



# **Second Progress Report on Implementation of Executive Order 2018-08**

---

*“An Executive Order Reforming the Administration and Eliminating the Backlog of Anti-Discrimination and Equal Opportunity Hearings at the Human Rights Commission”*

An intergovernmental partnership between the Illinois Department of Central Management Services, the Illinois Human Rights Commission, and the Illinois Department of Human Rights



## Executive Summary

The combined work of the Illinois Department of Human Rights (“Department” or “IDHR”) and the Illinois Human Rights Commission (“Commission” or “IHRC”) improves the quality of life in our State by **promoting and enforcing one of the most comprehensive human rights protection statutes in the nation**—the Illinois Human Rights Act (“Act”). Enacted in 1979, the Act created two separate administrative agencies with distinct functions regarding enforcement of the Act: The Department to investigate allegations of unlawful discrimination within Illinois, and the Commission to adjudicate complaints of civil rights violations.

The Act offers protection against discrimination in the areas of employment, real estate transactions, financial credit, public accommodations, and education. Through the Act’s broad coverage, extending protection to additional categories not afforded under federal law, such as military status, sexual orientation, order of protection, and arrest status, Illinois provides an important forum for its residents to seek justice. Moreover, its fee-free availability makes it an invaluable tool for self-represented litigants that often cannot afford fees accompanying court litigation.

Despite the State’s critical role in eradicating discrimination, cases at the Commission accumulated as backlog for nearly a decade, forcing participants to wait sometimes five or more years for resolution of their complaints. Languishing cases harm not only those awaiting decision, but also the general public. Excessive delays diminish the enforcement

of human rights in our State, endangering the rule of law.

**Backlog at the Commission was a challenge ripe for inter-agency collaboration.** Executive Order 2018-08, issued June 20, 2018, called for a multi-agency collaborative effort to eliminate within 18 months the growing backlog of cases pending before the Commission, and to further improve how our State communicates and delivers important services to its residents under the Act. **In just 14 months, not only has the Commission cleared its more than 2,500 case backlog, it has undergone a tremendous transformation, and become a leader in the protection and enforcement of civil rights.**

The Transformation Team appreciates this opportunity to share its second annual report since issuance of Executive Order 2018-08.

### The Task

Executive Order 2018-08 created an opportunity for leaders at the Department and Commission to partner with one another, and with the Illinois Department of Central Management Services’ Bureau of Administrative Hearings (“CMS BAH”) to attack the backlog collectively by sharing resources, ideas, and applying best practices to achieve greater efficiencies. The Order required a detailed Plan be compiled within 60 days. Interagency efforts were to include:

- 1) Developing a benchmark system and (within 60 days) a plan for complete elimination of backlog within 18 months;



- 2) Identifying where legislation, rules, and internal policies may be amended to streamline process;
- 3) Executing intergovernmental agreements to share resources;
- 4) Developing (with the Department of Innovation and Technology (“DoIT”) technological solutions and shared case management systems;
- 5) Tracking and reporting (at least quarterly) total number of pending cases, average and median length of time for case resolution, and other information necessary to capture backlog or delay;
- 6) Soliciting feedback and surveying parties appearing before the Commission and the Department and incorporating suggestions for better service; and
- 7) Developing and participating in training programs, including Rapid Results.

Highlighting the CMS BAH’s **successes coordinating between State agencies to identify economies of scale, model best practices, and develop thoughtful approaches to all aspects of administrative hearings work**, the Order tasked the CMS BAH with coordinating inter-agency efforts and monitoring and reporting on backlog reduction and overall improvements.

## The Team

Legal, technical, and operational leaders at each agency quickly mobilized a Transformation Team to implement the Order. Simultaneously, a new Executive Director, Philip Dalmage, well-versed in

transformation, was appointed to lead the Commission in achieving this vision.

To fulfill the goals of the Order, the Transformation Team created working groups, each comprised of and led by employees involved in the State’s legal, technical and operational areas. The groups quickly went to work in implementing the Order, sharing resources, ideas, and best practices.

Critical to this Team’s efforts has been the resiliency of Commission staff, who have time and again demonstrated their eagerness to tackle new challenges and remain flexible amidst the many changes instituted.

## The Plan

Those tasked with this charge recognized that justice is not an assembly line, and that each backlogged case reflects human experience. Any approach to eliminating backlog, therefore, must ensure utmost due process and respect. In pursuit of a thoughtful, carefully calculated Plan, the Transformation Team embarked on a journey to:

- Identify extent of backlog by cataloging inventory of all pending cases;
- Identify root causes of backlog;
- Review current efforts to reduce backlog; and
- Make recommendations to address the existing backlog and prevent growth of new backlog.

Taking comprehensive inventory of all cases pending before the Commission, the



Transformation Team discovered that backlog was isolated to the Commission's General Counsel's Office, and almost exclusively on Requests for Review of the Department's investigatory determinations. Prompt resolution of these matters is important because it is the first hurdle in whether a complaint moves forward to a hearing. It also provides the Department with the Commission's guidance on sufficiency of its investigations.

Backlog at the Commission accumulated steadily the past decade under a variety of unfavorable conditions, including a recessionary increase in filings, fluctuation in staffing, unfunded mandates, and weaknesses in its processes. The Commission's challenges were further compounded by its lack of infrastructure available to staff to process and track its cases.

**CMS' Office of Operational Excellence led a special, targeted Rapid Results workshop, training more than a dozen staff in proven continuous process improvement techniques.** Using the tools learned there, the inter-agency Transformation Team identified bottlenecks, developed streamlined processes, and instituted more rigid timeframes for each step in the filing and review process.

Within 60 days of the Executive Order's issuance, the Transformation Team devised a carefully crafted plan ("60 Day Plan") to **ensure due process and thoughtful consideration of each matter in the reduction of backlog.** In its 60 Day Plan, the Transformation Team concluded the following were essential to rid the backlog and create lasting change:

- Adopting consistent, streamlined processes and articulated timeframes for anticipated resolution;
- Temporary injection of additional human resources to reverse growing backlog and drive caseload down, coupled with long-range plans to normalize staffing upon elimination of backlog;
- Oversight of assignments, regular monitoring of productivity, and robust training; and
- Migrating the Department and upgrading the Commission to a modern, electronic case management system to improve transparency, accountability, service, and provide significant time savings.

