

Minutes of the
Cook County Commission on Human Rights
March 10, 2016

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Attendance:

Present: Chairperson K. Gunn; Commissioners K. Ayala-Bermejo, J. Block, C. Eatherton (telephonically), C. Harris, G. Orr (telephonically), H. Ratner, and S. Schultz.

Absent: Commissioners E. Clarke-Bey and T. Connor.

Staff present: Executive Director Ranjit Hakim, Legal Counsel Mary Jean Dolan, Human Rights Investigator A. Cahn.

Chairperson Gunn called the meeting to order at 10:11 a.m.

I. Adoption of Agenda

The agenda was approved and adopted by unanimous voice vote. A motion was made and approved by unanimous voice vote to allow Commissioner Eatherton to participate telephonically due to the illness of her child and to allow Commissioner Orr to participate telephonically due to travel downstate for work.

II. Statements by the General Public

Usama Ibrahim and Lilian Jimenez, members of Cook County Board of Commissioner Jesus “Chuy” Garcia’s staff, introduced themselves to the Commission and attended the meeting.

III. Introduction of New Commissioner and Nominee

Commissioner Orr introduced herself to her fellow Commissioners. Commissioner Orr works for the Illinois Guardianship and Advocacy Commission as Director of Community Relations and Resources, Chief Results Officer, and EEO Officer.

Director Hakim informed the Commissioners that Amber Smock, a director at Access Living, has also been nominated to serve on the Commission. Ms. Smock was travelling internationally earlier in the month and will likely have a confirmation hearing on March 22 or 23.

IV. Approval of Meeting Minutes —January 14, 2016

The Commissioners unanimously approved the minutes for the January 14, 2016 meeting.

V. Case Pending Report

Director Hakim presented the case pending report, a copy of which is attached to these minutes.

Director Hakim had anticipated presenting a draft order to the Commission for a vote in *Robertson v. Allstate-Louis Dodd Agency*, 2013E030, but the administrative law judge had granted several continuances with respect to the post-hearing briefing causing a delay. Director Hakim expects to present a draft order for consideration in that matter at the Commission's May meeting.

VI. Amendments to Procedural Rules

At the Commission's January 2016 meeting, the Commissioners asked the staff to revise three proposed amendments to the rules. A copy of the revised proposals, as presented by the staff, are attached.

Legal Counsel Dolan presented the three proposed amendments:

a. 440.107 Limits on Serial Complainants

Legal Counsel Dolan explained that this proposal is based on the practice of federal courts to limit abusive filings by serial litigants. There was extensive discussion with Commissioners on this proposed change to understand how it would be applied. Commissioner Block proposed an amendment to the proposal that would allow the staff to request serial litigant treatment when a complainant files three complaints in a three-year period, instead of a two-year period. The Commissioners and staff agreed with Commissioner Block's proposed amendment.

b. 440.110 Fact-Finding or Evidentiary Conference

Legal Counsel Dolan explained that this proposal took into account the Commissioners' suggestions at the January meeting that it be clear that litigants could call additional witnesses at the Evidentiary Conference.

c. 440.135 Access to Files by Parties

This proposal was unchanged from the version proposed at the Commission's January meeting.

The Commission adopted all three amendments, with the modifications outlined above to rule 440.107.

VII. Executive Director's Report

Director Hakim reported that in the first quarter of 2016, investigators processed 82 intakes and generated 6 new cases. Each attorney generated approximately two new orders per month. The average time to resolve cases this year has been adversely affected by a December decision that removed a case from the Commission's docket, but only after it was pending at the Circuit Court of Cook County for 1125 days. Director Hakim has been meeting with his colleagues to discuss ways to expedite Commission cases on review in the state trial courts.

The Commission has joined a statewide discrimination study regarding housing and public accommodations discrimination. Director Hakim also indicated the Commission will be joining working groups on employment and credit discrimination. The goal is to connect the Commission to other groups that work in same space that our litigants are in.

VIII. Commissioners' Reports

Commissioner Ayala-Bermejo indicated she is on the Police Accountability Task Force. She asked her fellow commissioners to forward any recommendations that they may have to her.

