

State of Illinois
The Illinois Human Rights Commission

the Illinois Human Rights COMMISSION

ANNUAL REPORT FISCAL YEAR 2021
(July 1, 2020-June 30, 2021)

Human Rights Commission Fiscal Year 2021 Annual Report



The act of protecting people's individuality and celebrating the diversity of our society is the North Star of my administration. I care deeply about this.

"The basis of any sound democracy is a guarantee that those least able to protect themselves, no matter their language, their religious, their socioeconomic background, have a system that steps in to do that. That's what the Human Rights Commission has long sought to be for Illinois. That mission has never been so urgent as it has been today."

"...my promise to the people of this state is that this government will use every power to fight against the insidious purveyors of hate and discrimination...both structural and personal. That's one reason why the work of the Human Rights Commission is so important to me."

The Hon. JB Pritzker, Governor, State of Illinois

December 3, 2020

2020 Human Rights Commission Civil Rights Summit



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about the commission

VISIT THE HRC WEBSITE AT:
WWW.ILLINOIS.GOV/IHRC
FOR THE LATEST UPDATES
TO THE ACT.

On December 6, 1979, the Illinois Human Rights Act 775 ILCS 5/1-101 et seq. (the "Act") was signed into law, creating the broadest civil rights coverage for the people of Illinois in the history of the State. The Act created two separate administrative agencies with distinct functions regarding enforcement of the Act: the Illinois Department of Human Rights (the "Department") to investigate charges of discrimination, and the Illinois Human Rights Commission (the "Commission") to adjudicate complaints of civil rights violations, in the areas of housing, employment, public accommodations and financial credit.

The Commission is dedicated to promoting freedom from unlawful discrimination as defined by the Act. The Act forbids discrimination based on: Age (40+); Ancestry; Arrest Record; Citizenship Status (with regard to employment); Color; Conviction Record; Disability (physical and mental); Familial Status (with respect to real estate transactions); Gender Identity; Marital Status; Military Status; National Origin; Orders of Protection; Pregnancy; Race; Religion; Retaliation; Sex; Sexual Harassment; Sexual Orientation or Unfavorable Military Discharge.

Our primary responsibility is to make impartial determinations of whether there has been unlawful discrimination as defined by the Act.

Structure

Pursuant to Article 8 of the Act, the Commission consists of seven members – a Chair and six Commissioners – who are all appointed by the Governor. No more than four members from the same political party may sit on the Commission. The Commissioners represent the diversity of the State of Illinois in all of its facets and must meet one of the following qualifications: (1) licensed to practice law in the State of Illinois; (2) have at least three years of experience as a hearing officer at the Commission; (3) have at least four years of professional experience working for or dealing with individuals or corporations affected by the Act or similar laws in other jurisdictions.

Staff Operations

Commission staff includes an Executive Director who is appointed by the Governor, a General Counsel, a Deputy General Counsel, Assistant General Counsels, a Chief Administrative Law Judge, Administrative Law Judges, and administrative operations staff. These staff are organized into the Executive Director's Office, the Administrative Law Section, the Office of the General Counsel, and a Fiscal Officer/Personnel Office. The Commission also provides administrative support to the Torture Inquiry and Relief Commission (TIRC) which has its own Executive Director and volunteer, appointed Board.

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ILLINOIS HUMAN RIGHTS COMMISSION

December 15, 2021

Honorable JB Pritzker, Governor
Members of the Illinois General Assembly
Citizens of Illinois

In June of this year, I was appointed by Governor Pritzker to serve as Chair of the Illinois Human Rights Commission, following in the footsteps of my esteemed predecessor, Chair James Ferg-Cadima. As you will read further on, the Commission works in tandem with the Department, two agencies created through the Act. The Department investigates charges of discrimination, and the Commission adjudicates complaints of civil rights violations in housing, employment, public accommodation, education and financial credit.

During these six months, I have witnessed the efforts required to serve justice in the midst of a renewed recognition and demand for racial justice and despite the longevity of a pandemic. Fortunate for the State of Illinois, just this year, Governor Pritzker created the Office of Equity, the ideals of which are aligned with the Illinois Human

TO READ BIOGRAPHICAL INFORMATION ON OUR COMMISSIONERS, VISIT THE HRC WEBSITE AT: WWW.ILLINOIS.GOV/IHRC

Rights Act and the Commission's work to adjudicate violations of the Act. After many years of working in the field of civil rights, it is my, and my fellow Commissioners' honor, to support the work of the Office of Equity as it manifests equity, diversity, and access as the cultural norm.

The Commission continues to operate under the Gubernatorial Disaster Proclamation, and various mitigation measures, which allow for work-from-home while maintaining staggered, in-office schedules; adopted emergency rules for electronic filings; and virtual Commission meetings. These steps allowed employees, complainants and respondents to remain safe without impacting the delivery of justice. To the credit of all Commission staff we have been successful in providing heartfelt and exceptional service to the public.

The main objective of the Commission is to provide a neutral forum for resolving complaints of discrimination filed under the Illinois Human Rights Act. Our primary responsibility is to make impartial determinations of whether there has been unlawful discrimination, as defined by the Act. A secondary objective is to educate and inform the public of the protected classes provided for in the Illinois Human Rights Act and the means available to the public to exercise their rights under the Act. To that end the Commission delivers monthly Lunch & Learn sessions, quarterly newsletters, and our Civil Rights Summit, in addition to an updated website. The Commissioners further support outreach efforts by participating in public education and outreach activities. This year, Commissioners and staff participated in the Illinois State Fair, met with law and college students to discuss the Illinois Human Rights Act and the Commission's work, and participated as guest speakers during the University of Illinois Fair Housing Legal Clinic on an employment and labor career panel.

It is an honor to serve the residents of the State of Illinois and on behalf of all the Commissioners and staff we look forward, and beyond the challenges presented, to continue to make a difference in 2022.

Sincerely,

A handwritten signature in cursive script that reads "Mona Noriega".

Mona Noriega
Chair

www.illinois.gov/ihrc

the year in review

Fiscal year 2021 was a **significant change** for the Commission.

Over the course of the fiscal year, the Commission navigated an almost entirely new senior management team, forty percent change among the staff at large including the first new Administrative Law Judges in more than 11 years, and four new Commissioners, while simultaneously working during an extraordinarily challenging period for all of society as a result of the COVID-19 pandemic.

In spite of the unique, arguably historic operating environment for the Commission and through a mix of in-person, remote and virtual efforts, we have not wavered from our fundamental mission to serve all those who live and work in Illinois in exercising and protecting their human and civil rights.

In an effort expedited by the pandemic, the Commission has implemented an interim electronic document filing (e-filing) system at the Commission. Now, complainants and respondents are no longer required to travel to the Commission offices or rely on the mail to file required documents to advance their claims of discrimination under the Act.

In fiscal year 2021 alone, 1,318 electronic filings were made at the Commission, up from zero before the onset of the pandemic.

A key initiative in the strategic effort to address a decade-long backlog in processing 2,558 Request for Review cases at the Commission, which was completed in August 2019, was updating the Commission's case management system. In April 2021, a more than 20-year-old, antiquated and rigid system was replaced with a **modern, stable, and highly configurable case management platform**.

GO TO PAGE 18 OF THIS REPORT FOR MORE ABOUT HRC "BY THE NUMBERS".

Supplementing its adjudicatory role, the Commission has increased the accessibility of information about the Act, the Commission, and our decisions. Both virtually and in-person, Commissioners have engaged in informational sessions about the Act and the Commission. Our Lunch and Learn series has provided valuable opportunities to inform lawyers across the State about changes in the Act and how it may impact practitioners in civil rights law. The Commission's 2020 Civil Rights Summit was conducted virtually and engaged more than 230 members of the public, legal community, civic and governmental leaders over the course of the event. The Commission established its first social media presence, transitioned to a modern contact management system for its public communications and continued its quarterly newsletter series.

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In our response to the COVID-19 pandemic, the Administrative Law Section of the Commission (ALS), implemented new processes and procedures to maintain progress on its caseload. Administrative Law Judges (ALJs) in Chicago transitioned to utilizing virtual platforms for certain routine proceedings and utilizing the Commission website www.illinois.gov/ihr, as a tool for complainants and respondents to gain valuable information on proceedings, best practices and answers to frequently asked questions. The Commission also implemented a reinvigorated onboarding and training program for its ALJs which involved a multi- day, in-person component.