The Transformation Team also made a series of recommendations for activities that would improve accessibility and service to the public, including increasing public outreach and educational efforts, launching a more user-friendly website, and soliciting stakeholder feedback to inform continuous improvement.

## The Result

The Transformation Team is pleased to report the **elimination of backlog just 14 months after Executive Order 2018-08 was issued.** This momentous achievement occurred months earlier than the 18-month ordered deadline, and one full month **earlier than the aggressive timeframe this Team committed to in its 60-Day Plan.**

More importantly, **the Commission has created the necessary infrastructure, accountability, and transparency to**



**prevent further backlog.** It has made sustainable improvements in service delivery, promoting knowledge of human rights laws and increased accessibility for Illinoisans.

The resolute vision of the Commission's leadership, cooperation of leaders at multiple agencies, immense dedication of project experts and program staff, and a clear plan to create a sustainable, improved future have proven to be a recipe for success.

## The Future

The work of the Transformation Team does not end after reaching zero backlog. Interagency collaboration has always meant more than simply case disposition.

The Transformation Team continues to demonstrate its commitment to furthering the protection of civil rights and ensuring access to justice. In the coming year, collaboration will continue as the Commission and Department implement expanded education and outreach, both at the local and national level, as well as solicit robust stakeholder feedback to inform continuous improvement.

New full-time Commission members, assembled in July 2019, have brought their collective expertise to further drive meaningful initiatives, and increased the Commission's capacity to tackle larger initiatives, including the establishment of a Midwest Coalition to advocate for the advancement of human rights and an expanded youth education curriculum.

## Summary of First Progress Report at the Six-Month Marker

At this time last year, the Commission had reached 44% overall reduction in backlog, an impressive achievement just 6 months after issuance of Executive Order 2018-08.

At that time, the Transformation Team established 9 targets from which to gauge progress in the coming year. This Second Progress Report is structured to report on each of those 9 targets, briefly identified below.

- 1) Reach Zero Backlog Without Sacrificing Due Process or Decision Quality**
- 2) Resolve All Newly Filed Request for Review Matters Within 12 Months of Receipt by the Commission**
- 3) Implement Upgrade to the Commission's Case Management System to Ensure Continued Support**
- 4) Procure and Implement a Case Management Solution for the Department**
- 5) Continue Building and Launch the Commission's Revamped, User-Friendly Website**
- 6) Convene an Advisory Council of Practitioners and Public Policy Experts to Provide Guidance to the Commission on Service Delivery**
- 7) Implement Public Outreach Activities**



- 8) **Formally Propose the Rules Drafted by the Commission, Implementing Public Act 100-1066**
- 9) **Continue to Enhance the Frequency and Location of the Department’s Mediation Offerings**

Comprehensive background regarding the functions of the Department, the Commission, and the various administrative processes referenced herein **may be found at the Appendix upon conclusion of this report.**

For more detailed information on early successes, the 60 Day Plan and First Progress Report are available at each agency’s website, or by [clicking here.](#)



## Second Progress Report

In its 60 Day Plan, the Transformation Team sought to eliminate backlog on an aggressive timeline of 15 months, a full 3 months earlier than ordered by Executive Order 18-08. In

an unprecedented fashion, the Commission **eliminated its case backlog in just 14 months.**

This transformation, however, is **more than just the sum of cases disposed.** Systemic changes instituted by the Transformation Team positively impact the service Illinoisans receive from the initiation of a charge at the Department through adjudication of a complaint at the Commission. Documented processes and performance metrics instituted by the Commission’s executive leadership team has immunized the Commission from re-formation of a backlog. Structural changes in the Commission have further transformed the agency.

Regular inter-agency meetings continue to identify opportunities for appropriate collaboration concerning joint rules, legislation, outreach and process improvement. In early 2019, James L. Bennett was appointed Director of the Department. During summer 2019, James A. Ferg-Cadima joined the Commission as its new Chair.

**Target #1**  
**Reach Zero Backlog Without Sacrificing Due Process or Decision Quality**

**Elimination of the backlog has, since day one, been about delivering justice, not simply reducing numbers.** The Commission has achieved zero backlog without sacrificing the high quality and clarity of its decisions.



## Pre-Executive Order Caseload

As a recap, there were 2,558 cases pending with the Commission's General Counsel's Office prior to Executive Order 2018-08. The overwhelming majority of those cases had been pending over four years.

Of those 2,558 cases, there were 2,287 Requests for Review. The breakdown of those cases was as follows:

- 1,518 cases awaiting the preparation of a proposed order and presentation to a Panel;
- 379 cases in which a Panel had made a decision, but no order had been drafted and served;
- 306 cases in which a Panel had made a decision and a draft order had been prepared, but the draft order needed finalization and service; and
- 84 cases in which an extension of time had been granted for the filing of a Request for Review, but no Request for Review was ever filed.

The remaining 271 cases were non-Request for Review cases, and the breakdown of those cases was as follows:

- 209 cases in which the timeframe for filing exceptions to an ALJ's ROD has expired, thus a Notice of No Exceptions may be issued making the ALJ's ROD final and closing the case;
- 29 contested matters awaiting presentation to a Panel;

- 10 contested matters decided by a Panel and remanded to an ALJ, but no order had been issued;
- 8 appellate court cases appealing Commission decisions;
- 7 settlements awaiting approval;
- 5 default matters;
- 2 petitions for rehearing; and
- 1 certified question.

In addition to 2,558 pending cases, the Commission was delayed by nearly three years in its publication of case decisions, depriving the public of knowledge of the Commission's actions and the Department, as investigatory body, of the Commission's jurisprudence to guide its work. This delay had also resulted in repeat audit findings against the Commission.

## IHRC's Caseload After Implementing Executive Order 2018-08

The largest hurdle for the Commission, of course, was the Request for Review backlog. The Commission decided the last backlogged Request for Review cases during its August 28, 2019 Special Panel meeting. The Special Panel was comprised of three Commissioners, appointed specifically to aid in expeditiously addressing backlogged cases.



