COOK COUNTY COMMISSION ON HUMAN RIGHTS

SUBJECT MATTER INDEX OF DECISIONS AND ORDERS

from November, 1993 through November 30, 2006

INDEX COVERAGE: This Index includes summaries of substantive decisions and orders issued by the Cook County Commission on Human Rights from November 8, 1993 through November 30, 2006.

INDEX ORGANIZATION: This Index is organized alphabetically by topic. Listed under each topic and sub-topic are relevant decisions with concise summaries, followed by the case name, case number and date of each decision.

COMMISSION DECISION AND ORDERS DEFINED: There are three types of substantive orders: Commission Orders ("**CO**"), Hearing Officer Orders ("**HO**") and Commission Decisions and Orders ("**CDO**"). A "**Commission Order**" is an order entered by the Commission during the complaint investigation stage. A Commission Order is usually a preliminary ruling by the Commission on jurisdictional questions raised by a respondent, or a ruling by the Commission on a challenge to the form and substance of the complaint itself. A "**Hearing Officer Order**" is an order entered by a Commission Administrative Hearing Officer during an Administrative Hearing as defined by Commission Procedural Rule 460.100. A Hearing Officer Order may include, but is not limited to, rulings on issues of Commission jurisdiction and discovery disputes. A "**Commission Decision and Order**" is an order entered by the Commission after consideration by the Commissioners of the Cook County Commission on Human Rights. Usually, it is the final order of the Commission subsequent to an Administrative Hearing.

EXPLANATION OF CASE CITATIONS AND ABBREVIATIONS IN INDEX: Following each entry in the index is a citation, e.g. Smith v. Acme, Inc., 1999E017, 3-19-2001, **HO**. The citation consists of the following information: Smith (Complainant) v. Acme, Inc. (Respondent), 1999 (year the case was filed) E (classification of the case - "**E**" denotes Employment, "**H**" for Housing, "**C**" for credit, "**PA**" for Public Accommodations, or "**S**" for County Services), 017 (sequence number), 3-19-2001 (date order was issued), and **HO** (classification of order, as described above). The Cook County Human Rights Ordinance is referred to throughout as "**CCHRO**" or "the Ordinance," and the Procedural Rules and Regulations of the Commission are referred to as the "Rules" or "Rule."

AVAILABILITY OF FULL TEXT OF DECISIONS AND ORDERS: Decisions and orders summarized in this Index are available online at **www.cookcountygov.com** by locating the Human Rights page under the "Agencies" link and then clicking the link to Decisions and Orders. In addition, hard copies are kept at the **Commission's Office** and may be copied for the cost of $0.10 per page.

69 West Washington Street, Suite 3040 Chicago, Illinois 60602-3007
312/603-1100 (Voice); 312/603-9988 (Fax); 312/603-1101 (TTY/TDD)
human.rights@cookcountyil.gov
www.cookcountygov.com (follow agencies links to Human Rights)

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ADMINISTRATIVE HEARING

Briefs on Exceptions

Hearing officer found that complainant's brief on exceptions to his initial proposed decision and order simply reargued the interpretation of facts and failed to argue any legal basis for reversal or modification of the hearing officer's legal conclusions. Alcegueire v. Cook County Department for Management of Information Systems, 1992E003 and 1992E026, 8-10-95, **CDO**.

Hearing officer filed a separate ruling on complainant's exceptions to initial proposed decision and order, and incorporated that ruling as appropriate in the final proposed decision and order. Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**; Carroll, et al v. Chicago District Campground Assoc., et al, 1999H006-009, 2-24-06, **HO**.

Default Hearing

Default Order and Judgment Entered
Commission entered an order of default against the respondent for failing to respond to the complaint. Administrative hearing held on damages, respondent did not appear and consequently the testimony of complainant is undisputed. Liability found and damages awarded. Feges v. The New Embers Restaurant, 1993E013, 6-16-94, **CDO**.

After respondent repeatedly failed to respond to discovery requests, complainants moved for sanctions. Following a status conference at which both respondent and complainants appeared, the hearing officer granted complainants' motion for sanctions, ordering that all paragraphs of the complainants' request for admission of fact would be deemed to be admitted for the purpose of this action and a default would be entered in favor of the complainants and against the respondent pursuant to Section 460.145(E) of the Commission's Procedural Rules. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

No Liability Found
Commission entered an order of default against the respondent for failing to respond to the complaint. Administrative hearing held, respondent did not appear and consequently the testimony of the complainant is undisputed. However, in this case, the complainant failed to meet the obligation of proving a prima face case of an unlawful denial of access to a place of public accommodation based on complainant's disability. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**.

Failure to Appear at Administrative Hearing

Complaint Dismissed
Complainant had ample time to hire substitute counsel or to present her case *pro se***.** Even *pro se* parties have an obligation to the Commission to participate in Commission proceedings. The Commission cannot fulfill its public duty in the absence of such cooperation by those invoking its processes. The Commission finds that failure to appear at the administrative hearing was unexcused. The complaint was dismissed for complainant's failure to cooperate. Banks v. Cook County Juvenile Temporary Detention Center, 1994E088, 11-14-96, **CDO.**

Failure to Cooperate

Complaint Dismissed
Dismissal of complaint for want of prosecution due to complainant's failure to attend pre-hearing meeting, failure to otherwise cooperate in administrative hearing process and failure to show cause why complaint should not be dismissed. Sampson v. Cermak Health Services, 1993E009, 4-27-95, **CDO**; D'Adam v. Bridgeview Sports Club Association, Inc., 2004PA004, 8-11-05, **CDO**.

After hearing officer issued an order to show cause why the matter should not be dismissed for failure of both parties to attend a scheduled pre-hearing meeting for which notice was provided, the matter was dismissed when both parties failed to respond to the order to show cause. Swift v. Signs Unlimited, 2000E042, 7-27-01, 9-19-01, **HO.**

Powers and Duties of Hearing Officer

Commission's hearing officer has full authority to control the procedures of Commission hearings. Lacy v. Cook County Hospital, 1992E033, 6-8-95, **CDO**; Parchim v. TLR Enterprises, Inc. d/b/a The Living Room, 2001PA001, 10-17-2002, **CO.**

Discretion in Admitting Evidence
At the administrative hearing, the hearing officer determines the admissibility of any testimonial evidence and exhibits and "shall not be bound by the strict rules of evidence applicable in courts of law or equity." Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Discretion With Pre-Hearing Memorandum
Where failure of complainant to respond to discovery requests resulted in respondent's inability to provide a pre-hearing memorandum, Commission hearing officer waived that requirement in view of complainant's inaction and *pro se* status. Sampson v. Cermak Health Services, 1993E009, 4-27-95, **CDO**.

Sanctions Other Than Dismissal or Default
When a party fails to appear at an administrative hearing, hearing officer may recommend some other remedy deemed appropriate and just--other than dismissal or default. Commission assessed respondent $70 for costs of court reporter after respondent failed to appear at a scheduled administrative hearing. Lacy v. Cook County Hospital, 1992E033, 6-8-95, **CDO**.

Complainant's motion to compel granted in part as an appropriate sanction for respondent's disregard of discovery order. Respondent's actions are an affront to the Commission and significantly undermine the public interest in swift and fair adjudication of discrimination complaints. Respondent ordered to serve its response to complainant's interrogatories, requests for production and requests for admission without objection. Complainant granted the right to amend her complaint to reflect discovery responses. McCoy v. United Airlines, 1996E111, 10-3-01, **HO**.

***Pro Se* Parties**

Obligation to Participate
Pro se parties have an obligation to respond to Commission orders. Commission cannot fulfill its public duty in the absence of cooperation. Where complainant failed to attend a mandated pre-hearing meeting, failed to respond to respondent's requests for discovery, or respond to respondent's motion to dismiss, Commission dismissed the complaint with prejudice. Sampson v. Cermak Health Services, 1993E009, 4-27-95, **CDO**; Banks v. Cook County Juvenile Temporary Detention Center, 1994E088, 11-14-96, **CDO**. Klegerman v. Heritage Manor Condominium Association and Rowell Property Mgt., 1998H009, 1-13-05, **CDO**; D'Adam v. Bridgeview Sports Club Association, Inc., 2004PA004, 8-11-05, **CDO**;

Failure to Appear
When, after Commission found substantial evidence to support allegations of complaint, *pro se* complainant failed to attend a mandated pre-hearing meeting, failed to respond to respondent's requests for discovery, failed to respond to respondent's motion to dismiss, in the face of a clear statement that silence would result in dismissal of her complaint, Commission dismissed the complaint with prejudice. Sampson v. Cermak Health Services, 1993E009, 4-27-95, **CDO**.

Complainant had ample time to hire substitute counsel or present her case *pro se.* Even *pro se* parties have an obligation to the Commission to respond to Commission orders, to abide by Commission rules and procedures, and to attend scheduled Commission proceedings. The Commission cannot fulfill its public duty in the absence of such cooperation by those invoking its processes. The Commission finds that failure to appear at the administrative hearing was unexcused. Banks v. Cook County Juvenile Temporary Detention Center, 1994E088, 11-14-96, **CDO**.

The decision to dismiss or to impose sanctions for failure of a party to participate in a mandatory conciliation conference is discretionary on the part of the Commission. Parchim v. TLR Enterprises, Inc. d/b/a The Living Room, 2001PA001, 9-25-02, **CO**.

Remand to Hearing Officer

After Hearing
In accordance with Commission Procedural Rule 470.105, the Commission remanded to the hearing officer for consideration the limited legal issue of whether the Commission should consider and for what purpose pre-CCHRO conduct. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

The Commission remanded the Final Proposed Decision and Order to the hearing officer for the limited purposes of (1) reconsidering the emotional damage award, and (2) expanding the damages analysis to include relevant Commission precedent and offer support for the award given. On reconsideration, the hearing officer increased the damage award and offered substantive case law in support of her decision. Carroll, et al v. Chicago District Campground Assoc., et al, 1999H006-009, 8-15-06, **CO**.

On July 15, 2003, the Commission remanded the decision to the Hearing Officer to review and consider: (1) whether respondent waived its opportunity to present and rely upon the Burlington Industries v. Ellerth affirmative defense; (2) how and why such waiver occurred; and (3) if the hearing officer determines that respondent did not waive its opportunity to present an affirmative defense, whether Burlington applies to Commission cases in general, whether it may be applied in this case, and if so, whether respondent adequately established its existence as a viable defense. Upon reconsideration, the hearing officer found that respondent waived its opportunity to present and rely upon the Burlington affirmative defense because respondent did not assert such defense until after reviewing the Initial Recommended Order and Decision. Thus, since respondent waived any potential affirmative defense, it is not necessary to resolve whether this defense applies to Commission cases in general and/or whether respondent adequately established its existence as a viable defense in this case. Conway v. Trans-Action Database Marketing, Inc., 1999E010, 10-09-03, **HO**.

Subpoenas
See SUBPOENAS

ADMINISTRATIVE REVIEW
See WRIT OF CERTIORARI

AFFIRMATIVE DEFENSE

The Commission generally will not dismiss either a complaint or any affirmative defense based solely on the pleadings prior to the conclusion of the Commission's neutral fact finding investigation. Kret v. Falcon and American Golf Corporation d/b/a Mission Hills Country Club, 1995E058, 3-4-96, **CO**; Krzyszton v. Falcon and American Golf Corporation d/b/a Mission Hills Country Club, 1995E059, 3-4-96, **CO**.

Under § 42-35 (E) of the CCHRO an employer is responsible for its acts and the acts of its agents and supervisory employees, regardless of whether the specific acts were authorized or even forbidden by the employer. Thus, in both *quid pro quo* and hostile work environment claims of sexual harassment, an employer is vicariously and strictly liable for its supervisors' conduct and can not assert an affirmative defense to such claims. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

AGE DISCRIMINATION

Prima Facie Case

Complainant made out *prima facie* case of discrimination on the basis of age by alleging that she was over 40 years old; she believed she was meeting respondent's legitimate performance expectations; she was terminated by the respondent; and, she was replaced by a male who was under 40 years of age. Hudok v. Quality Transportation Systems, Inc., 1994E031, 12-27-94, **CO**.

Commission grants complainant leave to amend complaint to set forth a *prima facie* case of age discrimination. Complainant directed to apprise respondent as to time, place and specific facts of the violation alleged. Alpert v. Evanston Hospital Corporation, 1996E105, 3-20-97, **CO**.

In proving a *prima facie* case of age discrimination, it is not necessary that a complainant show replacement by someone outside (i.e., replacement by a younger individual) the protected group. This finding overrules the Commission order in Alpert v. Evanston Hospital, 1996E105, 3-29-97 as to the articulation of a *prima facie* case of age discrimination. Scardine v. Zenith Electronics Corporation, 1996E079, 11-30-99, **CDO**.

Liability Not Found

Complainant established a *prima facie* case of age discrimination. However, the respondent, through specific and credible testimony, articulated its legitimate nondiscriminatory reason for terminating complainant: respondent had to terminate about one-third of the persons in complainant's department for reasons of economic necessity. Complainant bears the burden of persuasion to show by the preponderance of the evidence that respondent was motivated by age discrimination in selecting her for termination. Complainant did not meet her burden. Scardine v. Zenith Electronics Corporation, 1996E079, 11-30-99, **CDO**.

AGENCY LIABILITY

The CCHRO further provides in § 42-35 (E) that [a]n employer is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

Respondent owner found liable for manager's sexual harassment toward complainant and for retaliatory discharge. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

Pursuant to an order of default for respondent's refusal to respond to complaint, respondent found liable for manager's unlawful discharge on the basis of sexual orientation. Feges v. The New Embers Restaurant, 1993E013, 6-16-94, **CDO**.

Respondent employer held jointly and severally liable with offending employee in a supervisory position who sexually harassed complainant. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

AIDING AND ABETTING
See INDIVIDUAL LIABILITY

***AMICUS CURIAE* BRIEFS**

Where a motion to dismiss is pending, Commission grants motion of civil rights organization with considerable expertise in the area of law implicated by complaint to file *amicus curiae* brief. Sherry v. Office of Cook County Public Defender, 1996E007, 10-15-96, **CO**.

ANSWER
See RESPONSE

APPEARANCE
See ATTORNEY APPEARANCE

ATTORNEY APPEARANCE

Leave to Withdraw
See WITHDRAWAL OF ATTORNEY

Pro Hac Vice
Motion granted for leave to appear on a *pro hac vice* basis for the limited purpose of representing respondent in the proceedings before the Commission. Krzyszton v. Falcon and American Golf Corporation d/b/a Mission Hills Country Club, 1995E089, 9-5-95, **CO**; Dawson v. Elizabeth Arden d/b/a Mario Tricoci, 2005E028, 7-7-05; Magestro v. Sterling Jewelers, Inc. d/b/a Jared, The Galleria of Jewelry, 2005E066, 1-3-06, **CO**.

ATTORNEY'S FEES AND COSTS

Costs

It is appropriate to award costs proximately related to a move forced by discriminatory conduct. Complainants testified that they would not have moved but for being evicted by respondent. Complainants presented evidence that the $500 in costs were proximately related to their move. Accordingly, the Commission awards $500 to complainant in out-of-pocket expenses. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Degree of Success on the Merits

The Commission has held that a lodestar amount may be adjusted in light of the degree of complainant's success. One basis for adjusting the amount is that the complainant did not prevail on all of her claims although a complainant is usually entitled to a full fee if the claims on which he or she did not prevail and the claims on which he or she prevailed involved a common core of facts or were based on related legal theories. Pirrone v. Wheeling Industrial Clinic, 1997E006, 9-19-01, **CDO** (Citing Pace v. McGill Management et al., 1996H009, 11-30-99, **CDO**).