Chairperson Gunn indicated that the Chicago Commission on Human Relations has added military status as a protected class, whereas previously it was limited to military discharge status. Chairperson Gunn passed out educational handouts on military status discrimination. Additionally, retaliation has been added to Chicago's fair housing ordinance. Legal Counsel Dolan indicated that this change would affect the County Commission's jurisdiction over such claims. Finally, Chairperson Gunn informed his fellow commissioners that Chicago had just completed an analysis of impediments to Fair Housing. The report is available online at:

http://www.cityofchicago.org/content/dam/city/depts/obm/supp_info/CDBG/FINAL3_EDITED_AI_Report2_19_2016_rvsd.pdf.

IX. Other Business, If any

There was no other business.

X. Adjourn

By a unanimous voice vote, the meeting was adjourned at 11:09 a.m.

Cases Pending Report

March 10, 2016

PENDING INVESTIGATIONS

As of March 1, 2016: 19 pending investigations

CASES SCHEDULED FOR MEDIATION CONFERENCE

2014PA001 Orozco v. Summit Food and Liquor Disability/National Origin

Alleges respondent public accommodation failed to allow epileptic complainant to shop with seizure detecting service dog. Also alleges discriminatory comment about Mexicans. Found Substantial Evidence of disability discrimination and a Lack of Substantial Evidence of national origin discrimination on September 3, 2015. Assigned for Hearing to Administrative Law Judge Joanne Kinoy on September 4, 2015. At the November 24, 2015 status, parties requested assistance in reaching a settlement. Notice of Mediation Conference issued on November 25, 2015 for a mediation to occur on December 17, 2015 at 9:30 a.m. The parties notified the Commission on the eve of the mediation that they had reached a settlement in principle. The Commission advised that it would hold the matter on its docket until March 15, 2016 before issuing an order of dismissal.

CASES SCHEDULED FOR ADMINISTRATIVE HEARING

2013E012 Fritts v. Lo Voltage Sexual Orientation
Alleges employment discrimination (termination) based on sexual orientation and race. Finding of Substantial Evidence on April 21, 2015, with respect to sexual orientation claim. Assigned for Hearing to Administrative Law Judge Joanne Kinoy. Initial Status Date June 9, 2015 at 10 a.m. At September 1, 2015 status, Judge Kinoy granted Respondent's counsel's motion to withdraw. Respondent's counsel indicated that his client stopped communicating with him in July, emails do not bounce back as undeliverable, but go unanswered, the company's website and telephone numbers have been disconnected and certified letters to the business location are returned as undeliverable. Complainant did not object to the motion. Respondent given 21 days to appear *pro se* or through new counsel. Complainant's motions to compel discovery responses and impose sanctions entered and continued to status on October 1, 2015 at 10 a.m. On October 1, 2015, Respondent did not appear and so Judge Kinoy entered an order of default and allowed Complainant to prove up damages. Judge Kinoy issued an initial proposed decision on damages on December 9, 2015. Parties to submit exceptions by December 30, 2015. The Commission adopted Judge Kinoy's proposed order on January 14, 2016. Complainant's counsel had until February 4, 2016 to file a statement of fees and costs, but did not. The matter is now closed.

2013E030 Robertson v. Allstate-Louis Dodd Agency Disability
Alleges employment discrimination (termination of employment and medical benefits) based on disability and failure to accommodate disability. Found Lack of Substantial Evidence on November 20, 2014, with respect to all claims. Reconsideration granted on May 14, 2015 with respect to unlawful termination claim. Assigned for Hearing to Administrative Law Judge Joanne Kinoy. Initial Status Date June 16, 2015 at 9:30 a.m. Discovery closed. Hearing held on November 10, 2015. The parties received

an extension until February 16, 2016 to submit post-hearing briefing due to the health of Respondent's counsel. Complainant and Respondent filed a post-hearing brief on February 16, 2016.

2014E008 Yankaway v. Beauty 4 U Sexual Harassment
Alleges sexual harassment by a supervising manager. Supervising manager quit when confronted with the allegations by the employer. Case referred to Center for Conflict Resolution for mediation on July 9, 2015. Mediation held September 14, 2015, but the parties could not arrive at an agreement. Found substantial evidence to merit a hearing on November 10, 2015. Assigned for Hearing to Administrative Law Judge Joanne Kinoy. Initial Status Date January 12, 2016 at 10:00 a.m. Parties indicated that they are close to settlement at February 22, 2016 discovery status. Next Status date March 22, 2016 at 10:00 a.m. On schedule for a hearing on May 17, 2016 at 10:00 a.m.