Special Panel Commissioners Commended for their Service

The Commission’s August 2019 projection in last year’s First Progress Report was prescient. In short, the Request for Review backlog was eliminated in 14 months, and well ahead of the December 2019 deadline in Executive Order 2018-08.



The current Request for Review caseload is 129. Those cases all should be described as work in progress. Specifically, 127 of the 129 current cases were filed in 2019 (i.e., they are newly filed cases). In the other two cases (one filed in 2017 and one filed in 2018), Commission Panels voted to send them to the Administrative Law Section for evidentiary hearings on factual questions, and those two cases are being actively litigated by the parties before ALJs.

The current breakdown of the non-Request for Review cases within the General Counsel’s Office also should be described as work in progress and is as follows:

- 1 contested matter awaiting presentation to a Panel;
- 0 contested matters that have been presented, decided, and remanded back to the ALJ but no order has been issued yet;
- 93 Appellate Court cases appealing Commission decisions;
- 0 settlements awaiting approval;
- 0 default matters (i.e., cases where IDHR has requested that the Commission enter a default order against a non-cooperative respondent to a charge);
- 0 petitions for rehearing *en banc*;
- 0 motion for interlocutory appeal; and
- 1 certified question.

Please note two issues regarding the above list. First, many categories of cases that were referenced in last year’s First Progress Report do not appear on the above list because there are no pending cases in those categories at this time.

Second, as the Commission noted in last year’s First Progress Report, the high number of pending appeals of Commission decisions is no reflection on the quality of the Commission’s decisions. Instead, that number is directly related to the expeditious elimination of backlog. Simply put, more decisions issued led to more appeals in that timeframe.



In fact, the Commission's success rate on appeal has long been stellar, and lately has been perfect. The **Commission has not lost an appeal, on the merits or otherwise, since the elimination of the backlog began in earnest in Fall 2018.** The Commission's Executive Director has been adamant: the Commission would eliminate the backlog ahead of schedule, but **without sacrificing due process or decision quality.** Inasmuch as the ultimate arbiter on those issues is the Appellate Court, the Commission clearly accomplished its goal.

Moreover, Commission decisions are now timely published, thereby providing increased transparency to the public and eliminating prior repeat audit findings.

### **IDHR Response to Increased Workloads as IHRC Cleared Request for Review Backlog**

Dramatically increasing output in one area of operations poses a risk of bottleneck elsewhere in the process. Advanced knowledge and preparation are key to mitigating this risk, and **the Transformation Team was highly communicative and proactive in this respect.** The incredible work performed by the IHRC to clear the backlog impacted the IDHR both prior to and after the processing of the backlog, but IDHR kept pace with the changes, resulting in seamless service to Illinoisans.

#### ***IDHR Timely Filed Responses to Requests for Review with the IHRC***

Each of the 2,287 cases pending in the backlog contained an official response from the IDHR providing IDHR's review and

analysis of the case. Upon receiving notice by the IHRC that a Request for Review has been filed, IDHR considers the arguments made by a Complainant, reviews the case and prepares an IDHR Response for filing with the IHRC requesting that the IHRC enter one of the following orders: (a) an IHRC order sustaining IDHR's dismissal for lack of substantial evidence; (b) an IHRC order vacating the IDHR dismissal and entering a finding of substantial evidence; or (c) an IHRC order remanding the case to IDHR for further investigation.

New Request for Review cases were filed throughout 2019 and IDHR made it a priority to timely review and respond to these cases to ensure that new backlog did not form. IDHR is pleased to report that it has **timely responded to all 2019 Request for Review cases.** To improve data collection practices and to expedite IHRC review of IDHR response to Requests for Review, a new transmittal sheet was jointly developed by IHRC and IDHR.

#### ***IDHR Implemented IHRC Orders Vacating IDHR Determinations to Substantial Evidence***

Throughout 2019, IDHR received numerous IHRC orders vacating IDHR determinations of lack of substantial evidence to substantial evidence. IDHR implemented these orders by taking the following actions:

- IDHR issued new determinations of substantial evidence to complainants and respondents;
- IDHR attorneys engaged in conciliation discussions with complainants and respondents to provide them with



settlement options where appropriate; and

- Where conciliation was not successful or desired by the parties, IDHR attorneys offered complainants the option of having IDHR prepare and file a complaint on their behalf with the IHRC.

### ***IDHR Implemented IHRC Orders Remanding IDHR Determinations for Further Investigation***

Throughout 2019, IDHR received numerous IHRC orders vacating IDHR determinations of lack of substantial evidence and remanding the cases to IDHR for further investigation. IDHR implemented these orders by taking the following actions:

- Where sufficient time remained on the statutory investigative clock, IDHR investigators contacted complainants and respondents and any relevant witnesses to complete the investigation;
- Where insufficient time remained on the statutory investigative clock, IDHR contacted complainants and respondents to request an agreed extension of time to complete the investigation (for time to be extended both complainant and respondent must agree); and
- Where time for completion of an investigation had expired, parties are permitted by statute to proceed to IHRC or the Circuit Court for adjudication of their charge of unlawful discrimination.

### ***IDHR Responded to Complainant Appeals to the Illinois Appellate Court***

Throughout 2019, several complainants appealed decisions rendered by the IHRC to

the Illinois Appellate Court. Where complainants named the IDHR as a party, IDHR promptly contacted the Illinois Attorney General for representation and remained available to the Attorney General to answer questions or requests for information in the Appellate Court proceeding.

### ***IDHR Reviewed IHRC Request for Review Orders to Assess Impact on IDHR Policies and Procedures***

As IDHR received notice of IHRC issued orders (from the 2,287 Request for Review case backlog), IDHR promptly reviewed all orders to determine impact on IDHR legal and investigatory policies and procedures.

Where appropriate, IDHR issued new guidance to IDHR's intake, legal and investigative units to implement new IHRC interpretations of the Act.

### ***IDHR Maintained Availability of Request for Review Cases Pending at the IHRC and Continues to Docket IHRC Request for Review Decisions on IDHR Information Systems***

Throughout 2019, as IHRC worked to clear the backlog of 2,287 Request for Review cases, the IDHR's Clerk of the Department maintained custody and control of the case files for the 2,287 cases and maintained ready access for review by the IHRC as necessary and the internal divisions of the IDHR.