The Office of the General Counsel (OGC) continued to provide for a well-managed and timely process of Requests for Review of dismissals and defaults by the Department. As with the ALS, the Commissioner panels and En Banc proceedings managed by the OGC had to be transitioned to a virtual format for the fiscal year due to the health emergency. The OGC also developed and implemented a rigorous onboarding program for our new Commissioners as well as ongoing training for both Commissioners and staff.

Throughout the COVID-19 pandemic, the Commission offices in Chicago and Springfield have remained available to the public—in person and increasingly virtually—and **our work on behalf of the people who live and work in Illinois has continued unabated.**

In spite of the pandemic, the Commission was fortunate to continue its work educating the next generation of civil rights experts through the work of its Coles Fellows program. In FY2021, the Commission hosted four law school interns in a virtual program, providing valuable experience in legal writing and in learning about civil rights law in Illinois.

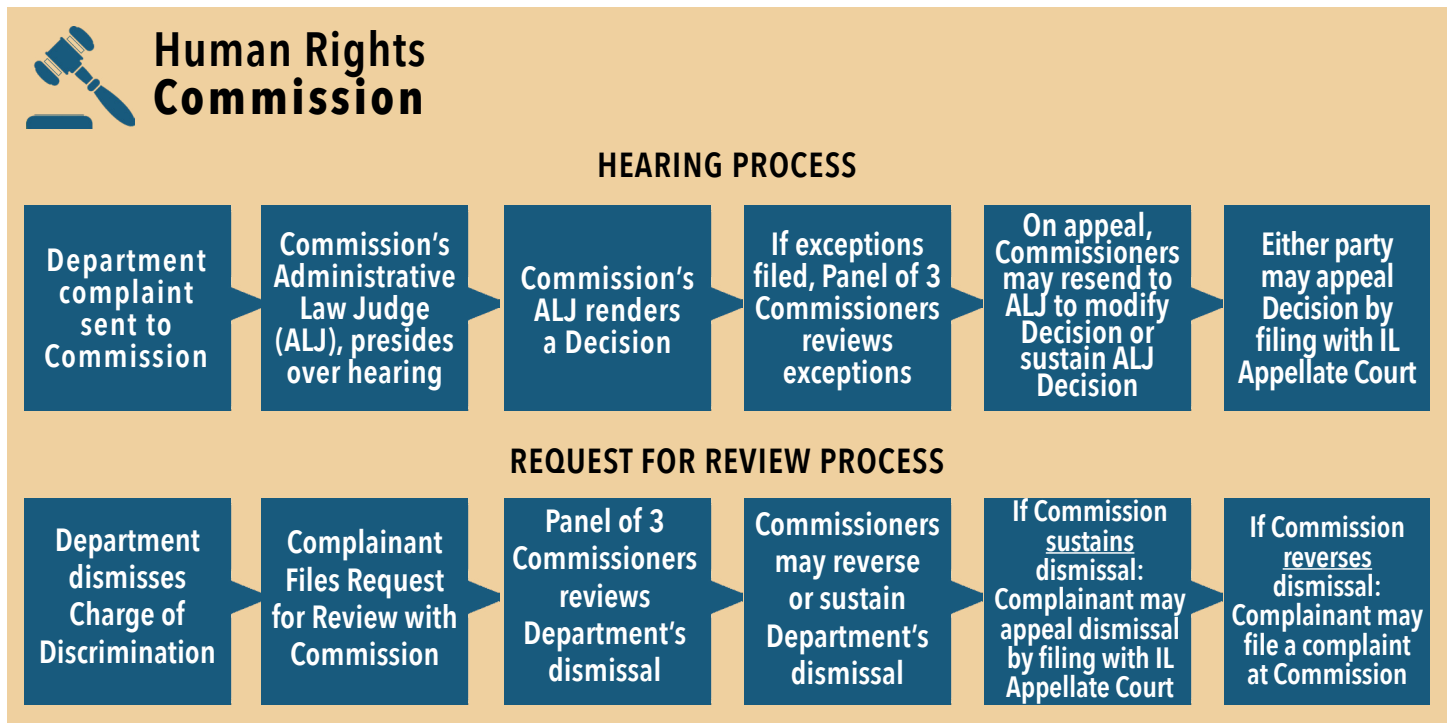
APPLICATION INFORMATION FOR
THE COLES FELLOWS PROGRAM
MAY BE FOUND AT [WWW.
ILLINOIS.GOV/IHRC](http://WWW.ILLINOIS.GOV/IHRC)

The Commission was honored to engage with the Illinois General Assembly by providing testimony in November 2020 during a joint meeting of the Senate Executive, Commerce and Economic Development and Labor Committees as well as two separate presentations in the House and Senate respectively on our FY2022 budget request.

The Commission has worked collaboratively with our partners in the Department to cross-train our respective staffs and conduct key public outreach initiatives during the fiscal year.

process overview

There are two primary processes at the Commission: The Administrative Hearing process and the Request for Review process. The graphic below provides a brief, high-level description of key steps in both processes. Our website features numerous additional details, FAQ's, and guides in multiple languages for people interested in the process or attempting to navigate our work. While they cannot provide legal advice to complainants or respondents, Commission staff also are available to provide general guidance by phone, in person or by email.



Administrative Hearing Process (Administrative Law Section)

The Illinois Department of Human Rights (IDHR) sends a complaint to the Commission

1. A Commission Administrative Law Judge (ALJ) presides over the hearing

A Commission ALJ renders a decision

2. If Exceptions are filed:
 - a. Panel of 3 Commissioners reviews exceptions
 - b. The Panel of Commissioners may resend to the ALJ to modify the decision, or
 - c. The Panel of Commissioners may sustain the ALJ's decision
 - i. Then, either party may appeal the decision by filing with the IL Appellate Court

Request for Review Process (Office of the General Counsel)

1. The Illinois Department of Human Rights (IDHR) dismisses the charge of discrimination
2. The Complainant files a Request for review with the Commission
3. Panel of 3 Commissioners reviews the Department's dismissal
4. The Panel of Commissioners may reverse or sustain the Department's dismissal
 - a. If the Commission sustains the dismissal, Complainant may appeal dismissal by filing with the IL Appellate Court
 - b. If the Commission reverses the dismissal, Complainant may file a complaint at the Commission.

case studies

As part of the work of the Commission, the judges of the ALS and the staff of the OGC, either of their own volition or as to reflect the decisions made by our Commissioner as part of their regular panel and En Banc meetings, publish various orders and decisions.

The following pages highlight a selection of cases and topics which have been addressed at the Commission in recent years.

For definitions of terms commonly used in Commission proceedings and details on any of the decisions below, including the full Commission decisions, please visit our website at www.illinois.gov/ihrc.

ADMINISTRATIVE LAW SECTION (CASE STUDY NO. 1)

CASE NAME: Annabel Hermansen and Four Boys Sushi, LLC d/b/a BLU Fish Sushi Bistro, Inc.,
CASE NUMBER: IHRC, ALS No.18-0204

PREGNANCY DISCRIMINATION

Complainant was hired as a host trainee of a sushi restaurant. Within three weeks, Respondent became aware of her pregnancy and inquired whether she could physically perform her duties. Despite assurance she could, Complainant was tardy 12 out of 17 days of her employment. Causation between her tardiness and pregnancy were presumed, but not shown. In addition, she could not pass the internal examination on the special cuisine. Complainant's tardiness caused other employees to do her prep work, and it took valuable time needed after the restaurant opened to teach her the day's specials. Respondent had a "three strike" rule, meaning three violations would result in termination, but it was never enforced or even raised during her employment. One day, Complainant told the supervisor that she wanted to go home, because she did not feel well. Her supervisor responded: "I think this job is kinda hard for you to work it because you're pregnant. I want you to find a little more comfortable job."

"A ...practice which excludes from employment ... employees because of pregnancy is a violation of the Act unless the employee's pregnancy renders her physically unable to be trained or perform the duties of the position in question. It is also a violation for an employer to discharge an employee because she becomes pregnant." 56 Ill. Admin. Code Section 5210.110 (a). Respondent did not argue that Complainant's pregnancy was undermining her performance. Complainant proved by the preponderance of the evidence that Respondent's articulated reason for her discharge from Respondent was a pretext for pregnancy discrimination. Regarding damages, Respondent proved by the preponderance of the evidence that Complainant failed to mitigate her damages by failing to reasonably search for employment, but Complainant proved by the preponderance of the evidence that she suffered emotional distress damages.

