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Annual Report

2001

in order to form a more perfect Union, to

establish Justice, insure domestic Tranquility, provide

defense, promote the general Welfare, and secure the Blessings of Liberty

to ourselves and our Posterity, do ordain and establish this

Constitution for the United States of America.



ILLINOIS
HUMAN RIGHTS
▲ COMMISSION



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**



Honorable George H. Ryan
Members of the General Assembly, and
Citizens of Illinois

The Illinois Human Rights Commission hereby submits to you its
Annual Report for Fiscal Year 2001.

During this year, the Human Rights Commission rededicated itself to
its original mission: to give fair and impartial hearing to those who
may have suffered discrimination or been accused of discrimination.

The Commission resolved to continue to provide a neutral forum for
resolving complaints of discrimination, and to do its best to resolve
them as efficiently and quickly as due process and fairness allow.

It is vital to provide professional, competent, and considerate service
to everyone who comes before the Commission, whether for informa-
tion or adjudication of a complaint. We at the Commission look
forward to continuing our service to the people of the State of Illinois
and fulfilling the Commission's motto: "Serving the public with
fairness; working together with pride."

Members, Illinois Human Rights Commission

**“These men ask for just the same thing—
fairness and fairness only.
This, so far as in my power,
they, and all others shall have.”**

**Abraham Lincoln, U.S. President
From a letter dated May 30, 1860, to Leonard Swett**

Like Abraham Lincoln, those who comprise the Illinois Human Rights Commission understand that all people want to be treated with fairness. Complainant or respondent, individual or corporation, all have the right to be heard impartially and to have their dispute resolved fairly.

Unprecedented staff turnover in fiscal year 2000 left the Human Rights Commission searching for stability and focus. By November 2001, five new administrative law judges had been hired, each possessing solid trial law backgrounds, mediation training, and the knowledge and skills necessary to resolve complaints successfully. The Commission’s general counsel staff was also new during fiscal year 2001.

Staff turnover brought to the forefront a longstanding anomaly in the Human Rights Act that had contributed to significant delays in the completion of matters before the Administrative Law Section. If an administrative law judge left the Commission’s employ after hearing the merits of a case but before issuing a decision, a provision in the Act precluded another judge from finishing the case unless another full hearing was convened. The Commission sought a legislative change to make the Act more consistent with other administrative hearing acts’ “departure before completion” provisions. House Bill 1175 was passed by the House of Representatives on May 23, 2001 and the Senate concurred on May 30, 2001. Although the amendment to the Human Rights Act did not become effective until fiscal year 2002, this bill was a significant change that benefitted all litigants before the Commission.

In addition, the Human Rights Commission created a course of action to enhance its compliance with statewide initiatives regarding long range planning, performance review, and other mandated reporting requirements. This plan of action will aid the Commission in its efforts to continue to improve performance and service.

About the Commission

Mission Statement

The Illinois Human Rights Commission is dedicated to promoting freedom from unlawful discrimination as defined by the Illinois Human Rights Act. The Act forbids discrimination based on sex, age, race, color, religion, arrest record, marital status, handicap, citizenship status, national origin, ancestry, unfavorable military discharge, retaliation, and sexual harassment. The Act forbids discrimination in employment, real estate transactions, higher education, public accommodations and access to financial credit.

Our mission 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 Illinois Human Rights Act. We are also responsible for furnishing information to the public about the Act and the Commission.

To fulfill our mission, we strive to provide professional, competent, and considerate service to everyone who seeks information from us or who has a case before the Commission.

The Creation of the Human Rights Commission

The Human Rights Commission was created December 6, 1979, with the passage of the Illinois Human Rights Act. The Act, the most comprehensive civil rights legislation in state history, created a two-part enforcement procedure: 1) a Department of Human Rights to investigate charges, and 2) a Human Rights Commission to adjudicate complaints of unlawful discrimination in employment, real property transactions, access to financial credit and public accommodations.

The Role of the Human Rights Commission

The Department of Human Rights investigates claims of unlawful discrimination brought under the Act. The Human Rights Commission adjudicates contested charges of unlawful discrimination, following the Department's investigation, when adjudication is warranted according to the Act. The spirit of the Human Rights Act encourages resolution of claims through the least litigious means. Claims are resolved at many different stages of the investigation and adjudication process.

The Commission acts as a neutral forum for the adjudication of contested claims. It makes findings of fact and law through administrative due process.