As IHRC issued orders on each of the 2,287 Request for Review cases, the IDHR Clerk of the Department staff worked diligently to docket case dispositions and arrange for closure and storage of physical files. Where an appeal was filed, IDHR kept the files open and available for the pendency of the appeal.



IDHR continues to notify IDHR federal partners (EEOC or HUD) of case dispositions for those cases where IDHR cross-filed the charge with a federal partner. Final disposition documents continue to be prepared and filed with federal partners in compliance with IDHR-Federal Partner Rules and Regulations.

## Target #2

### Resolve All Newly Filed Request for Review Matters Within 12 Months of Receipt by the Commission

If one were to rephrase Target #2 as a question, that question would be: How will the Commission prevent the formation of a new backlog? The answer is simple: By remaining **efficient, productive, and accountable**.

As noted in last year's First Progress Report, the Commission's Executive Director and staff implemented several systemic changes, specifically to the General Counsel's Office, that caused the 44% reduction in the backlog reported at that time. Those systemic changes included:

- Filling the long-vacant Deputy General Counsel position;
- Implementing a robust, three-day training program for new Commission staff attorneys which featured 17 different workshops and two practical skills projects;
- Implementing a new case assignment and accountability system, whereby the

Deputy General Counsel assigns new work to all attorneys, tracks the progress of the work, ensures timely completion of the work, and recognizes and corrects problems that arise;

- Providing staff attorneys clear expectations regarding acceptable levels of productivity, especially for Requests for Review;
- Creating new templates for Request for Review orders to make them shorter, faster to prepare, and easier for self-represented litigants to understand, but still legally sufficient; and
- Increasing the frequency of Commission Panel meetings from two per month to four per month, as well as increasing the number of cases assigned to each Panel.

Since last year's First Progress Report, a new, full-time General Counsel has been appointed. Upon her appointment in January 2019, the General Counsel implemented additional systemic changes to the General Counsel's Office which further improved the Office's productivity. For example, the General Counsel **formalized and reduced to writing productivity metrics for Commission staff**, expanded the metrics to include all legal work prepared by the attorneys and not just Requests for Review, and created similar metrics for administrative staff.

The General Counsel also professionalized and formalized the Commission's Coles Fellowes internship program; the extensive training and mentoring now received by the Fellowes have allowed them to become major contributors to the Office's legal work. The program provides students with schooling



course credit in a dynamic, interactive learning environment, where law students prepare and present real cases to Commissioners.

In 2019, Governor JB Pritzker appointed 7 new Commissioners to the Commission in response to Public Act 100-1066 which called for a restructuring of the former part-time Commission to consist of 7 full-time Commissioners. The Commission's new, full-time Commissioners, who were onboarded in early July 2019 brought a wealth of knowledge and experience, learned their jobs quickly and dove headlong into the Commission's work on the backlog. The new Commissioners, who are all attorneys, meet and decide cases four times per month, just as the part-time Commissioners did. Without question, the support and training provided by the Commission's staff led to the new Commissioners' successful onboarding and adjustment. The new Commissioners were provided a week-long training program, similar to the training program provided to staff attorneys. The Department's Director, Deputy Director and Chief Legal Counsel participated in the onboarding training, providing newly appointed Commissioners an overview of IDHR's mission and key policies and procedures governing its enforcement of the Act.

In sum, the Commission is confident that the General Counsel's Office's **leadership, policies, practices, and accountability, coupled with a team of full-time, highly trained Commissioners, make re-formation of a backlog highly unlikely.**

### Target #3

#### Implement Upgrade to the Commission's Case Management System to Ensure Continued Support

Vital to this transformation is **linking new, efficient business processes with effective technology solutions.** The Commission's version upgrade to its current case management system as described in last year's First Progress Report is almost complete. The system, myCaseLoad, has been designed and tailored to the Commission's needs and is currently undergoing testing.

Unlike the Commission's current, now-unsupported version, the latest version of myCaseLoad is web-based, meaning it can be accessed outside the office, runs faster, and receives continuous updates via the Internet. Moreover, its report-generating capabilities are sophisticated and will enable Commission management to watch workflows and case progress closely. Additionally, myCaseLoad will hold electronic versions of all case files, and can eventually be upgraded for e-filing capability like most modern courts.

The target date for migration of the Commission's data to myCaseLoad and system launch is early 2020.



#### Target #4

### Procure and Implement a Case Management Solution for the Department

Though both the Department and Commission participate in the life cycle of a case, both operate using separate case management systems unable to share basic case information with one another. Creation of a bridge between a common case management system will **facilitate the speedy electronic transfer of case information**, allowing both agencies access to real-time data throughout the case.

IDHR has elected to pursue myCaseLoad as its new information system in order to achieve seamless integration with the IHRC and to facilitate electronic file sharing as appropriate. IDHR, in partnership with DoIT, has identified an appropriate procurement path, a statement of work has been finalized and is under review by the parties. IDHR's goal is execute a purchase in January 2020 and begin implementation shortly thereafter.

In preparation of a new case management system, IDHR staff have worked diligently to document their critical workflows to expedite implementation of the new case management system. These workflows are indispensable in ensuring that IDHR investment in the case management system is maximized and efficiencies are achieved.

Key benefits, features, and efficiencies of the new system will include the following:

- Web-based e-filing of charges of unlawful discrimination;
- Web-based uploading of documents by Complainants and Respondents for review by IDHR Investigators;
- Web-based status of pending IDHR charges;
- Dashboards that will allow IDHR to readily identify process bottlenecks and redirect staff resources;
- Data analytics that will give IDHR the ability to conduct trend analysis and hot-spot analysis by charge basis;
- Elimination of data entry into multiple databases, reducing the likelihood of human error and resulting inconsistency in data;
- Real-time access to data to manage work flow and generate key performance data;
- Cessation of manual collection of data, including information stored on spreadsheets which exposes reliability of data to hard coded data risk as opposed to continually refreshed information; and
- Configurable workflow designer tools.

#### Target #5

### Continue Building and Launch the Commission's Revamped, User-Friendly Website

The Commission is pleased to announce that its new website went live in November 2019. As described in last year's First Progress



Report, the new website is an excellent resource for individuals seeking to learn their rights and obligations under the Act. The website also provides information about the Commission’s rules and requirements and a searchable database of Commission decisions.