ADMINISTRATIVE LAW SECTION (CASE STUDY NO. 2)

CASE NAME: C. H. v. Andresen's Cafe

CASE NUMBER: IHRC, ALS No. 10-0571

EMPLOYMENT DISCRIMINATION BASED ON PERCEIVED DISABILITY, HIV-POSITIVE STATUS; EQUITABLE ESTOPPEL

The Complainant filed a complaint against the Respondent, a local restaurant, alleging harassment and constructive discharge based on perceived disability, HIV-positive status. Rumors began circulating among the Respondent's patrons that the Complainant was HIV-positive. The Respondent demanded the Complainant present proof of his negative status to combat the rumors, which the Respondent believed was affecting its business. The Complainant provided the Respondent with a medical report indicating his negative status.

One day the Complainant came into work and noticed patrons snickering at him. He discovered that the Respondent had posted his medical report on the Respondent's wall where all of the Respondent's patrons could view the report. The Complainant left before the end of his shift, embarrassed by the ridicule he was being subjected to by the patrons. He did not return to the workplace. He thereafter filed a charge of discrimination with the Department on September 26, 2008, alleging harassment and constructive discharge based on perceived disability.

The Respondent did not agree to extend the investigation time. Both parties must agree to extend the Department's time to investigate a charge. However, a 300-day extension was entered into the Department's system. Thereafter, the Department sent the Complainant a letter informing him that his 90-day timeframe to file a complaint with either the Commission or the circuit court would run from 7/24/10 to 10/21/10.

On July 29, 2010, the Department sent the Complainant a letter informing him that it's time to investigate had expired and he could file a complaint. On August 9, 2010, the Department discovered that the Respondent had never agreed to the extension of time. Thereafter, the Department sent the Complainant a new letter, which informed the Complainant his complaint had to be filed between 9/27/09 and 12/25/09, which dates had already passed.

On August 17, 2010, the Complainant filed his complaint with the Commission. Once before the Commission, ALJ Michael Robinson, the Respondent filed a motion to dismiss the complaint, arguing that the Commission lacked jurisdiction because the Complainant failed to file the complaint within 90 days following the expiration of the Department's time to investigate the charge. Applying the theory of equitable estoppel, the ALJ denied the motion.

Generally, equitable estoppel applies to prevent a litigant from being deprived of a right when the litigant has been misled by the other party. The timeframes in the Act are jurisdictional and usually equitable principles cannot be applied to extend the timeframes set forth in the Act. A narrow exception to this rule is applicable when a charge is untimely filed because of a party's misleading conduct. The matter subsequently proceeded to a public hearing.

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Following the public hearing, the ALJ issued a ROD in favor of the Complainant. He addressed in detail the equitable estoppel issue. He determined that the Illinois appellate courts were split on the issue of whether or not equitable tolling principles should apply to the 90-day statutory timeframe in the Act for filing complaints. ALJ Robinson determined that based on U.S. Supreme Court case law, the Complainant had a protectable property interest in his discrimination complaint. He further determined that the case law cited by the Respondent in support of its position that equitable estoppel was inapplicable to the Act did not take that property interest into consideration. ALJ Robinson found the case law in support of the applicability of equitable tolling to the 90-day timeframe to be more compelling and also suggestive of the ultimate direction of courts and of the Commission's position. Therefore, he determined that equitable estoppel applied and, after considering other factors relevant to the equitable estoppel analysis, determined the Commission had jurisdiction over the complaint.

ALJ Robinson further determined that the Complainant had proven the merits of his complaint by a preponderance of the evidence. ALJ Robinson recommended an award of \$1,650.00 in back wages, \$20,000.00 for emotional distress, reinstatement to the Complainant's position, clearing of the Complainant's personnel record, and that the Respondent cease and desist from any further discrimination.

The Respondent filed exceptions to the ROD. A panel of three Commissioners declined review, making the ROD the final order of the Commission. The Respondent filed a timely Notice of Appeal with the Illinois Appellate Court. The Respondent's primary argument concerned the applicability of equitable estoppel to the Act's 90-day timeframe for filing a complaint with the Commission. If the appellate court agreed with the Respondent that equitable estoppel did not apply, that would mean the Commission had never acquired jurisdiction over the complaint and the Commission's final order would be vacated. However, that issue never reached the Appellate Court because the Respondent-Appellant failed to timely file its opening brief. As such, the Appellate Court dismissed the appeal for want of prosecution.

Therefore, the Commission's final order in the C.H. matter stands as undisturbed Commission precedent regarding the applicability of equitable estoppel to a situation where error by the Department causes a litigant to be misled into missing a jurisdictional filing deadline under the Act.

ADMINISTRATIVE LAW SECTION (CASE STUDY NO. 3)

CASE NAME: Hobby Lobby Stores, Inc. v. Sommerville

CASE NUMBER: 2021 IL App (2d) 190362

DISCRIMINATION BASED ON GENDER IDENTITY

In a case of first impression in Illinois, the Second District Illinois Appellate Court upheld the Commission's ruling that an employer violated the Act by denying a transgender woman the use of the women's bathroom.

Meggan Sommerville, who was designated as male at birth, was hired by Hobby Lobby in July 1998. In 2007, Sommerville began transitioning from male to female, and in July 2010, she obtained a court order legally changing her name, and a new Illinois driver's license and Social Security card with her new name, identifying her as female. Hobby Lobby changed her personnel records to reflect her female identity but refused to let her use the women's bathroom at the store. In December 2013, Hobby Lobby installed a unisex bathroom at the store, still refusing to let Sommerville use the women's bathroom.

Sommerville filed a complaint with the Commission alleging that she had been discriminated against on the basis of her gender identity in violation of Articles 2 (as an employee) and 5 (as a customer) of the Act. The Commission ruled in Sommerville's favor, found that she had suffered and continued to suffer emotional distress by being forced to either use the men's bathroom or the bathrooms in nearby businesses, and awarded her \$220,000 in damages.

The Appellate Court observed that "sex" is defined by the Act as "the status of being male or female," and is thus a state of being that may be subject to change. A person's sex is not an immutable characteristic based on anatomy, birth certificates, or genetics, but rather is a legal status whose determination can be based on a number of factors, including an individual's gender identity. The Appellate Court agreed with the Commission that Sommerville's sex is "unquestionably female," based on her transition, her appearance and comportment as a woman, and the recognition of her being female by the state and federal government and Hobby Lobby itself. Thus, Hobby Lobby violated the Act by treating Sommerville differently from all other women who worked or shopped at its store.

The Appellate Court found that Hobby Lobby's installation of a unisex bathroom was "irrelevant to the main issue in this case, which is whether Hobby Lobby violated Sommerville's civil rights in denying her, but not other women, access to the women's bathroom." The Appellate Court stated that if every employee and customer could use either the unisex bathroom or the bathroom corresponding to their sex, but Sommerville's choices were limited to the unisex bathroom or a bathroom that did not correspond to her sex, Hobby Lobby was acting discriminatorily.

In response to Hobby Lobby's argument that the damages award was excessive, the Appellate Court found that Sommerville had provided evidence of substantial mental and emotional distress on a daily level for over five years and that the Commission did not abuse its discretion in determining the amount of damages. The Appellate Court then ordered the case remanded back to the Commission for a determination of any additional damages from continuing violations and attorney fees that might be due. Hobby Lobby then filed a timely Petition for Leave to Appeal with the Illinois Supreme Court. On November 24, 2021, the Illinois Supreme Court granted Hobby Lobby's Petition. On December 10, 2021, the parties filed a Joint Motion to Dismiss the Appeal Pursuant to a Private Settlement Agreement.

OFFICE OF THE GENERAL COUNSEL (CASE STUDY NO.1)

CASE NAME: Brittany Sanders v. Illinois Dept. of Corrections

CASE NUMBER: IHRC, ALS No. 21-0024

SEXUAL HARASSMENT AND HARASSMENT IN RETALIATION FOR OPPOSING DISCRIMINATION

On July 12, 2019, the Petitioner filed a charge of discrimination with the Equal Opportunity Employment Commission ("EEOC"). On September 4, 2019, the Petitioner's charge was perfected with the Department, alleging that the Illinois Department of Corrections ("IDOC"), subjected her to sexual harassment, and harassment in retaliation for her opposing unlawful discrimination, in violation of Sections 2-101(A) and 6-101(A) of the Act). On December 8, 2020 the Department dismissed the Complainant's charge for Lack of Substantial Evidence.