PENDING LITIGATION

13 CH 17663 Walker v. Cook County Sheriff's Department (2008E017) Sex/Age/Sex
Harassment/
Retaliation

Administrative Hearing held by Hearing Officer Steven Saltzman on December 13 and 14, 2010, and resumed January 11, 2011. The Commission issued a Decision and Order on January 8, 2013. Commission Respondent filed writ. Commission is represented by the Office of the State's Attorney via ASA Jacqueline Carroll. Administrative record filed with circuit court on January 16, 2014. Briefing for and against writ completed on May 12, 2014. Motion heard on July 30, 2014. Judge ruled in favor of the Commission on February 11, 2015. The Commission's decision is supported by the manifest weight of the evidence and the relief ordered is within its legal authority and not arbitrary or capricious. The Sheriff's Department took an appeal to the First District Appellate Court on March 11, 2015. The record on appeal was filed on May 13, 2015. Petitioner filed its brief on September 28, 2015. The Commission joined Appellee Walker in responsive briefing and filed its brief on November 2, 2015. Petitioner filed its reply brief on November 16, 2015. There is no date set for oral argument.

12 CH 31377 Pryor v. Universal Foot Care Products, Inc. (2007E035) Race
Petition for Writ of Certiorari filed by Complainant on November 9, 2012. Commission is represented by the Office of the State's Attorney via ASA Alvin Portis. Court ordered remand to Hearing Officer Kinoy for explanation of evidentiary determinations. Supplemental Order issued by the Commission on April 7, 2014. Petitioner reasserted objections on August 8, 2014. Commission filed response brief, and Petitioner sought leave to amend to add a due process claim under section 1983. Judge Rudolfo Garcia continued petition for leave to amend on June 23, 2015 for resolution of the underlying petition for writ. Petitioner filed reply brief in support of petition for writ. On December 9, 2015, Court held oral argument on the petition for writ. Court ruled from the bench to confirm the Commission's decision and deny Petitioner's request for leave to file a 1983 action against the Commission. Petitioner filed a notice of appeal to the First District on January 8, 2016. The record on appeal must be filed by March 8, 2016. Petitioner will then have 35 days from the date the record is filed to file his brief in support.

**Proposed Revisions of the Cook County Commission on Human Rights Procedural Rules
(March 2016)**

Proposal 1: Allow for Limits on Excessive Filings by Serial Litigants

New Rule:

Section 440.107 **Limits on Serial Complainants**

- A. The Executive Director is primarily responsible for managing the Commission’s administrative resources. This involves fairly and efficiently allocating the limited investigative and legal staff time among pending cases in order to provide timely resolution of all human rights claims filed at the Commission. In rare instances, a just distribution of resources among current and potential litigants may require placing reasonable restrictions on particular complainants whose multiple prior non-meritorious complaints have used an inordinately large percentage of Commission staff time. To address this concern, the Executive Director is authorized to request the Commission to issue an order limiting a serial complainant’s ability to file additional claims at the Commission, as follows.
- B. In requesting such an order, the Executive Director must present the Commission with evidence that the complainant in question is a serial complainant. For purposes of this Rule, a “serial complainant” is defined to mean a person who has done either or both of the following:
- (1) Filed three or more complaints at the Commission in a two-year period, five or more complaints at the Commission in a ten-year period, or both, where the majority of such claims have been dismissed for lack of substantial evidence of a violation of the Human Rights Ordinance, failure to cooperate or for lack of jurisdiction; or
 - (2) Filed a second complaint at the Commission while he or she has another complaint currently pending at the Commission.
- C. In determining whether to exercise its discretion to grant the Executive Director’s request for an order limiting a serial litigant’s ability to file any additional claims at the Commission, the Commission shall consider the following non-exhaustive list of factors:
- (1) Availability of administrative resources;
 - (2) Availability of alternative administrative and non-administrative forums;
 - (3) The number, recentness and extent of administrative resources dedicated to Complaints currently on file with the Commission by the same Complainant; and
 - (4) The number, frequency, outcome and extent of administrative resources dedicated to Complaints previously filed by the same Complainant at the Commission and other similar administrative agencies.
- D. An order issued pursuant to this Rule 440.107:

