



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

2012

ILLINOIS HUMAN RIGHTS COMMISSION

ANNUAL

THE HONORABLE PAT QUINN, GOVERNOR

REPORT

## 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 2012.

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.

With several new Commissioners nominated this year the new Commission moved forward with our work, despite the fiscal challenges faced by state government. Indeed, now more than ever, in these times of economic challenge the people of Illinois need to have a forum like the Commission to press their claims of discrimination or protect themselves and/or their organizations from false or erroneous claims of violations of the Act.

We value our strong partnerships with the Office of the Governor, the Illinois General Assembly, the Department of Human Rights, to work to eliminate discriminatory practices in Illinois. We also value the contributions of our hard-working Administrative Law Judges and staff who day in and day out represent the interests of all Illinoisans in having a state free from bias and discrimination. I also wish to thank my fellow Commissioners for their contributions to the Commission, which have a broad and profound effect on the lives of the individual litigants, the employers and the organizations that appear before the Commission seeking to enforce their rights.

The Commission has also set forth a reputation of best practices, 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. 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

# THE ILLINOIS HUMAN RIGHTS COMMISSION

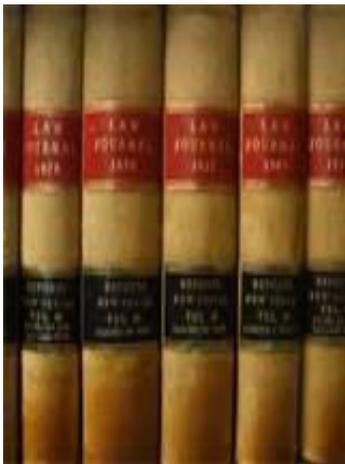
## CASE SYNOPSIS NO. 1

### **Morad and Zuniga v. Board of Education of the City of Chicago**

(Ancestry and National Origin Discrimination)

The two complainants charged that they were harassed on the basis of their ancestry and national origin. They also claimed that they were discharged because they complained of that harassment. The respondent maintained that no harassment took place and that the complainants were discharged because they had disrupted the work environment for other employees.

The complainants lost their harassment claim because they failed to prove that any harassment took place. They were unsuccessful on their discharge claims because they could not prove that the respondent's articulated reason for discharging them was a pretext for unlawful retaliation.



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

### **Murray v. Brandy's Automotive, Inc.**

(Mental Disability  
Discrimination)

The complainant claimed that he was discharged because of his mental disability. The respondent maintained that he was discharged because he failed to call in his absence and abandoned his job.

At hearing, the evidence showed that the complainant had been hospitalized briefly as a result of his disability. He conceded that he did not personally contact the respondent during that time, but his ex-wife did talk to the respondent about his condition. Upon his release from the hospital, his doctor gave him a full release to return to work. The respondent, however, disregarded that release and, without medical support, insisted that the complainant go through a substance abuse program before it would return him to work.

The respondent did not fire the complainant during his hospital stay. However, after the company refused to return him to work, the complainant contacted a lawyer. When the respondent learned that a lawyer was involved, it discharged the complainant. That timing supported the finding that the discharge was a pretext for discrimination.

The complainant was awarded back pay and attorney's fees and the respondent was ordered to send its management and employees to training to prevent future discrimination.

## REQUEST FOR REVIEW

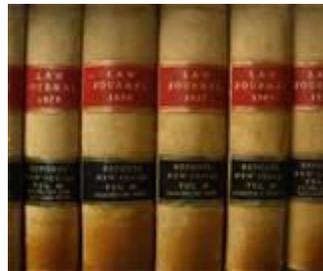
When the Illinois Department of Human Rights (DHR) dismisses a charge for lack of substantial evidence of discrimination, the Complainant may file a Request for Review with the HRC or file a Complaint in the Circuit Court within 90 days after receipt of the Notice of Dismissal. When the DHR dismisses 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/ihrc](http://www.state.il.us/ihrc).