The **revamped website is especially user-friendly with redesigned icons, and is available in multiple languages**, making it easier for those with language or educational barriers to understand their rights and obligations at the Commission.



are committed to convening an advisory body in 2020.

## Target #7 Implement Public Outreach Activities

Aside from eliminating the backlog and implementing systemic changes within the agency, the Executive Director and the Commission understood that the rebranding necessitated by the backlog also would have to include community outreach. The **Commission’s outreach activities in the past year have been numerous, multifaceted, and meaningful.**

### Educating the Bar



In August 2019, the Commission launched its monthly “Lunch & Learn” continuing legal education series. Lunch & Learn features leading law firms

and practitioners in the field of employment law addressing fellow Illinois attorneys on topics such as emerging trends in employment law, significant cases and news, and highlights or summaries of changes to the law.

Presenters and attendees receive Illinois continuing legal education credit, and the Commission handles all administrative planning and paperwork. Based on the

## Target #6 Convene an Advisory Council of Practitioners and Public Policy Experts to Provide Guidance to the Commission on Service Delivery

A team of both internal and external stakeholders to advise the Commission will further improve the insight as to further improvements. The establishment of a more formal advisory council **offers ongoing and robust feedback** on matters relating to the adjudicatory process, and the policies and regulations proposed by the Commission. Staff are currently exploring the concept and



written evaluation forms, **attorneys have found the presentations to date informative and the presenters impressive.**

In short, the Lunch & Learn program has been well received in the legal community and has filled a need for additional employment law education, which benefits all.

Educational topics to date have included:

- *Epic Systems Corp. v. Lewis*: How the U.S. Supreme Court Just Changed the Landscape for Arbitration Agreements Between Employers and Employees;
- Unlawful Discrimination in the Workplace: An Employee Advocate's Perspective;
- Workplace Bullying: Legal Implications and Exposure;
- Emerging Trends in Disability Discrimination in Employment; and
- The Impact of Immigration Status in Employment Law.

Notices regarding upcoming Lunch & Learn sessions are posted in public common areas at the Commission's Chicago and Springfield offices. All interested are welcome to attend. The next event will be held in January 2020, with details to be announced.

## **Educating the Public**

In an effort to educate the public about the rights afforded and responsibilities mandated under the Act, the Commissioners and Commission staff engaged with the public at several events over the past year, including the following:

- The Commission welcomed law students from Mexico for an in-depth discussion about American civil rights laws;
- The Commission held informational workshops for veterans and senior citizens at the Illinois State Fair; and
- Newly appointed Commissioners formed an Education and Outreach Committee to plan future workshops.

The Commission also kicked off its first quarterly newsletter in April 2019 with news updates and case highlights. The newsletter is sent to all State employees electronically and made available to the public on the Commission's newly revamped user-friendly website. The newsletter is one more avenue for the Commission to provide ongoing education regarding the Act.

## **Engaging Illinois' Youth**

Illinois' youth represent future leaders and advocates in our communities. This is why the Commission has developed an educational plan, which will bring these important principles to elementary, middle and high school students, culminating in a project where students showcase what they have learned. These actions will **empower a generation of youth that understand and respect human rights** in order to end discrimination, intolerance, and violence.

Additionally, the Commission has enhanced its past practice of having high school interns, encouraging interns to become more involved and exposed to Commission proceedings, and documenting completion with a certificate formally recognizing their



contribution to the protection of human rights.

At the post graduate level, the Commission has continued its prestigious Coles Fellowes program to mentor law students, exposing soon-to-be lawyers to the importance of human rights activities. In April 2019, the Commission was recognized for the quality of its extern placement experience when it was presented with the **prestigious Ronald W. Staudt award from the Chicago-Kent College of Law**. Established in 2011, this award is given to organizations that make **outstanding contributions to public interest law** and provide opportunities for Chicago-Kent students to gain a meaningful experience in public interest practice.

### Recognizing Trailblazers and Community Civil Rights Activists

In March, the Commission held a Women’s History Month ceremony, during which the Commission awarded its inaugural Diamond Awards to three women for their community service and activism.



*Awardees honored for their community service and activism*

In June, the Commission and the Department held a joint celebration for “Juneteenth,” June 19, 1865, the emancipation-day for the last enslaved African-Americans in the former Confederate States. Governor Pritzker gave the keynote address and issued a proclamation commemorating Juneteenth in Illinois. Also, the Commission awarded three more Diamond Awards for the awardees’ lifelong contributions to civil rights in Illinois.



*Governor Pritzker’s keynote address and Juneteenth proclamation*



In November, the Commission held a summit marking the 40th anniversary of the Illinois Human Rights Act: *Building a Better Illinois through Equality: Commemorating 40 Years of Civil Rights in Illinois*. The summit offered a valuable networking opportunity for human rights advocates, and featured workshops on the history of civil rights in Illinois, race and LGBTQ discrimination, sexual harassment, and the Commission’s year-in-review. The workshop drew a crowd of more than 50 and qualified for Illinois continuing legal education credit. The Commission honored four trailblazers leading the charge in the human rights arena.



*Trailblazer awardees at the Commission’s first inaugural summit*

**Target #8**  
**Formally Propose the Rules Drafted by the Commission, Implementing Public Act 100-1066**

Public Act (“P.A.”) 100-1066 requires the Commission adopt rules governing contents of newly permitted responses to Requests for Review. Commission staff took immediate initiative to draft clear procedural rules. With the support of the CMS BAH, whose focus it has been to make administrative procedure less legalese and more user-friendly for self-represented litigants, the Commission examined its existing procedural rules, and eliminated outdated or burdensome provisions that impose challenges for Illinoisans interacting with the Commission. For instance, a litigant having to file fifteen copies of a document is an onerous remnant of paper-based processes and no longer has a place in this modern age.

The Commission has worked with the Secretary of State’s Index Division to ensure proper formatting of draft rules and anticipates submitting its proposed rules for publication in the Illinois Register in early 2020, if not sooner.

