

**OUTLINE OF PRESENTATION BEFORE ILLINOIS HOUSE OF REPRESENTATIVE  
SPEAKER'S OFFICE ON MARCH 25, 2004 REGARDING THE  
ADMINISTRATIVE PROCESSES BEFORE THE ILLINOIS DEPARTMENT  
OF HUMAN RIGHTS AND ILLINOIS HUMAN RIGHTS COMMISSION UNDER THE  
ILLINOIS HUMAN RIGHTS ACT**

1. The complex and convoluted rules and procedures currently in existence pursuant to the Illinois Human Rights Act has been an administrative nightmare for attorneys and litigants for well over a decade. There has been a swinging pendulum of quick fix type remedies that have been instituted to resolve existing problems which have only resulted in difficulties created at another step or bottleneck within the process. See attached Exhibit A which outlines the 25 administrative steps necessary to complete the administrative process from the filing of charge to the collection of a judgment. The entire process can take over a decade to navigate and cases do not resolve because there is no finish line in sight to motivate settlement. Both employees and employers incur tremendous costs and attorney's fees which further inhibits resolution by settlement. The cost to Illinois tax payers of maintaining this multi process and multi step administrative system is not justified by the results experienced by the participants. Both employee and employer representatives are frustrated at many levels of the current system. The Illinois State Bar Association Employment and Labor Section Counsel (a group of both employer and employee representative attorneys) have resolved that the only appropriate resolution is to legislate a modification to the Illinois Human Rights Act wherein the Department of Human Rights resources are used productively toward negating systematic type discrimination with the garden variety type cases left upon the parties to litigate within the Circuit Courts through private counsel.

Delay inherent in the administrative process is readily apparent when you review reported decisions under the Illinois Human Rights Act. A summary of some recent decisions that were litigated before the Illinois Human Rights Commission are as follows:

- A. *Johnson v. Illinois Human Rights Commission*, 318 Ill.App.3d 582, 742 N.E.2d 793 (1<sup>st</sup> Dist. 2000).—This case was decided by the Appellate Court on December 26, 2000. The complainant originally filed a charge of discrimination on December 24, 1994 and amended his charge of discrimination after his employment was terminated on January 11, 1995. The Appellate Court reversed the Illinois Human Rights Commission and remanded the case back to the Commission for further proceedings.
- B. *Anderson v. Illinois Human Rights Commission*, 314 Ill.App.3d 35, 731 N.E.2d 371 (1<sup>st</sup> Dist. 2000).—This case was decided by the Appellate Court on June 5, 2000. The employee was terminated on March 20, 1991 and she filed a charge of discrimination on September 3, 1991. A public hearing was held at the Commission on September 10, 1997. Although this complainant was pro se, the Appellate Court reversed a determination on behalf of the employer on the basis that the hearing conducted by the ALJ was unfair and conducted in an arbitrary manner. The ALJ made erroneous applications of the rules of evidence and did so in an unequal fashion. The matter was remanded back to the Commission for rehearing.

- C. *Lalvani v. Illinois Human Rights Commission*, 324 Ill.App.3d774,755 N.E.2d 51(1<sup>st</sup> Dist. 2001).—This case was decided by the Appellate Court on July 31, 2001. The complainant had originally filed a charge of discrimination in May, 1990 and a public hearing was held by the ALJ in May, 1995.
- D. *Vancampen v. IBM*, 326 Ill.App.3d963,762N.E.2d545(1<sup>st</sup> Dist. 2001).—This case was decided on December 13, 2001. The facts of the case reflect that the employee was terminated from his employment on May 22, 1990.
- E. *Southern Illinois Clinic v. Illinois Human Rights Commission*, 274Ill.App.3d840,654N.E.2d655(5<sup>th</sup> Dist. 1995).—This case was decided on August 22, 1995. The employee was terminated on December 30, 1987 and a charge of discrimination was filed on March 17, 1988.
- F. *Irick v. Illinois Human Rights Commission*, 314Ill.App.3d929,726N.E.2d167(4<sup>th</sup> Dist. 2000).—This matter was decided by the Appellate Court on March 3, 2000. The employee was terminated from employment on June 18, 1990. A public hearing was held and decided by the ALJ in February, 1993. The ALJ’S decision was in favor of the employee. The Illinois Human Rights Commission subsequently reversed the ALJ’S decision in November, 1998. The Appellate Court in March, 2000 reversed the Commission and remanded the case for further proceedings.
- G. *Lake Point Tower v. Illinois Human Rights Commission*, 291Ill.App.3d897,684 N.E.2d948(1997).—This case was decided by the Appellate Court on August 28, 1997. The employee was terminated on October 9, 1987 and a public hearing was held on May 12, 1994.
- H. *Gilchrist v. Illinois Human Rights Commission*, 312Ill.App.3d597,728N.E.2d566 (1<sup>st</sup> Dist. 2000).—The Appellate Court mandate issued on March 27, 2000. The employee was terminated on November 10, 1992 and a charge of discrimination was filed with the Department on January 4, 1993. A public hearing was held on October 15, 1997. The Appellate Court remanded the decision of the Commission based upon the ALJ’S failure to comply with the statutory provision requiring adequate findings of fact and conclusions of law.