Fee Shifting Provision

§ 42-34 (C)(1)(g) of the CCHRO contains a fee shifting provision that provides that respondents must pay the prevailing complainant's attorney fees and costs. The purpose of such a fee shifting provision is to ensure effective access to the judicial process of persons with civil rights grievances. Pace v. Board of Managers of the Courts of Randview Townhome Association, 1996H009, 9-13-00, **CO**.

Lodestar Method for Calculating Fees

The Commission has adopted the Lodestar Method for calculating a reasonable attorney's fee under the CCHRO. Under that method, the most useful starting point for determining the amount of a reasonable attorney's fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. Pirrone v. Wheeling Industrial Clinic, 1997E005, 9-19-01, **CDO** (Citing Pace v. McGill Management et al., 1996H009, 11-30-99, **CDO**).

Prevailing Complainant

Commission finds that complainants should be awarded fees because they prevailed in this case by achieving the benefits they sought in bringing this suit. Complainants were awarded reasonable attorney's fees after the hearing officer examined time sheets and affidavits. See, e.g., Pace v. McGill Management, 1996H009, 11-18-99, **CDO** (awarding $12,897.00 in fees and $128.18 in costs).

Prevailing owners suing a board managing a condominium or townhome association under the CCHRO need not pay his or her proportional share of the board's expenses of the litigation, including attorney's fees and costs awarded to the prevailing unit owner. Pace v. McGill Management, 1996H009, 9-13-00, **CO.**

Pursuant to Commission Rule 470.110, a prevailing complainant may file and serve upon the hearing officer (with a copy to the Commission office), a petition for attorney fees and costs within 21 days of receipt of the Commission's decision and order. See, e.g., Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Under § 42-34 (C)(1)(g) of the Ordinance, prevailing complainants are entitled to recover reasonable attorney fees and costs. The complainants have prevailed, although not on all of their arguments. Not all of the actions complainants challenged have been unlawful. Therefore, the hearing officer recommends that the Commission issue an award that contemplates the award of an “appropriate” proportion of their reasonable attorney fees and costs. Carroll, et al v. Chicago District Camp Ground Assoc., et al, 1999H006-009, 10-14-06, **CDO**.

Prevailing Respondent

Where a respondent is found not liable for a complaint of discrimination, each party bears its own costs and attorneys' fees. Fiore v. Bloom Township Highway Department, 1993E074, 2-8-96, **CDO**; Iverson v. Horwitz, 1994E021, 2-8-96, **CDO**; Green v. Avon Products, 1996E096, 4-29-99, **CDO**; Blakemore v. City of Chicago Fire Department and Metropolitan Pier & Exposition Authority, 2002PA015, 10-26-04, **CO**; Blakemore v. Trizec Holdings,

Inc., (a/k/a) Trizec Office Properties, 2003PA007, 4-21-06, **CDO**.

Proportionality Not Required

There is no requirement that the amount of attorney's fees awarded be proportional to the amount of damages received. Pace v. McGill Management et al., 1996H009, 11-18-99, **CDO**.

BACK PAY

Awarded

Upon a showing of proof, complainant, pursuant to an order of default for respondent's failure to respond to the complaint, was awarded the equivalent of 12 weeks of pay of $2,247.84 for the period he was unemployed. Feges v. The New Embers Restaurant, 1993E013, 6-16-94, **CDO**.

Commission finds respondent liable to complainant for back pay in the amount of $41,418.37 and any additional back pay amount that may have accrued subsequent to issuance of CDO, plus applicable interest on the back pay. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**.

Upon a showing of proof at an administrative hearing, complainant was awarded back pay in the amount of $7,770 for 19-week period after she got fired to the time she stopped looking for work, minus the amounts she earned on another job and minus unemployment compensation received. Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**.

Following a default, complainant proved that she was entitled to back pay damages in the amount of $3,864 for one year of back pay. Anything more would have been speculative because there was no evidence that complainant would have worked at respondent after her work study period ended. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Mitigation

The Commission finds that complainant made reasonable attempts to mitigate his damages. Respondent has the burden of proof on this point and did not carry its burden. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**.

Not Awarded

Back pay not awarded because the amount was speculative due to lack of sufficient proof. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; McClellan v. Cook County Law Library, 1996E026, 6-7-99, **CDO**.

BANKRUPTCY PROCEEDINGS

Although the Commission may proceed with its neutral fact finding investigation into a bankrupt respondent as an action "by" a government agency, the automatic stay provision of the Bankruptcy Code 11 U.S.C. Sec. 362(a)(1) prevents the Commission from proceeding with a conciliation conference, as that is an action only by a complainant and not by the Commission. Holloway v. Wolf Camera & Video, 1999E050, 8-29-05, **CO**.

Respondent declared bankruptcy but failed to notify complainant, as a potential creditor, of his obligation to file a proof of claim. After the bankruptcy proceedings were finalized, respondent's assets were liquidated and the Commission had no jurisdiction to order money damages against respondent. Complaint was dismissed without prejudice, allowing complainant to challenge the bankruptcy order to allow his complaint to be acknowledged as a potential creditor, should he so desire. Holloway v. Wolf Camera & Video, 1999E050, 8-18-06, **CO**.

BURDEN OF PROOF

The complainant retains at all times the ultimate burden of proving that the respondent engaged in unlawful discrimination. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Dwyer v. Il Pescatore et al., 2001PA017, 6-12-03, **CDO**; Blakemore v. Trizec Holdings, Inc., (a/k/a) Trizec Office Properties, 2003PA007, 4-21-06, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

When the respondent's and complainant's depiction of events is in question, the burden of proof falls upon the complainant. Dwyer v. Il Pescatore Palace Restaurant & Banquet Hall and Vito Barbenente, individually, 2001PA017, 6-12-03, **CDO.**

Respondent has the burden of proof to establish that complainant did not sufficiently mitigate damages sustained due to respondent's conduct. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**.

BURDEN-SHIFTING

Complainant must establish by a preponderance of the evidence a *prima facie* case of discrimination. The burden then shifts to the respondent to articulate a legitimate non-discriminatory reason for its actions. If the respondent articulates a non-discriminatory reason for its actions, the complainant must then prove by a preponderance of the evidence that the articulated reason was pretext for unlawful discrimination. Complainant retains the ultimate burden of proving that the respondent unlawfully discriminated at all times. See, e.g., Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO** (finding that complainant was unable to prove that respondent's articulated reason was pretextual); Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO** (respondent failed to articulate a non-discriminatory reason for its actions).

COMMISSION DEADLINES

The 180-day investigation period is directory, not mandatory, and therefore the 180-day period is not jurisdictional. The Commission did not lose jurisdiction over a complaint because the Commission's investigation exceeded 180 days. Montgomery v. Rosenthal, 1994H001, 10-18-94, **CO**; Conway v. Transaction Database Marketing, Inc., 1999E010A, 7-17-02, **HO**.

COMMISSION EXECUTIVE REVIEW COMMITTEE

The Executive Review Committee, not the Commission investigator, upon review of the investigation report and supporting documentation, makes the final evidence determination, i.e., finding substantial evidence or a lack of substantial evidence of CCHRO violation. Iverson v. Horwitz, 1994E021, 4-6-95, **HO.**

COMPLAINTS

Amendment

Post-Evidence Determination

Commission grants motion to amend complaint pursuant to Commission Rule 420.140, to add additional claims that arose after the complaint was filed, where respondent had not objected and where complainant's first discovery of additional claims was after filing. Friedl v. The Women's Club of Evanston, 1994PA001, 4-9-96, **HO**.

Complainant permitted to amend complaint when respondent failed to establish that the admission of additional evidence and the filing of an amended complaint would prejudice respondent's ability to maintain a defense on the merits. McClellan v. Cook County Law Library, l996E026, 12-17-97, **HO**.

Commission denies complainant's oral motion to add respondent. The Commission's Procedural Rules require such amendments to be filed in the same manner as the original complaint in writing. Feges v. The New Embers Restaurant, 1993E013, 6-16-94, **HO**.

Pre-Evidence Determination

Add Claims

Section 420.140(B) of the Complainant's motion to amend complaint made during jurisdictional hearing taken under advisement until resolution of jurisdiction issues because additional claims were not relevant to jurisdictional issue before the hearing officer. Munda v. Block Medical Center, 2003E032, 1-27-04, **HO**.

Add Clarifying Facts

Commission grants complainant's motion to amend complaint prior to evidence determination to amplify and clarify allegations originally made and to set forth additional facts relating to the original charge. Kessel v. Cook County Sheriff's Office, 1999E068, 1-4-00, **CO**.

Add Parties
Commission grants motion to amend complaint to add an additional respondent prior to evidence determination because additional respondent had actual knowledge of the complaint, no objection was filed with the Commission, and granting of Complainant's motion would not prejudice additional respondent in maintaining its defense on the merits of the complaint. Harmon v. SRC/21st Century Healthcare Management, 1999E066, 12-14-99, **CO**

Commission grants motion to amend complaint to add an additional complainant and will have the amended complaint relate back to the original filing date if (1) the cause of action alleged by the person sought to be made a Complainant arises out of the same transaction or occurrence set forth in the original Complaint; (2) Respondents had timely knowledge of the original Complaint and the fact that the person sought to be added might be involved as a Complainant; (3) the additional Complainant sought to be added could have independently filed a Complaint against Respondents in the first instance; and (4) any objecting party fails to demonstrate that such an amendment would prejudice it in maintaining its action or defense upon the merits. Laiser and S&L Management v. Baldwin Greens Homeowners Association et al., 1997H009, 4-26-00, **CO**.

During the course of the Commission's neutral fact finding investigation, the Commission has determined that Complainant's daughter should also be named as complainant in the case. Adding complainant in this case would neither prejudice the Respondents, nor would it delay the Commission's investigation process. Anderson v. Lee, 2005H002, 11-2-06, **CO**.

Respondent does not contest that it is the correct respondent in this case. Therefore, the Commission will proceed with jurisdictional hearing even though the respondents who are added may be able to revisit some of the issues considered at the hearing at a later date. Munda v. Block Medical Center, 2003E032, 1-27-04, **HO**.

Articulate *Prima Facie* Case
Commission grants complainant leave to file an amended complaint setting forth a *prima facie* case of sexual orientation and marital status discrimination in accordance with the standards articulated by CCHRO. The complaint must apprize Respondent of pertinent facts related to discrimination by specifically identifying Complainant's employer, and setting forth specific allegations of conduct or treatment she has experienced which would violate the CCHRO. Eischen v. Cook County, 2000E002, 5-4-00, **CO**.

Cure Technical Defect
Motion for leave to substitute party respondent, correcting the name of the respondent granted. Shirley Waleska Soto v. WYLL FM Radio and Salem Communications Corporation, 2000E022, 6-5-00, **CO**.

The Commission determines that an incorrect date of discrimination is a defect which may be cured by an amendment to the complaint. Any dispute as to the actual date of discrimination will be addressed during the course of the Commission's neutral fact finding investigation. Perez v. Lake Park Construction, Inc., 2004E063, 3-21-05, **CO**.

Deceased Respondent
In accordance with Rule 420.140(H), a legal successor may be substituted for deceased respondent. It is the complainant's responsibility to identify the legal successor. Benson v. Affordable Carpet Cleaning and Alfonso Houston, 1996E0106, 12-21-00, **CO**.

Content

Prima Facie Case
Pursuant to Rule 420.105, complainant is not required to prove the elements of a *prima facie* case at the complaint-filing stage of the proceedings. A complainant satisfies the mandate of the CCHRO if she sets forth the basic elements of her discrimination claims so as to apprise a respondent of the nature of her allegations. See, e.g., Hudok v. Quality Transportation Systems, Inc., 1994EO31, 12-27-94, **CO**; Perez v. Lake Park Construction, Inc., 2004E063, 8-1-06, **CO**, Blakemore v. Chicago Transit Authority, et. al., 2006PA008, 11-30-06, **CO**.

While § 42-34 (B)(1)(b) of the CCHRO requires that a complaint "be in such detail as to substantially apprise any party properly concerned as to the time, place and facts surrounding the alleged violation," the Commission has held that a complainant satisfies that mandate if he or she sets forth the basic elements of a discrimination claim in a complaint so as to apprise a respondent of the nature of the allegations. However, if a complaint fails to satisfy these minimum requirements, the Commission may reject the complaint without prejudice and without investigation.

Blakemore v. City of Chicago Fire Department and Metropolitan Pier & Exposition Authority, 2002PA015, 10-26-04, **CO**; Munda v. Polish et al., 2004E044A, 2-10-05, **CO**; Blucher v. Wilkes & McClean Ltd., 2004E015, 5-24-05, **CO**.

Evidence of Pattern/Practice
In the context of a complaint, conduct outside the 180-day filing period may nonetheless be included in a complaint and be of significance during the investigatory stage if the conduct established a pattern and practice of discriminatory conduct or behavior. Such incidents, where appropriate, may be used to assess credibility, motive or bias of the respondent. Martin v. Club Fever, 1998PA009, 11-10-98, **CO** (citing Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95).

Notice Pleading
The CCHRO and Rules do not require a complaint to be stated with particularity, but rather provide that a complaint substantially apprise a respondent of dates, places and facts of an alleged violation of the CCHRO. See, e.g., Hudok v. Quality Transportation System, Inc., 1994E031, 12-27-94, **CO**; Blakemore v. Kinko's, Inc., 2002PA011, 7-14-03, **CO**; Blucher v. Wilkes & McClean Ltd., 2004E015, 5-24-05, **CO**.

Complaint Reinstatement

Commission reinstates complaint, dismissed as a result of Commission error and where complainant was sufficiently diligent about pursuing and participating in the investigation of his complaint. To deprive complainant of his due process right to an investigation of his complaint under these circumstances would be unjust. Gaines v. Cook County Hospital, 1994E100, 1-30-96, **CO**.

Complainant's request for reconsideration and reinstatement of complaint granted. The Commission misapplied the law when it dismissed the complaint as being untimely. The Commission initially determined that the 180-day filing limitations period began to run prior to when the complainant had definitive, unambiguous communication of respondent's decision to terminate complainant. Clay v. Cook County Hospital, 1996E059, 8-8-97, **CO**.

Relying on § 42-34 (D)(5) of the CCHRO, which grants Complainants an individual right of action, four different complainants chose to remove their complaints from the Commission to various Cook County circuit courts. In separate decisions or orders, the courts declared the CCHRO subsection relied upon by these complainants to be invalid and dismissed the court complaints. The individual complainants then sought to have their complaints reinstated at the Commission. Although neither the CCHRO nor the Commission's Rules specifically address the issue of reinstatement, the Commission finds without reinstatement by the Commission, complainants would be deprived any forum for consideration of the merits of their complaints. Equity concerns support the Commission consideration and subsequent granting of complainants' respective motions for resuming jurisdiction and reinstatement of the original complaints of discrimination at the Commission. See, e.g., Gilich v. LaGrange Memorial Hospital, 1995E036, 5-23-00, **CO**; Hakim v. Payco-General American Credits, Inc., 1999E021, 5-23-00, **CO**; Newman v. Humana, Inc., 1998E047, 5-23-00, **CO**; Lucas v. Zeta International and Branco Jevtic, 1996E022, 6-12-00, **CO**.

CONCILIATION CONFERENCE

Duty to Participate

All parties have an obligation to the Commission to participate in scheduled Commission procedures. The Commission cannot fulfill its public duty in the absence of such cooperation by those invoking its processes. See, e.g., Sampson v. Cermak Health Services, 1993E009, 4-27-95, **CDO**; Banks v. Cook County Juvenile Temporary Detention Center, 1994E088, 11-14-96, **CDO**.