- (1) Shall enjoin the affected person, and anyone acting on his or her behalf, from filing any new complaints at the Cook County Commission on Human Rights without first obtaining leave from the Commission by filing a motion captioned "Motion Seeking Leave to File Pursuant to Order of Commission," which motion shall be accompanied by the new complaint sought to be filed.
 - (2) Shall include a term of one year from the date issued, unless the Commission makes a specific finding, based on affected serial complainant's history of filings at the Commission, that a longer term is reasonable and necessary.
 - (3) Shall not affect cases pending prior to the entry of such an order, which cases shall proceed as usual.
- E. Upon receiving any motion and complaint filed pursuant to subsection (D)(1), the Executive Director or other staff shall send it to the Commission for consideration and decision at its next regular meeting; provided that, a special meeting of the Commission shall be called to decide this motion if necessary for the proffered complaint to satisfy the applicable limitations period.
- F. The Commission shall examine any such complaints to determine whether they should be filed. If the Commission determines that a complaint is frivolous or merely duplicative of matters already litigated, it shall deny leave to file the complaint. If it does not so find, then the Commission shall enter an order granting leave to file the submitted complaint. Commission staff shall then serve complainant with a copy of such order, file-stamp and serve the complaint upon the named respondent, and begin an investigation in accordance with the Rules.
- G. Whenever the Commission enters an order limiting a serial complainant's ability to file complaints with the Commission, Commission staff shall create and maintain a miscellaneous file with the title "In the matter of _____" and a case number in the following format: [year] M [number of case filed in the category] (e.g., 2016M001), which file shall serve as the repository of such order, any related order, and any materials received from the affected serial litigator during the term of such order which are not related to a case pending at the Commission.
- H. A person to whom the Commission issues an order:
- (1) under subsection (D), enjoining him or her or anyone acting on his or her behalf from filing any new complaints at the Cook County Commission on Human Rights without first obtaining leave from the Commission; or
 - (2) under subsection (F), denying leave to file a submitted complaint,
may file with the Commission, in accordance with Section 480.100(A) herein, a Request for Reconsideration of such an order.

Proposal 2: Allow Hearing Officers to Take Testimony at Evidentiary Conferences

Existing rule:

Section 440.110 **Fact-Finding or Evidentiary Conference**

The Commission may order the parties to attend either a Fact-Finding Conference or an Evidentiary Conference. These conferences may be ordered in an attempt to clarify disputed issues of fact or to obtain relevant evidence. The Commission may order the parties to provide written submissions, including affidavits, which would further clarify any disputed issues of fact or to provide additional evidence which would assist the Commission in making an Evidence Determination. A party may be represented at a conference by one or more persons who may or may not be attorneys. Once a conference has been ordered, if a party fails to attend, and such failure is not excused, the party shall be subject to the same penalties as those set forth in Section 440.145(B)(5).

Revised rule:

Section 440.110 **Fact-Finding or Evidentiary Conference**

The Commission may order the parties to attend either a Fact-Finding Conference or an Evidentiary Conference.

(A) Fact-Finding Conference:

These conferences may be ordered in an attempt to clarify disputed issues of fact or to obtain relevant evidence. The Commission may order the parties to provide written submissions, including affidavits, which would further clarify any disputed issues of fact or to provide additional evidence which would assist the Commission in making an Evidence Determination. A Fact-Finding Conference will be led by the Commission investigator assigned to a case.

(B) Evidentiary Conference:

(1) These conferences may be ordered to resolve simple factual disputes arising from conflicting testimonial evidence by parties and/or witnesses that is potentially determinative as to whether there is substantial evidence of a violation of the Human Rights Ordinance. The Commission may order the parties and/or witnesses to provide in-person, sworn testimony on the disputed fact before a Hearing Officer who will make a determination as to the credibility of any testifying party or witness with respect to the disputed fact. An order of an Evidentiary Conference will provide the parties with notice of the disputed issue of fact and the identity of the testifying parties and/or witnesses. Additional witnesses may be added by the parties as provided in subsection (3). An Evidentiary Conference will be led by a Hearing Officer assigned by the Commission.

(2) The Hearing Officer assigned by the Commission to an Evidentiary Conference cannot:

- a. Be a person who was otherwise involved in the investigation of the case that is the subject of the Evidentiary Conference; or
- b. Be designated by the Commission as the Hearing Officer for the case that is the subject of the Evidentiary Conference if that case proceeds to an Administrative Hearing under Subpart 460 of these Rules.