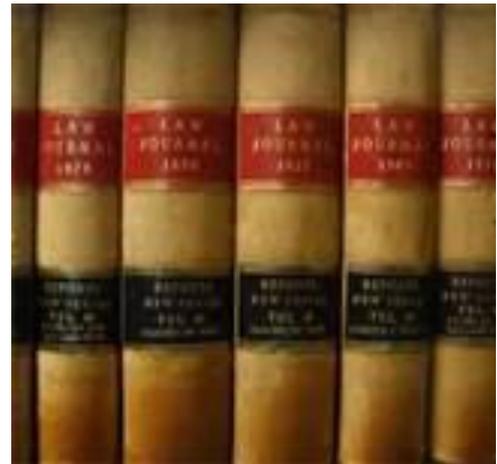
## CASE SYNOPSIS NO. 3

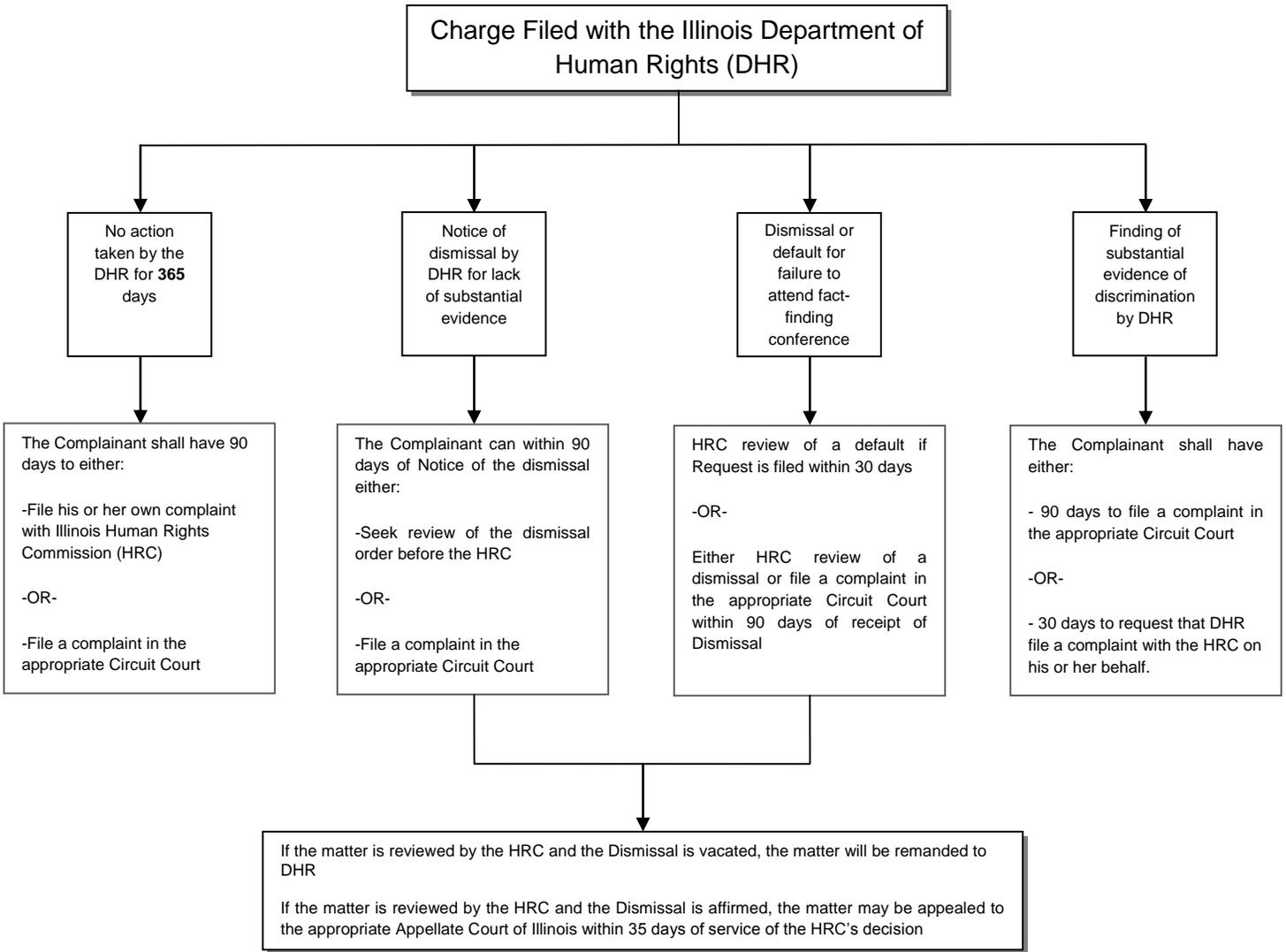
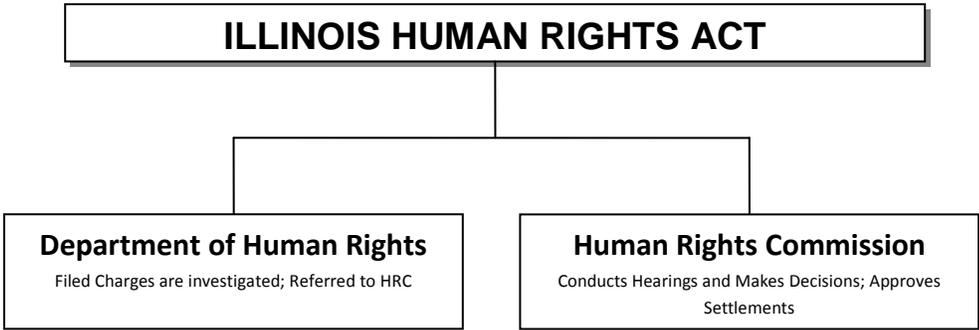
### James v. Ameritech Services, Inc.

(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.



