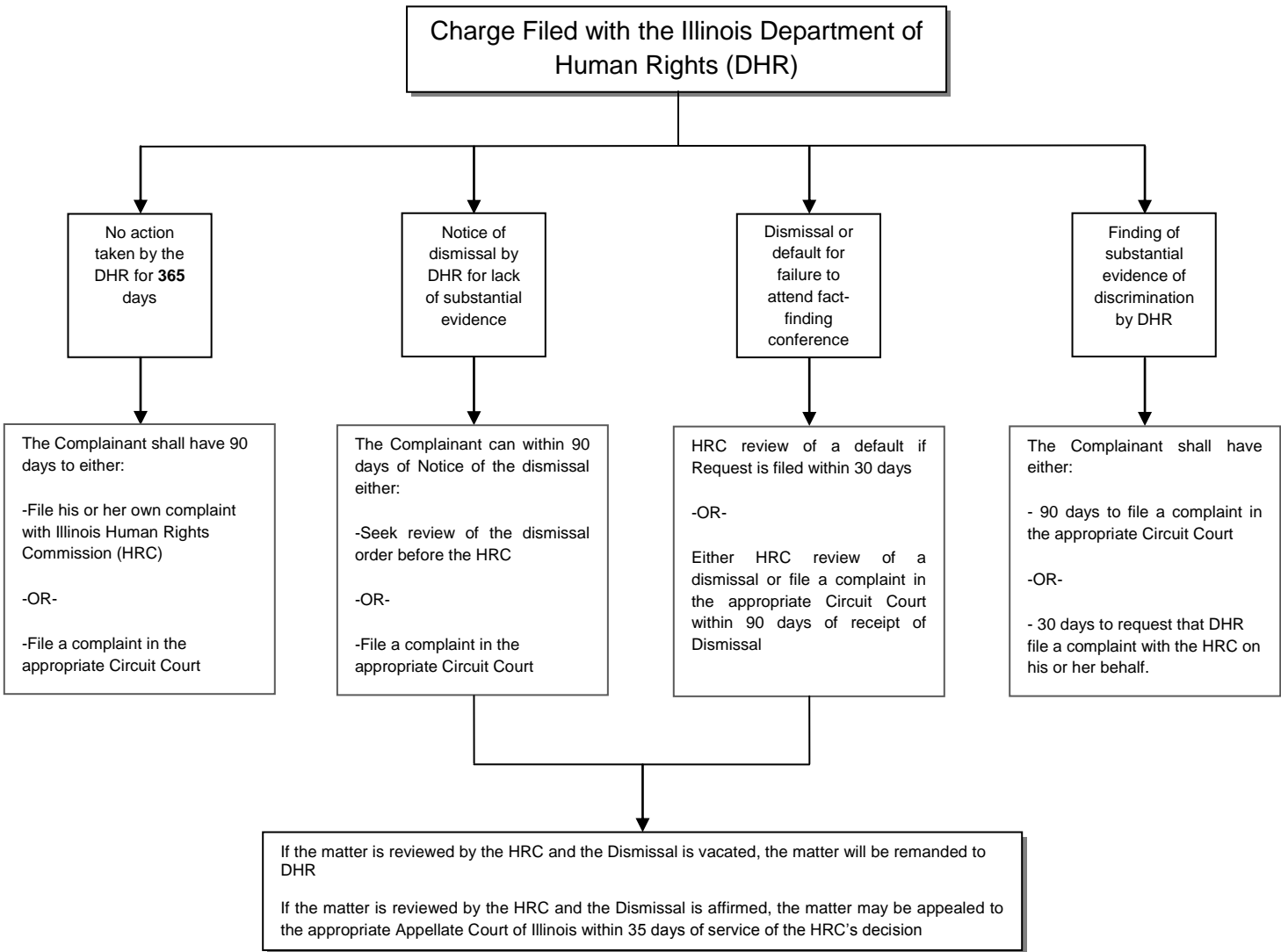
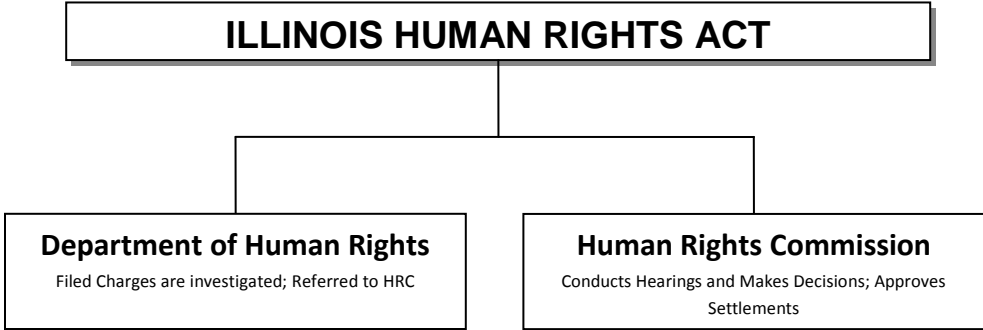
James Abernathy vs. Dwight Welch (Request for Review: Retaliation)

The Complainant alleged in his charge that Dwight Welch, Mayor City of Country Club Hills, demoted him in retaliation for filing a previous charge of discrimination. The Illinois Department of Human Rights dismissed the charge for lack of jurisdiction. The Department determined the Respondent was acting in his official capacity as an official for the City of Country Club Hills, and as such, under the Human Rights Act, he could not be held individually liable for the alleged retaliation.

The Complainant sought review of the Department's dismissal. The Complainant argued before the Commission that the Act allows individuals to be held personally liable for retaliation and for aiding and abetting, citing to Sections 6-101(A) and (B) of the Act.

The Commission sustained the dismissal of the charge. The Commission determined that generally when the individual is a company employee or official, and he undertakes an action in his official capacity as an employee or agent of the employer, the charge must be made against the employer alone, and not against the individual. The limited exceptions to this rule, such as in cases where sexual harassment is alleged, were inapplicable to this case.