Failure to Appear

Complaint Dismissed
Complaint dismissed for complainant's failure to attend a Commission-scheduled conciliation conference. Hamilton v. David Kilheeney, et al., 1999H004, 7-13-00, **CO**; Pope V. Berkeley Auto Service, et al., 2000PA007, 1-21-03, **CO**.

Complaint Not Dismissed
The decision to dismiss or to impose sanctions for failure of a party to participate in a mandatory conciliation conference is discretionary on the part of the Commission. Parchim v. TLR Enterprises, Inc. d/b/a The Living Room,

2001PA001, 9-25-02, **CO**.

Fine Assessed
Commission assessed fines against respondent for unexcused failure to attend a commission ordered conciliation conference. Marrero v. Injectec, Inc., 1995E052, 5-7-96, **CO**; Desparte v. Arlington Heights Kirby, et al., 2002E020, 7-22-05, **CO**.

***Pro Se* Parties**
Pro se parties have an obligation to abide by Commission rules and procedures. See, e.g., Sampson v. Cermak Health Services, 1993E009, 4-27-95, **CDO**; D'Adam v. Bridgeview Sports Club Association, Inc., 2004PA004, 8-11-05, **CDO**.

The Commission has the discretion to excuse a *pro se* party's failure to appear at the Conciliation Conference due to illness. Parchim v. TLR Enterprises, Inc. d/b/a The Living Room, 2001PA001, 9-25-02, **CO**.

CONCURRENT JURISDICTION
See JURISDICTION

CONFLICT OF INTEREST

Complaint Against the Commission and/or Any of its Staff

Filing a complaint with the Commission against the Commission and any of its staff presents obvious conflict of interest concerns. The Commission shall not accept complaints filed against itself or its staff and shall refer such complaints to other civil rights agencies. Blakemore v. Cook County Commission on Human Rights et al., 2002PA025, 6-12-03, **CO**.

Intergovernmental Agreement

The Commission entered into an intergovernmental agreement with the Chicago Commission on Human Relations providing that complaints of discrimination made against the Commission or any of its staff which cannot be filed at other civil rights agencies, shall be referred to and accepted by the Chicago Commission for processing under the Chicago Ordinances. Blakemore v. Cook County Commission on Human Rights et al., 2002PA025, 6-12-03, **CO**.

CONSTITUTIONAL CLAIMS

First Amendment

Free Exercise of Religion
The Commission lacks the authority to resolve internal church disputes, or matters requiring the interpretation of church doctrine, where to do so would abridge the right to free exercise of religion. If the respondents' actions were based on their sincerely-held religious beliefs, the Commission would lack jurisdiction to review those actions. Here, because respondents do not have a sincerely held religious belief that prohibits them from allowing practicing homosexuals to rent or own their cottages, respondents cannot claim the protection of the First Amendment. Carroll, et al v. Chicago District Camp Ground Assoc., et al., 1999H006-009, 10-14-06, **CDO**.

Free Speech
Respondent's argument that its First Amendment and Illinois Constitutional rights would be violated if they were compelled to publish a specific personal advertisement could be a valid defense to a complaint alleging discrimination based on sexual orientation in denial of access to a public accommodation. However, these issues raise factual questions which are not appropriate for a Commission resolution in a motion to dismiss. Reyes v. Penny Saver Publications, 1995PA005, 9-21-95, **HO**.

CONTINUING VIOLATIONS

§ 42-34 (B)(1)(a) of the CCHRO and Commission Procedural Rule 420.100(A) recognize that a violation of the CCHRO may be of a continuing nature. The continuing violation theory allows incidents which would otherwise be time-barred to be considered timely because they are part of a pattern of related events, at least one of which

occurred during the 180-day filing period. In determining whether allegations are of a continuing nature, the Commission considers the following factors: (1) whether the alleged events involve the same type of discrimination; (2) whether the acts are recurring and not isolated or discrete; and (3) whether a pattern or series of acts over a period of time finally alerts the individual that his or her rights are being violated. See, e.g., Martin v. Club Fever, 1998PA009, 11-30-98, **CO**; Howard v. Pappas Transport, 1999E033, 2-8-00, **CO**.

The "continuing violations" theory may allow a discrimination complainant can reach back to events occurring more than 180 days before the filing of a charge or complaint as long as the timely allegations are substantially related to the earlier events. When it is clear from the face of the complaint that the only timely allegations within the complaint have little or no connection at all to the time-barred allegations, the continuing violations theory will not prevent dismissal of the time-barred allegations. Munda v. Block Medical Center, et al., 2004E061, 2-10-05, **CO**.

The effects or outgrowth of alleged past discrimination may continue in the present but do not create an independent basis for a complaint and do not cause a new filing period to run. Complainant's allegation that the filing of a lien was discriminatory was not timely. The Commission rejected her argument that the removal of the lien (an outgrowth of the original filing) caused a new filing period to begin to run. Spurgash v. 7041-49 O'Connell Condominium Association and Kiner, 1994H006, 10-19-98, **CDO**.

The CCHRO and Procedural Rules require complainants to file their claims with the Commission within 180 days of the alleged violation or continuing violation. Neither a complainant's appeals nor a respondent's responses to those appeals can delay the tolling of the filing period. Complainant failed to file his complaint within 180 days of the alleged discriminatory acts, and therefore, the Commission grants respondent's motion and dismisses the complaint for lack of jurisdiction. Totten v. Chicago District Campground Association et al, 2001H003, 8-16-2001, **CO.**

COSTS

See ATTORNEY'S FEES - Costs

CREDIBILITY

During Administrative Hearing

Following a Default Order

When respondents were not present at the administrative hearing to challenge complainant's evidence or offer any of their own, the only real issue was for the Hearing Officer to decide whether he believed complainant and her only witness, her mother, who testified principally about damages. The Hearing Officer found complainant's testimony credible. Desparte v. Arlington Heights Kirby et al., 2002E020, 5-6-05, **CO**.

Liability

When the respondent's and complainant's depiction of events is in question, no credibility determination is necessary and the burden of proof falls upon the complainant. Dwyer v. Il Pescatore Palace Restaurant & Banquet Hall and Vito Barbenente, individually, 2001PA017, 6-12-03, **CDO.**

Commission finds that despite the lack of credibility of one of the main defense witnesses there was sufficient evidence to find for respondent and for termination of complainant. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95 **CDO**.

Respondent's pretextual argument rebutting charge of retaliation found not credible. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

During Investigation

When credibility of parties and witnesses is at issue during a Commission investigation, a substantial evidence determination is appropriate. The choice of whom to believe should be made by an administrative hearing officer with witnesses under oath and applying the rules of evidence. Ehlers v. United Parcel Service, 1997E027, 9-21-98, **CO**.

DAMAGES

Pursuant to the CCHRO, the Commission can order statutory fines, damages for emotional harm and payment of

interest on damages awarded. Remedies and relief set forth in § 42-34 of the CCHRO are not meant to be exclusive. The Ordinance itself expressly provides that the CCHRO is to be liberally construed for the accomplishment of its purposes. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Under the Ordinance, relief for violations may include, but is not limited to, an order to cease the illegal conduct complained of and to take steps to alleviate the effect of the illegal conduct complained of; to pay actual damages for injury or loss suffered; to entertain applications to sell or lease housing to the complainants; to pay the complainants all or a portion of the costs of pursuing the complaint and to take such action necessary to make the complainant whole; and to pay a fine of not less than $100 and not more than $500 for each offense. Carroll, et al v. Chicago District Camp Ground Assoc., et al., 1999H006-009, 10-14-06, **CDO**.

The Commission has broad power to award remedies as set forth in § 42-34 (C) of the CCHRO. Included within this power is the power to discourage respondent from engaging in similar discriminatory conduct in the future. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Actual Damages

The Commission has clear precedent for the awarding of compensatory damages. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

§ 42-34 (C)(1)(b) authorizes an award of actual damages for emotional harm. "Humiliation, shame, and mental anguish are elements of actual damages which cannot be precisely measured." Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Awarded
Award of emotional distress damages must be directly related to the incidents complained of. Commission authorized award of $3,500.00 actual damages for injury such as emotional harm. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

The Commission awards emotional distress damages and interest thereon for pain, suffering and mental anguish in the amount of $50,000.00. After complainant was fired, he was in shock, suffered depression, stayed in bed for two weeks, his dosage of an anti-depressant medication was increased, he was subsequently hospitalized for one night and as of date of administrative hearing still suffered consequences as a result of this hospitalization. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**.

The Commission awards emotional distress damages and interest thereon for pain, suffering and mental anguish in the amount of $35,000.00. For 14 months, complainant felt humiliation, shame and mental anguish both from retaliatory actions and threats. Complainant felt unprotected by respondent. Complainant's repeated attempts to report ongoing harassment to respondent went unheeded. In addition, complainant's testimony was supported by testimony from her husband, as well as evidence that complainant sought medical treatment and therapy, in part related to respondent's actions. McClellan v. Cook County Law Library, 1996E026, 6-7-99, **CDO**.

A compensatory damage award is appropriate for the complainants' loss of their right to occupy their cottage. If the cottage has already been sold, the complainants are entitled to the proceeds of that sale; otherwise, the complainants are entitled to receive the right to occupy the cottage. Additionally, complainants are entitled to any proceeds realized by the respondent from renting the cottage, less any upkeep expenses. However, since complainants failed to provide evidence of the rental value, no such awards will be made. Carroll, et al v. Chicago District Camp Ground Assoc., et al., 1999H006-009, 10-14-06, **CDO**.

Commission finds that the retaliatory discharge in response to a simple letter requesting an end to discriminatory treatment could have created the kind of emotional distress testified to by complainant. Thus, a $6,500.00 compensatory damage award which includes reimbursement for complainant's sessions with a social worker is justified. Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**.

Commission finds that the harassing conduct consisted of discrete acts over a short period of time; no medical evidence was presented as to any prolonged medical treatment; and the specific testimony on emotional distress was somewhat generic, resulting in an appropriate award of $2,000.00. A smaller award would overly minimize the

impact of the blatant and homophobic statements made by a supervisor directed to an employee. Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **CDO**.

Factors Considered

In considering an appropriate award for emotional distress damages, the Commission considers previous Commission and other tribunal decisions, as well as the following factors: (a) the extent of testimony concerning the emotional distress, i.e., was there negligible or merely conclusory testimony or was there detailed testimony revealing specific effects of the distress; (b) the length of the discriminatory conduct; the type of discriminatory conduct, *i.e.*, acts occurring briefly or egregious behavior accompanied by face to face conducts, epithets and/or actual malice; (d) the duration of the discriminatory conduct's effects; (e) whether medical treatment was sought and/or whether and to what extent physical manifestations or psychiatric manifestations related to the distress; (f) whether the discriminatory conduct was so egregious that one would expect a reasonable person to experience severe emotional distress; (g) the vulnerability or fragility of the complainant due to past discriminatory experiences or pre-existing condition; (h) whether the conduct involved refusal to rent, rather than harassment, or an attempt to evict or refusal to sell; (I) whether the discriminatory act was accompanied by acts or threats of violence; and (j) whether serious medical or psychological reactions to the discriminatory acts were present. McClellan v. Cook County Law Library, 1996E026, 6-7-99, **CDO**.

Egregiousness of Conduct
Commission awarded complainant $15,000.00 in compensatory damages for emotional distress. Here, complainant was still in high school and suffered repeated physical contact of a very sensitive nature. For that reason, a substantially higher award is justified. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Given the severity of emotional distress suffered by the complainants, the physical symptoms suffered by complainant, and respondent's egregious conduct in evicting them during the middle of winter while complainant was pregnant, the Commission awards $10,000.00 to complainant for emotional and physical distress caused by respondent's discrimination. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

The unlawful treatment of the Carroll complainants was sufficiently egregious, public and persistent, and so went to the heart of their identification as a family of two homosexual men and their (then-foster) son, that an award of $5,000.00 to each family member, totaling $15,000.00. Carroll, et al v. Chicago District Camp Ground Assoc., et al., 1999H006-009, 10-14-06, **CDO**.

Foreseeability
It was reasonably foreseeable that the complainants would have some sort of problems with any housing they were able to secure within the short time period available to them due to the eviction by respondent. In this case, it is clear that being evicted by respondent was the proximate cause of at least some of the emotional distress that complainant suffered, especially the migraine headaches, the crying, and sleeplessness. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

The sizeable awards for emotional distress damages sought by complainants are not warranted because the testimony failed to demonstrate significant emotional distress resulting from the discrimination. Damages of $1000.00 for each complainant awarded. Pace v. McGill Management, 1996H009, 2-25-99, **CDO**.

Advocacy Organizations

Advocacy organizations may be proper parties under the ordinance and can be awarded damages. The Commission determined that the South Suburban Housing Center (SSHC), an advocacy agency that is involved in monitoring, training, and remedying unlawful housing practices that are included in the CCHRO may be a proper complainant under the CCHRO. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Back Pay

Awarded
Upon a showing of proof, complainant, pursuant to an order of default for respondent's failure to respond to the complaint, was awarded the equivalent of 12 weeks of pay of $2,247.84 for the period he was unemployed. Feges v. The New Embers Restaurant, 1993E013, 6-16-94, **CDO**.

Upon a showing of proof at an administrative hearing, complainant was awarded back pay in the amount $41,418.37 and any additional back pay amount that may have accrued subsequent to the issuance of the Commission's Decision and Order, plus applicable interest. This amount reflects what complainant would have been making had he not been unlawfully terminated by the respondent, including yearly raises and appropriate deductions for mitigating factors. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**.

Upon a showing of proof at an administrative hearing, complainant was awarded back pay in the amount of $7,770 for 19-week period after she got fired to the time she stopped looking for work, minus the amounts she earned on another job and minus unemployment compensation received. Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**.

Following a default order, complainant proved that she was entitled to back pay damages in the amount of $3,864 for one year of back pay. Anything more would have been speculative because there is no evidence that complainant would have worked at respondent after her work study period ended. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Not Awarded
Back pay not awarded because the amount was speculative due to lack of sufficient proof. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; McClellan v. Cook County Law Library, 1996E026, 6-7-99, **CDO**.

The Commission finds that the record is devoid of any probative evidence that would allow the complainant to be awarded back pay. In addition, the Commission's finding on mixed motive and after-acquired evidence analysis as it applies to complainant's termination also supports a finding of no back pay award for complainant. Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **CDO**.

Fringe Benefits

§ 42-34 (C)(1)(c) and (h) of the CCHRO provide that the Commission may order a respondent to provide such fringe benefits the complainant may have been denied. Respondent ordered to pay complainant the value of lost benefits in the amount of $1,482.00, plus interest on these benefits. Respondent ordered to return stock options complainant lost as a result of the unlawful termination and give to complainant the stock options that he would have received but for his termination. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**.

Injunctive Relief
See INJUNCTIVE RELIEF

Interest

In order to make complainants whole, § 42-34 (C)(1)(h) of the CCHRO provides for the payment of interest on damages awarded. The Commission awards interest from the date of the violation for emotional distress damages and from the date of the judgment for all other damages and shall be calculated at prime rate, adjusted quarterly and compounded annually. See, e.g., Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Mitigation

The Commission finds that complainant made reasonable attempts to mitigate his damages. Respondent has the burden of proof on this point and did not carry its burden. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**.

Proof of Damages

Credibility
When respondents were not present at the administrative hearing to challenge complainant's evidence or offer any of their own, the only real issue was for the Hearing Officer to decide whether he believed complainant and her only witness, her mother, who testified principally about damages. The Hearing Officer found complainant's testimony credible. Except for some confusion about the order of the three incidents, her testimony was straightforward and believable. Her demeanor added to her credibility because her emotions seemed sincere, and were not manifested

to impress the Hearing Officer. Similarly, the Hearing Officer found complainant's mother a credible witness about her daughter's emotional distress, based on her straightforward testimony and her demeanor in that she also did not testify in an overly emotional manner so as to evoke sympathy. Desparte v. Arlington Heights Kirby et al., 2002E020, 5-6-05, **CDO**.