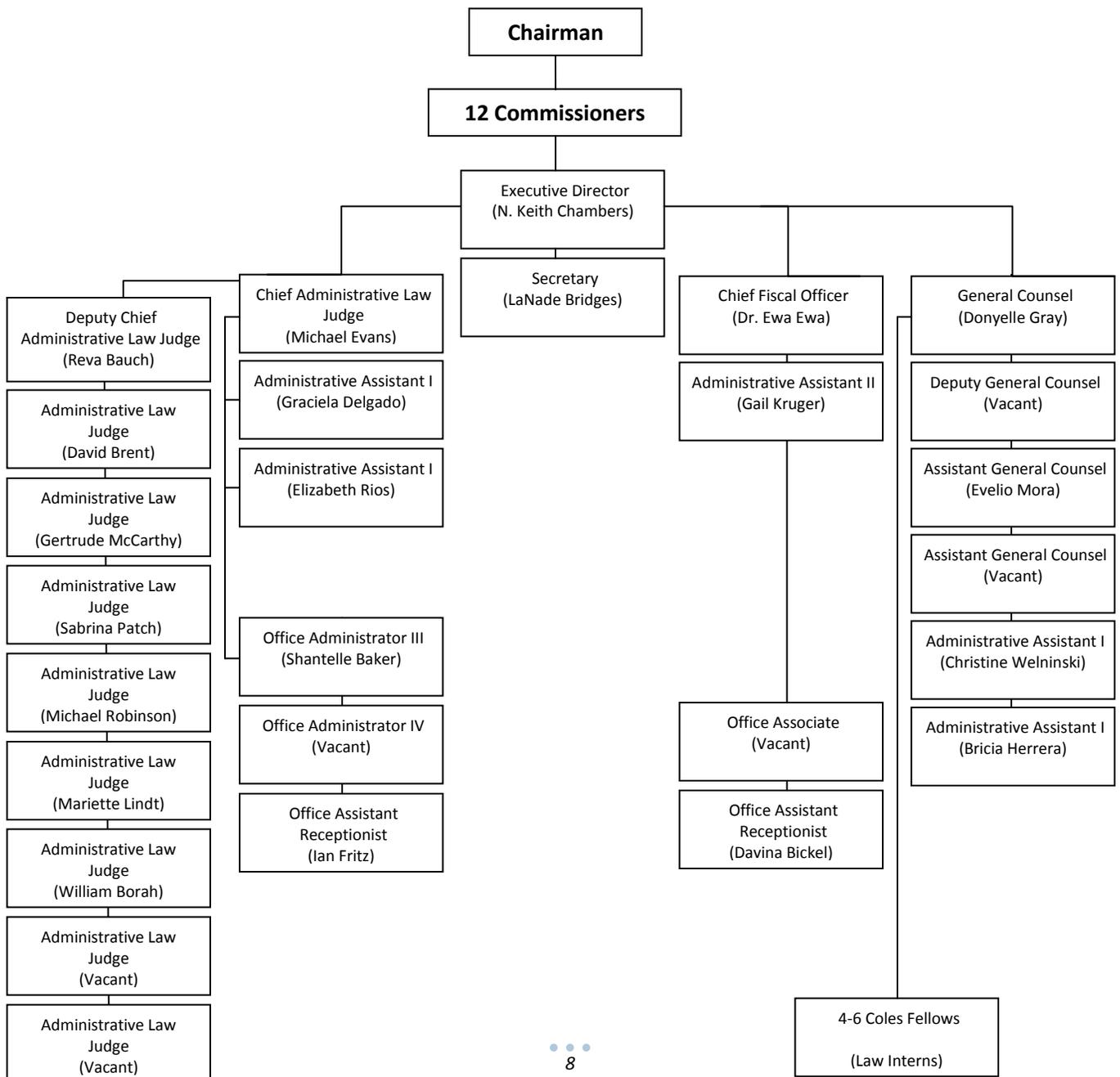


## THE COMMISSION PROVIDES A NONPARTISAN FORUM TO RESOLVE COMPLAINTS OF UNLAWFUL DISCRIMINATION

The Commission consists of a staff 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 Commissioners reflect the 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 2012 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 Cantone**

Appointed 2011  
Attorney with the law firm of Goldstein, Bender & Romanoff of Chicago, Illinois. Arbitrator for the Cook County Mandatory Arbitration Program. 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. 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. **Nabi R. Fakroddin, 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.

### 7. **Marylee V. Freeman**

Appointed 1999  
Former Director of Inter-Governmental Outreach for the City of Chicago Department of Buildings, working with aldermen, elected officials, community groups, churches and schools.

**8. Spencer Leak, Sr.**

Appointed 2001 – Term ended 2012  
President of Leak and Sons Funeral Home;  
Chairman of Black on Black Love Inc.;  
Former Director District 1 of Illinois  
Department of Corrections; Former  
Executive Director of Cook County  
Department of Corrections.

**9. Munir Muhammad**

Appointed 2003 – Term ended 2012  
Co-founder of CROE and Executive Producer  
of Muhammad and Friends television  
program.

**10. Rozanne Ronen**

Appointed 2004  
Civic Leader and Business owner  
specializing in information technology.

**11. 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.

**12. 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.

**13. 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.

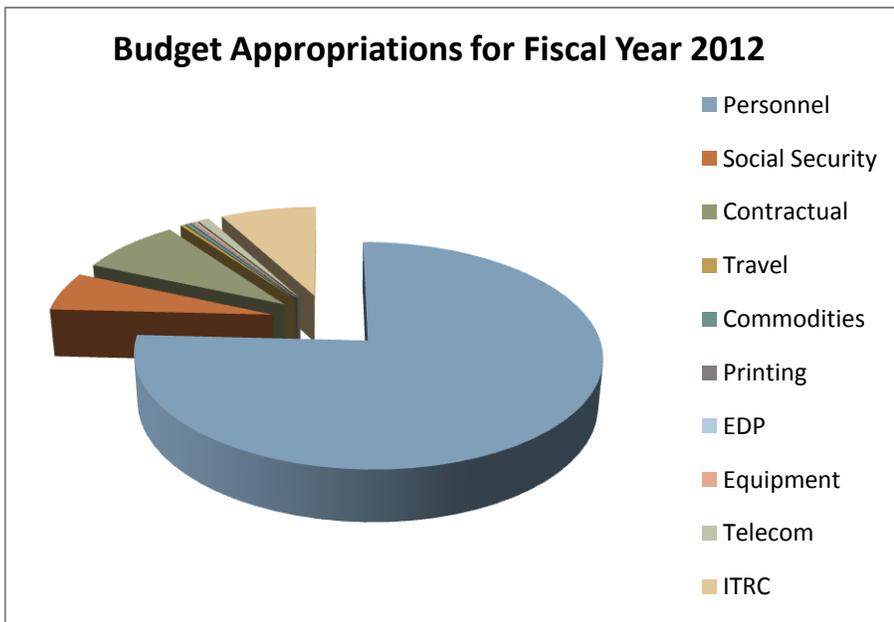


**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

BUDGET APPROPRIATIONS FOR FISCAL YEAR 2012

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.....	\$ 150,000
 Total Appropriations w/ Federal Funds	 \$ 1,905,900

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**

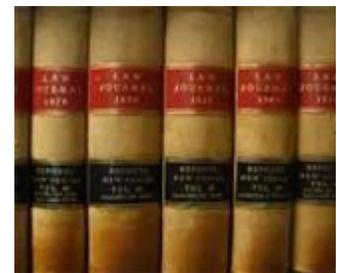
**Plonka v. GKN Sinter Metals, Inc.**

(Age Discrimination)