The Complainant alleged that she was subjected to sexual harassment by a fellow Correctional Officer (CO). The Complainant alleged that the sexual incidents by the CO were verbal in nature, comments over the phone while they were working in their respective towers at the IDOC facility, and included: commenting that seeing her sitting as she was made him want to take her right then and telling the Petitioner that he had watched another female CO urinating while working in the tower. Complainant also alleged that on one occasion she observed the fellow CO watching her through binoculars while she was urinating. The Complainant admitted that she did not tell the fellow CO to stop and only hung up the phone and avoided him. However, the Complainant stated she told other COs of the incident and one of them reported to IDOC's Management.

In sexual harassment cases, employers are automatically liable for the harassment of its managerial employees, and are only liable for the harassment of non-managerial employees, or harassment of their employees by non-employees if they were aware of the conduct and failed to take reasonable corrective measures. 775 ILCS 5/2-102(D). Here, the evidence showed that the fellow CO, was Petitioner's co-worker, and not a supervisory employee or member of management. There was no evidence that IDOC knew of the sexual harassment prior to the Complainant's internal complaint. There was no evidence that once IDOC became aware of the sexual harassment, that it failed to take reasonable corrective measures. As such, the evidence was insufficient to show IDOC subjected the Complainant to sexual harassment.

The Commission sustained the dismissal of sexual harassment count for Lack of Substantial Evidence.

OFFICE OF THE GENERAL COUNSEL (CASE STUDY NO. 2)

CASE NAME: J.S. v. IA Collaborative, LLC

CASE NUMBER: IHRC, ALS No. 21-0040

DISCRIMINATION BASED ON SEXUAL ORIENTATION

The Petitioner filed a charge of discrimination with the Department (IDHR) alleging that IA Collaborative, LLC ("Employer") discharged him based on the Petitioner's sexual orientation in violation of Section 2-102(A) of the Act. The Department dismissed the Petitioner's charge for Lack of Substantial Evidence. The Petitioner filed a request for review of the Department's determination with the Commission.

In the Petitioner's request for review, the Petitioner argued that once the Petitioner revealed his same-sex partner and sexual orientation to one of the Owners of the Employer, the Owner began to treat the Petitioner differently, became hostile, and unfairly criticized the Petitioner's work performance. During the Petitioner's employment with Employer, the Petitioner alleged that he received positive feedback from his colleagues, his immediate supervisor, and one of the Owners. Moreover, the Petitioner argued that the Supervisor indicated that a promotion for the Petitioner was on the way in the near future. The Employer proffered that the reasons for the Petitioner's termination were not based on the Petitioner's sexual orientation, but rather the Petitioner's poor job performance. The Petitioner's supervisor indicated that he had several conversations with the Petitioner to improve the Petitioner's job performance. The Petitioner alleged that the Petitioner never had any sort of discipline, coaching, or conversations about the Petitioner's alleged negative performance.

Prior to being terminated, the Petitioner was allowed to train the woman (heterosexual female) who would replace him as the Office Environment Associate with the Employer. It is uncontested that one of the Owners sent an email directly to Petitioner indicating that the Petitioner was doing an amazing job. This presents conflicting information regarding verbal correction and the decline in Petitioner's job performance. The Owner indicated that positive feedback is part of her leadership style and she gives authority to managers to address performance issues. The Employer did not provide evidence of performance reviews (written or verbal) for any other employees and did not provide any evidence of a performance review for the Petitioner. Employer does not have a formal performance improvement process and does not have a discharge or progressive discipline policy.

In request for review proceedings before the Commission, the Department is the Respondent. The Department filed a response with the Commission asking that its dismissal of the charge be sustained for lack of substantial evidence. The Department argued that there was no substantial evidence that the Petitioner performed the Petitioner's job duties satisfactorily, and the Petitioner did not provide any evidence of a similarly situated employee, outside of the Petitioner's protected class who received favorable treatment.

The Commission reviews requests for review de novo, and decides independently, based on the evidence presented, whether substantial evidence of discrimination exists. "Substantial Evidence" is evidence which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.

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In this case, the Commission found that the Petitioner provided a scintilla of evidence to support the allegation that the Petitioner was discharged based on the Petitioner's sexual orientation. The Commission found that the Department's report identified discrepancies of fact and issues of credibility between the Petitioner and the Employer. The Commission found that there are questions of fact and credibility as to the Petitioner's job performance and favorable treatment for a heterosexual employee that must be determined by a trier of fact.

Additionally, the Petitioner alleged that the Supervisor disclosed that a previously employed heterosexual female was given notice, a performance plan, and an opportunity to improve her performance prior to her termination. Thus, there was an issue of fact as to whether the same or similar disciplinary actions were taken for a similarly situated heterosexual terminated for poor work performance. Questions of credibility and questions of fact are not determined in the request for review process. Instead, an Administrative Law Judge, as a trier of fact, will determine issues of credibility and questions of fact.

Therefore, the Commission vacated the Department's dismissal of the Petitioner's charge, and directed the Department to enter a finding of Substantial Evidence consistent with the Order by the Commission and the Act.

OFFICE OF THE GENERAL COUNSEL (CASE STUDY NO. 3)

CASE NAME: Sylvenia Henderson v. Dollar Tree Stores, Inc.

CASE NUMBER: IHRC, ALS No. 21-0017

UNLAWFUL DISCRIMINATION BASED ON RACE

On September 2, 2019, the Petitioner was waiting to purchase items in the only open checkout line at Dollar Tree Stores, Inc. ("DTS"). Sales associate Gonzales opened a second check-out line and invited customers to step over. The Petitioner stated that the customer ahead of her moved to the second line, but before she could move over, another customer got into the second line ahead of her. The Petitioner stated that she tried to speak to Gonzales because she believed she should have been able to check out before the second customer, but Gonzales "gave her an attitude and stated that it was not her problem that she was not quick enough." When the Petitioner returned to the first checkout line, Gonzales told the other cashier not to serve her, and Gonzales threatened to call the police, which caused the Petitioner to leave without purchasing any items. The Petitioner did not, however, identify any non-Black, similarly situated customers who were not denied service under similar circumstances. The Commission explained that without a non-Black comparative, it could not infer that the reason for DTS's treatment of the Petitioner was based on her race. The Commission thus sustained the Department's dismissal of the Petitioner's charge.

According to Gonzales, when she opened the second check-out line, the Petitioner asked to be helped first. When Gonzales said she would have to wait, the Petitioner began arguing with another customer in line. The Petitioner next returned to the first check-out line and then left without making a purchase. Gonzales denied telling the Petitioner that she would be unable to purchase anything or refusing her service. After she left, the Petitioner called the store three or four times. Gonzales denied hanging up on her. Then the Petitioner's husband came to the store and spoke with the assistant store manager.

The Petitioner filed a charge of discrimination with the Department, alleging that DTS denied her the full and equal enjoyment of its facilities and services based on her race, Black, in violation of Section 5-102(A) of the Act.

The Act states that it is a violation for any person on the basis of unlawful discrimination to "deny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation." 775 ILCS 5-102(A). In order to establish a prima facie case of discrimination in a public place of accommodation, the Petitioner must show: 1) that she falls within a protected class, 2) that she was denied the full and equal enjoyment of the actor's facilities, goods, or services, and 3) that similarly situated customers outside the Petitioner's protected class were afforded the full use and enjoyment of the actor's facilities. *In re Walter Henry, Jr. and TCF Nat'l Bank of Illinois*, IHRC, ALS No. 10992, 2003 WL 24045369, *3 (April 28, 2003).

The Department dismissed the Petitioner's charge for lack of substantial evidence of discrimination. Upon the Petitioner's request for review, the Commission concluded that the Petitioner did not establish a prima facie case of discrimination. She offered evidence that she was within a protected class, and that she was denied the full and equal enjoyment of the store in that Gonzales would not let her take her rightful place in the second check-out line,

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Gonzales told the other cashier not to serve her, and Gonzales threatened to call the police, which caused the Petitioner to leave without purchasing any items. The Petitioner did not, however, identify any non-Black, similarly situated customers who were not denied service under similar circumstances. The Commission explained that without a non-Black comparative, it could not infer that the reason for DTS's treatment of the Petitioner was based on her race. The Commission thus upheld the Department's dismissal of the Petitioner's charge.

what's next?

Our first, most immediate priority is to continue to **maintain a safe, high-functioning work environment for the staff, Commissioners and members of the public who visit the Commission in light of the continued threat from COVID-19.** We continue to monitor developments in the fight against this disease, and we will work with our partners in State government and our union partners to take all necessary steps to protect those who work for and interact with the Commission.

We look to continue to support the exceptional work of the Commissioners in adjudicating the Requests for Review and other matters which come before them during the fiscal year. We also look to **increase the operational tempo of the work of the Commission, particularly relating to the public hearings within our Administrative Law Section.** This will increase financial and other operational pressures on the Commission.