Following a default order, at the Administrative Hearing, the burden is upon complainants to support their requests for damages. Also, at the Administrative Hearing the Hearing Officer determines the admissibility of any testimonial evidence and exhibits and "shall not be bound by the strict rules of evidence applicable in courts of law or equity." (Section 460.105) Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

The duration of the unlawful acts themselves was brief and the evidence of emotional distress suffered is very sketchy. The Commission awards $1,000.00 for each Graham family member, totaling $4,000.00 Carroll, et al v. Chicago District Camp Ground Assoc., et al., 1999H006-009, 10-14-06, **CDO**.

Punitive Damages

Authority to Award
Preamble expressly provides that CCHRO is to be liberally construed for the accomplishment of its purposes. Thus § 42-34 of the CCHRO, while not expressly providing for punitive damages, does not explicitly prohibit them. The list of remedies in § 42-34 is not intended to be exhaustive. Commission has authority to award punitive damages. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Awarded

Retaliation
Respondent discharged complainant based on her letter to him complaining about her treatment. This conduct was taken in reckless disregard for complainant's right and should be sanctioned to deter future wrongdoing. Commission finds that a punitive damages award of $4000.00 is sufficient as a reasonable punishment for respondent, a small occupational medicine clinic, to deter potential wrongdoers. Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**.

Sexual Harassment
Commission levies punitive damages of $5,000.00 for employer's reckless disregard for victim's rights by allowing supervisor to continue conduct. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

Commission awards $12,500.00 in punitive damages for sexual harassment because the supervisor's behavior went unpunished; the employer demonstrated no real plan to prevent it; the violations were egregious, and the pattern of behavior was ongoing despite Complainant's complaints. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Calculation of Award

Conduct
Commission awards $12,500.00 in punitive damages for sexual harassment because of the greater need for deterrence given the repeated conduct the supervisor engaged in with no real punishment or plan to prevent it by respondent employer. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Relevance of Net Worth and Income
Commission grants complainant's motion to compel information regarding respondent's net worth and income as relevant to the issue of punitive damages, if any. Nunnery v. Lewy, *et al.*, 1998H008, 8-7-01, **HO**; Interfaith Housing Center of the Northern Suburbs v. Lewy *et al.*, 1998H009, 8-7-01, **HO.**

Income and assets of respondent are relevant to the issue of punitive damages. In this rule applicable to the Commission, the Commission follows both the rule of law adopted by the Seventh Circuit Court of Appeals and the Chicago Commission on Human Relations. Gonzalez v. Kedzierski. 1995H014, 2-19-96, **HO**; Nunnery v. Lewy et al., 1998H008, 8-3-01, **HO**; Interfaith Housing Center of the Northern Suburbs, 1998H010, 8-3-01, **HO.**

Legal Standard
Punitive damages are appropriate when a respondent's actions are shown to be motivated by evil motive or intent, or when actions involve reckless or callous indifference to the protected rights of others. The Commission levies punitive damages where employer's reckless disregard for victim's rights allows supervisor to continue unlawful harassing conduct. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Not Awarded
Punitive damages are not appropriate where respondent, acting on advice from counsel, did not act with evil motive or intent when it denied complainants' request for an accommodation. Pace v. McGill Management, 1996H009, 2-25-99, **CDO**.

In promulgating the CCHRO, there is no specific indication that the Cook County Board of Commissioners intended to override the specific provisions of the Illinois Tort Immunity Act. The Act prohibits a local public entity from being held liable for punitive damages; hence the Commission can not assess punitive damages against respondent, the Cook County Law Library. McClellan v Cook County Law Library, 1996E026, 6-7-99, **CDO**.

The Commission finds this case is inappropriate for an award of punitive damages. The award of actual damages in this case is substantial. However, actual damages are not a substitute for punitive damages, although the substantial award of actual damages may have the incidental effect of deterring future discrimination by respondent. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**.

A finding of liability does not in and of itself entitle a complainant to an award of punitive damages. Based on the facts that the main harasser is no longer employed with respondent, that there is no evidence that respondent encouraged or condoned the supervisor's illegal behavior, and that the record is relatively thin as to the context and frequency of the discriminatory slurs, punitive damages are not appropriate in this matter. Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **CDO**.

Punitive damage awards are appropriate where the respondents' actions are willful and/or malicious or where the respondents recklessly disregarded the rights of the complainants. In this case the First Amendment issues were sufficiently complex, and the status of the respondent under the First Amendment sufficiently unclear, that it cannot be said that respondents acted with evil motive or intent. Punitive damages are inappropriate in this case. Carroll, et al v. Chicago District Camp Ground Assoc., et al., 1999H006-009, 10-14-06, **CDO**.

Purpose
The purpose of punitive damages is to punish the respondent for his outrageous conduct and to deter him and others like him from similar conduct in the future. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Randle El et al v. Pizza Hut of America, Inc., 1996PA013, 4-14-97, **CO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

The Commission wants employers and supervisors to understand that their failure to take strong measures to prevent physical sexual harassment of a teenage employee by a repeated sexual harasser and the actions of such a sexual harasser are the kind of misconduct that punitive damages were designed for. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

DEFAULT

Failure to Respond

Judgment Entered
After respondent repeatedly refused to participate in the procedures of the Commission and numerous notices of the consequences of that failure were issued by the Commission, a default order was entered against respondent. Consequently, respondent is deemed to have admitted to all of the factual allegations of complainants' complaint. See, e.g., Feges v. The New Embers Restaurant, 1993E013, 11-8-93, **CO**; Matthews v. Eugene's Fireside Restaurant, 1997PA017, 12-29-98, **CO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 5-6-05, **CO**; Garcia v. Winston et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Hearing on Damages

Liability Found
Subsequent to the entry of a default order, an administrative hearing was held to determine complainant's relief, if any. Due to respondent's failure to file a timely response to the complaint, all of complainant's well-pleaded allegations were deemed admitted, complainant established a *prima facie* case of discrimination and damages were awarded. Feges v. The New Embers Restaurant, 1993E013, 6-16-94, **CDO**.

Liability Not Found
Having received no written verified response to the Commission complaint, no response to the notice of default, and no response or request for reconsideration of the Commission's order of default, the Commission scheduled this matter for an administrative hearing. At an administrative hearing in a default case, a complaint must establish a *prima facie* case of discrimination and prove any damages. Even though this is a default case, complainant has failed to meet his obligation of proving a *prima facie* case. Therefore, the complaint is dismissed. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**.

Motion for Default

Denied
A strict application of the default rule would violate the spirit of the CCHRO, which is to be liberally construed to accomplish its purpose. Failure of respondent to respond timely or otherwise is not cause for the immediate entry of an order of default; rather, the Commission's rules permit the Commission to issue a notice of default. While the notice formally communicates to a dilatory respondent that the Commission's next action may be the entry of an order for default, the notice also provides a respondent with an opportunity to explain and correct their omission, thereby avoiding the harsh sanction of default. Jacob v. Northwestern University, 2002E037, 10-24-02, **CO.**

Default is a severe sanction which should not be entered in a punitive manner, especially where the underlying omission was due to an error, not disregard for Commission procedures. Jacob v. Northwestern University, 2002E037, 10-24-02, **CO.**

Granted
After respondent repeatedly refused to participate in the procedures of the Commission and numerous notices of the consequences of that failure were issued by the Commission, a default order was entered against respondent. Consequently, respondent is deemed to have admitted to all of the factual allegations of complainants' complaint. Garcia v. Winston et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Request to Vacate

The CCHRO and the Commission's Procedural Rules do not provide for vacating a final order or judgment. In the absence of its own rules on the subject, the Commission looks to rules of procedure of the courts of general jurisdiction for guidance. The courts are concerned with the preservation of justice through the exercise of fairness to both parties. In this case, the parties have agreed to settle their differences and it is reasonable to vacate the final default order and approve the settlement agreement. Tsimogiannis v. UBS and Quinones, 1995E074, 1-3-00, **CO**.

To vacate a default order and judgment, respondent must affirmatively set forth in his or her timely filed motion specific factual allegations supporting each of the elements: (1) the existence of a meritorious defense or claim, which through no fault of respondent was not initially brought before the Commission; (2) due diligence in pursuing this defense or claim in the original action; and (3) due diligence in filing the motion to vacate. Feges v. The New Embers Restaurant, 1993E013, 11-3-94, **CDO**; Matthews v. Eugene's Fireside Restaurant, 1997PA017, 8-4-97, **CDO**: **Vacated** 3-21-00.

DEFERRAL OF COMMISSION INVESTIGATION

Commission Discretion

The Ordinance acknowledges that the Commission shares concurrent jurisdiction with other agencies over certain discrimination complaints, and thus gives the Commission discretionary authority to defer investigation of a complaint when it would serve the goal of conserving administrating resources and minimizing the burden on

respondents without compromising the due process rights of the complainant to an investigation of the complaint. See, e.g., Hudok v. Quality Transportation Systems, Inc., 1994E031, 12-27-94, **CO**; Lee v. DaVita d/b/a Logan Square Dialysis, 2002E082, 12-19-02, **CO**; Harrington v. John H. Stroger, Jr. Hospital, 2005E010, 3-30-2005, **CO**.

The deferral operates like a grace period, allowing the opportunity for a complaint to be resolved in another forum before the Commission begins its investigation. If the dispute is not resolved in the alternative forum on the merits or through settlement or mediation which would result in the voluntary dismissal of the complaint filed with the Commission, the Commission will commence its investigation. Hudok v. Quality Transportation Systems, Inc., 1994E031, 12-27-94, **CO**; Barnes v. United Parcel Service, 2003E024, 6-26-03, **CO**; Peters v. Lyons School District No. 103, 2004E067, 1-7-05, **CO**; Diggs v. Dollar General, Inc., 2005E016, 5-16-2005, **CO**.

If the EEOC finds no reasonable cause at the close of its investigation, the Commission shall review the information the EEOC has collected in its investigation of the charge and decide whether the Commission shall dismiss the complaint for lack of substantial evidence, conduct further investigation, find there is substantial evidence of a violation of the CCHRO, or take other steps as appropriate. If the EEOC tries to conciliate the case, it shall try to have the Commission complaint resolved at the same time. If the case does not settle and if either the EEOC or the complainant files in federal court, the Commission shall dismiss the complaint. Benson v. Northwestern University, 2005E043, 11-15-05, **CO**.

Deferral Denied

Motion to defer denied. Respondent failed to provide any substantive information which indicated that a resolution on the merits in the complaint/charge filed and pending with the other agency was forthcoming. See, e.g., Harper v. Foster Wheeler Constructors, 1996E069, 4-2-97, **CO**; Heavrin v. Health O'Meter Products, 1997E020, 7-31-97, **CO**.

Neither the Commission's Procedural Rules nor Commission precedent require the Commission to exercise its discretion and defer its investigation merely because a complaint is filed in another forum. Where the Commission complaint was filed earlier, and that respondent has not provided the Commission any substantive information as to the procedural status of the investigation at the other forum, or that a resolution on the merits was forthcoming, the Commission has not been persuaded that its investigation should be delayed. See, e.g., Bohn v. Il Primo Foods, Ltd.,1994E120, 5-15-95, **CO**; Williams v. Cook County Sheriff et al., 1999E028, 2-14-00, **CO**; Jamison v. Rowland-Borg Corporation, et al., 2001E045, 5-30-02, **CO**.

Administrative Efficiency

Motion to defer denied. The Commission determined that issues of administrative efficiency would not be served by deferral. No evidence that other agency has completed its investigation, is near completion or that the parties are close to resolving the substantive issues raised in the complaint filed at the other agency. Where another administrative agency is in the process of conducting their investigation does not in and of itself warrant deferral. See, e.g., Green v. Avon Products, Inc., 1996E096, 3-31-97, **CO**; Stagailo v. Salton-Maxim Housewares, 1999E017, 7-20-99, **CO**.

Respondents' motion to defer denied. The complaint filed at the Commission contains allegations (national origin discrimination) not alleged in a charge filed at the Illinois Department of Human Rights. The Commission concludes that the interests of administrative efficiency would be more effectively served by the Commission proceeding with its investigation into all of the allegations. Vourazeris v. Champion Technologies, 1995E096, 12-28-95, **CO**; Torres-Munoz v. Cook County Clerk et al., 2002E075, 2-03-03, **CO**.

Dissimilarity of Charges

Motion to defer denied where the charge filed at the other administrative agency is dissimilar to the complaint filed with the Commission. See, e.g., Solis v. Hi-Temp Incorporated, 1994E046, 11-5-94, **CO**; Tillman v. Andrew Corporation, 1995E101, 1-3-96, **CO**; Malone v. Foster Wheeler Constructors, Inc., 1996E071, 4-2-97, **CO**.

Jurisdiction of Other Agency Lacking

Respondent's motion to defer denied. Complaint filed with the Commission is not the same complaint filed with the Chicago Commission on Human Relations. In fact, the retaliation in housing complaint could not be filed with the City of Chicago Commission because the City Commission lacks jurisdiction over retaliation in housing cases. Stovall v. Metroplex,Inc. et al., 1995H010, 10-19-95, **CO**.

Respondent's motion to defer denied. Complainant filed a complaint of discrimination based on housing status with the Commission and filed a complaint of discrimination based on race with the Chicago Commission on Human Relations. Respondent alleges that the Commission should either dismiss the Commission complaint or defer the Commission investigation because both the Chicago Human Relations complaint and the Commission complaint involve the same parties and arise from the same facts and involve similar issues and subject matters. Because the Chicago Ordinance does not prohibit discrimination based on housing status, the Chicago Commission lacks jurisdiction to consider allegations of such discrimination, and therefore, it is not appropriate for the Commission to defer its fact finding investigation. Blakemore v. Dublin Bar and Grill, Inc., an Illinois Corporation d/b/a Dublin Pub, 2005PA008, 4-3-06, **CO**.

Substantially Similar Charge Filed at Another Agency
Motion to defer is denied. Although the act of the alleged discrimination is substantially similar to the one before another agency, the Commission still needs to complete its own neutral fact finding investigation. However, to minimize duplication and the burden on respondent, the Commission will review the documentation submitted by respondent, and will only request additional information the Commission investigator believes necessary to complete her investigation. Harrington v. John H. Stroger, Jr. Hospital, 2005E010, 3-30-2005, **CO**; Diggs v. Dollar General, Inc., 2005E016, 5-16-2005, **CO.**

Respondent's motion to defer denied. Even though the EEOC charges are substantially similar to the allegations contained in the Commission complaint, respondent notified the Commission that the EEOC dismissed the charges, rendering respondent's request for deferral of the Commission investigation moot. Green v. D & K Machine, 1999E014, 7-2-99, **CO**.

Temporary Stay
Although respondent's motion to defer is denied, the Commission temporarily stays respondent's responsibility to file with the Commission their written response to the Commission questionnaire and position statement. Harrington v. John H. Stroger, Jr. Hospital, 2005E010, 3-30-2005, **CO**.

Deferral Granted

Administrative Efficiency
Motion to defer granted. Complainant filed with the Commission a complaint alleging retaliation in violation of the CCHRO. Complainant also filed a charge at the IDHR, alleging unlawful discrimination based on national origin and retaliation. In this case, since the IDHR has jurisdiction over both the national origin discrimination charge and the retaliation charge, the Commission, in the interests of administrative efficiency, will defer its investigation into complainant's retaliation allegation while the IDHR proceeds with its investigation into both allegations. See, e.g., Nemoyer v. Video 44/Telemundo of Chicago, Inc., 2002E038, 6-21-02, **CO**; Barnes v. United Parcel Service, 2003E024, 6-26-03, **CO**, Peters v. Lyons School District No. 103, 2004E067, 1-7-05, **CO**.