How a Claim of Discrimination Is Adjudicated Under the Act

A person may initiate a claim of discrimination by filing a Charge of Discrimination with the Department of Human Rights. The alleged violator is given notice of the charge and the Department conducts an investigation of the allegations. At the conclusion of its investigation, the Department serves the parties with its finding. The Department's finding may be one of the following:

- (1) The claim is dismissed because it does not raise a claim falling under the Human Rights Act, or
- (2) The claim is dismissed because the Department finds that there is not substantial evidence that a violation of the Act has occurred, or
- (3) The Department finds that there is substantial evidence that a violation of the Act has occurred.



**A hearing
before an
administrative
law judge
is similar to
a court trial.**

When the Department finds that there is substantial evidence that a violation of the Act has occurred, it files a complaint with the Human Rights Commission. This begins the Commission's adjudicative process. If the Department issues no finding of any kind within 365 days of the filing of a charge, the complainant may file a complaint with the Commission, without the Department's finding.

The Commission, through appointed administrative law judges, conducts administrative hearings. There are rules of evidence and witnesses give sworn testimony. Following such a hearing, the presiding administrative law judge issues a recommended order and decision. A hearing before an administrative law judge is similar to a court trial.

The Commission may hear arguments taking exception to the decision of an administrative law judge. The Commission hears arguments of law, based on the record of the hearing, and issues an order similar to an appellate court decision. It is important to note that, notwithstanding the similarities, administrative tribunals are distinct from judicial tribunals and function differently in many ways.

The Commission hears exceptions to recommended orders by meeting in panels of three Commissioners. A party may petition the entire Commission of thirteen members to rehear any order made by a panel. The Commission grants such rehearings at its discretion, usually when it believes it is necessary to create uniformity between its panels or to clarify an important point of law. Additionally, the Commission reviews and approves or rejects the terms of settlements between parties submitted by the Department of Human Rights.

The Commissioners

The Commission is made up of thirteen Commissioners, appointed by the Governor with the advice and consent of the Illinois Senate. Staff include an executive director, a general counsel, an assistant general counsel, a chief administrative law judge, administrative law judges, and administrative operations staff.

	<u>Appointment</u>	<u>Expiration</u>
<i>Chairman</i>		
Rose M. Jennings Chicago	2/1/95	1/20/03
Eva Betka Palatine	2/8/99	1/20/03
Dominic DiFrisco Chicago	2/8/99	1/20/03
Marylee V. Freeman Chicago	3/31/99	1/17/05
Mary Jeanne Hallstrom Evanston	9/18/91	1/20/03
Sakhawat Hussain, M.D. Frankfort	5/4/94	1/17/05
Yvette Kanter Highland Park	5/12/98	1/17/05
Spencer Leak, Jr. Chicago	1/16/01	1/17/05
Girvena M. LeBlanc Olympia Fields	2/8/99	1/20/03
James Maloof Peoria	5/21/97	1/17/05
Arabel Alva Rosales Chicago	1/10/99	1/17/05
Daniel C. Sprehe Chicago	2/8/99	1/20/03
Isiah Thomas Calumet Park	6/20/94	1/20/03
Leroy Jordan* Springfield	7/24/00	1/15/01

* Mr. Jordan was appointed to serve as Commissioner for the remainder of the term left by the late Reverend Dr. Rudolph S. Shoultz of Springfield.

Administrative Law



The Administrative Law Section of the Illinois Human Rights Commission is the trial-level division of the Commission, charged with the responsibility of conducting the pre-trial and public hearing phase of complaints of discrimination. This mandate is carried out by the Commission staff of administrative law judges, all licensed attorneys located in Chicago and Springfield, who conduct hearings throughout the state.



Preparing a Case for Hearing

Because of the complex nature of the relevant law, substantial preparation by the parties, including discovery proceedings and motion practice, is generally necessary before a hearing on the merits of the case. As a consequence, all parties are encouraged to obtain legal representation, and at public hearings, both parties are usually represented by legal counsel. In the Chicago office, there is an oral motion practice for cases in which the site of the alleged discrimination is located in Cook County. Having an oral motion call greatly expedites the pre-hearing phase of litigation before the Commission because it often produces immediate responses from the opponent of a motion as well as prompt rulings from the administrative law judge hearing the motion.