While a small agency, the Commission has worked hard to **build and maintain a diverse and dedicated staff.** We begin the fiscal year with several critical staff vacancies and will look to fill those vacancies expeditiously and strategically augment our capabilities, as the work of the Commission demands. This work and related efforts will be supported by **continued implementation of our Diversity, Equity, Inclusion and Access (DEIA) plan.**

Building on our new case management platform, the Commission must and will strive to **implement an integrated, permanent, e-filing platform,** which allows complainants and respondents a robust system of filing and obtaining accurate details about the ongoing status of their proceedings.

In order to provide greater and highly accurate information to the public and interested elected officials, **the Commission must invest additional resources in our data analytic capabilities.** We look forward to working with the Department to appropriately integrate our systems so that those who make or respond to claims of discrimination have as seamless a technological experience across either or both of our agencies as possible.

**FOR MORE INFORMATION ON HOW TO
MAKE A FILING WITH THE COMMISSION,
GO TO: WWW.ILLINOIS.GOV/IHRC**

During the next fiscal year, the Commission anticipates relocating both its Chicago and Springfield offices. We will continue to make the Commission physically available to the public while simultaneously **building on our interim e-filing system and expanding the capabilities of our website to serve as a resource and first point of contact for those looking for information about the Act and how to exercise their rights.**

Human Rights Commission Fiscal Year 2021 Annual Report

The Commission looks forward to building capacity to further serve Illinois' increasingly diverse population, effectively and without bias or favor. This work may include both technological and other means to assist those individuals, particularly our pro se litigants and those with limited English proficiency, with understanding and interacting with the Commission. The Commission also looks forward to providing accurate and useful information to the public and elected officials through our interactions with the Office of the Governor and the Illinois General Assembly. To this end, we will work diligently with our partners in the Department of Innovation and Technology (DoIT) to build additional data analytic capabilities to support telling the story of the work of the Commission in the most accurate way possible.

by the numbers

The numbers below provide some framing for the work of the Commission in FY 2021. They do not tell the entirety of the story of the work of the Commissioners or Staff.

Description	FY 2021
Complaints filed through the Illinois Department of Human Rights	106
Complaints filed by Complainants	92
Total Cases received	500
Total Cases closed/disposed	293
Number of Electronic Filings *	1,318
Number of in-person office visits**	209
Total number of phone inquiries	3,323
Number of Lunch and Learns	10
Number of Lunch and Learn participants	680
Number of Participants in Civil Rights Summit	230
En Banc and Panel Meetings	36
Appellate Court decisions affirming Commission actions***	42 of 43

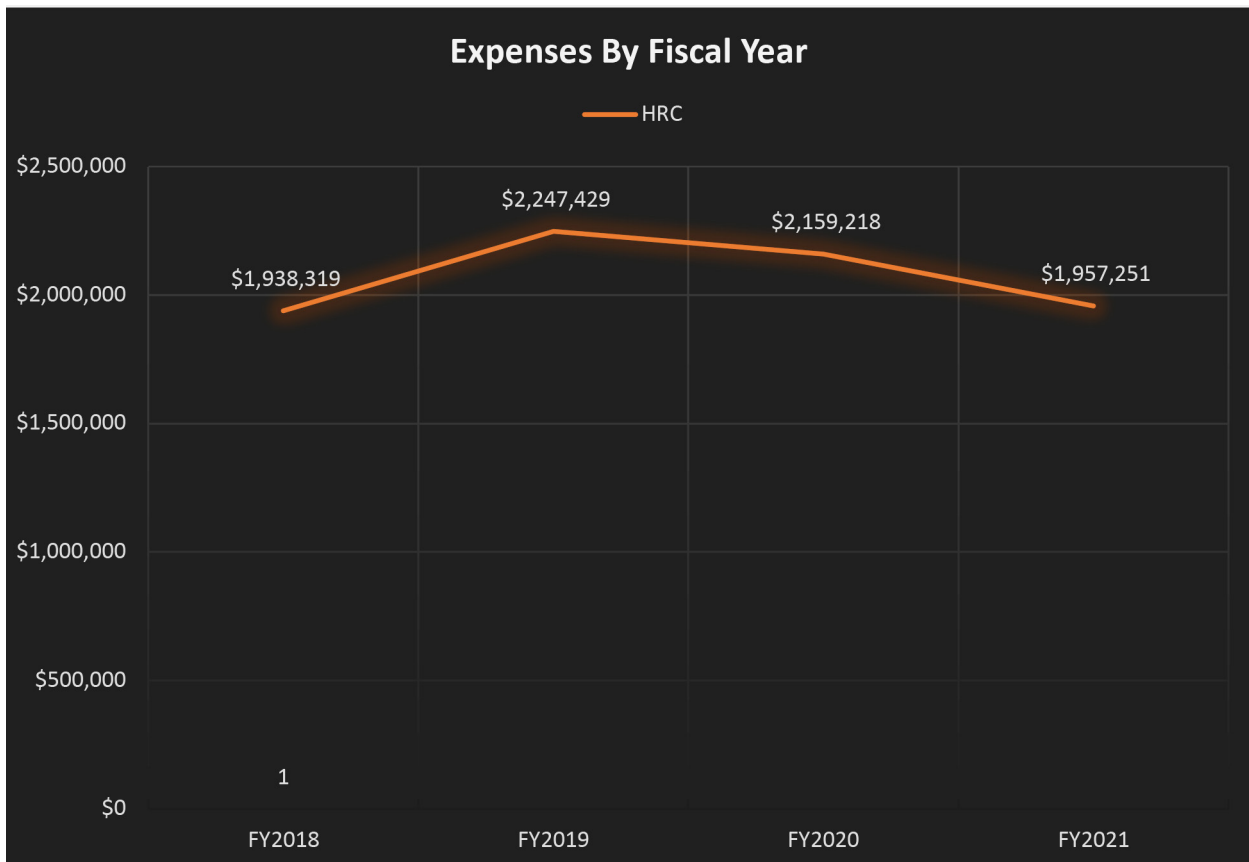
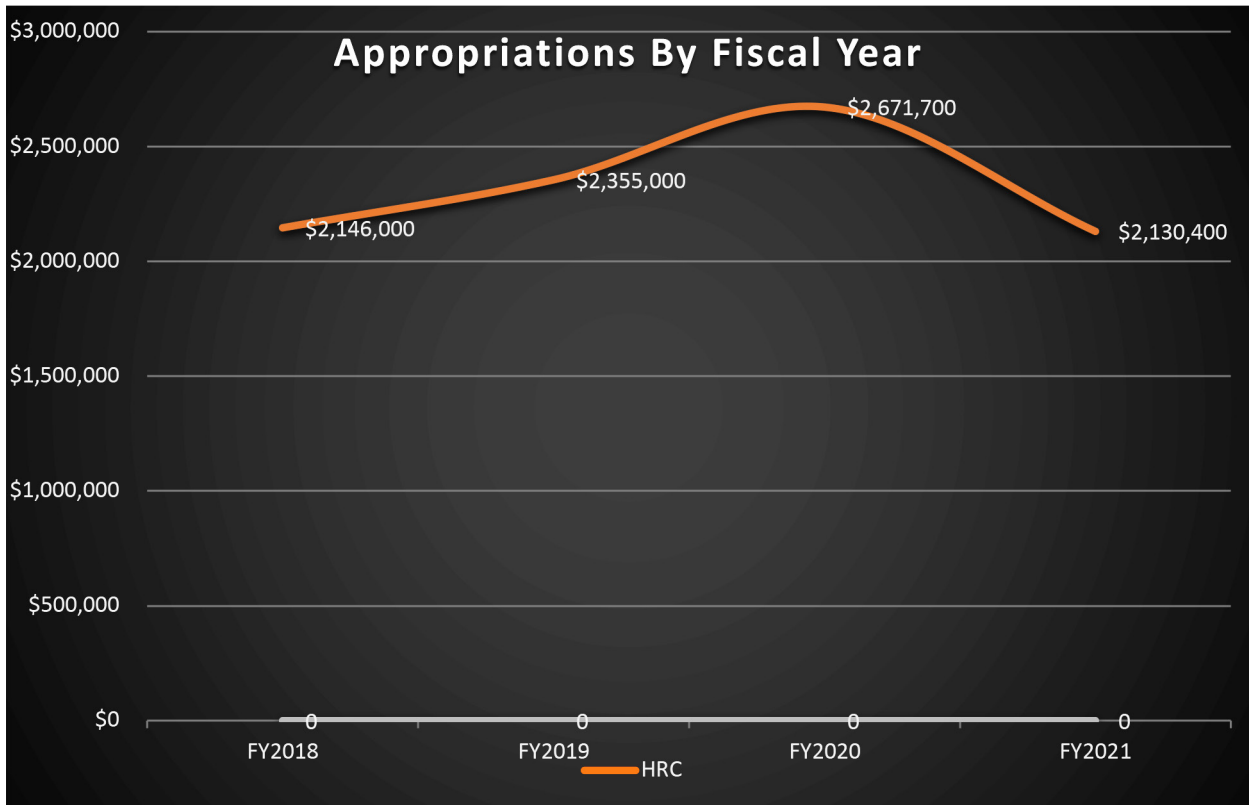
NOTES

*The Commission began accepting electronic filings in April 2020 as a response to the COVID-19 pandemic. The term "electronic filings" refers to any materials submitted through the required email account during the covered period. Multiple filings may be associated with a single matter before the Commission.