**Target #9**  
**Continue to Enhance the Frequency and Location of the Department’s Mediation Offerings**

Mediation is a tool that provides parties a less formal, and often less intimidating process to



resolving a dispute as compared to formal hearing or court. Flexibility in procedure allows the parties involved to find the best path to agreement, and fashion their own remedies without the uncertainty of how a judge or the Commission might rule.

IDHR's Mediation Program offers parties to a charge of unlawful discrimination the opportunity to negotiate a settlement of charges rather than go through a full, time-consuming investigation. Mediation services are voluntary and provided free of cost to the parties. During a mediation conference, an IDHR Human Rights Mediator meets with parties in a confidential, nonconfrontational atmosphere to explore mutually acceptable settlement options. Mediation does not affect the investigation if there is no settlement. If the parties fail to reach a resolution, the case is investigated.

In 2018, IDHR moved forward with its plan to expand the mediation unit and posted positions for both the Chicago and Springfield offices. The searches were unsuccessful and IDHR reallocated its limited available headcount to fill several mission critical vacancies in the Human Rights Investigator corps. In 2019, IDHR launched and successfully completed an ambitious recruitment campaign resulting in the hiring of over twenty Human Rights Investigator Trainees. IDHR is now prepared to resume its plan to expand the IDHR Mediation Program by launching a new recruitment campaign in early 2020 that will include the positing of two additional mediators for the Chicago office and one mediator for the Springfield Office.

Expanding the IDHR Mediation Program is a critical component of IDHR's plan to

respond to Public Act ("P.A.") 101-0430 which takes effect July 1, 2020. Under P.A. 101-0430, the Illinois Human Rights Act's coverage was expanded to include employers with one or more employees (previously only applicable to employers with fifteen or more employees). Given this expansion in coverage, IDHR anticipates a significant increase in the number of charges received for investigation. IDHR will respond to increased volume by increasing the availability of the mediator program for all parties interested in alternative dispute resolution.

## **IDHR and IHRC Collaborate with the General Assembly to Strengthen the Illinois Human Rights Act**

During the 101<sup>st</sup> General Assembly, several pieces of legislation were passed and signed into law by Governor Pritzker that **significantly amend, expand or clarify the enforcement and adjudication of the Illinois Human Rights Act ("Act")**. The IDHR and IHRC are working both independently and collaboratively to implement this historic legislation.

The IHRC and IDHR anticipate an increase in the number of charges of unlawful discrimination filed with IDHR for investigation and filed with the IHRC for adjudication.



- **Expanded Definition of Employer.** Changes the definition of “employer” in Section 2-101(B) of the Act from having 15 or more employees to having one or more employees within Illinois. (P.A. 101-0430): Effective July 1, 2020.
- **Protection Extended to Nonemployees.** Amends Section 2-102 of the Act to make it a civil rights violation for any employer, employment agency, or labor organization to subject “nonemployees” to sexual harassment or harassment on the basis of any protected class in the workplace. “Nonemployees” include independent contractors and consultants performing services pursuant to a contract. (P.A. 101-0221): Effective January 1, 2020.
- **Disclosure of Adverse Judgments/Administrative Rulings.** Adds new Section 2-108 to the Act to require employers to disclose to the IDHR any “adverse judgment or administrative ruling” against them in the previous calendar year where there was a finding of sexual harassment or unlawful discrimination under state, federal or local law. Provides that if IDHR is investigating a charge, it may request the responding employer to submit the total number of settlements entered into during the preceding 5 years that relate to any alleged act of sexual harassment or unlawful discrimination. Disclosures are required beginning July 1, 2020 and by each July 1 thereafter. (P.A. 101-0221).
- **Annual Sexual Harassment Prevention Training Required.** Adds new Section 2-109 to the Act to require employers to

provide sexual harassment prevention training to their employees at least once per year. Requires IDHR to produce a model training program that will be available to employers and the public at no cost. In addition, under new Section 2-110, IDHR is required to create a model sexual harassment training for use by the restaurant and bar industry and make it available to the public at no cost. Employers are required to comply by December 31, 2020. Model training will be available online at the IDHR’s website. Please check IDHR’s website for more information on when the training programs will be available. (P.A. 101-0221).

- **Impact of Filing Complaint in Federal or State Court.** Amends Section 7-109.1 of the Act to provide that where a party initiates Federal or State court litigation seeking relief for some or all of the issues that are the basis for the charge, either party may request that IDHR administratively dismiss the charge. Clarifies that for charges filed under 7B of the Act (Article 3 – Real Estate Transactions), administrative dismissal may occur only after a trial has commenced. (P.A. 101-0221): Effective January 1, 2020.
- **Arrest Record Housing Protections.** Amends Section 5/3-102 of the Act to make it a civil rights violation for a person engaging in a real estate transaction to discriminate because of an arrest record. Adds new Section 5/3-102.5 to provide that an owner or any other person engaging in a real estate transaction is not precluded from



prohibiting the tenant, a member of the tenant's household, or a guest of the tenant from engaging in unlawful activity on the premises. (P.A. 101-0565): Effective January 1, 2020.

- **Assistance Animal Accommodation.** Creates the Assistance Animal Integrity Act, which addresses when a person requests that a housing provider make an exception to the housing provider's policy prohibiting or restricting animals on the housing provider's property because the person requires use of an assistance animal. Permits the housing provider to require the person to produce reliable documentation of the disability and disability-related need for the animal only if the disability or disability-related need is not readily apparent or known to the housing provider. (P.A. 101-0518): Effective January 1, 2020.
- **Complaint Filing Period for Circuit Court Election Cases.** Amends Section 10-103(A) of the Act to clarify that when a party elects to have a complaint alleging discrimination in connection with a real estate transaction adjudicated in the circuit court, rather than before the IHRC, the time period for the Attorney General to file the complaint shall begin when the IHRC enters the order of administrative closure. (P.A. 101-0530): Effective January 1, 2020.
- **Housing Discrimination Training for Human Rights Commissioners.** Amends Section 8-101(F)(2) of the Act to add housing discrimination to the list of issues covered in training for newly appointed Human Rights

Commissioners. (P.A. 101-0530): Effective January 1, 2020.