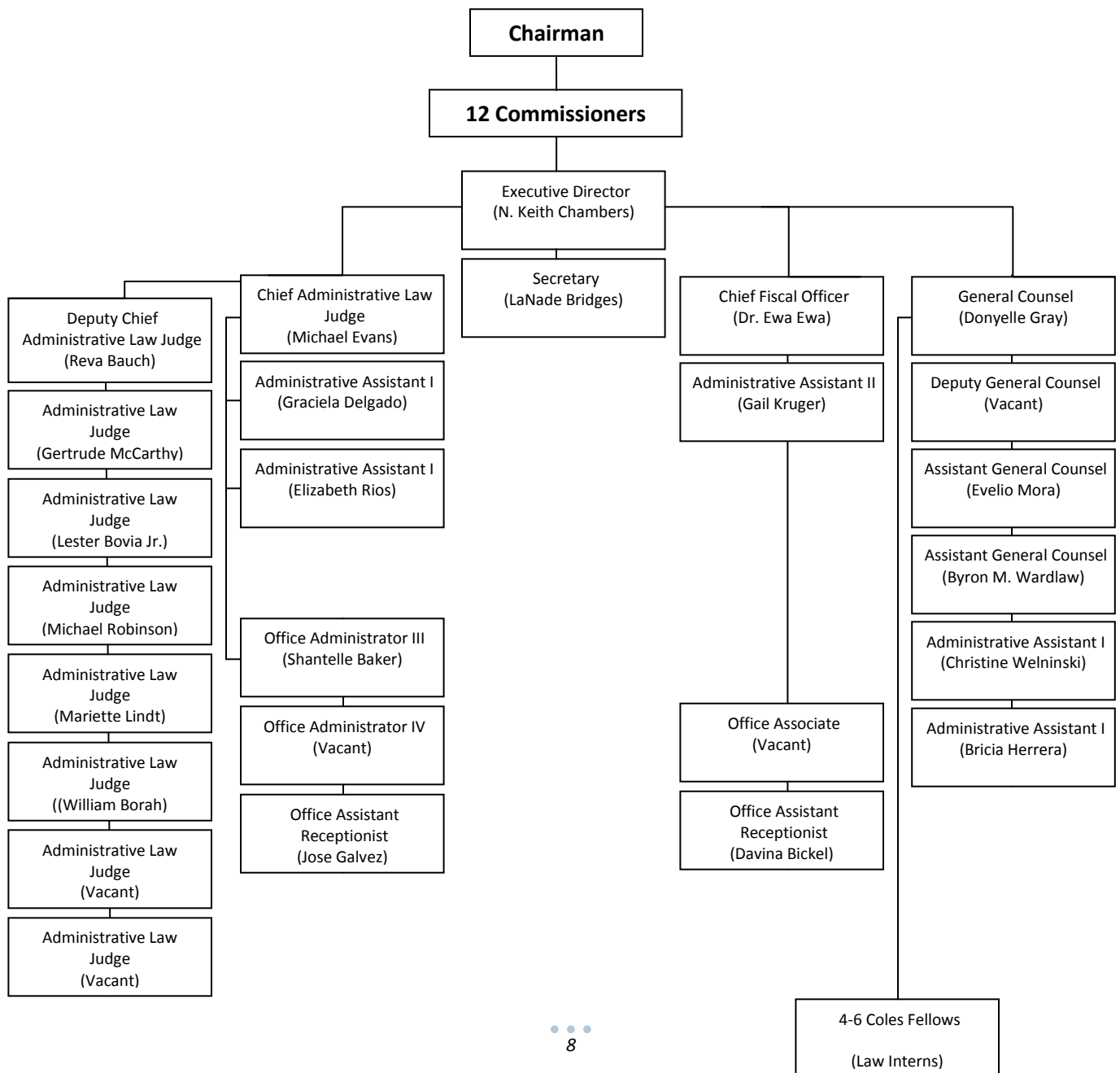


THE COMMISSION PROVIDES A NONPARTISAN FORUM TO RESOLVE COMPLAINTS OF UNLAWFUL DISCRIMINATION

The Commission consists of a staff of 20 and thirteen Commissioners. The Commissioners are appointed by the Governor, with the advice and consent of the Illinois State Senate, and no more than seven Commissioners may be appointed from the same political party. The Governor designates one of the Commissioners as Chairman.

The staff and Commissioners reflect the rich diversity of the State of Illinois. The Commissioners come from a variety of professional backgrounds and from different parts of the State. The Commissioners are diverse in race and ethnicity, religious faiths, gender and sexual orientation. By maintaining a diverse and non-partisan body of Commissioners, as well as a diverse staff, the Commission strives to serve all people and entities throughout the State who seek a fair forum for the adjudication of complaints pursuant to the Illinois Human Rights Act.

ORGANIZATIONAL CHART



FY 2013 COMMISSIONERS

PROUD TO SERVE THE PUBLIC

1. **Martin R. Castro, Chairman**

Appointed 2009
President of Castro Synergies LLC;
Chairman of the United States Commission on Civil Rights; Co-Founder, New Futuro, LLC; Board member of the National Museum of Mexican Art; Member of the Executive Committee of the Chicago Community Trust.

2. **Marti Baricevic, M.Ed.,LPC**

Appointed 2003
A parent/school liaison with the Regional Office of Education in St. Clair County. In this capacity, she works with at risk students and their families to achieve success in school. She holds school counseling certificates in Missouri and Illinois, and is a Licensed Professional Counselor in Illinois. Commissioner Baricevic is a doctoral candidate in counseling at the University of Missouri – St. Louis.

3. **David Chang**

Appointed 2003
Civic Leader, Leader in Chicago's Asian American Community.

4. **Robert A. Cantone, J. D.**

Appointed 2011
As attorney with his own law firm, he concentrates in representing individuals who have sustained personal injuries as a result of an accident. He also serves as an Arbitrator for Cook County Mandatory Arbitration Program, and is a member of the Chicago Bar Association, the Illinois State Bar Association and the Illinois Trial Lawyers Association.

5. **Terry Cosgrove**

Appointed 2011
President & CEO of Personal PAC which supports access to the full range of reproductive health care for everyone in Illinois. Served as Chair of the Urbana, Illinois Human Relations Commission from 1976-1979. He has played a major role in promoting public awareness about the importance of Human Rights. Was one of two plaintiffs in a precedent-setting legal action successfully challenging discriminatory practices based on sexual orientation in public accommodations.

6. **Merri Dee**

Appointed 2013
A nationally recognized motivational speaker and a highly popular panelist, moderator, and professional mentor. As president of MD Communications, she helps organizations develop strategies on media relations, marketing and public relations, community relations, and fundraising. While also serving as the Illinois State President of, AARP.

7. **Nabi R. Fakhroddin, P. E., S. E**

Appointed 2010
Licensed Professional and Structural Engineer; Fellow of American Society of Civil Engineers; Past President of the Illinois Engineering Council and the Illinois Association of County Engineers; Board Member, St. Charles Zoning Board of Appeals; Former Member, Western Illinois Regional Manpower and Planning Commission; Recipient of numerous awards including the APWA's Top Ten Public Works Leaders in the U.S. and a Distinguished Service Award from the National Council of Examiners for Engineering and Surveying.

8. Lauren Beth Gash, J. D.

Appointed 2013

An attorney (Georgetown University Law Center, '87, where she served as Associate Editor of the American Criminal Law Review). She served four terms in the IL House of Representatives, where she chaired the Judiciary Committee. She was also Vice-Chair of the Elections and Campaign Reform Committee. She has worked on Capitol Hill in Washington, D.C., and served on the staffs of Senators Alan Dixon and Paul Simon. A life-long community organizer, she has founded and/or served on numerous not-for-profit boards, including the Anti-Defamation League, the PTA, and the League of Women Voters. She is a former volunteer attorney at Prairie State Legal Services.

9. Rozanne Ronen

Appointed 2004

Began career working in public service for the City of Chicago; Subsequently provided information technology services as an employee and business owner to several large Illinois corporations. Ongoing local board member for the Hadassah Medical Organization.