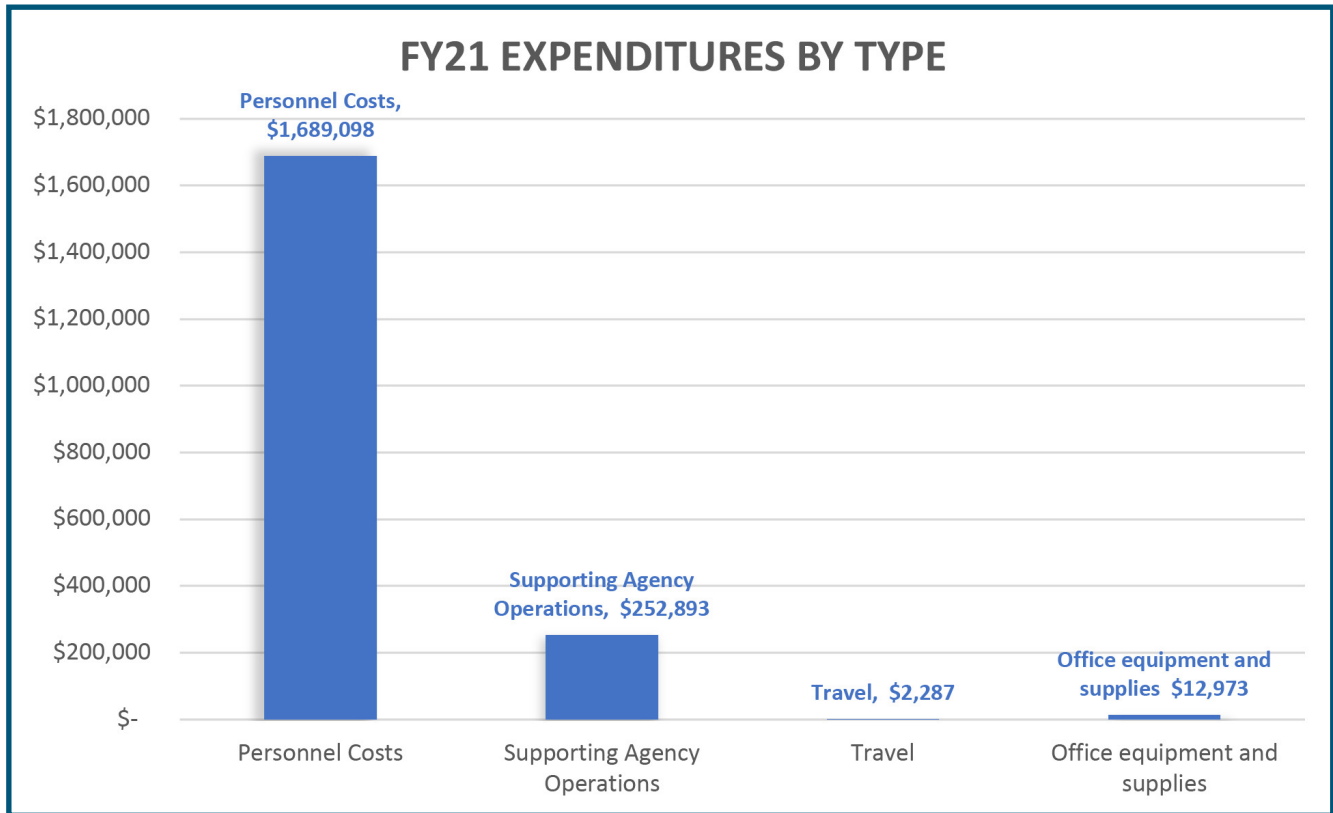
**Office visits reflect instances where individuals visited the Commission offices in Chicago or Springfield on business relating to a specific matter pending or potentially to be filed with the Commission. Multiple visits may be associated with a single matter before the Commission.

***There was one (1) voluntary remand by the Appellate Courts to the Commission during the fiscal year.

Human Rights Commission Fiscal Year 2021 Annual Report



Human Rights Commission Fiscal Year 2021 Annual Report



The financial information included on pages 19-20 of this report is for the Commission only. The Commission provides administrative support to the Torture Inquiry and Relief Commission (TIRC), their appropriations and expenditures are not reflected in these charts.

commissioners and staff*

Board of Commissioners

Mona Noriega, Chair and Commissioner*
LeDeidre S. Turner, Vice Chair and Commissioner*
Barbara R. Barreno-Paschall, Commissioner
Robert A. Cantone, Commissioner
Elizabeth A. Coulson, Commissioner*
Janice M. Glenn, Commissioner*
Stephen A. Kouri II, Commissioner*
**Pending Senate Confirmation*

Commission Staff

Tracey B. Fleming, Executive Director
Kelley M. Chube, General Counsel and Ethics Officer
Claudia P. Ortega, Chief Financial and Human Resources Officer
The Hon. Michael Robinson, Acting Chief Administrative Law Judge

The Hon. Azeema Akram, Administrative Law Judge
Shantelle Baker, Administrative Assistant I
The Hon. William Borah, Administrative Law Judge
LaNade Bridges, Private Secretary
Graciela Delgado, Administrative Assistant I
Jose Galvez, Office Administrator III
Bricia Herrera, Administrative Assistant I
Denise Hutton, Executive Assistant III
Samantha Judd, Office Specialist
Bonnie Kim, Assistant General Counsel
Evelio Mora, Assistant General Counsel
Jennifer Nolen, Assistant General Counsel
Erica Seyburn, Assistant General Counsel
Christine Welninski, Administrative Assistant I

*as of December 15, 2021

TO READ BIOGRAPHICAL INFORMATION
ON OUR COMMISSIONERS AND STAFF,
VISIT THE HRC WEBSITE AT:
WWW.ILLINOIS.GOV/IHRC

Former Commissioners and Staff.

James A. Ferg-Cadima ◇
Steven A. Andersson ◆
Jeffrey Shuck ◆
Lester G. Bovia Jr. ◀
Philip Dalmage ◀
Michael J. Evans ◀
Ewa Ewa ◀
Latosha Fleming ◀
Gail Kruger ◀
Elaine Kuntz ◀
Mariette Lindt ◀
Kerrie Maloney Laytin ◀
William Roberts ◀

◇ Former Chair and Commissioner
◆ Former Commissioner
◀ Former Staff

Illinois Torture Inquiry and Relief Commission

2021 Annual Report

Alternate/Acting Chair Kathleen Pantle

Robert Olmstead, Executive Director

STATE OF ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

HISTORY

The Illinois Torture Inquiry and Relief Commission ("TIRC") was created by statute in 2009 to address the problem of coerced confessions by the Chicago Police Department that were related to former Chicago Police Commander Jon Burge. The General Assembly was responding to the fact that a number of people convicted in that era were exonerated, and certain claims of torture that were disregarded at the time had been shown to be true.

The Torture Commission staff members investigate claims of torture and formulate a recommendation to its eight-members of unpaid volunteer Commissioners. The Torture Commission, which is not bound by the staff's recommendation, determines whether there is sufficient evidence of torture to merit judicial review of a conviction, or whether the claim should be denied. At least five affirmative votes are necessary to refer a claim to court for further judicial review; a minimum of four negative votes are necessary to dismiss it.

If the Torture Commission finds that a claim is sufficiently credible to merit judicial review, the claim is referred to the Circuit Court of Cook County where a judge is assigned to hold a hearing on the issue of whether the convicted person's confession was coerced. This enables convicted persons to get appropriate relief if they were convicted due to a confession that was obtained by torture – even if their appeals and regular post-conviction proceedings would otherwise be exhausted.