- **Discretionary Fact-Finding Conferences in Fair Housing Cases.** Amends Section 7B-102(C)(5) of the Act to give IDHR discretion to determine on a case-by-case basis when it would be beneficial to the investigation to hold a fact-finding conference in housing cases. This change does not apply to fact-finding conferences in non-housing cases. (P.A. 101-0530): Effective January 1, 2020.

IDHR and IHRC will continue to offer the public guidance as it implements these and other new changes to the Act.

## The Future

**With the backlog gone, the workforce reenergized, and strong leadership at the helm, the future of the Commission is bright.** Continued Commission and joint inter-agency initiatives make our State a strong leader in the protection of civil rights.

Expanded education and outreach, both at the local and national level, as well as robust stakeholder feedback, will continue to make the work of the Commission and Department impactful to Illinoisans.

New full-time Commission members, assembled in July 2019, have brought their collective expertise to further drive meaningful initiatives that will advance human rights in our State.



## Full-Time Professionalized Commission

Working full-time, new Commission members have increased capacity to further collaborate with Commission staff and the Transformation Team on Statewide initiatives. The newly-established Commission members have aligned their efforts in committees dedicated to the advancement of 6 ongoing and future initiatives:

- Education and Outreach Committee;
- Legislative Committee;
- Midwest Coalition Committee;
- Youth Initiative Committee;
- Access and Transparency Committee; and
- Technology Committee.

## Organization of a Midwest Coalition to Advance Human Rights

In addition to regularly engaging local communities, the Commission endeavors to bring human rights to a national level, coordinating with the Department and neighboring states to form a Midwest Coalition dedicated to the advancement of human rights.

By engaging with leaders across the country, Illinois will continue to identify best practices and strengthen our efforts to vigorously enforce human rights protections in our State. The convening of an advisory council as described in Target #6 will provide

additional valuable assistance in coordinating this initiative.

## Continued Education and Outreach

In the coming year, the Commission will expand its education and outreach initiatives, particularly its youth training initiatives, and has developed a special committee devoted to this important cause. Additionally, the Department and Commission will collaborate with CMS to design a comprehensive diversity and inclusion training curriculum that can be made available to all State employees.

## Joint Surveys to Inform Operations

On the broadest level, measuring performance should take the form of public confidence in the process, and ease of access. Survey responses from external stakeholders will provide valuable feedback in this area, presenting unique insight into areas for continued betterment.

The Transformation Team is working on development of a survey instrument to be used in assessing the quality of its services and community outreach initiatives. Additionally, the Commission and Department will jointly survey parties that appear before the two agencies to incorporate their suggestions for better service.

The Department and Commission will use information gleaned from this exercise to explore and develop additional tools to assist self-represented litigants in navigating the investigation and adjudication of claims.



## Conclusion

Since the height of the backlog in June 2018, the Transformation Team is proud to report the **Commission has reached zero backlog ahead of schedule**. Cases are now initiated within the year filed, and Illinoisans can expect to receive a timely, well-reasoned decision bringing resolution to their case. However, the outcome here is much greater than simply elimination of a longstanding backlog. The systemic changes at the Commission, coupled with increased coordination with the Department and CMS BAH have brought, and will continue to bring, value to the lives of Illinoisans. The end of the backlog does not signal the end of collaborative efforts. Rather, **broader lessons can be drawn from this inter-agency collaboration and extended toward future inter-agency initiatives**.

The Transformation Team is grateful for this opportunity to share its work. It continues to remain accountable to the public it serves by publishing information on participating agency websites and looks forward to providing the third and final progress report in 2020, as well as interim updates on current and new initiatives.

## Appendix: Background

### The Role of the Department and Commission in Enforcing the Illinois Human Rights Act

On December 6, 1979, the Illinois Human Rights Act (“Act”) was signed into law, creating the broadest civil rights coverage for the people of Illinois in the State’s history. The Act created two separate administrative agencies with distinct functions regarding enforcement of the Act: The Department to investigate allegations of unlawful discrimination within Illinois, and the Commission to adjudicate complaints of civil rights violations.

The Department’s core mission is to secure for all individuals within the State of Illinois freedom from unlawful discrimination; and to establish and promote equal opportunity and affirmative action as the policy of this state for all its residents. The Department fulfills the Act’s goals by receiving allegations of discrimination (intake), investigating charges of discrimination within specified time periods required by statute, rendering determinations, prosecuting discrimination complaints before the Commission, and educating the public.

The Department operates a Training Institute (“Institute”) which provides training events to state agencies, non-profit organizations, the private sector and the public on topics that impact the incidence of discrimination in Illinois. The Institute provides outreach through year-round activities that promote



anti-discrimination and raise awareness of the Department's mandate and services. The Public Contracts Unit enforces provisions of the Act and the IDHR Rules which require public contractors and eligible bidders to refrain from unlawful discrimination, undertake affirmative action in employment and develop a written sexual harassment policy. The State Agency Liaison Unit administers and enforces the equal employment opportunity/affirmative action provisions of the Act and Department Rules.

The Commission is a quasi-judicial agency and serves as a neutral, impartial forum for the litigation of complaints filed pursuant to the Act following the Department's investigation of a charge of discrimination. Such complaints are adjudicated pursuant to procedures set forth in the Act and Commission Rules. The Commission is dedicated to promoting freedom from unlawful discrimination. Its primary responsibility is to make impartial determinations of whether there has been unlawful discrimination as defined by the Act. The Commission also furnishes valuable information to the public about the Act and the Commission.

Similar to law enforcement agencies ensuring the safety and protection of persons and property, the Department and Commission work to ensure equal application of rules, policies, and procedures in the Act's covered areas of employment, housing, financial credit, public accommodations, and sexual harassment in education.

The Department and the Commission play different but equally important and vital roles in the enforcement of civil rights in the State of Illinois. A natural synergy exists in the

way each operates, with Illinoisans receiving the assistance of each agency in the pursuit of complaint resolution.