(3) At an Evidentiary Conference, the testifying parties and/or witnesses will be examined by the Hearing Officer. The parties to the case, or their attorneys or representatives of record, will then have the opportunity to examine and cross-examine any party or witness testifying at an Evidentiary Conference. The parties to the case, or their attorneys or representatives of record, may also present any additional witnesses or documentary evidence to the Hearing Officer that the parties believe will assist the Hearing Officer in resolving the disputed issue of fact. A party must provide advance notice of any such additional evidence to the Commission and the other party at least five (5) business days before the Evidentiary Conference. The Evidentiary Conference is limited to hearing evidence relevant to resolving the dispute of fact identified in the order of an Evidentiary Conference.

(4) Within 21 days of the Evidentiary Conference, the Hearing Officer will present in writing any findings of fact, including any determinations of testimonial credibility, to the Commission investigator assigned to the case that is the subject of the Evidentiary Conference. The Hearing Officer's findings shall be considered an additional piece of evidence for inclusion in the investigation report. Such findings shall be used only for purposes of making an evidentiary determination and shall not be considered binding in any Administrative Hearing or other subsequent hearing.

(C) Right to Representation:

A party may be represented at a ~~conference~~ Fact Finding Conference or an Evidentiary Conference by one or more persons who may or may not be attorneys. Once a conference has been ordered, if a party fails to attend, and such failure is not excused, the party shall be subject to the same penalties as those set forth in Section 440.145(B)(5).

Proposal 3: Increase Access to Commission Files to Facilitate Due Process at Evidentiary Conferences

Existing rule:

Section 440.135 **Access to Files by Parties**

- (A) A party or the party’s attorney or representative of record may review documents in the Commission investigation file at any time after the Commission has served notice of an Evidence Determination. A party must provide the Commission with at least 48 hours notice of the party’s intent to inspect the file.
- (B) Notwithstanding Subsection (A) above, the Commission shall not allow parties to inspect internal memoranda, work papers, notes, or other materials generated by Commission staff or agents in the course of an investigation, which reflect the deliberative process, mental impressions, or legal theories or recommendations of the staff or agents of the Commission. In addition, parties shall not be allowed to inspect materials or documents otherwise protected from disclosure by applicable state or federal law.
 - (1) If the Commission deems it necessary, or if a party files a written motion setting forth good cause, the Commission may require a party seeking access to the files to enter into a protective order limiting the use of information from the files to an Administrative Hearing only, and prohibiting any other disclosure of information from the files.
 - (2) The Commission may acknowledge publicly the existence of a Complaint, including the case number, the identities of the parties, the type of case, and the stage of proceedings at which it is pending, unless the Commission deems it necessary to withhold this information for good cause. A party may request, in writing, that the Commission not include the party’s name in any public acknowledgment. The party must state the reasons for any such request.

Revised rule:

Section 440.135 **Access to Files by Parties**

- (A) A party or the party’s attorney or representative of record may review documents in the Commission investigation file at any time after the Commission has served notice of an Evidence Determination; except where the Commission has ordered an Evidentiary Conference pursuant to Rule 440.110(B), in which case, a party or the party’s attorney or representative of record may review documents in the Commission investigation file before an Evidentiary Conference even when such conference occurs before the Commission has served notice of an Evidentiary Determination. ~~In all cases, a~~ party must provide the Commission with at least 48 hours’ notice of the party’s intent to inspect the file.
- (B) Notwithstanding Subsection (A) above, the Commission shall not allow parties to inspect internal memoranda, work papers, notes, or other materials generated by Commission staff

or agents in the course of an investigation, which reflect the deliberative process, mental impressions, or legal theories or recommendations of the staff or agents of the Commission. In addition, parties shall not be allowed to inspect materials or documents otherwise protected from disclosure by applicable state or federal law.

- (1) If the Commission deems it necessary, or if a party files a written motion setting forth good cause, the Commission may require a party seeking access to the files to enter into a protective order limiting the use of information from the files to an Administrative Hearing only, and prohibiting any other disclosure of information from the files.
- (2) The Commission may acknowledge publicly the existence of a Complaint, including the case number, the identities of the parties, the type of case, and the stage of proceedings at which it is pending, unless the Commission deems it necessary to withhold this information for good cause. A party may request, in writing, that the Commission not include the party's name in any public acknowledgment. The party must state the reasons for any such request.