10. Diane M. Viverito

Appointed 2005

Administrator in student development at Moraine Valley Community College; Founding member and past Chair of Study Illinois Consortium; Advocate for community college international and diversity education.

11. David J. Walsh

Appointed 2011

Joined Mark J. Walsh & Company in 2011 as the head of business development. He worked as the Senior Vice President of advertising for the Minneapolis Star Tribune from 2008-2010. Prior to joining the Star Tribune, Walsh worked in a variety of positions within the Tribune Company- where his last position was as Vice President of advertising for the Los Angeles Times. Before joining the Times in 2005, he served as Vice President of Tribune Interactive, overseeing print and online classified strategies for 10 Tribune newspapers.

12. Patricia Bakalis Yadgir

Appointed 2011

Vice President of School Programs at American Quality Schools, an Educational Management Organization that runs 13 charter schools in the Midwest. Working over 25 years in the field of education as a counselor, instructor, and in administration within the Illinois Community College system.

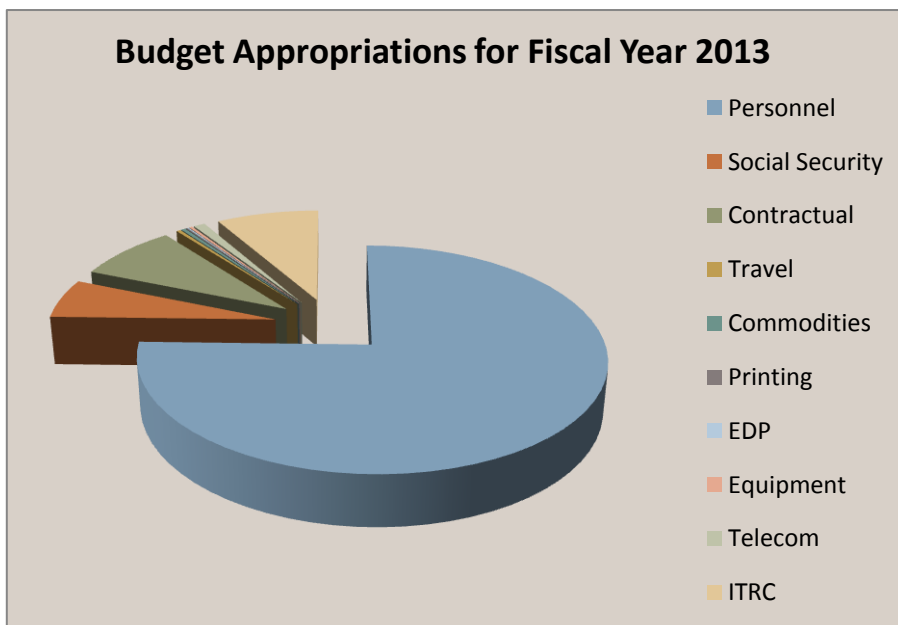


STATE OF ILLINOIS HUMAN RIGHTS COMMISSION

BUDGET APPROPRIATIONS FOR FISCAL YEAR 2013

Personnel Services.....	\$ 1,444,100
Retirement – Contribution.....	\$ 0.0
Retirement – Pension Pick-Up.....	\$ 0.0
Social Security.....	\$ 110,700
Contractual Services.....	\$ 159,000
Travel.....	\$ 6,500
Commodities.....	\$ 7,000
Printing.....	\$ 2,000
Electronic Data Processing.....	\$ 2,500
Equipment.....	\$ 5,200
Telecommunications.....	\$ 18,000
Total Appropriations...(HRC).....	\$ 1,755,900
Torture Inquiry and Relief Commission (Fed. Grant)	\$ 160,000
 Total Appropriations w/ Federal Funds	 \$ 1,915,900

Funding is appropriated annually from the state budget to cover all of the Human Rights Commission’s statewide services to the people of Illinois.



CASE SYNOPSIS NO. 4

Sharon Tadlock v. Benedictine University

(Request for Review: Employment Discrimination Based on Sexual Orientation Discrimination)

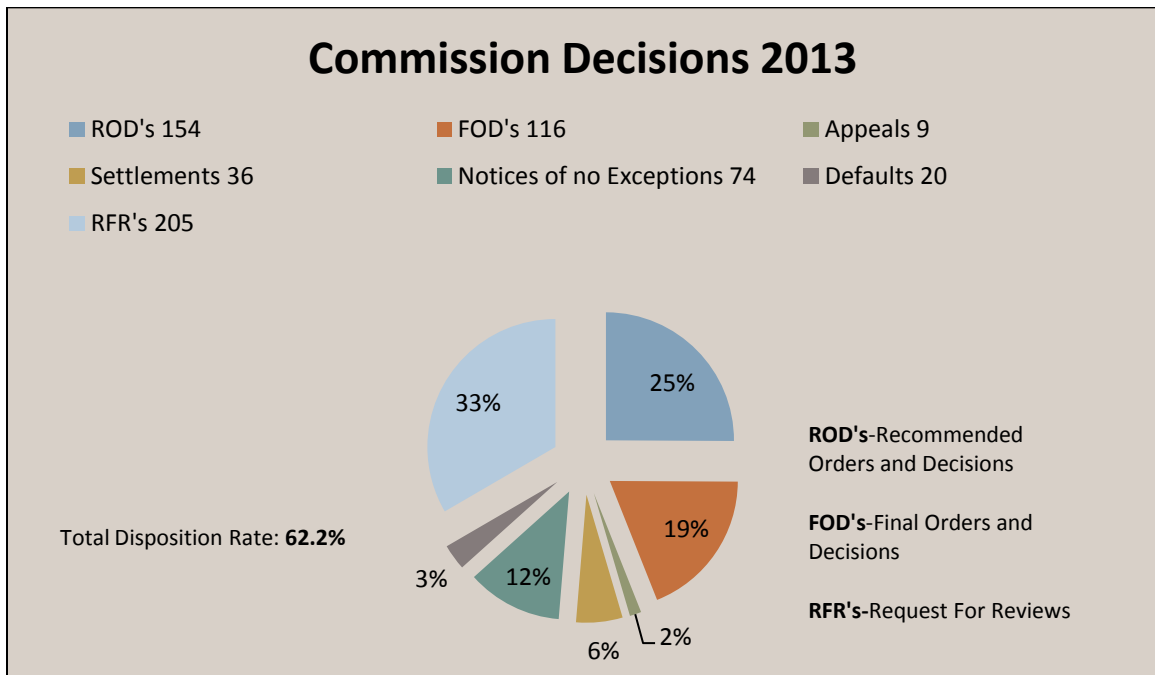
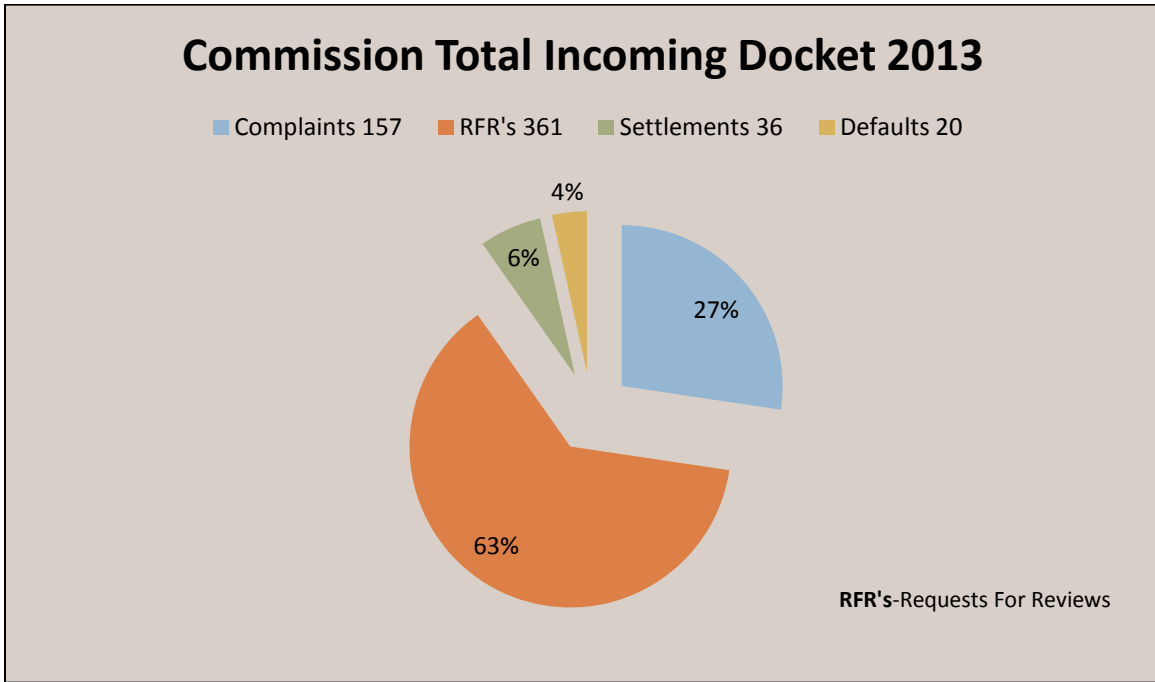
The Complainant alleged in her charge of discrimination that she was placed on administrative leave by the Respondent because of her sexual orientation (homosexual); that she was proposed a job reassignment because of her sexual orientation, and that she was discharged from employment because of her sexual orientation.