Intergovernmental Agreement
Respondent's motion to defer granted. Commission granted deferral of investigation for a six month period of time where identical complaint filed a charge with the IDHR on the same day, where complainant did not object to the deferral request, where respondent had already submitted to IDHR a verified response, and where a new expedited investigation process was instituted at IDHR. Luszczak v. S&S Sales, Ltd., 1996E075, 12-10-96, **CO.**

Respondent's motion to defer granted. Commission's investigation was deferred for a limited time where mediation of similar charge possibly resulting in settlement of Commission complaint is scheduled at other administrative agency. Young v. Cook County Sheriff, 1997E063, 7-28-97, **CO.**

Complainant's motion to defer granted. Commission granted deferral request where a question exists as to the City of Chicago Commission's jurisdiction to consider the underlying merits of the complaint. Ehrsam v. National Casein Co. et al., 1994E126, 10-16-95, **CO**.

Respondent's motion to defer granted. Commission granted deferral request where Complainant filed a similar charge of age discrimination with the IDHR and finds the Commission complaint and the IDHR charge to be substantially similar. Based on this fact, in this case, the Commission will defer its investigation of the age discrimination complaint for a period of six months. Powers v. Stroger Hospital of Cook County, 2006E043, 12-22-06

The EEOC and the Commission have entered into an intergovernmental agreement that covers parallel cases filed with each respective agency. The agreement provides, in pertinent part, that either the Commission or the EEOC may defer its fact finding investigation of a substantially similar charge of discrimination while the non-deferring agency conducts and concludes its fact-finding investigation. In this case, the Commission will defer its investigation while the EEOC proceeds with its own investigation. See, e.g., Abelman v. G.E. Financial Assurance, 2001E034, 5-30-02, **CO**; Benson v. Northwestern University, 2005E043, 11-15-05, **CO**; Kramer v. ACGT, Inc., 2005E037, 11-18-05, **CO**.

DEPOSITIONS
See DISCOVERY

DISABILITY DISCRIMINATION

Employment Discrimination

In cases of employment discrimination based on disability, the Illinois courts have developed and recognized three models or theories by which a complainant can typically prove his/her case: (1)

the disparate treatment model; (2) the disparate impact model; and (3) the barriers model. Green v. Avon Products, Inc., 1996E096, 1-20-98, **CO**.

Barriers Model - *Prima Facie* Case
The barriers model requires complainant to establish a *prima facie* case that (1) she is disabled, (2) her disability is unrelated to her ability to perform her job with accommodation, and (3) the employer failed to accommodate her disability. Implicit in the *prima facie* case is the employer's duty to accommodate where the employer has knowledge of complainant's disability and where the complainant has made an effort to seek accommodation. See, e.g., Green v. Avon Products, Inc., 1996E096, 1-20-98, **CO**; San Ramon v. Cook County Hospital, 2000E014, 5-2-01, **CO**; Boykin v. Provident Hospital, 1997E018, 2-14-02, **CDO**; Sotelo v. J.F. Schroeder, 2001E014, 5-21-02, **CO**.

Once a complainant has succeeded in establishing a *prima facie* case, the employer must rebut that showing by proving that an accommodation would impose an undue hardship. Green v. Avon Products, Inc., 1996E096, 4-29-99, **CDO**.

Failure to Accommodate
To demonstrate that the employer has violated the CCHRO by failing to make a reasonable accommodation, the complainant must show that (1) she is disabled, (2) her disability is unrelated to her ability to perform her job with accommodation, and (3) the employer failed to provide a meaningful accommodation for the known disability of complainant, which would have permitted the complaint to perform the essential functions of her job. San Ramon v. Cook County Hospital, 2000E014, 5-2-01, **CO**.

Lack of Substantial Evidence
During the investigation stage, the complainant was unable to establish the first element of a *prima facie* case that she was disabled within the meaning of the CCHRO under either the disparate treatment or barriers theory of disability discrimination. Adams v. Cook County Juvenile Temporary Detention Center, 2001E013, 1-23-02, **CO**.

Substantial Evidence
During the investigation stage, the complainant met her limited burden of providing substantial evidence that she is disabled within the meaning of the CCHRO; that respondent knew of her disability; and that complainant was fully able to perform her job and work overtime if her request for accommodation was granted. Green v. Avon Products, Inc., 1996E096, 1-20-98, **CO**.

During the investigation stage, the complainant has shown more than a mere scintilla of evidence that she is disabled with or without her hearing aids under either the "substantially limited" or "regarded as" prongs of the CCHRO's disability definition. Complainant presented evidence that her disability was unrelated to her ability to perform her job and that her proposed accommodation would not have been an undue hardship for respondent. Finally, complainant presented sufficient evidence to support a conclusion that respondent failed to make a reasonable accommodation. San Ramon v. Cook County Hospital, 2000E014, 5-2-01, **CO**.

Undue Hardship
Complainant's preferred accommodation was not reasonable because it would have imposed undue hardship on respondent through disruption and delay of production and added work and longer hours for the other employees on complainant's line. Green v. Avon Products, Inc., 1996E096, 4-29-99, **CDO**.

Disability Defined

Definition
In order to prove a *prima facie* case of discrimination based on disability, the complainant must have offered substantial evidence that she (1) has a physical or mental impairment that substantially limits one or more of her major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning or working; (2) has a record of such impairment; or (3) is regarded as having such an impairment. Complainant failed to establish a *prima facie* case that she has a disability as defined by the CCHRO. San Ramon v. Cook County Hospital, 2000E014, 5-2-01, **CO**; Adams v Cook County Juvenile Temporary Detention Center, 2001E013, 1-23-02, **CO**; Boykin v. Cook County Hospital, 1997E018, 2-14-02, **CDO**; Sotelo v. J.F.Schroeder Co. Inc., 2001E014, 5-21-02, **CO**.

Major Life Activity - Working
The ability to work has been considered a major life activity. Boykin v. Provident Hospital, 1997E018, 2-14-02, **CDO**; Sotelo v. J.F.Schroeder Co. Inc., 2001E014, 5-21-02, **CO.**

Substantially Limited
The first element of the CCHRO's definition of disability is whether a physical or mental impairment substantially limits one or more of a complainant's life activities. In this case, the Commission found that the complainant had a physical impairment, however, there was a lack of evidence to show that the complainant was substantially limited in one or more of her major life activities. Complainant's impairment was transitory in nature, the duration of her impairment was limited, and no evidence was introduced to show that complainant would suffer permanent or long-term effects from her impairment. Adams v. Cook County Juvenile Temporary Detention Center, 2001E013, 1-23-02, **CO**.

Complainant suffers from sensory-neural hearing loss. At the investigation stage, respondent does not seriously dispute that complaint is a person with a disability either because her hearing loss is a physical impairment that substantially limits one or more or her major life activities, or because she is regarded as having such an impairment. San Ramon v. Cook County Hospital, 2000E014, 5-2-01, **CO**.

Where working is the major life activity in question, an individual must demonstrate a significant restriction to show a substantial limitation. The factors to be considered include: (1) the nature and severity of the impairment; (2) the duration of the impairment; (3) and the actual long-term impact of the impairment. Though complainant's uncontradicted testimony was that while her depression was an impairment, it did not substantially limit her ability to work in nursing. Thus she failed to establish a *prima facie* case that she has a disability as defined by the CCHRO. Boykin v. Provident Hospital, 1997E018, 2-14-02, **CDO**.

There has been no evidence offered that complainant had a substantial limitation in any major life activity, like walking or working. Sotelo v. J.F.Schroeder Co. Inc., 2001E014, 5-21-02, **CO.**

Disparate Treatment

Administrative Hearing
At administrative hearing, complainant failed to establish the third prong of her disparate treatment argument, specifically, that the respondent treated her differently than similarly situated non-disabled employees. Green v. Avon Products, Inc., 1996E096, 4-29-99, **CDO**; Phillips v. Gilbert & Associates, Ltd., 1997 E101, 1-9-01, **CO**; San Ramon v. Cook County Hospital, 2000E014, 5-2-01, **CO**.

Respondent has partially articulated a legitimate business reason for complainant's termination: overtime work by all employees was necessary. However, no reason was articulated for treating complainant differently than other similarly situated employees who left work early and were not disciplined or subsequently terminated. Green v. Avon Products, Inc., 1996E096, 1-20-98, **CO**.

Investigation Stage
Complaint alleged sufficient facts to set forth the elements of a *prima facie* case of discrimination based on disability in an unlawful discharge case. Complainant alleged that she was disabled (blind in one eye); she believed she was meeting respondent's legitimate performance expectations; she was terminated by the respondent; and, she was replaced by a male who was not disabled. Hudok v. Quality Transportation Systems, Inc., 1994E031, 12-27-94, **CO**.

Complainant has not shown even a scintilla of evidence at the investigation stage that he was disabled at the time of his discharge or that his employer perceived him to be disabled so this claim must be dismissed for a lack of substantial evidence. Sotelo v. J.F. Schroeder Co., Inc., 2001E014, 5-21-02, **CO**.

During the investigation stage, complainant has shown substantial evidence that her discharge was the result of disparate treatment discrimination in violation of the CCHRO. Complainant has met her limited burden of providing substantial evidence that she has a disability; she suffered an adverse employment decision in that she was terminated for leaving work early; and other non-disabled employees were not disciplined or were subjected to lesser discipline than complainant for leaving work early. Green v. Avon Products, Inc., 1996E096, 1-20-98, **CO**.

During the investigation stage, the complainant presented sufficient evidence that respondent discriminated against her based on her disability in meting out discipline and in other terms and conditions of her employment. San Ramon v. Cook County Hospital, 2000E014, 5-2-01, **CO**.

During the investigation stage, the complainant was unable to establish the first element of a *prima facie* case under either the disparate treatment or barriers theory of disability discrimination, that she was disabled within the meaning of the CCHRO. Adams v. Cook County Juvenile Temporary Detention Center, 2001E013, 1-23-02, **CO**.

***Prima Facie* Case**
In a discharge case involving allegations of disability discrimination based on disparate treatment, a complainant may use two alternative methods to establish and prove a *prima facie* case of discrimination. In the first method the complainant must show the following: (1) she is disabled; (2) the respondent took an adverse action related to her disability against the complainant; and, (3) the disability is unrelated to the complainant's ability to perform the job. In the second method the complainant must show the following: (1) she is a member of a group protected by the law; (2) she was treated in a certain manner by the respondent; and, (3) the respondent treated her differently than similarly situated employees who are not members of the protected group. Green v. Avon Products, Inc., 1996E096, 1-20-98, **CO**; Adams v. Cook County Juvenile Temporary Detention Center, 2001E013, 1-23-02, **CO**.

Housing Discrimination

Liability Found
The complainants proved by a preponderance of evidence that respondent board is liable because the complainants proved that: (1) they are disabled, (2) their request for a disabled parking space is a reasonable request that affords them an equal opportunity to use and enjoy their townhome; and (3) the board refused to grant their request for a reasonable accommodation. Pace v. McGill Management, 1996H009, 2-25-99, **CDO**.

Indirect Discrimination

Commission denies motion to dismiss one of two complainants. Complainants, husband and wife, reside in separate, but adjoining apartment units. Neither of complainants' leases was renewed by respondent. The Commission finds a sufficient nexus between the alleged disability of the complainant husband, his related behavior and the failure of the respondents to renew the lease of complainant wife as stating a claim of indirect discrimination based on complainant wife's actual association with her husband, a person with a disability. James and Marjorie Anderson v. Town Management, Howard Fink, Barrington Lakes Apartments, and Lois Phelps, 1996H012, 6-9-97, **CO**.

Public Accommodations Discrimination

Futile Gesture Doctrine
The futile gesture doctrine has been applied to claims of disability discrimination in the public accommodations context. The doctrine protects an individual with a disability from having to make repeated efforts to gain access to a

public accommodation but require that such individual be genuinely interested in its use and express that interest in some manner designed to give the owner or operator some notice of that interest. In this case, the complainant has not shown that he had any interest in partaking of the use of respondent. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**; Smith v. Michael Anthony's Restaurant, 2002PA028, 4-12-05, **CO**.

***Prima Facie* Case**

A complainant may establish a *prima facie* case of denial of the full use of a public accommodation in two ways: The complainant shows that (1) she is disabled within the meaning of the CCHRO; (2) the respondent is a public accommodation; (3) she sought to use the public accommodation or expressed an interest in using it to someone employed at the public accommodation but nevertheless was denied full and equal treatment in its use due to her disability; (4) such denial was due to an architectural barrier, and either (a) that structure was built after 1985 or rehabilitated at a cost of more than 15% of the reproduction cost of the facility and does not comply with Illinois Environmental Barriers Act (410 ILCS 25/1) and its accompanying regulations, the Illinois Accessibility Code (71 Ill. Admin. Code ' 410.110 *et seq*.); or (b) that structure was built after 1985 or rehabilitated at a cost of more than 15% of the reproduction cost of the facility and the removal of such barrier is readily achievable; OR If the complainant can show elements (1), (2) and (4), but did not seek to use the public accommodation or express an interest in using the public accommodation, she may still establish a *prima facie* case by showing that it was futile to attempt to enter or use the public accommodation. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**; Smith v. Michael Anthony's Restaurant, 2002PA028, 4-12-05, **CO**.

Complainant failed to make out a *prima facie* case in that he failed to provide any evidence that he sought to enter or that he expressed an interest in dining or drinking at respondent and that the means of entrance into respondent could be made accessible to the complainant in a readily achievable way. Smith v. McCafferty's Pub, 2002PA029, 11-29-04, **CDO**; Smith v. Michael Anthony's Restaurant, 2002PA028, 4-12-05, **CO**.

Readily Achievable

The Commission defines "readily achievable" as "easily accomplishable and able to be carried out without much difficulty or expense." Smith v. McCafferty's Pub, 2002PA029, 11-29-04, **CDO**; Smith v. Michael Anthony's Restaurant, 2002PA028, 4-12-05, **CO**.

Regulations

Absence of Commission Regulations

In the absence of the Commission's own substantive rules or regulations, the Commission will follow reasonable interpretations of the federal regulations when adjudicating claims of disability discrimination under the CCHRO. Previously, the Commission has considered "these interpretations to be reasonable explanations of the requirements of the CCHRO that the impairment substantially limits one or more major life activities" that should be followed "in adjudicating claims of disability discrimination under the CCHRO." Green v. Avon Products, Inc., 1996E096, 1-20-98, **CO**; Sotelo v. J.F. Schroeder Co., Inc., 2001E014, 5-21-02, **CO**.

The duty to reasonably accommodate the disability of employees is implicit in the CCHRO's proscription against employment discrimination. In the absence of interpretive regulations, the Commission will develop additional standards for adjudicating the issue of reasonable accommodation on a case by case basis. Green v. Avon Products, Inc., 1996E096, 1-20-98, **CO**; San Ramon v. Cook County Hospital, 2000E014, 5-2-01, **CO**; Sotelo v. J.F. Schroeder Co., Inc., 2001E014, 5-21-02, **CO**.

The CCHRO does not expressly contain the ADA requirement that structural barriers be removed when readily achievable and it does not contain an express requirement that owner or operators of public accommodation reasonably accommodate the disability of person desiring to use the facility. However, the Commission interprets the CCHRO as including such requirements because the preamble to the CCHRO requires that it be interpreted liberally to effectuate its purposes, one of which is to ensure that persons with disability can fully participate in the programs and services offered at place of public accommodation. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**.