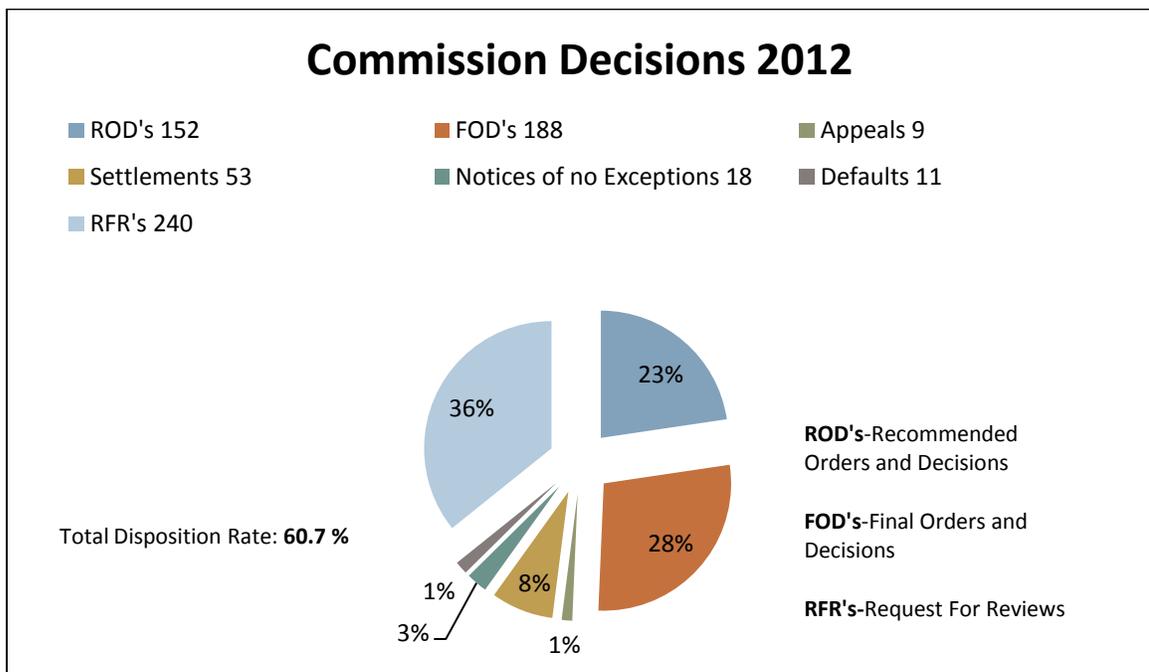
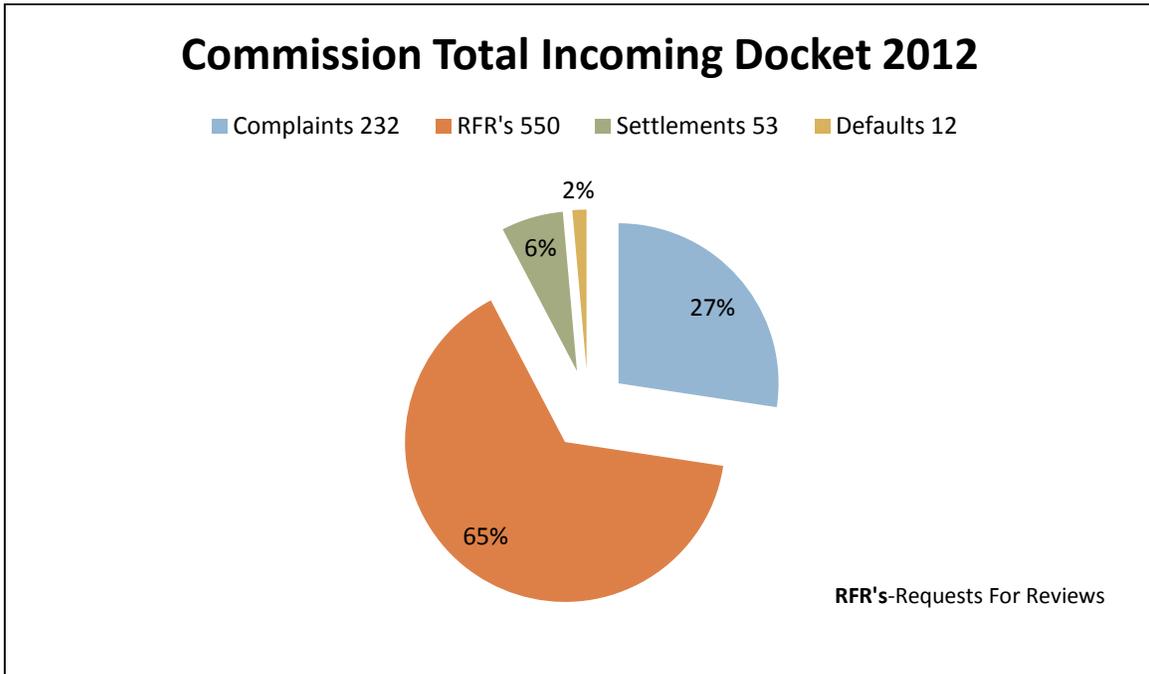
The complainant claimed that he was discharged on the basis of his age. The respondent, though, maintained that complainant was fired because he initiated a fight on company property.

Evidence at the hearing established that the complainant had been provoked by certain remarks made by a younger co-worker. It was clear, though, that the complainant responded to those remarks with physical violence. The complainant was discharged and the co-worker was retained.