The Illinois Department of Human Rights dismissed the charge for lack of substantial evidence. The Department determined the Respondent had followed its Catholic Mission when it took the alleged actions against the Complainant for publicly going against its Catholic religious tenets. Specifically, the Complainant had published a wedding announcement concerning her marriage to a woman, and she identified the Respondent as her employer.

The Complainant filed a request for review of the dismissal with the Commission. The Complainant pointed to another “controversial” non-homosexual employee who had allegedly violated Catholic tenets via an equally public forum, and that employee was not discharged. In response, the Department now agreed there was substantial evidence as to the first two counts of her charge, but argued that the dismissal of the third count, regarding the termination of her employment, should be sustained. The Department argued the evidence showed the Complainant was discharged because she did not report to work; thus, there was no substantial evidence of a discriminatory motive for the termination. The Complainant argued this was a mere pretext for the Respondent’s discriminatory motive.

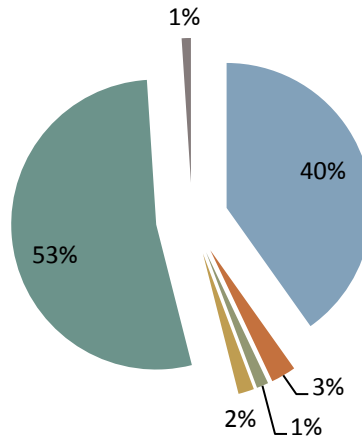
The Commission determined there was substantial evidence as to all three counts of the Complainant’s charge. The Commission determined there was substantial evidence that the Respondent’s ostensibly non-discriminatory reason for firing the Complainant was in fact pretext for discrimination. Therefore, the Commission ordered that the dismissal of the charge should be vacated in its entirety.

COMMISSION OUTPUTS AT A GLANCE



Office of the General Counsel-Services 2013

■ Panel Matters 274
 ■ Panel Hearings 19
 ■ Appellate Appeals 9
■ En Banc Mtg. 12
 ■ RFR Log In's 361
 ■ Outreach 7



Panel Matters

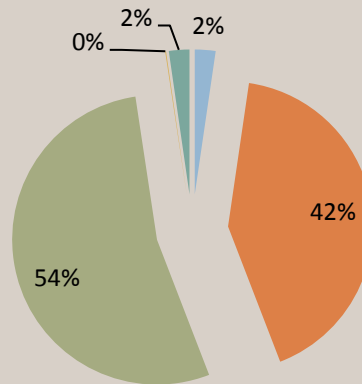
*Contested 30
 *RFR's 159
 *Motions 50
 *Defaults 20
 *Settlements 36

RFR's-Requests For Reviews

Total RFR Docket: **1184**

Administrative Law Section -Services 2013

■ ALJ Motion Calls 159
 ■ Office Visits 2875
 ■ Service Calls 3676
■ Outreach 7
 ■ Complaint Log In's 157



Total Docket Count
831

ALJ- Administrative Law

COMMUNITY OUTREACH HIGHLIGHTS

Donyelle L. Gray, General Counsel

October 25, 2013, met with a U.S. State sponsored human rights official from Nepal, Mr. Bijay Raj Gautam, Executive Director of Informal Sector Service Centre (“INSEC”), to discuss best practices for human rights advocacy through policy making, the work of the Commission and INSEC, and the role of government-based antidiscrimination infrastructures.

September 16, 2013, presented to a delegation from The Lagos State House of Assembly Service Commission in Nigeria on the topic: *The Role of Ethics and Commissions in Governance*.

Summer of 2013, met with the Illinois Chamber of Commerce to discuss issues surrounding proposed amendments to certain provisions of the Illinois Human Rights Act.

February 2013, - attended the 2013 Midwest Public Interest Law Career Conference, which took place at Northwestern University School of Law.

Evelio Mora, Assistant General Counsel

October 2013, - attended the Meet the Public Service Organizations reception at the Loyola University Chicago School of Law, where he talked to students about the Commission and its Coles Fellowship program.

Spring 2013, - along with a Spring Coles Fellow, attended a meeting of the Cook County Commission on Human Rights, so as to broaden our Fellow’s awareness of human and civil rights work in Chicago, and also to connect with governmental entities performing work similar to the HRC’s work.

February 2013, - attended the 2013 Midwest Public Interest Law Career Conference, which took place at Northwestern University School of Law, where he provided law students with information about the Commission, and also conducted interviews of students interested in Coles Fellowship opportunities.

February 4, 2013, - attended the 2013 Midwest Public Interest Law Career Conference at Northwestern University School of Law, where he talked to law students about the Commission and interviewed candidates for the Commission’s Coles Fellowship program.