Structural Barriers – Removal

The CCHRO does not expressly contain the ADA requirement that structural barriers be removed when readily achievable and it does not contain an express requirement that owner or operators of public accommodation reasonably accommodate the disability of person desiring to use the facility. However, the Commission interprets

the CCHRO as including such requirements because the preamble to the CCHRO requires that it be interpreted liberally to effectuate its purposes, one of which is to ensure that persons with disability can fully participate in the programs and services offered at place of public accommodation. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**; Smith v. Michael Anthony's Restaurant, 2002PA028, 4-12-05, **CO**.

Employment
The duty to reasonably accommodate the disability of employees is implicit in the CCHRO's proscription against employment discrimination. In the absence of interpretive regulations, the Commission will develop additional standards for adjudicating the issue of reasonable accommodation on a case by case basis. Green v. Avon Products, Inc., 1996E096, 1-20-98, **CO**; San Ramon v. Cook County Hospital, 2000E014, 5-2-01, **CO**; Sotelo v. J.F. Schroeder Co., Inc., 2001E014, 5-21-02, **CO**.

The federal courts have found that an employer under federal law has a duty to engage in an interactive process with an employee who seeks an accommodation to his or her disability. Although the Commission has not previously held that this interactive process is required under the CCHRO, it is appropriate to conclude, as have the federal courts, that the determination of an appropriate and effective accommodation requires an exchange of relevant information and that both employer and employee have a responsibility to engage in that exchange. San Ramon v. Cook County Hospital, 2000E014, 5-2-01, **CO**.

During the investigation stage, the complainant was able to show that there was more than a mere scintilla of evidence that she is disabled with or without her hearing aids under either the "substantially limited" or "regarded as" prongs of CCHRO's disability definition. Complainant also presented evidence that her disability was unrelated to her ability to perform her job. Finally, complainant presented evidence to support a conclusion that respondent failed to make a reasonable accommodation. San Ramon v. Cook County Hospital, 2000E014, 5-2-01, **CO**.

The CCHRO does not require employers to accommodate an employee's personal preferences. Complainant failed to prove that a reasonable accommodation from respondent was necessary or available to enable her to do the essential functions of her job. Complainant's suggested accommodations were not reasonable and it would have imposed undue hardship on respondent. Green v. Avon Products, Inc., 1996E096, 4-29-99, **CDO**.

Housing
The complainants have the right to a reasonable accommodation that provides them with an equal opportunity to use and enjoy the privileges that come with their townhome under the CCHRO. The complainants' requested accommodation that the board convert one of the open spaces to a disabled space for the use of any owner or guest who needs disabled parking was reasonable because the number of spaces that can be made into disabled parking is so limited. Pace v. McGill Management, 1996H009, 2-25-99, **CDO**.

Public Accommodation
The CCHRO does not expressly contain the ADA requirement that structural barriers be removed when readily achievable and it does not contain an express requirement that owner or operators of public accommodation reasonably accommodate the disability of person desiring to use the facility. However, the Commission interprets the CCHRO as including such requirements because the preamble to the CCHRO requires that it be interpreted liberally to effectuate its purposes, one of which is to ensure that persons with disability can fully participate in the programs and services offered at place of public accommodation. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**; Smith v. Michael Anthony's Restaurant, 2002PA028, 4-12-05, **CO**.

DISCOVERY

Depositions

Commission Investigator
Motion to compel deposition of Commission investigator and to call investigator as witness at an administrative hearing denied. Commission finds no "good cause" as required by Commission Procedural Rule 460.145(A) and (B) to compel deposition of Commission investigator. Good cause requires among other things that the information to be obtained has significant probative value. As to the administrative hearing, Commission Procedural Rule 460.175 requires finding among other things that the information elicited be admissible. Iverson v. Horwitz, 1994E021, 4-6-95 & 11-30-95, **HO**.

Complainant
Discovery deposition of complainant denied. No good cause shown. The fact that the complainant is the complainant is not in and of itself good cause. Iverson v. Horwitz, 1994E021, 4-6-95 & 11-30-95, **HO**.

Request Denied
The taking of depositions is not generally favored by the Commission where the information is available through other means and where the taking of depositions would unreasonably delay the proceeding. Respondent's motion for depositions is denied because it would require further postponement of the hearing dates and because the respondent may directly contact the proposed deponents (who are not parties) for interviews. Greco v. Millman, 1996PA001A, 9-29-98, **HO**.

Hearing officer denied respondent's request for leave to subpoena for deposition of non-party witnesses, who refused to cooperate with respondent. Discovery beyond limited interrogatories, requests for admissions, and requests for documents, will be permitted only upon good cause shown, and the requesting party has the burden of demonstrating good cause. Iverson v. Horwitz, 1994E021, 11-30-95, **HO**; Greco v. Millman, 1996PA001A, 9-29-98, **HO**; Carroll et al v. Chicago District Campground Assoc. et al., 1999H006-009, 4-5-02, **HO**.

Commission denies complainant's motion to hold open the record and for leave to take an evidence deposition of an out-of-town witness, where complainant proffered no support that the deposition might have a significant impact on the issues in the case. Commission concluded that it would be burdensome for respondent to undergo the expense and delay occasioned by an out-of-state deposition. Rush v. Ford Motor Company, 1996E013, 4-27-00, **HO**.

Good Cause Required

Commission denied respondent's motion for leave to issue subpoenas for third party witnesses because respondents failed to make a showing of good cause pursuant to Commission Procedural Rule 460.145(B). With regard to discovery, good cause requires, among other things, a showing that the information to be obtained through deposition testimony is not otherwise obtainable, and such information has significant probative value, and that respondent has attempted to obtain the information by direct inquiry, or that the information is not available from other witnesses to the same events. Carroll et al v. Chicago District Campground Assoc. et al., 1999H006-009, 4-5-02, **HO**.

Motion to Compel

Denied
Commission denies respondent's motion to compel, effectively a denial of leave to file discovery more than five weeks past the deadline, as an appropriate sanction for respondent's disregard for the Commission's procedures. Borio v. ANCA Management, Inc., Willow Creek #7 Condo Association, 1996H008, 4-24-97, **HO**.

Granted
Respondent's motion to compel granted in part. Although complainant cannot be compelled to provide information that he does not have, he must provide information that he does have, either through his own knowledge or through conversations with others, including his wife. Complainant ordered to cure omissions from his answers to certain interrogatories, to produce documents, and submit under oath his answers to interrogatories and requests to admit. Greco v. Millman, 1996PA001A, 9-29-98, **HO**.

Complainant's motion to compel granted in part, effectively closing discovery, as an appropriate sanction for respondent's disregard of the Commission's post-conciliation processes, its published Procedural Rules, and hearing officer's scheduling order. Respondent was ordered to serve its responses to complainant's interrogatories, requests for production and requests for admission without objection. McCoy v. United Airlines, 1996E111, 10-3-01, **HO**.

Commission grants complainant's motion to compel information regarding respondent's net worth and income as relevant to the issue of punitive damages. Nunnery v. Lewy et al., 1998H008, 8-7-01, **HO**; Interfaith Housing Center of the Northern Suburbs v. Lewy et al. 1998H009, 8-7-01, **HO**.

Respondents' motion to compel production of a tape recording of an interview by complainant's counsel of one of the named respondents in the presence of respondent's attorney was granted. Complainants' claim that the tape recording is protected by the work product doctrine was rejected by the Commission, inasmuch as presence of respondents' and complainants' attorneys at the interview constitutes waiver of the protection. Carroll et al v. Chicago District Campground Assoc. et al., 1999H006-009, 1-15-02, **HO**.

Requests for Production of Documents
Complainant's motion to compel granted in part. Unlike interrogatory answers, requests for production of documents require only that the responding party provide all such documents which they actually have or can locate, using reasonable diligence. Attorneys practicing before the Commission, as before the courts, are officers of the court and it is presumed that where a party, through counsel, asserts that it has produced all documents which it could locate, that representation is accurate and made in good faith. Burgin et al. v. Community Consolidated School District 168 et al., 2000PA010, 5-24-02, **HO**.

Motion to compel production of complainant's tax returns granted in part where tax returns may be relevant to complainant's status as an employee of respondent. Complainant shall produce her tax returns to the hearing officer only, for in camera inspection. The hearing officer will then determine whether the tax returns, or any parts thereof, shall be produced to respondent. Munda v. Block Medical Center, 2003E032, 1-27-04, **HO**.

Sanctions
See SANCTIONS

Subpoenas

Request for subpoena must, pursuant to Commission Procedural Rule 430.100(B), state (1) the reason the evidence sought is relevant to the complaint and (2) could not be obtained through discovery process pursuant to Commission Procedural Rule 460.145. Request denied. Zaccardo and Zaccardo v. Circle Hill Apartments, Matanky Realty, Inc. and Robert Kinter, 1994E025, 5-30-95, **HO**.

Request Denied
Hearing officer denied respondent's request for leave to subpoena for deposition of non-party witnesses, who refused to cooperate with respondent. The Commission does not issue subpoenas lightly. Its rules and procedures permit only limited discovery. Discovery beyond limited interrogatories, requests for admissions, and requests for documents, will be permitted only upon good cause shown, and the requesting party has the burden of demonstrating good cause. In this case, the parties have already taken depositions, and engaged in discovery far beyond the norm in Commission proceedings. The non-party witnesses have not been designated as expert witnesses, nor is there evidence that their possible testimony will have any value. Iverson v. Horwitz, 1994E021, 11-30-95, **HO**; Greco v. Millman, 1996PA001A, 9-29-98, **HO**; Carroll et al v. Chicago District Campground Assoc. et al., 1999H006-009, 4-5-02, HO.

Work Product Doctrine

Privilege Waived
Illinois Supreme Court Rule 201(b)(2), the work product doctrine, states that material prepared by and for a party in preparation for trial is subject to discovery if it does not contain or disclose the theories, mental impressions or litigation plans of the party's attorney. The work product doctrine protects a mixture of factual material and counsel's work product in the form of his conclusions, characterizations and summaries. Where, complainants made no effort to protect their questions to a named respondent from disclosure to a party opponent and to opposing counsel, the work product doctrine privilege was deemed waived. Carroll et al v. Chicago District Campground Assoc. et al., 1999H006-009, 1-15-02, **HO**.

DISMISSAL OF COMPLAINT

Bankruptcy Proceeding

Complainant may not proceed at Commission because he did not file the requisite proof of claim with the court before the statutory deadline, nor was the claim preserved in Respondent's Plan of Liquidation. Consequently, if the Commission proceeded and determined that Respondent was liable for the discrimination alleged in the complaint,

the Commission could not order Respondent to pay damages or recommend any other relief be awarded to the Complainant because Complainant, as a creditor, did not file a proof of claim, and because Respondent, as it existed at the time of the Complaint, has liquidated its assets and is no longer a legal entity. Holloway v. Wolf Camera & Video, 1999E050, 9-11-06, **CO**.

Failure to Cooperate
See FAILURE TO COOPERATE

Failure to Establish an Employment Relationship

Respondents' motion to dismiss employment discrimination complaint granted where respondents had no employment relationship with complainant. Respondents, who were the attorneys for complainant's former employer, never had nor did complainant seek any employment relationship with respondents and therefore, cannot have violated the CCHRO's prohibition against disability discrimination in employment. Munda v. Polish, Cramer, et al., 2004E044A, 2-10-05, **CO**.

Commission grants motion to dismiss respondent. Complainant made no allegations which either directly or indirectly implicate that one of the respondents was complainant's employer. Eklin v. Farmers Insurance Group and Kenneth C. More Agency, 1996E018, 6-25-96, **CO**; Dixon v. Chicago Zoological Society and the Forest Preserve District of Cook County, 1996E082, 4-2-97, **CO**; Hilgendorf v. Dr. Debbie Tekdogan, 1997E097, 3-27-98, **CO**.

Dismissal Denied
In a joint order, the Commission denies the respondents' motions to dismiss. Respondents assert that school districts are not proper respondents, as they cannot be considered either "employers" or "persons" under the CCHRO. However, the Commission holds that school districts are municipal corporations, who are, in turn, included in the CCHRO's definition of "person," and thus are employers under the CCHRO. Jiminez v. Maine Township High School District #207, 2003E005, 11-24-06; Johnson v. Maine Township District #207, 2001E062, 11-24-06; Knowles v. Cicero Public High School District #99, 2001E056, 11-24-06; Robinson v. Leyden School District #212, 2002E054, 11-24-06.

Failure to State a Claim

Commission dismisses complaint against City of Chicago for failure to state a claim of public accommodations discrimination because no adverse action by respondent City of Chicago was alleged. Blakemore v. City of Chicago, Argus Security and Two Unknown White Argus Security Officers, 2002PA019, 4-23-02, **CO.**

Commission dismisses complaint against Regional Transportation Authority (RTA) because Complainant fails to allege that any employee or agent of RTA actually denied, withheld or curtailed Complainant's use of a CTA bus. Moreover Complainant does not allege that RTA or any of its employees actually control, own, operate or otherwise the CTA or the bus that Complainant attempted to board nor does RTA have personnel authority over the CTA. Blakemore v. Chicago Transportation Authority, et. al., 2006PA008, 11-30-06, **CO**.

Commission dismisses the complaint against certain respondents. The complaint alleged aiding and abetting and interference violations on the part of these certain respondents. The Commission, drawing reasonable inferences in the light most favorable to the complainant, was unable to discern from the complaint any alleged act or other detail which indicates how these respondents allegedly aided and abetted anyone in a violation of the CCHRO or interfered with the performance of a duty or power by the Commissioners of the Human Rights Commission. Munda v. Polish, et al., 2004E044, 09-09-04, **CO**; Munda v. Block Medical Center, et al., 2004E061, 2-10-05, **CO**.

Commission review of the allegations set forth in the complaint particulars dictate that this complaint be dismissed *sua sponte* by the Commission for failing to state a claim under the CCHRO upon which relief may be granted. § 42-34 (B)(1)(b) of the CCHRO states that "[t]he Commission may reject without prejudice and without investigation any complaint that fails to set forth sufficient evidence to state a *prima facie* case of a violation of this CCHRO." There are no allegations which support complainant's claim that he was denied full and equal access to a place of public accommodation or that complainant opposed housing status discrimination with respondent and, therefore, fails to state a claim of retaliation based on housing status discrimination. Blakemore v. Walgreens, 2005PA001, 4-04-05, **CO**.

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Commission grants motion to dismiss one of three individually named respondents. Even construing the complaint liberally, there is no indication that this individual respondent, unlike the other two individually named respondents, knew or should have known of the alleged sexual conduct. Urbach v. Amelio's Restaurant et al., 1997E089, 7-1-98, **CO**.

Lack of Jurisdiction
See JURISDICTION

Lack of Substantial Evidence

Complainant has not shown even a scintilla of evidence at the investigation stage that he was disabled at the time of his discharge or that his employer perceived him to be disabled so this claim must be dismissed for a lack of substantial evidence. Sotelo v. J.F. Schroeder Co., Inc., 2001E014, 5-21-02, **CO**.

Material Question of Fact

Respondent asserts that no employee-employer relationship existed between the parties and, therefore, the Commission lacks jurisdiction to consider the complaint. The Commission must resolve this threshold issue before it proceeds with its neutral fact finding investigation into the underlying merits of the complaint. However, respondent's motion reveals contested issues of fact whose resolution lies outside of the parameters of the complaint itself. To make a determination on respondent's motion requires the Commission to go beyond the face of the pleadings. Munda v. Block Medical Center, 2003E032, 10-9-03, **CO**.