Motion practice for cases located outside Cook County is generally conducted by telephone conference calls or by mail. There is no set oral motion practice in the Springfield office due to the greater geographic area covered. It would be inefficient to require litigants to travel to the Springfield office for routine motions; instead, such are frequently decided on the basis of the written motions and written responses. Parties may at any time request an oral argument in person or by conference call on a motion in the Springfield office.

As with any litigation, it can take parties months to years to complete needed discovery and engage in pretrial motions.

Settlements

Pre-hearing settlement conferences are offered and used extensively at various stages in the resolution of complaints. As a consequence, settlements have been reached after the filing of the respondent's answer, after rulings by the administrative law judge on crucial motions, after completion of discovery, and even during or after preparation of the joint pre-hearing memorandum. The parties in some cases settle after the public hearing has begun or even after the hearing judge has issued a Recommended Liability Determination.

During Fiscal Year 2001, the Administrative Law Section has continued the general practice of having an administrative law judge who will not preside over the public hearing conduct a voluntary settlement conference with the parties and their attorneys immediately before the scheduled public hearing. The Administrative Law Section encourages the

parties to participate in a settlement conference because it has proven to be a successful tool for final case resolution. "Eve of trial" settlement conferences result in settlements in a significant percentage of cases pending before the Administrative Law Section.

Parties who choose to settle can formalize the terms of their agreement in two ways. First, the most common, parties can settle among themselves without presenting the settlement to the Commission and without making the terms public. Second, parties can submit the settlement agreement to the Commission for approval. These settlements will be discussed in the "Commission Review" section below.

Public Hearings

In accordance with the Act, public hearings are held at a location that is within 100 miles of the place at which the civil rights violation is alleged to have occurred. As a consequence, the Commission's administrative law judges traveled in the course of the year to sites throughout the state as necessary.

The public hearings conducted by administrative law judges at the Commission are very similar to circuit court trials; they are formal and conducted in accordance with the rules of evidence used in the courts of Illinois. These hearings typically last two to three days. They may, however, take less than a half a day at one extreme or several weeks at the other.

Partly as a result of the four-year "lump-sum" funding and partly as a result of recently introduced administrative efficiencies, litigants before the Commission's Administrative Law Section are now able to schedule a final public hearing on the merits of their cases at times of the parties' choosing.



**...all parties
are encouraged
to obtain legal
representation...**

Decisions

After the transcripts of a public hearing have been received from the court reporter and post-hearing briefs have been submitted by all parties, if desired, the administrative law judge who heard the case prepares a written recommended decision. This includes findings of fact, conclusions of law, a proposed disposition, and a discussion of the applicable statutory provisions, court and Commission decisions, and other relevant authority. If the recommendation is in favor of the complainant, the administrative law judge will recommend appropriate damages. This may include an award of reasonable attorney's fees and costs. In some cases where the decision is in favor of the respondent, the administrative law judge may also recommend fees and costs in that prevailing party's favor.

Parties have the opportunity to file written exceptions to the administrative law judges' recommended orders. If no timely exceptions are filed, the administrative law judge's Recommended Order and Decision becomes the Order and Decision of the Commission. If exceptions are filed, the first level of review of the decision is invoked, and the case becomes a matter for Commission consideration. A panel of three Commissioners has the option of reviewing or declining to review the Recommended Order and Decision. If the panel declines review, the Recommended Order and Decision becomes the Order and Decision of the Commission. If the panel decides to review the Recommended Order and Decision, the panel may adopt, reverse, remand for further hearing, or modify a recommended decision. A party dissatisfied with a panel's decision has the right to seek rehearing before the full Commission.

During Fiscal Year 2001, the Administrative Law Section achieved a balance between cases received and cases disposed of at its level. At the beginning of the year, there were 949 cases pending at the Commission; at the end of Fiscal Year 2001, there were 769 cases. These numbers indicate that cases are moving through the adjudication and administrative review levels of resolution at a reasonable rate.

The number of cases filed with the Commission in Fiscal Year 2001 was down over the previous year. In FY 2000, 415 cases were filed; FY 2001 saw 262 new cases filed at the Commission.

During Fiscal Year 2001, 463 cases were completed at the Administrative Law Section level. Of these, 124 were closed through the issuance of Recommended Orders and Decisions, written opinions authored by administrative law judges. A "ROD" closure occurs either after hearing on the merits of the case or as a result of a dispositive motion. It is important to note that a Recommended Order and Decision only completes a case at the Administrative Law Section level. Cases only become final decisions as a result of Commission action.