Deputy Administrative Law Judge Reva Bauch

Member of the Hearing Board of the Attorney Registration and Disciplinary Commission

Administrative Law Judge Gertrude McCarthy

President-elect of the Turner Syndrome Society of the United States

Co-program Coordinator for the Administrative Law Judges committee of the Chicago Bar Association

Administrative Law Judge Michael Robinson

September 2012 - Published an update of his chapter on Federal Subject Matter Jurisdiction for the Illinois Institute for Continuing Legal Education

April 2013 - Participated in the Illinois State Bar Association's Ask a Lawyer Day
Working with a local literacy group in Springfield, provides tutoring for GED candidates

March 2013 - Participated in the state finals of the high school mock trial competition, sponsored by the Illinois State Bar Association

Administrative Law Judge William Borah

November 27, 2013 - Trial Judge for American Bar Association National Trial Moot Court Competition

March 27, 2013 – Panelist IDPH Annual Conference Minority Health Services

March 14, 2013 – Speaker at the Illinois State Bar Association's seminar Litigating, Defending, and Preventing Employment Discrimination Cases: Practice Updates and Tips

February 22, 2013 – Participated in a panel discussion on litigation based on sexual orientation at the LGBT Civil Rights Symposium sponsored by the Chicago-Kent College of Law

January 21, 2013 – Spoke on employment law to the Will County Bar Association





Governor Edward Coles

2013 COLES FELLOWS

Aja Carr
Coles Fellow, Spring 2013
Valparaiso University School of Law

Ruth Dordoe
Coles Fellow, Spring 2013
The John Marshall Law School

Michelle Prasad
Coles Fellow, Spring 2013
Valparaiso University School of Law

Chime Asonye
Coles Fellow, Summer 2013
Northwestern University School of Law

Kinza Khan
Coles Fellow, Summer 2013
DePaul University College of Law

Brett Werenski
Coles Fellow, Summer 2013
Northwestern University School of Law

Jessica Katlin
Coles Fellow, Fall 2013
DePaul University College of Law

Mia Mayberry
Coles Fellow, Fall 2013
Valparaiso University School of Law

Nicholas Rawls
High School Volunteer Summer & Fall 2013

COLES FELLOWSHIP

PROMOTING CIVIL RIGHTS LAW PRACTICE

GOVERNOR EDWARD COLES FELLOWSHIP

The Governor Edward Coles Fellowship is named in honor of Edward Coles, (1786-1868), who served as the second Governor of Illinois from 1822 until 1826.

Decades before the Civil War, the new State of Illinois was a political battleground in the fight to end slavery. Illinois' second Governor, Edward Coles, defeated a hotly contested effort to change Free Illinois into a slave state. Although his abolitionist positions meant political suicide, Coles passionately expounded the proposition that all people are created equal, regardless of race. Governor Coles was primarily responsible for Illinois remaining a free state before the Civil War.

The Illinois Human Rights Commission Governor Edward Coles Fellowship is a year-round internship program for first (summer only), second and third year law students interested in Civil Rights and Administrative Law. Fellows assist the HRC in advancing the anti-discrimination protections and policies of the Illinois Human Rights Act. Fellows are uncompensated.

The program is modeled after traditional summer associate programs found at many major law firms. The program offers students the opportunity to work on complex civil rights litigation under the guidance of subject matter experts and gives students the opportunity to view the inner workings of the state's tribunal system.



WORK REQUIREMENTS AND APPLICATION PROCESS

Fellows are primarily responsible for assisting Administrative Law Judges and the Office of the General Counsel in performing legal research, document preparation, legal writing, record analysis, drafting of orders, and other litigation-related work. In addition, Fellows may engage in policy-related work, such as bill review, administrative rulemaking, and other legislative matters related to the HRC.

Fellows work in a small office environment within a structured assignment program that affords the Fellows an opportunity to:

- Hone their analytical, research, and legal writing skills under the supervision of experienced attorneys and Administrative Law Judges
- Gain real-life experience in a field setting at a governmental agency with the option of earning school credit
- Assist in drafting Orders of the HRC that may be reviewed by the Illinois Appellate Court and Illinois Supreme Court
- Engage in public outreach by working with local Bar Associations

Fellows are expected to work 2 to 3 days per week for 5 hours per day. Summer Fellows are expected to work 3 to 4 days per week, for up to 7 hours per day.



CASE SYNOPSIS NO. 5

James v. Ameritech Services, Inc.

(Race Discrimination)

The complainant alleged that she was denied time off for her wedding and discharged on the basis of her race. The respondent argued that the complainant was discharged because she violated the company's leave policies.

The evidence showed that the complainant had, in fact, taken more leave time than was allowed under the respondent's written policies. Moreover, the complainant was unable to show that any similarly situated employee of a different race had ever been allowed to take as much leave as she requested. Because the complainant could not prove that workers outside her race had received more favorable treatment, she failed to prove her case.





CASE STUDY NO. 1

CONTESTED MATTER:

PRESERVATION OF RIGHTS ON APPEAL

Illinois Human Rights Act, 775 ILCS § 5/8A-103

Victoria Moreira (Galvao) v. Juan Gomez

The underlying charge was sexual harassment. The Complainant, Victoria Moreira (Galvao) obtained a default on liability against the Respondent, Juan Gomez. In June of 2004, the Commission referred the matter to the Administrative Law Section for a damages hearing. The Complainant sought and received approximately eight continuances of the damages hearing. A final damages hearing date was set for September 29, 2009.

On September 29th, the Complainant's attorney appeared at the damages hearing, but the Complainant did not. The ALJ determined no good cause was shown for the Complainant's failure to appear, denied the Complainant's attorney's request for a ninth continuance, and dismissed the proceedings. However, because counsel had made appearances before the Commission on the Complainant's behalf, the ALJ permitted the Complainant's attorney to file a fee petition.

The Complainant's attorney requested nearly \$ 400,000 in fees and costs. The ALJ found this request to be unreasonable, and alternatively recommended an award of \$9,440.00 in attorney's fees and \$488.00 in costs. The ALJ issued a *Recommended Order and Decision* ("ROD") to that effect on February 16, 2010.

The Complainant filed Exceptions to the ROD. According to the Commission's procedural rules, any party wishing to submit additional evidence had to submit that request at the same the Exceptions were filed. A few weeks after filing her Exceptions, the Complainant filed an untimely *Request to Present Additional Evidence*.

The Exceptions and the untimely *Request* were presented to a Commission Panel of three Commissioners. The Panel denied the *Request* and declined further review of the ROD. The Decline Review Order was served on the parties on April 20, 2011, with service deemed complete on April 24, 2011. The Complainant's only additional recourse before the Commission was to file a timely *Petition for Rehearing En Banc* within 30 days after service of the Decline Review Order, or by May 24, 2011.