The respondent had a strict “no tolerance” policy about workplace violence. Respondent asserted that complainant was discharged because he violated that policy. The co-worker was retained because he did not resort to physical violence. Complainant failed to prove his case because he could not prove that reliance upon the “no tolerance” policy was a pretext for age discrimination.

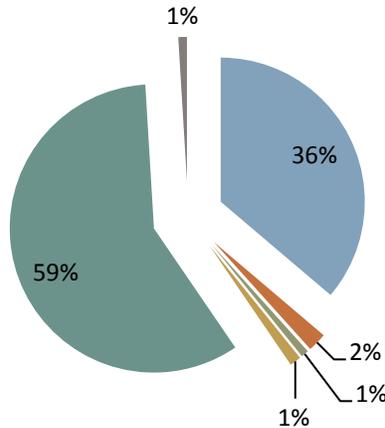


## COMMISSION OUTPUTS AT A GLANCE



## Office of the General Counsel-Services 2012

■ Panel Matters 340   
 ■ Panel Hearings 20   
 ■ Appellate Appeals 9  
■ En Banc Mtg. 12   
 ■ RFR Log In's 550   
 ■ Outreach 9



### Panel Matters

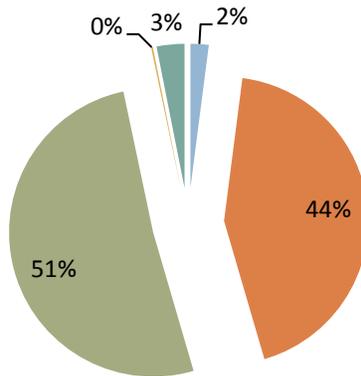
\*Contested 12  
 \*RFR's 183  
 \*Motions 87  
 \*Defaults 11  
 \*Settlements 47

RFR's-Requests For Reviews

Total RFR Docket: **601**

## Administrative Law Section -Services 2012

■ ALJ Motion Calls 152   
 ■ Office Visits 3239   
 ■ Service Calls 3818  
■ Outreach 15   
 ■ Complaint Log In's 232



Total Docket Count  
**895**

ALJ- Administrative Law

## COMMUNITY OUTREACH HIGHLIGHTS

### ILLINOIS COMMISSION ON HUMAN RIGHTS TO SERVE AS HUMAN AND CIVIL RIGHTS MODEL FOR NATION OF UKRAINE

HRC honors World Chicago's request to host Ukrainian delegation of lawyers, independent legal experts, legal scholars, and judicial administrators, benchmarking best practices for Civil Rights adjudication, Monday, July 2, 2012.

#### GENERAL COUNSEL

##### **Donyelle L. Gray, General Counsel**

On October 10, 2011, appeared as a guest on a legal education cable show produced by the Illinois State Bar Association; the topic was prosecuting discrimination claims under the Illinois Human Rights Act.

On February 4, 2012, attended the 2012 Midwest Public Interest Law Career Conference, which took place at Northwestern University School of Law.

On March 15, 2012, participated as a panel member for the Illinois State Bar Association's Continuing Legal Education seminar entitled, *"Litigating, Defending and Preventing Employment Discrimination Cases: Practice Updates for the Illinois Human Rights Act."*

On March 29, 2012, served as the moderator for the Black Women Lawyers Association of Greater Chicago's Continuing Legal Education seminar entitled, *"LGBT Rights and Discrimination: Be Careful Where You Love and Work,"* where she provided an overview of the HRC's work in the area of LGBT rights and discrimination.

During the Summer of 2012, in an effort to broaden their awareness of human and civil rights work in Chicago, created opportunities for our Coles Fellows to observe a meeting of the City of Chicago Commission on Human Relations, where afterwards they met with the Commission's First Deputy Commissioner Kenneth Gunn; and to visit the National Immigrant Justice Center, a Heartland Alliance partner, where the Fellows met with the Justice Center's managing attorney Lisa Koop.

##### **Evelio Mora, Assistant General Counsel**

Assistant General Counsel Evelio Mora attended a Labor Rights Conference at the Chicago Mexican Consulate on August 26, 2011 and provided information about the Human Rights Commission.

In November 2011, Assistant General Counsel Evelio Mora attended the Chicago-Kent Lambdas' 2011 LGBT Civil Rights Conference on behalf of the Commission, where he provided the attendees with an overview of the Commission.

In November 2011, Mr. Mora attended the "Meet the Public Service Organizations" reception at the Loyola University Chicago School of Law, where he talked to law students about the Commission and its Coles Fellowship program.

On February 4, 2012, Mr. Mora attended the 2012 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.

## **ADMINISTRATIVE LAW SECTION**

**Administrative Law Judge, Trudy McCarthy**, participated in the Administrative Law Judge Committee of the CBA and attended the First Friday Club July 11-6, 2012.

**Administrative Law Judge, William Borah**, on July 11, 2012 spoke to ISBA Illinois Law and Leadership Institute

On November 11, 2012 participated as a trial judge for ABA National Moot Court Competition

On March 12, 2012, spoke to Black Women Lawyers Association

On February 2, 2012, participated in a panel discussion at National Employment Lawyers Association

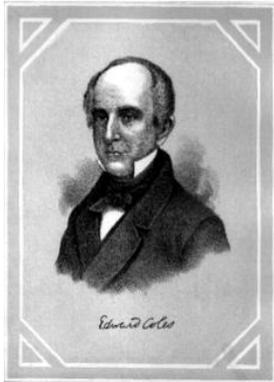
**Administrative Law Judge, Sabrina Patch**, on August 11, 2012 spoke on HRA disability provisions to Will Grundy Center for Independent Living.

On January 12-6, 2012 participated as a volunteer attorney for Lawyers in the Classroom project.

**Chief Administrative Law Judge, Michael Evans** on January 12, 2012 spoke to CBA Administrative Law Judge Committee on attorney's fees.