If a judge rules a confession was coerced, the judge can order a new trial, at which the prosecution must prove the defendant's guilt without use of the coerced confession.

Commissioners were first appointed in late 2010. Activities of the Torture Commission were delayed in part by organizational and funding issues. In 2012 and 2013, the Torture Commission was defunded and mothballed for approximately 9 months. Nevertheless, the Torture Commission adopted initial rules, hired staff, obtained the assistance of pro bono counsel, and began obtaining documents and reviewing claims. In late 2013, the Torture Commission hired a new Executive Director and a Staff Attorney, who began work in January 2014. Executive Director Barry Miller resigned at the end of July 2015, and Staff Attorney Rob Olmstead acted as interim executive director until his formal hiring as Executive Director on January 20, 2016.

In 2016, the legislature and governor passed Public Act 99-688, broadening the Torture Commission's jurisdiction and extending the claim period until August 10, 2019. The Act removed the requirement that claims of torture had to be related to Burge, and allowed any defendant convicted in Cook County to apply.

At the time of the Act's passage in 2016, the Torture Commission had remaining approximately 210 unadjudicated claims. However, only about 80 were believed to be within the jurisdiction of the original Act. Most of the claims (approximately 130) were non-Burge claims that had been held in abeyance while court cases confirmed the Commission's jurisdictional reach. The Torture Commission had anticipated that those claims would be subject to

Torture Inquiry & Relief Commission Fiscal Year 2021 Annual Report

summary dismissal under its rules. When, as anticipated, the Illinois Appellate Court ruled that those non-Burge claims were beyond the jurisdiction of the Torture Commission, the legislature and governor passed Public Act 99-688.

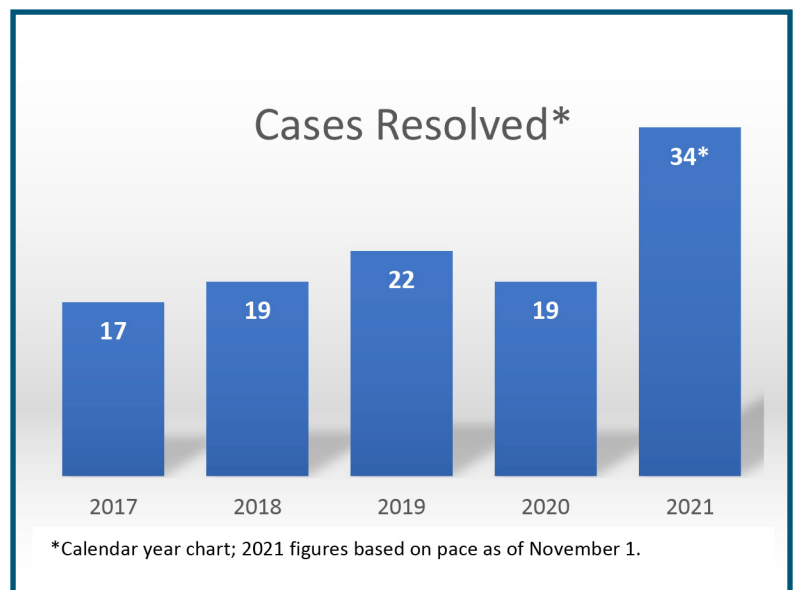
The immediate effect of Public Act 99-688 was to bring those 130 claims within the purview of the Torture Commission. The Act also re-opened the claim period, and the Torture Commission soon received an avalanche of new claims. That claim period closed August 10, 2019. As of November 2021, the Torture Commission had 494 total pending claims, a number expected to be reduced to 479 at its December meeting (press times dictated publication of this report before the meeting).

RECENT DEVELOPMENTS

To deal with the backlog of claims, the Torture Commission requested and received an increase in its FY 2021 budget. The legislature and governor increased the FY 2020 budget of \$418,900 to \$959,200. The new funds were allocated to bring aboard 5 temporary contract attorneys in December 2020 and January 2021 who began work on nothing but claims; an attorney to both investigate claims and provide support to the Torture Commission's pro bono partners (who have taken over investigation of approximately 60 claims); an attorney to both investigate claims and to supervise the contract attorneys; and a paralegal. All newly created positions were filled except the paralegal.

Much of early calendar year of 2021 was spent training new staff with standardized investigation guides and templates and increasing TIRC operations with IT efficiencies. TIRC transitioned from a physical-based server to a cloud-based server in the Spring of 2021, increasing the speed at which employees working from home because of the pandemic could access files and perform work. Legacy desktop computers in the office (many still running Windows 7) were replaced, eliminating computer lag times for staff, and increasing staff efficiency in the office as well. With the addition of the new staff and the efficiencies, case numbers began rising midway through the calendar year. By August 2021, TIRC had resolved 19 claims – two

more than in all of calendar year 2020. An additional 8 claims were prepared and ready for disposition at the October meeting, but were tabled when the Torture Commission could not reach a quorum. A make-up meeting to resolve those claims is being scheduled for December, alongside the normal December meeting, where an additional 7 claims are anticipated to be presented.



Torture Inquiry & Relief Commission Fiscal Year 2021 Annual Report

In 2021 the Torture Commission:

- Is on pace as of November 2021, to resolve by year's end 34 claims – a 79% increase over the prior calendar year.
- Joined many other state agencies in moving offices to prepare for the sale of the Thompson Center. In October, the Torture Commission moved to the state's new home at 555 W. Monroe St., Ste. 600-S, Chicago, 60661.
- Returned to in-person Torture Commission meetings in August.
- Saw the culmination in court of some previous Torture Commission referrals:
 - In May 2021, the Illinois Supreme Court reinstated an earlier Circuit Court order that granted Gerald Reed, a claimant referred by TIRC to the courts in 2012, a new trial free of his coerced confession. Reed had won that relief from Judge Thomas Gainer in 2018, but a new judge assigned to the case, Judge Thomas J. Hennelly, reversed Gainer's earlier order. The Supreme Court's order reinstated Judge Gainer's order and removed Judge Hennelly from the case. Governor J.B. Pritzker commuted Reed's sentence to time served in April 2021.
 - In July 2021, Cook County Circuit Court Judge Alfredo Maldonado named former federal prosecutor Lawrence Oliver as a Cook County Special Prosecutor to investigate the conduct of the Cook County State's Attorney's Office in its handling of the Jackie Wilson case. Wilson was referred to court by TIRC in May 2015. Judge William Hooks suppressed Wilson's coerced confession in 2018. Wilson was being retried by special prosecutors in October of 2020 when they suddenly dropped all charges after an assistant Cook County State's Attorney who had handled Wilson's original prosecution announced on the witness stand that he knew the location of a key witness that current special prosecutors had been searching for in vain. The special prosecutors informed the judge that some of the testimony of the original assistant Cook County prosecutor was not truthful. Judge Bill Hooks issued Jackie Wilson a certificate of innocence in December 2020.
 - In September 2021, the Cook County State's Attorney's Office dropped all charges against Sean Tyler, a claimant TIRC referred to court in 2020.
- Expressed its concern with a new practice by the Cook County Public Defender's Office to not represent claimants referred by TIRC to court for torture hearings. The Torture Commission expressed its disagreement with Public Defender's stance that such cases fall outside the purview of their office, and expressed its concern that, without adequate legal representation for claimants in court, TIRC referrals could become meaningless. It is not yet clear whether the courts will be appointing private attorneys to represent TIRC-referred claimants in place of the public defender.
- Resolved dozens of cases, including the following representative cases:
 - Earl Wilson: Referencing its earlier cases defining torture, the Torture Commission determined that even though no physical abuse was alleged, Wilson credibly alleged torture in the form of threats of imminent bodily harm to Wilson and his family by threatening to publicize his status as a police informant and his involvement in the murder of a feared drug lord, thereby placing him in danger of retribution. The Torture Commission referred the case to court for further proceedings.
 - Michelle Clopton: After investigating Ms. Clopton's claims, the Torture Commission determined there was not enough credible evidence of torture to refer her claim to court for a hearing. However, the Torture Commission did find credible certain allegations of coercion not rising to the level of torture in the form

Torture Inquiry & Relief Commission Fiscal Year 2021 Annual Report

of Miranda violations, long detention while pregnant and instructions from police not to mention their conduct to prosecutors. Using its statutory authority to do so, the Torture Commission made an “informal referral” of Ms. Clopton’s claim to the Cook County State’s Attorney’s Office’s Conviction Integrity Unit and recommended it consider whether any relief from its office was warranted.