However, on June 8, 2011, the Complainant filed a *Motion for Extension of Time to File a Petition for Rehearing En Banc*. The Complainant argued that her attorneys did not receive the Decline Review Order until May 10, 2011. Without citing to any support in the law, the Complainant contended that the 30 days to file a *Petition for Rehearing En Banc* commenced from the date her attorneys claimed to have *received* the Decline Review Order. That *Motion* was submitted to a Commission Panel,

which denied the *Motion*.

On August 25, 2011, the Complainant filed a second motion which essentially was as follows: *A Motion for Extension of Time to File a Petition for Rehearing En Banc to Challenge the Commission Panel's Denial of Complainant's Motion for More Time to File a Petition for Rehearing En Banc*. Neither the Human Rights Act nor the Commission's Procedural Rules provided that an order denying a motion for more time could be reviewed *en banc*. Thus, when this *Motion* was presented to a Commission Panel, the *Motion* was denied.

On December 20, 2011, the Complainant filed a Notice of Appeal of the Commission's orders with the Illinois Appellate Court.

On appeal, the Complainant's main argument was that the Commission had failed to properly serve the Complainant with the Decline Review Order back in April 2011 because the Decline Review Order had been served by First Class U.S. Mail, and not by Registered or Certified Mail. The Complainant relied on 56 Ill. Admin. Code § 5300.1140 for this argument. However, the Commission argued this section does not apply when the Commission *declines* further review of a ROD, but only when the Commission *grants* review. Rather, 775 ILCS § 5/8A-103(E)(3) of the Human Rights Act applied to the instant case, which required that when the Commission declined review of a ROD, the Commission "shall issue a short statement" and serve the statement on the parties via first class U.S. mail. The Commission further argued that the Appellate Court lacked jurisdiction to hear the appeal because the Complainant's Notice of Appeal had been untimely filed more than 35 days after service of the Decline Review Order.

The Appellate Court agreed with the Commission. The Appellate Court determined the Commission had properly served the Complainant with the Decline Review Order in April 2011. The Appellate Court determined the "heightened" service requirements of Certified or Registered Mail only applied when the Commission accepted review of a ROD. Further, the Appellate Court stated that the only way to toll the 35 day time limit for filing the Notice of Appeal was by filing a timely *Petition for Rehearing En Banc* with Commission, which the Complainant had failed to do. Therefore, the Petition for Review, filed more than 35 days after service of the Decline Review Order, was untimely, and the Appellate Court dismissed the Complainant's appeal for lack of jurisdiction.





CASE STUDY NO. 2

CONTESTED MATTER:

AGE DISCRIMINATION AND “MINI-RIFs” (REDUCTIONS IN FORCE)

Illinois Human Rights Act, 775 ILCS § 5/2-102(A)

Corporate Business Cards, Ltd. v. William Kosmieja

William Kosmieja, Complainant, was a former typesetting assistant for the Respondent, Corporate Business Cards, Ltd. On August 23, 2002, the Respondent informed the Complainant that he was being laid off. However, the Respondent gave the Complainant the option of working part-time. The Complainant left his position rather than accept a part-time position. The Complainant filed a Complaint with the Commission in which he alleged the Respondent had unlawfully discharged him because of his age, 43, in violation of the Illinois Human Rights Act. After a public hearing, an Administrative Law Judge found in favor of the Complainant and issued a ROD to that effect.

The Respondent filed Exceptions to the ROD. The matter came before a Commission Panel, which declined further review of the ROD and adopted the ROD as the final Order of the Commission. The Respondent filed a timely appeal with the Illinois Appellate Court.

The Commission successfully defended its Order before the Appellate Court.

The Court determined that the application of the McDonnell-Douglas burden-shifting analysis was complicated by the fact that what had occurred was a Reduction in Force (“RIF”). Typically in a burden-shifting analysis, which is utilized when there is no direct evidence of discrimination, the Complainant must first establish a *prima facie* case of discrimination. A typical element of this *prima facie* case when discriminatory discharge from employment is alleged is that the discharged employee was replaced by a similarly situated employee outside the protected class.

However, the Appellate Court stated that “RIF-cases” are complicated by the fact that the discharged employee is rarely ever replaced, and the job performed by the discharged employee is typically eliminated. The Appellate Court determined this case presented a “mini-RIF” scenario because it was a single discharge case where the Complainant’s former position was not eliminated; rather his duties were “absorbed” by others outside the Complainant’s protected class. Therefore, the Appellate Court held that in a “mini-RIF” scenario, in order to establish a *prima facie* case, ...“the plaintiff does not have to show that similarly situated employees were treated better because the inference of discrimination arises from the fact that they were constructively replaced by workers outside of the protected class.”

Applying the “mini-RIF” standard, the Appellate Court determined the Complainant had made allegations in his charge consistent with a mini-RIF claim, in that he alleged he was replaced by a younger employee, who was performing the Complainant’s old duties. The Appellate Court found precedent supported the Commission’s determination that the Complainant’s layoff constituted a

termination of employment. The Court also found that the Complainant's former duties had been absorbed by a younger employee of the Respondent, which satisfied the final element of the *prima facie* case. As such, the Commission's determination that the Complainant had proven a *prima facie* case of discrimination was not against the manifest of the evidence.

The Court further determined the Commission's finding that the Respondent's articulated reason for terminating the Respondent was in fact pretext for age discrimination was not against the manifest weight of the evidence. The Court stated that ... "the employer's decision, to layoff the older, more experienced and skilled employee and to retain the younger, less skilled and experienced employee, who worked overtime, did not make any rational sense and was sufficient grounds, together with the proof of the elements of the *prima facie* case, for the Commission to infer a discriminatory motive."

Following the Appellate Court's affirmation of the Commission's Order, the Respondent filed a Petition for Leave to Appeal ("PLA") to the Illinois Supreme Court. However, on January 30, 2013, the Supreme Court denied the PLA, therefore making the Commission's Order final.





CASE STUDY NO. 3

RACE & AGE DISCRIMINATION; APPEARANCES MATTER

Illinois Human Rights Act, 775 ILCS § 5/8A-103; Illinois Supreme Court Rule 11

Winston Birdin v. Proviso Township High School District 209

Vinston Birdin, Complainant, initially filed a charge of discrimination with the Illinois Department of Human Rights, alleging the Respondent, Proviso Township High School District 209, had denied him a bonus because of his race, Black, and his age, 69, and had also wrongfully discharged him because of his age. The Respondent was represented by an attorney. The Respondent filed an untimely verified response to the Complainant's charge. After failing to show "good cause" for its failure to file a timely response, the Department filed a *Petition for Default Order* with the Commission. The Commission granted the *Petition* and referred the matter to its Administrative Law Section for assignment to an Administrative Law Judge ("ALJ"), who would preside over a damages hearing.

Although the issue of liability was determined against the Respondent, the Respondent still had the right to appear at the hearing to challenge the Complainant's asserted damages. The Respondent's attorney appeared before the ALJ and requested the damages hearing be rescheduled. The ALJ granted the request and set the new date, as requested by counsel. However, no one appeared on behalf of the Respondent at the damages hearing. The hearing went forward, and the Complainant presented his evidence without any opposition.