Respondent asserts through its motion to dismiss that it did not do business, hire new laborers, or employ any workers and therefore cannot be held liable for employment discrimination. Complainant, in his complaint and in his response to Respondent's motion, alleges that Respondent hired a new employee after the alleged date of discrimination and that Respondent continued to conduct business throughout the relevant time periods. The Commission has held that when ruling on a motion to dismiss, only those allegations in the complaint and the subsequent reasonable inferences drawn therefrom will be considered. Thus, while Respondent has presented facts that may shield it from liability, comparing Respondent's claims to those facts alleged by Complainant raises a material issue of when or whether Respondent ceased conducting business. Material issues of fact cannot be resolved on a motion to dismiss, and are more appropriately addressed through the Commission's neutral fact-finding investigation. Hudok v. Quality Transportation Systems, Inc.,1994E031, 12-27-94, **CO**; Perez v. Lake Park Construction, Inc., 2004E063, 8-1-06, **CO**.

Similar Allegation Filed in Other Forum

Circuit Court
Pursuant to § 42-34 (D)(5), the Commission must dismiss a complaint filed with the Commission when a suit filed in circuit court contains the same or substantially similar allegations of discrimination. Paloma v. The Cottage Restaurant, 1994E085, 12-7-95, **CO**; Gilich v. LaGrange Memorial Hospital, 1995E036, 6-8-98, **CO**.

Dismissal Denied
Motion to dismiss is denied. Complainant's filing of complaint in court is not the same or substantially similar to the complaint filed with the Commission. Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **CO**; Gerick v. Airoom Architects, Inc. et al., 2002E080, 6-30-03, **CO**.

Other Agency
Respondent's motion to dismiss denied. Complainant filed a complaint of discrimination based on housing status

with the Chicago Commission. Respondent alleges that the Commission should either dismiss the Commission complaint or defer the Commission investigation because both the Chicago complaint and the Commission complaint involve the same parties and arise from the same facts and involve similar issues and subject matters. Because the Chicago Human Rights Ordinance does not prohibit discrimination based on housing status, the Chicago Commission lacks jurisdiction to consider allegations of such discrimination. Therefore it is not appropriate for the Commission to dismiss the Commission complaint. Blakemore v. Dublin Bar and Grill, Inc., an Illinois Corporation d/b/a Dublin Pub, 2005PA008, 4-3-06, **CO**.

Federal Court
Pursuant to § 42-34 (D)(5) of the CCHRO, the Commission's jurisdiction automatically terminates and the Commission will dismiss a complaint *sua sponte* or by motion of either party when a suit filed in federal court contains same or substantially similar allegations of discrimination. See, e.g., Enzenbacher v. Interstate Steel Co., 1994E105, 6-14-95, **CO**; **CO**; Taylor v. Zenith Electronics Corporation, 1996E089, 4-3-97, **CO**.

Timeliness of Filing

Commission lacks jurisdiction and will dismiss a complaint when the complaint is filed beyond the 180-day statute of limitations set forth in Commission Procedural Rule 420.100(B). Kwok-Keung Law v. Real Estate Buyer's Agent, Inc., 1994H003, 4-15-94, **CO**; Jones v. Motorola, Inc., 1995E086, 10-24-95, **CO**.

See also STATUTE OF LIMITATIONS

Want of Prosecution

Dismissal of complaint for want of prosecution due to failure to attend a pre-hearing meeting or administrative hearing or failure to otherwise cooperate in administrative hearing process. See, e.g., Koop v. Drs. Pick & Amadeo, 1994E016, 11-9-95, **CDO**; Banks v. Cook County Juvenile Temporary Detention Center, 1994E088, 10-30-95, **CO**; Henderson v. Office of Cook County Medical Examiner, 1995E016, 3-13-97, **CDO**; Burns v. Sam's Warehouse Club, 1996E033, 5-26-98, **CDO**; Sampson v. Cermak Health Services, 1993E009, 4-27-95, **CDO**; Klegerman v. Heritage Manor Condominium Association and Rowell Property Mgt., 1998H009, 1-13-05, **CDO**; D'Adam v. Bridgeview Sports Club Association, Inc., 2004PA004, 8-11-05, **CDO**.

Complaint dismissed for complainant's failure to attend a Commission-scheduled conciliation conference. Hamilton v. David Kilheeney, et al., 1999H004, 7-13-00, **CO**; Pope v. Berkely Auto Service et al., 2000PA007, 1-21-03, **CO**; Trigueros v. Sprint PCS, 2002E039, 5-2-05, **CO**.

After hearing officer issued an order to show cause why the matter should not be dismissed, for failure of both parties to attend a scheduled pre-hearing meeting for which notice was provided, the matter was dismissed when both parties failed to respond to the order to show cause. Swift v. Signs Unlimited, 2000E042, 7-27-01; 9-19-01, **HO**.

Complaint dismissed after Complainant failed to contact or respond to Commission in timely manner. Turner v. Evanston Northwestern Healthcare, 2003E020, 2-7-06, **CO**.

DISPARATE IMPACT

Disparate impact, although suggested, was neither pled nor proven at the administrative hearing and, therefore, was not considered by the Commission. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95, **CDO**.

DISPARATE TREATMENT

Burden of Production

Respondent carries its burden of production if it articulates a legitimate non-discriminatory reason for its actions. Respondent does not need to persuade a trier of fact that it was actually motivated by the proffered reasons, but merely to raise a genuine issue of fact as to whether it discriminated against the complainant. Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**; Scardine v. Zenith Electronics Corporation, 1996E079, 11-30-99, **CDO**.

Once a complainant establishes a *prima facie* case, the burden shifts to the respondent to rebut the inference of disparate treatment by articulating a legitimate, non-discriminatory reason for its actions. If the respondent articulates a nondiscriminatory reason for its actions, the complainant must then prove by a preponderance of the evidence that the articulated reason was pretext for unlawful discrimination. The complainant retains at all times the ultimate burden of proving that the respondent unlawfully discriminated. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Hardimon v. Allied Tube & Conduit Corp., 1996E003, 10-11-01, **CDO**; Blakemore v. Trizec Holdings, Inc., (a/k/a) Trizec Office Properties, 2003PA007, 4-21-06, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Mixed-Motive
In a mixed-motives case, an employer relies on both an illegal reason and a legal reason as the basis for an adverse action. When a complainant establishes an illegal reason, the respondent must prove by a preponderance of the evidence that it would have made the same adverse decision absent the discriminatory motive. Here, respondent proved that it would have terminated complainant regardless of any retaliatory motive, and that portion of the complaint was dismissed. Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **CDO**.

Not Sustained
Respondent proffered two nondiscriminatory reasons for discharging complainant. Complainant proved those reasons to be unworthy of credence and designed to hide discriminatory motive. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

Partially Sustained
Respondent partially articulated a legitimate business reason for complainant's termination, in that overtime work by all employees was necessary. However, no reason was articulated for treating complainant differently than other similarly situated employees who left work early and were not disciplined or subsequently terminated. Green v. Avon Products, Inc., 1996E096, 1-20-98, **CO**.

Sustained
Respondent offered and proved a legitimate non-discriminatory reason for complainant's termination which was clear, reasonably specific and supported by evidence. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-26-98, **CDO**.

Respondent must introduce, not prove, credible evidence sufficient to establish a non-discriminatory basis for its treatment of complainant. Respondent has met its burden by articulating that complainant was discharged because he refused to submit to a drug test. Fiore v. Bloom Township Highway Department, 1993E074, 2-8-96, **CDO**.

Respondent met its burden of articulating a legitimate non-discriminatory reason for its exercise of discretion to deploy the department work force most efficiently. Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**.

Respondent met its burden of articulating a legitimate non-discriminatory reason for its failure to select complainant for assignment to "election duty" (resulting in additional pay) and for termination of complainant. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95, **CDO**.

Respondent, through specific, credible testimony articulated a legitimate non-discriminatory reason for terminating complainant: namely, that respondent had to terminate about one-third of the persons in complainant's department for reasons of economic necessity. Scardine v. Zenith Electronics Corporation, 1996E079, 11-30-99, **CDO**.

Respondent met its burden of producing an articulated non-discriminatory reason for a disciplinary suspension of complainant, which reason was not rebutted. Rush v. Ford Motor Company, 1996E013, 9-13-00, **CDO**.

Complainant had no evidence to cast doubt on respondent's reason for dismissing him. The pretext analysis seeks to uncover the true intent of the respondent, not the belief of the complainant. Hardimon v. Allied Tube and Conduit Corporation, 1996E003, 10-11-01, **CDO**.

Respondent met its burden of articulating a legitimate, non-discriminatory business reason for firing complainant. Respondent had a policy to terminate employees who fought in the workplace and complainant fought a co-worker. Hardimon v. Allied Tube & Conduit Corp., 1996E003, 10-11-01, **CDO**.

Commission finds that respondent has met his burden of production by articulating a legitimate reason for revoking his decision to rent an apartment to complainant. As a matter of law, he need not prove that was the reason, but merely articulate it through admissible evidence. To rebut that articulation, complainant must prove that this asserted reason was not credible or was pretextual to hide the real discriminatory reason. Piesen v. Fleurisca, 1998H032, 5-9-02, **CDO**.

Burden of Proof

The complainant retains at all times the ultimate burden of proving that the respondent engaged in unlawful discrimination. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Dwyer v. Il Pescatore et al., 2001PA017, 6-12-03, **CDO**; Blakemore v. Trizec Holdings, Inc., (a/k/a) Trizec Office Properties, 2003PA007, 4-21-06, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

To sustain a claim of discrimination, the complainant must prove, beyond a preponderance of the evidence, that (1) she was unlawfully discriminated against; and (2) she has rebutted respondent's articulated non-discriminatory reasons for its actions. Here, complainant failed to rebut respondent's articulated reasons. Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**.

Once the respondent articulates a nondiscriminatory reason for its actions, the complainant must then prove by a preponderance of the evidence that the articulated reason was pretext for unlawful discrimination. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Blakemore v. Trizec Holdings, Inc., (a/k/a) Trizec Office Properties, 2003PA007, 4-21-06, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Complainant bears burden of proving by a preponderance of the evidence a causal connection between adverse action and protected basis. See, e.g., Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**; Hardimon v. Allied Tube and Conduit Corporation, 1996E003, 10-11-01, **CDO**.

Not Sustained

Complainant has not met her burden of proof that (1) she was unlawfully discriminated against on the basis of her race and/or sex and (2) has failed to rebut respondent's articulated non-discriminatory reasons for its actions. Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**.

Complainant failed to sustain his burden of proof, by a preponderance of the evidence that his failure to be selected for "election duty" (resulting in additional pay) or the ultimate termination of employment was proximately caused by unlawful discrimination in violation of the CCHRO. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95 **CDO**.

Complainant failed to establish a *prima facie* case of discrimination in access to a public accommodation on the basis of perceived housing status because he failed to prove that any agent of the respondent was involved in the alleged adverse action taken against him. Blakemore v. Metropolitan Pier and Exposition Authority, 2002PA015, 4-21-06, **CDO**.

Complainant failed to prove by a preponderance of the evidence that she was meeting respondent's legitimate expectations for performance in the training program. McCoy v. United Airlines, Inc., 1996E1111, 10-10-02, **CDO**.

Complainant failed to provide a statistical analysis or other evidence that would allow the Commission to conclude that, in making termination decisions, respondent was motivated by a concern as to the age of the employees it was terminating. Scardine v. Zenith Electronics Corporation, 1996E079, 11-30-99, **CDO**.

Complainant failed to prove his ultimate burden of showing that his discharge or any other treatment of him was motivated by his national origin. Fiore v. Bloom Township Highway Department, 1993E074, 2-8-96, **CDO**.

Complainant has not met her burden of proof that respondent's articulated legitimate non-discriminatory business reason for replacing complainant was pretext for unlawful discrimination. Iverson v. Horwitz, 1994E021, 2-8-96, **CDO**

Complainant failed to sustain her burden of proof by showing that her termination was based upon her sex. In light of respondent's legitimate non-discriminatory reasons for their actions, complainant's evidence of a one-time

comment by respondent is insufficient to prove pretext. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-26-98, **CDO**.

At hearing, complainant failed to establish by a preponderance of the evidence a *prima facie* case of discrimination based on race. Complainant failed to show that non African-American customers were treated more favorably by respondent than she. Gilmore v. Menard's, Inc., 1999PA002, 5-9-2002, **CDO**.

Complainant failed to meet his burden of proof because he failed to provide either direct or circumstantial evidence of discrimination. When the credibility of both the respondent's and complainant's depiction of events is not in question, the burden of proof falls upon the complainant. Dwyer v. Il Pescatore et al., 2001PA017, 6-12-03, **CDO**.

Complainant bears the burden of proving by a preponderance of the evidence that respondents articulated legitimate reason was pretext for unlawful discrimination. Complainant was unable to carry her burden of persuasion. Gilmore v. Menard's, Inc. 1999PA002, 5-9-02, **CDO**; McCoy v. United Airlines, Inc., 1996E111, 10-10-02, **CDO**.

Complainant was unable to carry her burden of persuasion to show pretext to hide a discriminatory motivation on the part of the respondent in his revoke the agreement to rent the apartment to complainant. Piesen v. Fleurisca, 1998H032, 4-11-02, **CDO**.
Complainant failed to prove, by a preponderance of the evidence, a causal connection between the adverse action and protected basis. Specifically, complainant has not met his burden of proving that: (1) he is perceived to be homeless; (2) he was denied full access to the Sears Tower; and (3) he was treated in a markedly hostile manner and/or in a manner which a reasonable person would find objectively unreasonable. Blakemore v. Trizec Holdings, Inc., (a/k/a) Trizec Office Properties, 2003PA007, 4-21-06, **CDO**.

Complainant failed to establish a *prima facie* case of discrimination in access to a public accommodation on the basis of perceived housing status against respondent. Because the complainant failed to prove at an administrative hearing that any agent of the respondent was involved in his removal from the Navy Pier Grand Ballroom, the complaint must be dismissed. Blakemore v. City of Chicago Fire Department and Metropolitan Pier & Exposition Authority, 2002PA015, 4-21-06, **CDO**.

Complainant failed to provide direct or circumstantial evidence of disparate treatment of similarly situated employees and thus failed to sustain the ultimate burden of proving discrimination. Rush v. Ford Motor Company, 1996E013, 9-13-00, CDO; Hardimon v. Allied Tube and Conduit Corporation, 1996E003, 10-11-01, **CDO**.

Complainant proved by a preponderance of the evidence that he was retaliated against by respondent for his protected activity of filing a formal complaint of discrimination with the Commission. However, respondent proved by a preponderance of the evidence that it would have made the same decision to termination complainant absent the unlawful retaliation. Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **CDO**.

Sustained
During the complaint investigation stage, complainant has offered substantial evidence that respondent's proffered reasons for her termination were pretextual. Complainant has shown substantial evidence that her discharge was the result of the disparate treatment discrimination in violation of the CCHRO. Complainant has met her limited burden of providing substantial evidence that she has a disability within the meaning of the CCHRO. Complainant has produced substantial evidence that she suffered an adverse employment decision in that she was terminated for leaving work early and other non-disabled employees were not disciplined for leaving work early. Complainant was also treated differently than another employee who left work early and was subjected to lesser discipline than complainant. Green v. Avon Products, Inc., 1996E096, 1-20-98, **CO**.

Complainant has proven by preponderance of evidence that she was sexually harassed during her employment in that she was subjected to a hostile work environment. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

Complainant has met her burden of proving constructive discharge due to sexual harassment. Complainant showed that the working conditions became so intolerable that a reasonable person in the employee's position would have felt compelled to resign. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

McDonnell Douglas Test

The Commission has adopted the analytical framework enunciated in McDonnell Douglas and Texas Department of Community Affairs in adjudicating disparate treatment cases where no direct evidence of discriminatory intent is present. Complainant must establish by a preponderance of the evidence a *prima facie* case of discrimination. The burden then shifts to the respondent to articulate a legitimate non-discriminatory reason for its actions. If the respondent articulates a non-discriminatory reason for its actions, the complainant must then prove by a preponderance of the evidence that the articulated reason was pretext for unlawful discrimination. Complainant retains at all times the ultimate burden of proving that the respondent unlawfully discriminated. See, e.g., Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**; Hudok v. Quality Transportation Systems, Inc., 1994E031, 12-27-94, **CO**; Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Fiore v. Bloom Township Highway Department, 1993E074, 2-8-96, **CDO**; Iverson v. Horwitz, 1994E021, 2-8-96, **CDO**; Green v. Avon Products, Inc., 1996E096, 1-20-98, **CO**; Blakemore v. Trizec Holdings, Inc., (a/k/a) Trizec Office Properties, 2003PA007, 4-21-06, **CDO**.