- Armando Gutierrez: Commissioners found not credible Mr. Gutierrez’ claim that he had been physically abused by a detective who had interrogated Mr. Gutierrez about a murder and aggravated battery. The Torture Commission’s investigation showed that Mr. Gutierrez had not made such claims at his pre-trial proceedings, and interviews with his past attorneys could not support his claims. The Torture Commission denied his claim.

TIRC has referred a total of 39 claims to court for further proceedings and denied 109 claims. Of the 39 claimants that TIRC has referred to court for further proceedings:

- 3 had torture hearings and had their confessions suppressed and charges against them dropped,
- 1 had a torture hearing and had his confession suppressed and will be retried without introduction of the coerced confession,
- 5 had charges dropped either before or during their hearing, or before a hearing ruling was issued,
- 8 reached a plea agreement to shorten their sentences,
- 1 had a torture hearing that determined his confession was admissible and did not appeal that ruling,
- 3 had torture hearings that determined their confessions are admissible and are currently appealing those rulings,
- 16 are still awaiting their torture hearings,
- 1 claimant died in prison while awaiting his torture hearing, and
- 1 claimant was denied a torture hearing after a Circuit Court judge ruled TIRC did not have jurisdiction to refer the claim to court; he is appealing that ruling.

Of the eight claimants who had their charges dropped, five have received Certificates of Innocence. The Torture Commission denied another claimant’s torture allegation, but only because it lost jurisdiction when charges against the claimant were dropped after DNA tests that TIRC had sought implicated another suspect in a decades-old murder. That claimant also went on to receive a Certificate of Innocence, and the new suspect was charged and pled guilty, receiving a 50-year prison sentence.

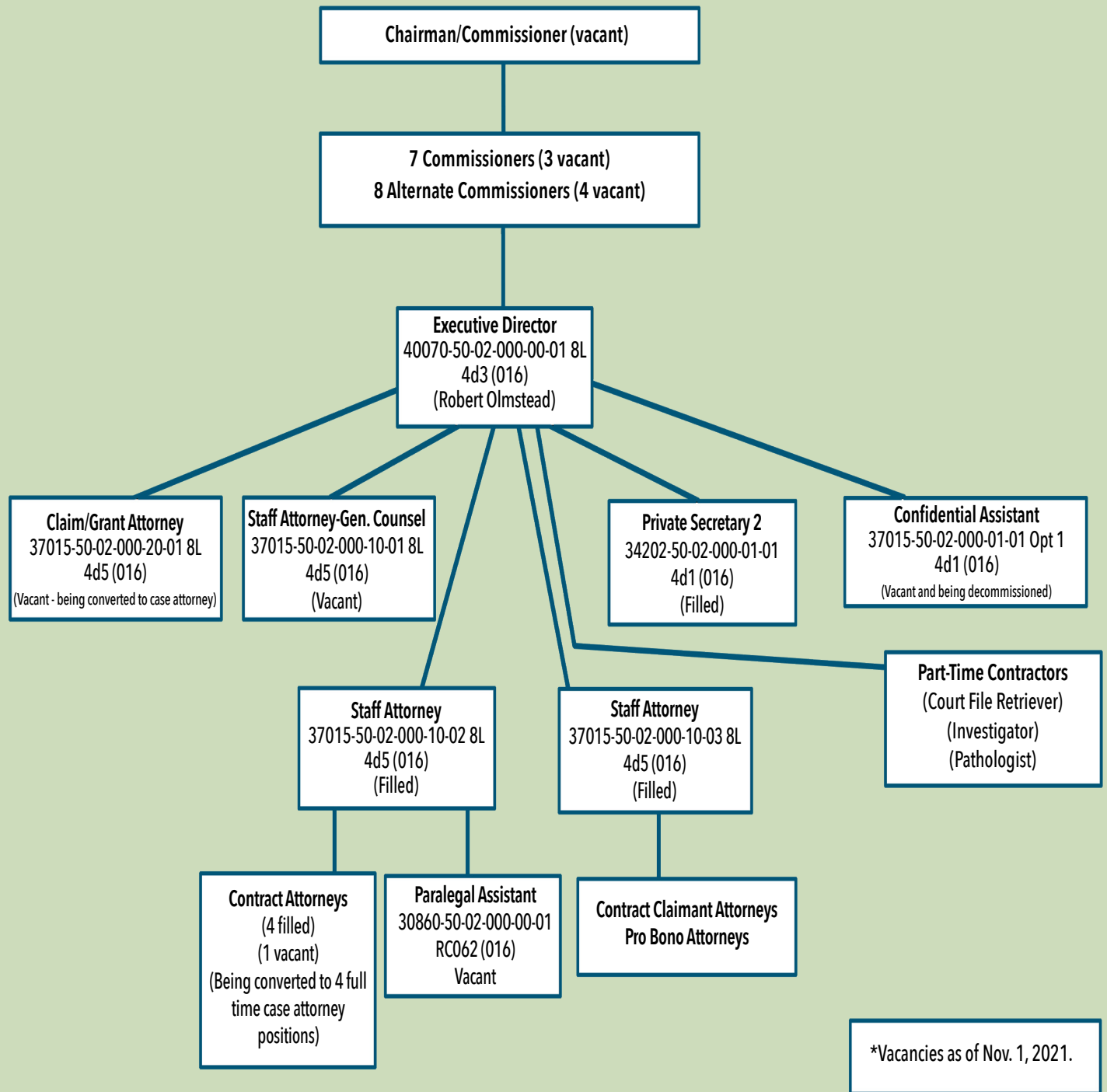
Torture Inquiry & Relief Commission Fiscal Year 2021 Annual Report

LOOKING FORWARD

Despite the increased case dispositions in 2021, much more can and will be done to increase TIRC's disposition rate in the coming year. Although most newly created positions were filled in 2021, other existing positions were either not filled or filled and vacated again, leaving potential resources untapped. In 2021, the Torture Commission is focused on maximizing budget utilization through eliminating position vacancies. One lesson of 2021 was that the temporary attorneys hired, while helpful, had significant learning curves and would not reduce the backlog overnight. The Torture Commission, therefore, is seeking to make the positions permanent and has begun the required drafting to obtain such approval. With full staff utilization in 2022, the Torture Commission expects case disposition rates to grow further and is setting a goal of resolving 50-75 cases in calendar year 2022.

The Torture Commission does not anticipate that its work in 2021 and 2022 will require additional funding for other agencies.

Illinois Torture Inquiry and Relief Commission Organizational Chart



Illinois Torture Inquiry and Relief Commission Commissioners*

Commissioner Positions	Filled by
Chair (Former Circuit Court Judge)	(vacant)
Former Prosecuting Attorney	Steven Block
Former Public Defender	(vacant)
Practicing Defense Attorney	(vacant)
Law Professor	Robert Loeb
Public	Steven Thurston
Public	Tim Touhy
Public	(vacant)

Alternate Commissioner Positions	Filled by
Chair (Former Circuit Court Judge)	Kathleen Pantle
Former Prosecuting Attorney	(vacant)
Former Public Defender	Liliana Dago
Practicing Defense Attorney	(vacant)
Law Professor	Vanessa del Valle
Public	Autry Phillip
Public	(vacant)
Public	(vacant)

*All TIRC Commissioners are unpaid volunteers. Vacancies are as of November 1, 2021.

Contact Us

Illinois Torture Inquiry and Relief Commission

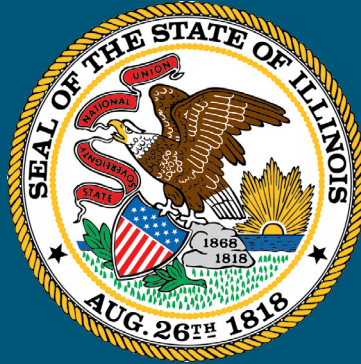
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Chicago, IL 60661

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Acting/Alternate Chair: Kathleen Pantle

Executive Director: Rob Olmstead



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TDD (217) 557-1500

REQUESTS FOR REASONABLE ACCOMMODATIONS: Services at the Illinois Human Rights Commission are accessible to and usable by persons with disabilities in compliance with the Illinois Human Rights Act. A person with a disability needing an accommodation to participate in any Commission activities should contact the Commission Disability Access Coordinator at 312-814-6269 or (TTY) 217-557-1500 or at HRC.NEWS@illinois.gov. The Commission requires five (5) business days to review any reasonable accommodation.