**Administrative Law Judge, Michael Robinson** on March 3, 2012, participated at ISBA high school mock trial competition. On April 12, 2012, volunteer for ISBA's "Ask a Lawyer Day"





Governor Edward Coles

## 2012 COLES FELLOWS

**Emily Coffey**  
Coles Fellow, Summer 2012  
*Loyola University Chicago School of Law*

**Mary Leukam**  
Coles Fellow, Summer 2012  
*The John Marshall Law School*

**Sheida Ahmadzadeh**  
Coles Fellow, Fall 2012  
*The John Marshall Law School*

**Stephanie Northrop**  
Coles Fellow, Fall 2012  
*DePaul University College of Law*

**Adam Rayford**  
Coles Fellow, Fall 2012  
*The John Marshall Law School*

**Mandy Lee**  
Volunteer Law Clerk, Fall 2012  
*DePaul University College of Law*

## 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

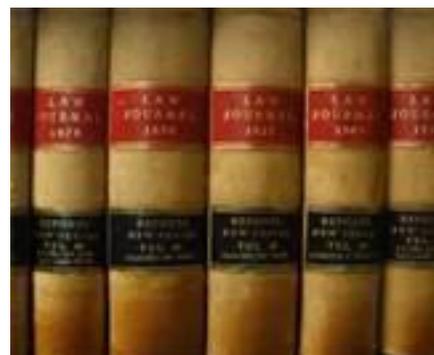
### Cebula v. Jamo Hi-Fi USA, Inc.

(Retaliation)

The complainant alleged that the respondent unlawfully retaliated against him. The complainant's attorney had written a letter to the respondent's upper management. That letter described age-related comments allegedly made by the complainant's immediate supervisors. Two days after the company had received that letter, the complainant was discharged.

The respondent asserted that the complainant had been discharged as a result of excessive absenteeism. In addition, the supervisor who fired the complainant testified that he was unaware of the lawyer's letter when he made the discharge decision. However, the credibility of the defense was irreparably damaged by the fact that the discharge letter explicitly mentioned the complainant's attorney.

The respondent's explanation was found to be a pretext for unlawful retaliation. The complainant was awarded back pay and other damages, including attorney's fees.





## **CASE STUDY NO. 1**

### **CONTESTED MATTER:**

### **SEX DISCRIMINATION IN EMPLOYMENT AND THE "MINISTERIAL EXCEPTION"**

Illinois Human Rights Act 775 ILCS 5/2-101 (B) (2) and 775 ILCS 5/2-102(A)

### **Ellen Grafner v. St. Peter's Catholic Church**

Ellen Grafner ("Complainant") was hired as a Music Director by St. Peter's Catholic Church ("Respondent") on September 15, 1990. As the Music Director, the Complainant was allowed to perform as an organist at weddings and funerals that took place at the Respondent's parish. When she performed at funerals and weddings, the Complainant was compensated by the families, not the Respondent. However, the Respondent often referred the Complainant to families requesting referrals. Before July 2005, the Respondent referred the Complainant almost exclusively. Starting in July 2005, however, the Respondent began referring a male organist for weddings and funerals. On August 10, 2005, the Complainant filed a charge of discrimination with the Illinois Department of Human Rights ("DHR") alleging the Respondent stopped referring her for weddings and funerals because of her sex, female, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). The Complainant filed a Complaint with the Illinois Human Rights Commission ("Commission") on August 13, 2007.

The Respondent filed a Motion to Dismiss the Complaint. The Respondent argued that the Complaint was barred by the "ministerial exception" to the Act, as provided in 775 ILCS § 5/2-101(B)(2). Section 101-(B)(2) of the Act provides that the Act's prohibitions regarding employment discrimination do not apply to . . . "any religious corporation . . . with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation . . . of its activities." The Respondent argued that the Complainant was not covered by the Act because the Complainant's job as Music Director was a ministerial position.

A hearing on the motion was held before a Commission Administrative Law Judge ("ALJ"). The ALJ issued a Recommended Order and Decision ("ROD") wherein he recommended the Complaint be dismissed. The ALJ determined the Complainant had engaged in the following tasks in her capacity as the Respondent's Music Director: (1) performed hymns and music for masses; (2) selected the hymns and music that she performed, subject to the priest's final approval; (3) encouraged the congregation to participate in masses by singing; and (4) performed as an organist at weddings and funerals that take place at the Respondent's parish.

Because this case presented a fact pattern that was novel to the Commission, the ALJ looked to federal law for guidance on whether or not the Complainant was a "minister" to which the ministerial exception should apply. The ALJ determined that federal courts examined whether or not the employee's duties furthered the spiritual and pastoral mission of the religious institution.

Upon examining federal law, the ALJ determined that the Act’s ministerial exception applied to bar the Complaint because the Complainant was a major contributor to, if not primarily responsible for, the church’s music ministry; thus, because her work furthered the church’s spiritual and pastoral mission, the Complainant was a “minister” under the Act.

The Complainant filed Exceptions to the ROD with the Commission, in which the Complainant argued the ALJ’s findings of fact were contrary to the manifest weight of the evidence and that the ALJ had erred in his conclusion of law. However, a Panel of three Commissioners declined review of the ROD and voted to adopt the ROD as the final Order and Decision of the Commission.