The Administrative Law Section closed 295 cases by Final Order and Decision. These cases were voluntarily dismissed by agreement of the parties, usually as a result of the parties reaching a settlement. The Administrative Law Section judges actively facilitate settlement of cases, which is a less costly resolution of the matter than proceeding to hearing on the merits.

Commission Review

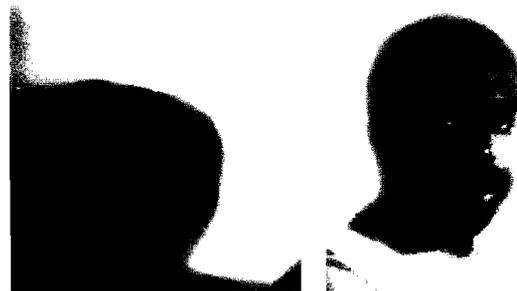
Members of the Human Rights Commission have adjudicative authority over claims and are responsible for the administration of the Commission by and through Commission staff.

In keeping with the spirit of the Act, most cases are resolved without review by the Commissioners. Following the issuance of a Recommended Order and Decision by the Administrative Law Section, parties may file exceptions to that order. If no exceptions are filed, the Recommended Order and Decision of the administrative law judge is adopted by the Commission as its final order. These cases become final due to "No Exceptions".

When exceptions are filed, the Commission determines whether or not to grant review of the case. The Commission takes review of cases based on its statutory discretion and the nature of the claims presented by the parties. For example, the Commission will not disturb an administrative law judge's findings of fact unless those findings are contrary to the manifest weight of the evidence presented to the ALJ at the hearing. A petition of exceptions which seeks review to introduce new evidence not raised at the public hearing will not be granted. These cases are closed because the Commission has "Declined Review".

Parties also sometimes reach settlement between themselves even after hearing of the case.

The Commission may take review of any case where one party or another has filed exceptions. In normal practice, only the most contentious or complex cases require the Commission review through a panel, or en banc. In these cases, the full Commission issues an Order and Decision. These cases have the most precedential value in interpreting the Human Rights Act. Significant orders of the Commission for this fiscal year are summarized in the next section of this report.



These numbers indicate that cases are moving through the adjudication and administrative review levels of resolution at a reasonable rate.

Year in Review: 2001

NOTE: Throughout this outline: "Act" refers to the Illinois Human Rights Act, 775 ILCS 5/1-101, et seq.; "ALJ" refers to an Administrative Law Judge of the Commission; "Commission" refers to the Illinois Human Rights Commission; "Department" refers to the Illinois Department of Human Rights.

I. Amendments to the Illinois Human Rights Act

A. Gilchrist Legislative Response

The uncertainty surrounding the process for substituting an administrative law judge if the one originally appointed to preside at a public hearing became unavailable to submit a recommended order was brought to a head by the Appellate Court during late fiscal year 2000 when it issued the opinion *Mary Beth Gilchrist v. The Human Rights Commission et al.*, 245 Ill. Dec. 484 (1st Dist. March 27, 2000.) The Court held that the Act precluded a successor ALJ from deciding the case, even if the parties agreed to such a course of action.

In response, the Commission sought an amendment to the Act that would more easily facilitate a smooth transition in such situations. House Bill 1175 was passed May 23, 2001, with Senate concurrence coming on May 30, 2001.

II. Amendments to the Procedural Rules

There were no amendments to the Commission's procedural rules in 2001.

III. Illinois Supreme Court and Appellate Court Decisions

A. Illinois Supreme Court

The Court issued no opinions in 2001 on cases brought originally at the Commission.

B. Illinois Appellate Court

1. Published Opinions

Chicago Housing Authority v. Human Rights Commission (Norman Lasko), 325 Ill.App.3d 1115, 759 N.E.2d 37, 259 Ill.Dec. 557 (1st Dist. 2001) – The Court approved the use of the so-called "mixed-motive" method of proof in discrimination cases and declared that the complainant need not plead or otherwise give notice that this approach would be employed. (Rehearing denied, November 29, 2001.)