On April 18, 2011, the ALJ issued a *Recommended Order and Decision* ("ROD") in which he recommended the Complainant be awarded back pay in the amount of \$186,788.77, plus prejudgment interest, and attorney's fees in the amount of \$ 7,425.00 The ROD was served on the parties on April 20, 2011. Pursuant to 775 ILCS § 5/8A-103 of the Human Rights Act ("HRA"), the parties had 30 days to file Exceptions to the ROD; failure to file timely Exceptions meant the ROD would become the Order of the Commission, without any further review. Exceptions were due to be filed by May 24, 2011.

Neither party filed Exceptions to the ROD by May 24, 2011.

Over one year later, in July 2012, the Respondent filed a *Motion* by which it sought additional time to file Exceptions to the ROD, a rehearing before an ALJ, leave to present additional evidence, and a request to review the default. In the *Motion*, the Respondent contended it had learned of the default, the damages hearing, and the ROD on July 18, 2012. One day later, the Respondent filed the *Motion*. The Respondent argued that it did not have an opportunity to present a case; and that to uphold the ROD would cause it undue, irreversible harm, and would contravene fundamental principles of fairness and justice.

The Respondent's *Motion* came before a panel of three Commissioners. The Commission denied the *Motion*. To the extent the Respondent argued it did not have notice and opportunity to present its case, the Commission determined the Respondent was properly notified of all proceedings by and

through its attorney of record, in accordance with Illinois Supreme Court Rule 11, which provides that when a party is represented by an “attorney of record,” then... “*service shall be made upon the attorney.*” Further, the Commission found no evidence that the Respondent was unaware of the damages hearing, especially when its attorney of record had appeared before the ALJ and requested a new hearing date.

Having determined the Respondent had notice and opportunity to participate in the proceedings both before the Department and the Commission, there was no legal basis upon which to undo the Commission’s prior Orders. Further, the Respondent’s motion for more time to file Exceptions was denied because the motion was untimely made over one year after the Commission had served the parties with the ROD. Finally, because no further review of the ROD was available, the Commission issued a Notice of No Exceptions to the ROD, in accordance with 56 Ill. Admin. Code § 5300.910.

The Complainant subsequently petitioned the Commission for enforcement of the Commission’s Order and judgment in his favor, which the Commission granted in November 2013.





CASE STUDY NO. 4

EMPLOYMENT DISCRIMINATION BASED ON RACE; STANDARD OF REVIEW ON APPEAL

Illinois Human Rights Act, 775 ILCS § 5/2-102(A); 775 ILCS § 5/8A-104

Martin Anderson v. Batavia Park District

Martin Anderson, Complainant, was employed by Batavia Park District, Respondent, as a part-time Teen Supervisor. The Complainant filed a Complaint with the Commission in 1999, alleging the Respondent had discharged him from his position because of his race, Black, in violation of Section 2-102(A) the Illinois Human Rights Act ("HRA"). The Complainant was represented by counsel.

A public hearing on the Complaint was held in October 2002. In March 2009, the Administrative Law Judge ("ALJ") who presided over the case issued a Recommended Liability Determination ("RLD"), in which he concluded the Complainant had established race discrimination by a preponderance of the evidence. The ALJ recommended the Complainant receive just over \$ 10,000 in monetary relief, which included \$ 5,000 for emotional distress, injunctive relief, and instructed the Complainant to file his petition for attorney's fees and costs within 21 days after service of the RLD on the parties.

The Complainant's attorneys sought to be compensated at their then current hourly rate of \$ 300 per hour, which took into consideration that they were attorneys with 14 years experience. The ALJ determined the current hourly rate was appropriate, and awarded the Complainant attorney's fees in the amount of \$ 111,780.00, and \$ 155.26 in costs.

The Respondent filed Exceptions to the ROD. The matter was presented to a panel of three Commissioners for decision. The Commission adopted the ALJ's recommendation as to the compensatory damages and other relief awarded the Complainant. However, the Commission declined to adopt the ALJ's recommendation as to the attorney's fees. The Commission determined the ALJ should not have utilized the current hourly rate to calculate the attorney's fees because the majority of the work performed on the case by the Complainant's attorneys had been done when they were attorneys with 2 to 7 years experience. The Commission determined that no significant work on the matter had been performed by the attorneys between 2002 and 2009. The Commission determined the Complainant's attorneys were entitled to be compensated at the historical rate they earned at the time they performed the majority of the work, which was \$ 200 per hour. On that basis, the Commission reduced the attorney's fee award to \$ 75,520.00. The Commission then adopted the ROD, as amended, as its final Order and Decision, which issued on December 30, 2011.

The Respondent appealed the Commission's Order, and the Complainant filed a cross-appeal with the Illinois Appellate Court.

On appeal, the Respondent challenged the Commission's Order in its entirety. Among other arguments it made, the Respondent contended the Appellate Court should not apply its usual

deferential standard of review when reviewing the ALJ's factual findings due to the delay between the end of the public hearing and issuance of the RLD. The Respondent argued the ALJ had relied on a "cold record" and that due process considerations were implicated. Rather than utilize the manifest weight of the evidence standard of review, the Respondent argued the Appellate Court should review the factual findings *de novo*.

On cross-appeal, the Complainant argued the Commission had erred in reducing the attorney's fee award. The Complainant argued the Commission was required as a matter of law to adjust the fee award in order to compensate for a delay in receiving payment.

The Appellate Court affirmed the Commission's Order in its entirety.

As to the Respondent's appeal, the Appellate Court rejected the Respondent's argument that a less deferential standard of review should be applied. In the first place, the Appellate Court pointed out that it reviews the Commission's Order, and not the ALJ's ROD. Nonetheless, the Appellate Court stated that in order for it to accept the Respondent's position, the Court would have to assume the ALJ had no "meaningful recollection of anything that occurred during the evidentiary hearing." The Appellate Court found no evidence in the record to substantiate such an assumption. To the contrary, the Appellate Court noted that the record showed the ALJ had taken contemporaneous notes during the hearing; thus, the ALJ had notes available to refresh his memory. Therefore, the Court found no basis upon which to subject the Commission's Order to a heightened standard of review. Overall, the Appellate Court found that the Order as to the issue of liability was not against the manifest weight of the evidence because the opposite conclusion was not clearly apparent from the record.

Regarding the Complainant's cross-appeal, the Appellate Court rejected the Complainant's argument that it was entitled as a matter of law to an adjustment of the fee award. The Appellate Court pointed to permissive language in 775 ILCS § 5/8A-104, which provides that the Commission "may" provide various forms of relief to a prevailing party.

Then, applying the abuse of discretion standard, the Appellate Court determined the Commission did not abuse its discretion when it utilized the historical rate as opposed to the current rate when calculating the attorney fees. Commission authority demonstrated that it was appropriate to utilize the historical rate under certain circumstances. In this case, the Appellate Court found the Commission's exercise of discretion was appropriate because the Commission identified that the difference in the historical and current rates was not simply a result of economic forces. In addition, the Appellate Court found no abuse of discretion in the Commission's decision to reduce the fee amount so as to avoid a "windfall" to the attorneys, and to avoid an attorney's fee award that was disproportionately high, given the nature of the case.