## CASE STUDY NO. 2

### CONTESTED MATTER:

#### SEXUAL HARASSMENT, RETALIATION – COMMISSION AFFIRMED ON APPEAL

Illinois Human Rights Act, 775 ILCS § 5/2-102(D) and 775 ILCS § 5/6-101(A)

#### **Cheryl Lockard v. First Baptist Church**

#### **Cheryl Lockard v. Keith Jones**

Cheryl Lockard (“Complainant”) filed a charge of discrimination with the Illinois Department of Human Rights (“Department”) against the Respondents, First Baptist Church (“the church”) and its Minister (“Jones”), alleging Jones had sexually harassed her and that the church had discharged her from the position of Church Secretary in retaliation for her having complained of sexual harassment. The alleged sexual harassment consisted of both verbal conduct and unwelcomed touching, primarily in the form of an unsolicited shoulder rub by Jones. The Department found substantial evidence of sexual harassment and retaliation and subsequently filed a complaint of unlawful discrimination on behalf of the Complainant, against Jones and the church, with the Illinois Human Rights Commission (“Commission”).

The Illinois Human Rights Act (“the Act”) provides that a charge of discrimination must be filed within 180 days of the alleged discriminatory conduct. Jones and the church alleged the majority of the alleged sexual harassment had occurred outside the 180-day time frame, and they alleged the one act that had occurred within the 180-day time frame, the shoulder rub, was non-severe.

The matter went to public hearing before one of the Commission’s Administrative Law Judges (“ALJ”). The ALJ issued a Recommended Order and Decision (“ROD”) in which he determined that the charge had been timely filed, and that the Complainant had proven her sexual harassment and retaliation claims by a preponderance of the evidence. The ALJ recommended the Complainant be awarded provable back pay, unreimbursed medical expenses, and emotional distress damages stemming from the discriminatory acts. The church and Jones filed exceptions to the ROD. A Panel of three Commissioners declined review of the ROD and voted to adopt the ROD as the final Order and Decision of the Commission. The church and Jones appealed the Commission’s Order and Decision to the Illinois Appellate Court.

In an opinion that was eventually published, the Appellate Court upheld the Commission’s Order. In the course of upholding the Commission’s Order and Decision, the Appellate Court clarified the scope of the applicability of the “Morgan rule” to hostile work environment sexual harassment claims. The Morgan rule derives from the U.S. Supreme Court decision in National R.R. Passenger Corp. v. Morgan, 536 U.S. 101 (2002), which was adopted by Illinois courts and made applicable to the Act in Gusciara v. Lustig, 346 Ill.App.3d 1012 (2nd Dist. 2004). The “Morgan rule” provides that a charge of sexual harassment that is based on a hostile work environment theory is timely filed so long as any of the acts that contributed to the hostile environment occurred no more than 180 days prior to the filing of the charge. In other words, so long as the action within the 180-day jurisdictional period was

related to the actions that had occurred outside the 180-day jurisdictional period, the sexual harassment charge would be considered timely.

In the Lockard matters, the Appellate Court not only upheld this “relatedness” aspect of the Morgan rule, but it also clarified the rule and expressly held that an employer’s “intervening action” could destroy the relationship between the acts within and outside the 180-day jurisdictional time period in hostile work environment sexual harassment claims under the Act. The Appellate Court further defined the type of intervening employer action that would be considered sufficient—the action must remove the employee from the complained-of workplace or change the employment relationship between the employees involved in the hostile work environment.

After clarifying the scope of the applicability of the Morgan rule to sexual harassment claims under the Act, the Appellate Court then held that the Commission’s finding that the shoulder rub was related to the conduct that had occurred outside the 180-day jurisdictional time period was not against the manifest weight of the evidence. The Appellate Court further determined there was no intervening employer action sufficient to sever the relationship between the shoulder rub and the conduct that had occurred outside the 180-day period.





## **CASE STUDY NO. 3**

### **REQUEST FOR REVIEW**

#### **EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION**

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

#### **Tawanna M. Young v. City of Chicago, Department of Streets and Sanitation**

Tawanna M. Young (“Complainant”) was formerly employed by the City of Chicago, Department of Streets and Sanitation (“Respondent”) as a Hand Laborer. In November 2008, the Complainant filed a charge of discrimination with the Illinois Department of Human Rights (“the Department”). The Complainant alleged that the Respondent had subjected her to unlawful discrimination on the basis of her sexual orientation, homosexual, in violation of the Illinois Human Rights Act (“the Act”) when the Respondent denied her overtime hours, issued her a written reprimand, and discharged her. Following an investigation into her charge, the Department dismissed all counts for lack of substantial evidence. The Complainant then filed a Request for Review (“Request”) of the Department’s dismissal with the Commission.

The Request came before a Commission Panel for determination. The Commission found there was no substantial evidence of discrimination and sustained the dismissal of the charge. A final appealable written Commission order was served on the Complainant, which informed her of the Commission’s reasons for sustaining the dismissal of her charge. The Complainant appealed the Commission’s order to the Illinois Appellate Court, 1<sup>st</sup> District.

On appeal, the Illinois Appellate Court issued a rare published opinion in which it affirmed the Commission’s order. A published decision can be cited by future litigants as legal precedent, while an unpublished decision cannot. This decision is significant because it discusses the standard of review the Appellate Court should utilize when reviewing Commission orders in Request for Review proceedings since the Act was amended in 2008. The Appellate decision offered a brief legislative history of the Act and explained how the jurisdiction over Requests for Review had shifted over the years between the Commission and the Department. The Appellate Court noted that, prior to 1996, the Commission had jurisdiction over Requests for Review, and that the standard of review of Commission orders on appeal was abuse of discretion. On January 1, 1996, that jurisdiction shifted back to the Department, until 2008. Between 1996 and 2008, the Appellate Court noted the standard of review did not change. The last amendment to the Act in 2008 placed jurisdiction over Requests for Review back with the Commission.