Lalvani v. Human Rights Comm'n (Cook County Hospital), 324 Ill.App.3d 774, 755 N.E.2d 51, 257 Ill.Dec. 949 (1st Dist. 2001) – Where the decision-maker in a “failure to promote” claim based on age, race and national origin discrimination is a committee, it must be shown that a working majority of the committee was driven by the unlawful factor to reach its decision for there to be a finding of liability. Lalvani at 789. (Leave to Appeal denied, 2001 Ill. LEXIS 1702 (December 5, 2001).)

Matson v. Department of Human Rights, 322 Ill.App.3d 932, 750 N.E.2d 1273, 255 Ill.Dec. 888 (2nd Dist. 2001) – The Court held that the finding of “no substantial evidence” to some, but not all, of the counts in the charge of discrimination filed with the Department of Human Rights is not appealable to the Appellate Court until the remaining counts for which there was “substantial evidence” reach disposition at the Commission unless certain findings required by Supreme Court Rule 304 are made by the Department’s Chief Legal Counsel. (Leave to Appeal denied, 196 Ill.2d 545 (2001).)

Welch v. Illinois Supreme Court, 322 Ill.App.3d 345, 751 N.E.2d 1187, 256 Ill.Dec. 350 (3rd Dist. 2001) – This case reaffirmed that the exclusive remedy for civil rights violations in Illinois is an action before the Illinois Human Rights Commission, including situations where alleged discriminatory practices are inextricably interwoven with other tort claims. Welch at 355.

2. Rule 23 (Unpublished) Opinions; Leave to Appeal to the Illinois Supreme Court Denied (This list may not be exhaustive)

Bowers v. Human Rights Comm'n, 195 Ill.2d 548, 754 N.E.2d 1284, 257 Ill.Dec. 889 (2001)

Donato v. Human Rights Comm'n, 194 Ill.2d 567, 747 N.E.2d 352, 254 Ill.Dec. 312 (2001)

Illinois Dept. of Transportation v. Human Rights Comm'n, 195 Ill.2d 552, 754 N.E.2d 1282, 257 Ill.Dec. 887 (2001)

Jackson v. Human Rights Comm'n, 193 Ill.2d 587, 744 N.E.2d 285, 253 Ill.Dec. 3 (2001)

Koulegeorge v. Human Rights Comm'n, 193 Ill.2d 587, 744 N.E.2d 285, 253 Ill.Dec. 3 (2001)

Palos Community Hospital v. Human Rights Comm'n, 194 Ill.2d 570, 747 N.E.2d 353, 254 Ill.Dec. 313 (2001)

Wilder v. Human Rights Comm'n, 194 Ill.2d 583, 747 N.E.2d 358, 254 Ill.Dec. 318 (2001)

IV. Final Orders of the Illinois Human Rights Commission

A. Final Orders After Commission Review

Johnson and Help at Home, Inc., Ill. H.R.C. Rep. (1995CF2897, March 28, 2001)
– Following a default by respondent and entry of a final order of the Commission granting relief to complainant, respondent requested reconsideration. The Commission found that adequate notice of all proceedings, including the default, was provided to respondent and that there was no basis for reconsideration.

Polewaczyk and Roadside Auto & Truck Bodies, Inc., Ill. H.R.C. Rep. (1994CA2261, April 25, 2001) – Here, the Commission upheld dismissal of a complaint for lack of subject matter jurisdiction where the original charge was filed at the EEOC, concurrent consideration was initially declined by the Department, and the complainant much later tried to file the charge directly with the Department.

B. Final Orders with Commission Approval

There were at least 96 orders of this kind entered in 2001, too numerous to summarize here. See note below regarding the relative precedential value of the two types of Commission decisions.

V. Trends and Upcoming Issues

A. Default –

While the Commission and the Appellate Court have long approved the present standard applying to default by respondents for alleged failure to fully engage in the Department's investigative process, it appears that new appeals may be filed on this issue upon the conclusion of consideration of several cases by the Commission.

B. Comments on some terms used in this outline

1. Substantial Evidence.

As used to define the standard for the filing of a complaint at the Commission by the Department of Human Rights, "substantial" is used in the sense of being the opposite of "ephemeral." It does not connote the weight, admissibility or ultimate probative value of that "evidence."

2. Precedential Value.

In the context of citation of authority at the Commission, the Human Rights Act is the primary authority. Next are decisions of the Commission that have been considered and explained by the Commission directly. These are followed by those decisions of the Commission that result from administrative ratification of a recommended order filed by an ALJ where no party has filed exceptions. It is often thought that the latter have no precedential value. The Commission has said, rather, that such decisions do not "have the same precedential value as one in which the Commission has issued its own Order and Decision," implying that such decisions have some lesser precedential value, instead of no value at all. Lalvani and Cook County Hospital, Ill. H.R.C. Rep. (1990CA2502, August 27, 1999); Slip Opinion at 3.