In Memory Of

Commissioner Marylee V. Freeman



Served
1999 – 2013

Commissioner Marylee V. Freeman was appointed to the Commission in 1999 by former Governor George Ryan. Until her transition, she served for 14 distinguished years promoting and advancing the mission of the Illinois Human Rights Act, which is to secure for all people of the State of Illinois freedom from discrimination.

During her lengthy tenure, Commissioner Freeman presided over hundreds of matters and served as a member of the Commission's legislative committee. Commissioner Freeman executed her responsibilities with integrity and the highest of ethical values, thus greatly contributing to the Commission's duty to provide a neutral forum for resolving complaints of discrimination filed under the Illinois Human Rights Act.

Commissioner Freeman was a person of great class and grace who treated everyone who crossed her path with respect, fairness, patience, and dignity. She personified the values of the Commission and of the State that she served so dutifully.





**STATE OF ILLINOIS
ILLINOIS TORTURE INQUIRY AND RELIEF
COMMISSION
Cheryl Stark, Chairman
David C. Thomas, Executive Director**

**ILLINOIS TORTURE INQUIRY
AND
RELIEF COMMISSION**

STATE OF ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In its short history, the Illinois Torture Inquiry and Relief Commission (TIRC) has made great strides toward fulfilling its statutory mission to investigate and determine the credibility of claims by convicted persons in Illinois that their criminal convictions are based upon coerced confessions resulting from the use of torture by the police. This statute, which became effective on August 10, 2009, was passed as a result of growing public awareness of the police torture scandal involving Chicago police officer Jon Burge and detectives working under his command.

After the bill was signed into law, the lengthy process began of appointing Commissioners and their alternates. This process was not completed until July 31, 2010.

The first order of business for any state agency is to draft, publish, and adopt the rules of procedure which will govern its operation. This is also a lengthy process, in part because there are two 45 day waiting periods to allow for public comment and legislative input. The TIRC's rules, approximately 50 pages in length, became effective August 25, 2011.

While the rules were in the process of being adopted, the Executive Director of the TIRC began to identify potential claimants by reviewing the Report of the Special Assistant State's Attorney appointed by the Cook County Circuit Court to investigate the actions of Burge and his associates. In April the TIRC began receiving claims, and there are now almost 150 claims pending for investigation.

Once the TIRC began receiving claims, it started to obtain the court files and other documents necessary to conduct the investigations. Subpoenas were issued to the offices of the Cook County Circuit Court Clerk, the State's Attorney, and the Public Defender. The TIRC was able to establish an arrangement with the Clerk's office whereby that office is scanning the files into an electronic format and furnishing the Commission with the disc, thereby saving the Commission a great deal of money and storage space.

The TIRC's enabling statute requires that claimants be advised by counsel regarding their waiver of certain rights, as well as Commission procedures. The TIRC has secured and trained *pro bono* counsel to fulfill this task, once more saving a significant sum of money. The TIRC has also established an arrangement with the Department of Corrections to facilitate interviews of claimants through a video conference procedure. This again saves a great deal of money and time because it eliminates the necessity of traveling all over the state to conduct the necessary interviews.

Finally, the TIRC has also secured the *pro bono* services of attorneys from a number of the large law firms in Chicago to assist the Executive Director in conducting the investigations, once more saving the state a great deal of money.

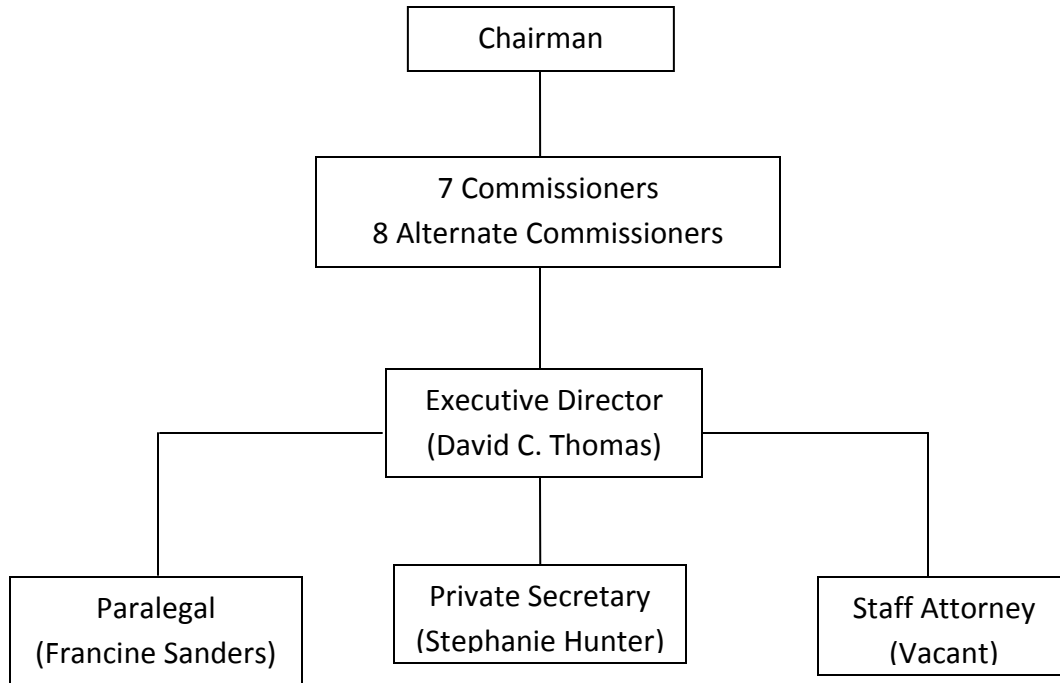
ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION BOARD MEMBERS

Commissioners	Category	Date of Appointment
Cheryl Starks (Chair)	Former Judge/Former AUSA	July 31, 2010
Leonard Cavise	Law School Professor	July 31, 2010
Charles Dahm	Public	September 20, 2013
John Mathias, Jr.	Criminal Defense Attorney	September 20, 2013
Hippolito (Paul) Roldan	Public	July 31, 2010
Marcie Thorp	Former Prosecutor	July 31, 2010
Neil Toppel	Former Public Defender	July 31, 2010
Rob Warden	Public	July 31, 2010

Alternate Commissioners	Category	Date of Appointment
Vacant	Former Judge/Former AUSA	
Craig Futterman	Law School Professor	February 25, 2013
Doris Green	Public	July 31, 2010
Vacant	Criminal Defense Attorney	
Vacant	Public	
Vacant	Former Prosecutor	
Vacant	Former Public Defender	
Vacant	Public	



ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION ORGANIZATIONAL CHART



WE ARE HERE TO SERVE YOU. PLEASE CONTACT US ANYTIME.

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**Martin R. Castro, Chairman
N. Keith Chambers, Executive Director**

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