The Appellate Court determined there were no published cases which provided guidance on the appropriate standard of review for Request for Review decisions issued by the Commission following the 2008 amendment. The Appellate Court found no evidence that the standard of review had changed, and held that the standard of review remained abuse of discretion. An abuse of discretion standard, the Appellate Court explained, meant that the Appellate Court would not disturb the Commission’s decision in Request for Review proceedings unless the Commission’s decision was arbitrary or capricious; the Appellate Court would neither reweigh the evidence nor substitute its

judgment for that of the Commission. Applying that standard of review, the Appellate Court found the Commission's determination that there was no substantial evidence of discrimination was not an abuse of discretion, and upheld the dismissal of the Complainant's charge.





## CASE STUDY NO. 4

### **Venessa Fitzsimmons and Universal Taxi Dispatch, Inc., Employment Discrimination—Sexual Orientation/Transgender**

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

The matter of Venessa Fitzsimmons and Universal Taxi Dispatch, Inc., earned media attention because it included the first damages award issued in favor of a transgender person by the Illinois Human Rights Commission (“the Commission”).

Since 2006, the Illinois Human Rights Act (“the Act”) has forbidden discrimination on the basis of sexual orientation, as defined by 775 ILCS § 5/1-103(O-1) of the Act, to include protection for transgender people.

Venessa Fitzsimmons (“Complainant”) was a transgendered woman who filed a charge of discrimination with the Illinois Department of Human Rights (“the Department”) against her former employer, Universal Taxi Dispatch, Inc. (“Respondent”), alleging the Respondent had subjected her to discrimination and harassment in the workplace because she is transgendered.

The Department subsequently filed a three-count Complaint with the Illinois Human Rights Commission (“Commission”) on the Complainant’s behalf. The Complaint alleged sexual orientation discrimination, related to gender identity, against the Complainant by the Respondent. The Respondent failed to respond to the Complaint and failed to participate in the Commission proceedings. Thereafter, an order of default was entered against the Respondent. As a result, the Respondent was deemed to have admitted all allegations of the Complaint, and was deemed liable for any damages successfully proven by the Complainant at a damages hearing.

A damages hearing was held before a Commission Administrative Law Judge (“ALJ”). After the damages hearing and the filing of the Complainant’s petition for attorneys’ fees and costs, the ALJ issued a Recommended Order and Decision (“ROD”) in which he recommended the following relief for the Complainant: back wages in the amount of \$36,356.00, plus prejudgment interest; \$40,000.00 for emotional distress damages; reimbursement of \$85.00 in expenses, and \$18,270.00 in attorney’s fees. The ROD was served on the parties.

Neither party filed Exceptions to the ROD. Therefore, the ROD became the final Order and Decision of the Commission by operation of law, and enforceable in the circuit court.



**STATE OF ILLINOIS**  
**Illinois Torture Inquiry**  
**And Relief Commission**  
**Patricia Brown Holmes, 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.

Once the Commissioners were in place, they began the search for an Executive Director. On February 1, 2011, David Thomas was hired for that position and the TIRC began daily operations. In April, Rosa Martinez was hired as the secretary to staff the Commission office.

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 100 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 videoconference 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.

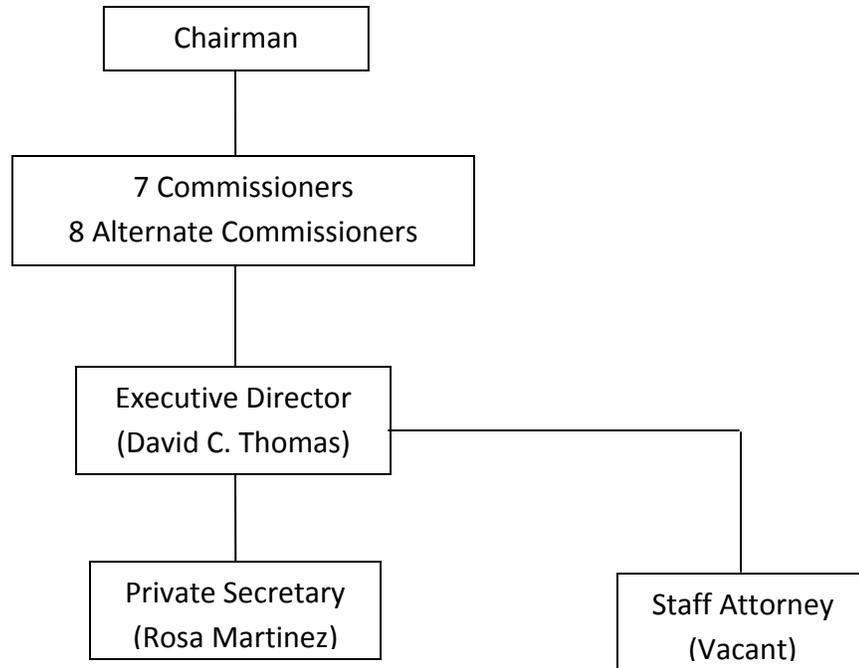
## ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION BOARD MEMBERS

<b>Commissioners</b>	<b>Category</b>	<b>Date of Appointment</b>
Patricia Brown Holmes (Chair)	Former Judge/Former AUSA	July 31, 2010
Vacant	Former Prosecutor	
Leonard Cavise	Law School Professor	July 31, 2010
Vacant	Criminal Defense Attorney	
Neil Toppel	Former Public Defender	July 31, 2010
Hippolito (Paul) Roldan	Public	July 31, 2010
Rob Warden	Public	July 31, 2010
Vacant	Public	

<b>Alternate Commissioners</b>	<b>Category</b>	<b>Date of Appointment</b>
Bernetta Bush	Former Judge	July 31, 2010
Marcie Thorp	Former Prosecutor	July 31, 2010
Vacant	Law School Professor	
Vacant	Criminal Defense Attorney	
Vacant	Former Public Defender	
Janette Wilson	Public	July 31, 2010
Doris Green	Public	July 31, 2010
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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