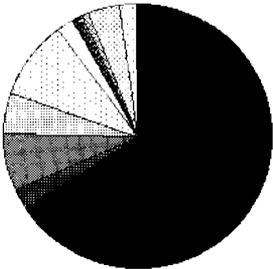
Appropriations

General Revenue Fund FY 01

(In Thousands of Dollars)

	FY 01 <u>Approp.</u>
Personal Services	1,080.7
State Paid Retirement Contribution	40.2
Retirement	113.3
Social Security	82.6
<i>Subtotal P.S.</i>	<u>1,316.8</u>
Contractual Services	155.6
Travel	34.0
Commodities	15.0
Printing	5.5
Equipment	13.9
EDP	61.4
Telecommunications	36.9
<i>Subtotal</i>	<u>322.3</u>
Total All Funds	1,639.1

FY 01 Appropriations



- Personal Services
- ▣ State Paid Retirement Contribution
- ▤ Retirement
- ▥ Social Security
- ▦ Contractual Services
- ▧ Travel
- ▨ Commodities
- ▩ Printing
- Equipment
- EDP
- ▬ Telecommunications

Executive Summary

The Illinois Human Rights Commission is dedicated to promoting freedom from unlawful discrimination and to providing fair and impartial hearings to resolve complaints under the Illinois Human Rights Act.

Each year, several hundred discrimination cases are resolved by the Commission. Fiscal year 2001 was a time for the Commission to reflect upon its past accomplishments and to seek improvement in the system. Its goal is to change from an agency that had become overburdened and cumbersome to one that will better serve those who come before it. To further those efforts, the Human Rights Act was amended to address over thirty cases in limbo and to avoid similar circumstances in the future.

The Commission is poised to continue its important work on behalf of the people of the State of Illinois. With determination, the Human Rights Commission rededicates itself to fulfilling the mission of the Human Rights Act.



**The Commission
is poised to
continue its
important work
on behalf of
the people...**

Glossary of Terms

Adjudication - Rendering of a decision.

Administrative Agency - An agency created to enforce and adjudicate specific local, state or federal laws and charged with developing expertise in that specific area of law. Distinguished from the judicial system.

ALJ - Administrative Law Judge

Charge - This is the initial allegation of discrimination. It must be filed with the Department of Human Rights within 180 days of the date of the alleged discriminatory act. A charge is often confused with a "complaint," which is the document that starts proceedings at the Human Rights Commission.

Complaint - This is the initial pleading filed at the Human Rights Commission by either a complainant or by the Department of Human Rights.

Complainant - One who files a charge with the Department of Human Rights.

EEOC - The federal Equal Employment Opportunity Commission.

Final Order and Decision - A decision by an administrative law judge dismissing a case at the request of the complainant.

Lack of Substantial Evidence - If the Illinois Department of Human Rights finds after an investigation that the substantial evidence standard has not been met, it will dismiss the charge without a hearing based on a "lack of substantial evidence."

Motion - A plea/request by either party asking for a specific finding.

Motion Call - Regularly scheduled times in the Commission's Chicago office when litigants may appear before an administrative law judge to present and argue motions. For cases outside Cook County most motions are either heard telephonically or decided on the basis of the written motions and responses.

Order and Decision - This is the final decision of the Commission on the merits of a case.

Petition for Rehearing - Following an Order of a Commission panel, a party may petition to be heard by the full Commission, all 13 members meeting en banc.

Recommended Liability Determination - This is the title of a recommended order by an administrative law judge that upholds the Complaint or portions thereof and/or that determines that a party is entitled to an award of attorney's fees and costs and directs that party to file a petition for such award. This order is subsequently incorporated into the final Recommended Order and Decision of the administrative law judge.

Recommended Order and Decision - This is the title of the recommendation of the administrative law judge to the Commission as to how the case should be decided.

Respondent - One against whom the complaint of alleged human rights violation is brought.

Substantial Evidence - Enough evidence of discrimination so that a reasonable person might infer a discriminatory motive. This is the standard used by the Department of Human Rights to decide if a case should be dismissed without a hearing at the Human Rights Commission.