## Benefits of the Illinois Administrative Process

### The Illinois Act's Coverage Exceeds Federal Protections

While Federal law overlaps to some extent with Illinois law, Illinois' Act includes several additional categories, including sexual orientation, military status, order of protection status, and arrest record. In addition, Federal agencies investigate discrimination in employment and housing, while the Act also covers discrimination in public accommodations and financial credit. Federal law is also more restrictive than the Act in some definitions, for example, what constitutes a "disability," and what constitutes an "employer" liable for sexual harassment. The Act also contains certain procedural safeguards that are not afforded in the Federal counterpart. Unlike Federal law, a charge under the Act is filed under oath or affirmation, which may protect against false or frivolous charges. The Department is required to conclude an investigation in a specific timeframe, while there is no similar protection under Federal law. Additionally, the party filing a charge is afforded the right to an investigation under the Act, while under Federal law, a charge may be dismissed with little or no investigation. Finally, the Department's decision can be appealed through the Request for Review process, at no cost to the parties, while under Federal law the only recourse is to file a lawsuit.



## **The Illinois Administrative Process Provides Access for the Economically Disadvantaged**

Victims of discrimination are often members of vulnerable populations and historically disadvantaged groups (e.g. low wage earners, unemployed, recently discharged, minorities, persons with disabilities, etc.) Indigent complainants who believe they have been discriminated against have access to the Illinois administrative process regardless of their financial ability. There are no filing fees and legal representation is not required to pursue a complaint. The Department works with complainants during the intake process to gather sufficient information to determine the allegations, whether the Department has jurisdiction, and the preparation of a charge that initiates an investigation by the Department. Where agreed to by the parties, the Department provides mediation services to aid expedient and satisfactory resolution.

## **The Illinois Administrative Process Provides an Alternative to a Burdened Court System**

In the traditional judicial system, most cases are disposed of prior to trial by motions to dismiss or for summary judgment. Those dismissals are even greater in discrimination cases where the evidence is largely going to be in the possession of the defendant. Thus, unless the self-represented plaintiff is adept at conducting discovery to obtain the evidence needed to bring a case to trial, most self-represented plaintiffs will not see their case go to trial. To the contrary, the Department is required by statute to investigate every case in which it has

jurisdiction. Thus, by initiating a complaint with the Department, a victim of discrimination will obtain an investigation into their allegations and receive a final investigative determination made by the Department, which may be brought before the Commission for adjudication and damages.

### **Overview of Process for Administrative Investigation and Adjudication of Human Rights Violations in Illinois**

An overview of the investigative and adjudicative processes is helpful to an understanding of the backlog numbers, both as it pertains to case accumulation, and case disposition.

### **Initiating a Discrimination Charge at the Department**

By statute, the Department has 365 days from the date a perfected charge of discrimination is filed to investigate and determine whether substantial evidence of discrimination exists. Where the Department's investigation finds substantial evidence of discrimination, a Complainant has the option of:

- 1) requesting, within 30 days, the Department to file a complaint on complainant's behalf with the Commission, a separate adjudicatory agency;
- 2) filing a complaint with the Commission within 90 days; or



- 3) commencing, within 90 days, a civil action in a State circuit court of appropriate venue.

Alternatively, if the Department dismisses the charge (for lack of substantial evidence, lack of jurisdiction, or failure to proceed), the complainant has 90 days to either:

- 1) file a Request for Review (appeal) of that dismissal with the Commission; or
- 2) commence a civil action in a State circuit court of appropriate venue.

Prior to 2008, Requests for Review (appeals) were determined by the Department's Office of Chief Legal Counsel. However, to provide independent review for individuals seeking appeal of the Department's dismissals, the General Assembly amended the Act to transfer this function to the Commission, effective January 2008. This mandate occurred largely unfunded, which was a contributing factor to the Request for Review backlog.

### **Adjudicating a Discrimination Complaint at the Commission**

A quasi-judicial agency, the Commission serves as a neutral forum for litigating complaints of civil rights violations. The Commission also hears and determines Requests for Review of the Department's determinations of either dismissal or default. Finally, the Commission approves settlements submitted by the Department, determines *en banc* petitions, and hears and determines a variety of other motions and petitions.

The substantive casework of the Commission is accomplished through the Administrative

Law Judges ("ALJs"), the Board of Commissioners, and the General Counsel's Office. The ALJs preside over public hearings, during which complaints are litigated. The Board of Commissioners, with the advice and counsel of attorneys in the General Counsel's Office, decide post-public hearing matters (called contested matters), as well as Requests for Review of the Department's determinations.

The Board of Commissioners, previously comprised of 12 part-time Governor-appointed Commissioners and one Chair, now 7 full-time appointees, are diverse in experience and representation of our State. Contested matters, Requests for Review, approval of settlement agreements, and various motions and petitions are determined by three-member Commission panels. The Commissioners *en banc* (as a whole) determine petitions for rehearing and certified questions.

As the vast majority of the Commission's work, and subsequent backlog, is determining Requests for Review and contested case matters, a brief overview of each is presented for background.

#### ***Requests for Review***

Where a party requests, Commission panels review Department defaults and dismissals. When reviewing a default, if the Commission panel finds the respondent showed good cause for failure to participate in the Department proceedings, the Commission will vacate the Notice of Default; otherwise, the Commission panel will enter an Order of Default against the respondent. When reviewing a dismissal, the Commission panel shall determine whether to sustain (uphold)



the dismissal or vacate (undo/reverse) the dismissal. If sustained, a final Commission order dismissing the charge will issue. If vacated, the Commission will issue an order either remanding the matter to the Department for further investigation, or finding substantial evidence of discrimination, thus allowing the complainant to move forward with filing a complaint with the Commission.

In the course of their duties, the Commissioners receive technical and legal advice from attorney advisors, staffed in the Commission's General Counsel's Office. The attorney advisors are responsible for drafting legally-sufficient orders memorializing the Commissioners' oral determinations.

### ***Contested Matter Cases***

Upon conclusion of an evidentiary hearing on a complaint, the ALJ issues a Recommended Order and Decision ("ROD"). The parties have an opportunity to file exceptions to the ROD if they disagree. If parties file exceptions to the ALJ's ROD, the exceptions go to the Commissioners for determination. If no exceptions are filed, then the ROD becomes the Commission's final decision. Historically, the Commission's General Counsel's office has been tasked with mailing the parties Notices of No Exception, which allows the ROD to stand as the final enforceable order of the Commission. The Administrative Hearings Unit assumed this task last year, resulting in 100% elimination of backlogged cases awaiting Notices of No Exception.