The above cases are a sample of what typically occurs at the administrative level. Most practitioners know that from the filing of the initial charge with the Department of Human Rights through the date that the Illinois Human Rights Commission would issue a final order takes a minimum of 5 years and often much longer. Many practitioners have their own personal “horror stories” of cases that have lasted over a decade. On some occasions, a final judgment becomes unenforceable because the employer is no longer in business or bankrupt.

2. There has for a substantial period of time been a concern at the Illinois Department of Human Rights regarding substantive due process. In December, 1998, the ISBA Labor and Employment Law Section Counsel issued a report stating that there was a lack of procedural due process at the Illinois Department of Human Rights and recommended that the department adopt the following procedural safe guards:

- A. Recorded proceedings;
- B. Witnesses be sworn under oath;
- C. Attorneys be allowed to actively participate at hearings including the right to cross examine witnesses;
- D. Disclosure of exhibits and position statements to the litigants prior to the fact finding conference and issuance of the investigator's report.

3. Subsequently, the Federal Courts issued a temporary and permanent injunction against the practices and procedures before the Illinois Department of Human Rights in the case of Cooper v. Salazar. However, the Federal Injunction largely relates to the issue of credibility determinations at the investigation process and thereby does not address the procedural safe guards outlined above.

4. Litigants that have practiced before the Illinois Department of Human Rights and the Illinois Human Rights Commission have observed a variety of quick fix type remedies and a swinging pendulum of political and administrative responses. These types of remedies which may be expedient at one level becomes abhorrent to lawyers seeking a fair and equitable process which can be relied upon to resolve disputes arising under the Illinois Human Rights Act. For example, during one era the Department would issue few dispositive reports within the 300 day time requirement resulting in attorneys using the "30 day window" to file a complaint before the Illinois Human Rights Commission without a Department's determination. This resulted in a flood of cases and a tremendous back log before the Illinois Human Rights Commission which created years of delay. Currently, the Department's practice is to view the term "substantial evidence" in a fashion which is not justified by this statutory definition. By statute, the definition is more than a scintilla of evidence but less than a preponderance. Practitioners as well as Administrative Law Judges have remarked that the Department is construing the term substantial evidence as a burden beyond a reasonable doubt or even greater.

5. If a right to sue letter were available to complainants, the IDHR would be able to select those charges to be fully investigated. As it now stands, all charges must have a fact-finding conference. This is not true at the EEOC. The EEOC makes an early call as to what charges they wish to fully investigate and which charges they wish to merely issue a right to sue letter. The IDHR's budgetary requirements would dramatically decrease if it did not have to conduct a fact-finding conference on each and every charge.

6. Respondents would not have to incur substantial expense for meritless charges. Currently, respondents have to invest defense money into both good and bad faith charges because all charges are investigated equally at the IDHR. Under the EEOC system, meritless charges are given the quick brush-off at the administrative level, leaving the complainant with only the remedy of civil litigation at the District Court level. Unless that complainant can convince an attorney to accept his or her case, the time to sue expires and the bad charge goes away at little or no cost of defense to the employer. In short, both the IDHR and private attorneys could create a filter eliminating the need to defend bogus claims.

7. Under the current protracted format, even when an employer prevails by a final decision at the Commission, it must incur a huge costs of defense. Should the respondent lose,

the respondent not only has to pay the cost of defense but then has to pay complainant's attorney. As a result, the attorney fee issue often wags the dog during settlement negotiations. This makes settlement more difficult and forces the parties into further litigation.

8. The quality of the judiciary at the Circuit Court level would provide the parties with more reliable and predictable results, which would enable employers to conform their conduct accordingly.

9. Administration and interpretation of the Illinois Human Rights Act would not be subject to political pressures and agenda. As we have seen in years past, winds of political change can create a drastic difference in how the Illinois Human Rights Act is interpreted and administered. Political appointments and administrative rule changes can swing the pro-complainant or pro-respondent pendulum dramatically in one direction or another. Circuit courts are not subject to that type of influence. Judges around this state would be able to read and interpret the Illinois Human Rights Act subject only to Appellate and Supreme Court decisions.

10. Pro se complainants are unable to navigate the current administrative framework beyond the initial IDHR investigation.

11. Illinois taxpayers would save by eliminating the Illinois Human Rights Commission budget in its entirety and drastically reducing the budget at the Illinois Department of Human Rights.

12. Attorneys around the state would be free to litigate these cases in their local courts with well-established rules of procedure, evidence and review; the same as other tort and civil litigation.