Once a complainant establishes a *prima facie* case, the burden shifts to the respondent to rebut the inference of disparate treatment by articulating a legitimate, non-discriminatory reason for its actions. If the respondent articulates a nondiscriminatory reason for its actions, the complainant must then prove by a preponderance of the evidence that the articulated reason was pretext for unlawful discrimination. The complainant retains at all times the ultimate burden of proving that the respondent unlawfully discriminated. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Hardimon v. Allied Tube & Conduit Corp., 1996E003, 10-11-01, **CDO**; Blakemore v. Trizec Holdings, Inc., (a/k/a) Trizec Office Properties, 2003PA007, 4-21-06, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Pretext

Respondents' stated reason for denying housing to complainants was the "disruption" that complainants' actions caused is pretext for unlawful discrimination. Other residents who were similarly at fault for disruptions were not barred from renting or owning a cottage at respondent and the failure to handle these incidents even-handedly demonstrates unlawful discrimination on the basis of sexual orientation. Carroll, et al v. Chicago District Camp Ground Assoc., et al., 1999H006-009, 10-14-06, **CDO**.

Complainant has the burden of proving that a respondent's legitimate non-discriminatory reason is pretext for unlawful discrimination. Pretext may be proven by a complainant's initial evidence combined with effective cross examination of the respondent; by showing that the employer's explanation is inherently unbelievable; by showing that the employer treated employees in the protected class different from the way it treated employees outside the protected class. Iverson v. Horwitz, 1994E021, 2-8-96, **CDO**.

For claims, the complainant must first establish a prima facie case of unlawful discrimination and once the complainant establishes a prima facie case, a rebuttable presumption arises that the employer unlawfully discriminated against the complainant; to rebut the presumption, the employer must articulate, not prove, a legitimate, nondiscriminatory reason for its decision; and if the employer carries its burden of production, the presumption of unlawful discrimination falls and complainant must then prove by a preponderance of the evidence that the employer's articulated reason was not its true reason, but was instead a pretext for unlawful discrimination. The ultimate burden remains with complainant at all times. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Hardimon v. Allied Tube & Conduit Corp., 1996E003, 10-11-01, **CDO**.

The Commission has adopted the analytical framework enunciated by the United States Supreme Court in adjudicating disparate treatment cases where no direct evidence of discriminatory intent is present. Complainant must establish by a preponderance of the evidence a *prima facie* case of sexual harassment. The burden then shifts to the respondent to articulate a legitimate non-discriminatory reason for its actions. If the respondent articulates a non-discriminatory reason for its actions, the complainant must then prove by a preponderance of the evidence that the articulated reason was pretext for unlawful discrimination. Complainant retains at all times the ultimate burden of proving that the respondent engaged in unlawful behaviors. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Established
During the complaint investigation stage, complainant offered substantial evidence that respondent's proffered reasons for her discharge were pretextual. Green v. Avon Products, Inc., 1996E096, 1-20-96, **CO**.

Commission finds that while the proof of employer's articulated reason for termination is not wholly credible, this does not equate to proof of pretext, but raises the possibility that complainant was terminated for reasons other than unlawful discrimination. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95, **CDO**.

While respondent has articulated a legitimate business reason for discharge, asserting that it would be unable to operate its business if it had to consult with complainant's attorney in job assignments, complainant has proven that this proffered business reason is unworthy of credence because at no time did respondent ask complainant if she would take job assignments without consulting her attorney. Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**.

Prior to complainant's termination, respondent did not give complainant any counseling, written warning, or probation pertaining to the alleged conflict and creation of a hostile work environment for another employee. Respondent's failure to follow their own progressive discipline policy may be evidence that the respondent did not view the incident with the other employee as an instance of poor job performance by the complainant. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**.

Respondent found liable for retaliatory discharge. Complainant established her prima facie case of retaliation in that: she engaged in protected expression when she complained about comments regarding her sexual orientation and practices; respondent's discharge of complainant constitutes an adverse employment decision; and established a causal link because of the proximity in time between the complaint and her discharge. Respondent has met its limited burden by proffering two nondiscriminatory reasons for discharging her. However, complainant proved these reasons are pretextual in that they were unworthy of credence and designed to hide the real discriminatory motive. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

Not Established

Respondent's articulation of its legitimate non-discriminatory reason for complainant's termination was clear and supported by evidence. Complainant failed to show that respondent's explanation was a pretext for discrimination. A one-time comment by the respondent is insufficient to prove pretext. Freiberg v. South Cook Broadcasting, Inc.,1994E068, 5-26-98, **CDO**.

Respondent's articulation of its legitimate non-discriminatory reason for complainant's termination was specific and credible. Complainant failed to prove pretext. Scardine v. Zenith Electronics Corporation, 1996E079, 11-30-99, **CDO**; Rush v. Ford Motor Company, 1996E013, 9-13-00, **CDO**.

Complainant had no evidence to cast doubt on respondent's reason for firing him, nor did cross-examination shake respondent's articulated reason for dismissal. Hardimon v. Allied Tube and Conduit Corporation, 1996E003, 10-11-01, **CDO**.

Complainant failed to prove that respondent's legitimate nondiscriminatory reason for terminating complainant from the flight dispatch program was pretext for discrimination based on sex. McCoy v. United Airlines, Inc., 1996E111, 10-10-02, **CDO**.

Respondent has articulated a legitimate business reason for revoking his agreement to rent the apartment to complainant. Complainant has failed to prove that the reason was pretextual and was due to her marital status. Piesen v. Fleurisca, 1998H032, 4-11-02, **CDO**.

Commission finds that respondent has met its burden of articulating a legitimate non-discriminatory reason for its action toward complainant. Gilmore v. Menard's, Inc. 1999PA002, 5-9-2002, **CDO**.

Complainant had no evidence to cast doubt on respondent's reason for dismissing him., nor did cross-examination shake respondent's articulated reason for dismissal. The pretext analysis seeks to uncover the true intent of the respondent, not the belief of the complainant. Hardimon v. Allied Tube and Conduit Corporation, 1996E003, 10-11-01, **CDO**.

Commission finds respondent has met its burden of articulating a legitimate non-discriminatory reason for its exercise of discretion to deploy the department work force most efficiently. Complainant did not rebut or prove that respondent's reason for an intra-department transfer was pretext for discrimination based on sex or race. Meallet v.

Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**.

Pretext not shown where complainant failed to establish that while the decision maker may have made disparaging remarks about Italians, there was no evidence that those feelings impacted upon respondent's decision to terminate complainant. Also, it is undisputed that complainant was subjected to random drug tests as a condition of his employment with respondent and that complainant refused to submit to a drug test as directed by respondent. Fiore v. Bloom Township Highway Department, 1993E074, 2-8-96, **CDO**.

Commission finds that employer reasonably believed complainant had voluntarily resigned and had a legitimate non-discriminatory reason for replacing her. Complainant did not establish that the reason was pretext for discrimination based on religion and national origin. Iverson v. Horwitz, 1994E021, 2-8-96, **CDO**.

Commission finds that respondent has met its burden of articulating a legitimate non-discriminatory reason for its failure to select complainant for assignment to election duty (resulting in additional pay) and for termination of complainant. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95, **CDO**.

Respondent's articulation of its legitimate non-discriminatory reason for complainant's termination was specific and credible. Complainant failed to prove pretext. Scardine v. Zenith Electronics Corporation, 1996E079, 11-30-99, **CDO**.

DUE PROCESS RIGHTS

Complaint Reinstatement

Commission reinstates complaint, dismissed as a result of Commission error and where complainant was sufficiently diligent about pursuing and participating in the investigation of his complaint. To deprive complainant of his due process right to an investigation of his complaint under these circumstances would be unjust. Gaines v. Cook County Hospital, 1994E100, 1-30-96, **CO**.

Relying on § 42-34 (D)(5) of the CCHRO, four different complainants chose to remove their complaints from the Commission to various Cook County circuit courts. In separate decisions or orders, the courts declared the CCHRO subsection relied upon by these complainants to be invalid and dismissed the court complaints. The individual complainants then sought to have their complaints reinstated at the Commission. Although neither the CCHRO nor the Commission's Rules specifically address the issue of reinstatement, the Commission finds that the CCHRO was drafted as remedial legislation. Equity concerns support the Commission consideration and subsequent granting of complainants' respective motions for resuming jurisdiction and reinstatement of the original complaints of discrimination at the Commission. Lucas v. Zeta International and Branco Jevtic, 1996E022, Gilich v. LaGrange Memorial Hospital, 1995E036, Newman v. Humana, Inc., 1998E047, and Hakim v. Payco-General American Credits, Inc. 1999E021, 5-23-00, **CO**.

Right to Investigation

Commission finds that if the Commission granted a motion to dismiss because of a lack of proof for a *prima facie* case, complainant would be denied access to Commission's investigatory process and effectively deny her due process right to a complaint investigation. The Commission follows the U.S. Supreme Court in Logan v. Zimmerman Brush Co. 455 U.S. 422 (1982). Hudok v. Quality Transportation Systems, Inc., 1994EO31, 12-27-94, **CO**.

Commission finds that if it granted a motion to dismiss because the investigation was not completed within 180 days, complainant would be denied access to the Commission's investigatory process and effectively denied her due process right to an investigation of her complaint. Commission follows the U.S. Supreme Court in Logan v. Zimmerman Brush Co. 455 U.S. 422 (1982). Montgomery v. Rosenthal, 1994H001, 10-18-94, **CO**; J. Eugene O'Neill v. Handy Andy Home Improvement Centers, 1994E053, 6-20-95, **CO**.

Once a charge was filed, a property interest was created, which could not be terminated without the due process of having the agency consider the charge on its merits by completing its investigation. The Commission follows the U.S. Supreme Court in Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982). Hart v. Market Facts, Inc., 1999E009, 4-22-04, **CO**.

Type of Investigation

Simply because a complainant does not get the exact type of investigation that he or she would like, and arguably the corresponding results, does not mean that a complainant was denied due process during the course of the investigation. Complainant's request for reconsideration denied. Hart v. Market Facts, Inc., 1999E009, 4-22-04, **CO**.

EMPLOYEES

See EMPLOYMENT DISCRIMINATION - Employee

EMPLOYERS

See EMPLOYMENT DISCRIMINATION - Employer

EMPLOYMENT DISCRIMINATION

After-Acquired Evidence

When an employer seeks to rely upon after-acquired evidence of wrongdoing, it must establish that it was unaware of the evidence at the time of discharge and that the wrong doing was of such severity that the employee, in fact, would have been terminated on those grounds alone if the employer had known of it at the time of discharge. The Commission finds that while the record is not clear as to when respondent first became aware of the allegation that complainant had illegally used credit card information to the detriment and substantial financial cost to the respondent, a reasonable inference can be drawn that it was not appraised of the allegations until after termination of the complainant. Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **CDO**.

Age Discrimination

Complainant established a *prima facie* case of age discrimination. Complainant has proved a *prima facie* case by showing that (1) she was 65 years old at the time of her termination; (2) she was performing her work in a manner consistent with the company's expectations; (3) she was terminated in the RIF; and (4) two younger employees in her work group were retained. Scardine v. Zenith Electronics Corporation, 1996E079, 11-30-99, **CDO**.

The respondent in this case, through specific and credible testimony, articulated its legitimate nondiscriminatory reason for terminating complainant, respondent had to terminate about one-third of the persons in complainant's department for reasons of economic necessity. Complainant bears the burden of proving by a preponderance of the evidence that respondent was motivated by age discrimination in selecting her for termination. Complainant did not meet her burden. Scardine v. Zenith Electronics Corporation, 1996E079, 11-30-99, **CDO**.

Burden of Proof

The complainant retains at all times the ultimate burden of proving that the respondent unlawfully discriminated. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

To sustain a claim of discrimination, the complainant must prove, beyond a preponderance of the evidence, that (1) she was unlawfully discriminated against; and (2) she has rebutted respondent's articulated non-discriminatory reasons for its actions. Here, complainant failed to rebut respondent's articulated reasons. Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**.

Once the respondent articulates a nondiscriminatory reason for its actions, the complainant must then prove by a preponderance of the evidence that the articulated reason was pretext for unlawful discrimination. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Complainant bears burden of proving by a preponderance of the evidence a causal connection between adverse action and protected basis. See, e.g., Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**; Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**; Hardimon v. Allied Tube and Conduit Corporation, 1996E003, 10-11-01, **CDO**.

Burden-Shifting

Complainant must establish by a preponderance of the evidence a *prima facie* case of discrimination. The burden then shifts to the respondent to articulate a legitimate non-discriminatory reason for its actions. If the respondent articulates a non-discriminatory reason for its actions, the complainant must then prove by a preponderance of the evidence that the articulated reason was pretext for unlawful discrimination. Complainant retains the ultimate burden of proving that the respondent unlawfully discriminated at all times. See, e.g., Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**; Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Constructive Discharge

To show a constructive discharge due to sexual harassment, a complainant must prove that the working conditions became so intolerable that a reasonable person in the employee's position would have felt compelled to resign. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

The CCHRO does not require a tangible employment decision to find an employee's constructive discharge attributed to the employer when it stems from sexually harassing conduct by a supervisor. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Disability Discrimination
See DISABILITY DISCRIMINATION

Employee Defined

Clerk of the Court Employees
Motion to dismiss granted. Commission finds non-judicial employees of the Office of the Clerk of the Circuit Court of Cook County are employees of the State of Illinois for purposes of coverage under the CCHRO. The Commission follows the Illinois Supreme Court decision in Drury v. County of McLean, 89 Ill.2d 417, 420, 433 N.E.2d 666, 667 (Ill.1982). Eischen v. Cook County, 2000E002, 11-21-01, **CO**.

Independent Contractors

Commission denies respondent's motion to dismiss and restates its position that the CCHRO protects "any individual" from unlawful discrimination in employment. This means no specific label such as "independent contractor" will determine an individual's standing to file a complaint. There is no language in the CCHRO reading "only an employee" may file a complaint. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-1-95, **CO.**

The Commission will review the totality of the circumstances surrounding the employment relationship between the parties. Being labeled or considered an independent contractor under traditional agency law does not necessarily preclude coverage of an individual under the CCHRO, rather, coverage will turn on the given facts of each case. The Commission concludes that complainant's employment relationship with respondent was more akin to a traditional "employee relationship" and that the economic realities test and affecting opportunities test support the complainant's coverage under the CCHRO. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-26-98, **CDO**.

Respondent, in support of its motion to dismiss, argues that complainant was an independent contractor and that because respondent was never complainant's "employer" as defined by the CCHRO, the Commission has no jurisdiction over this matter. Commission denies respondent's motion to dismiss and orders a jurisdictional hearing to resolve the issue of whether the type of employment arrangement, regardless of how it is labeled, is covered by the CCHRO. Munda v. Block Medical Center, 2003E032, 10-9-03, **CO**.

Employment Relationship
Respondent's motion to dismiss granted. Respondents had no employment relationship with complainant. Complainant argued in part that the employment discrimination provisions of the CCHRO do not require one to have an employment relationship to file a complaint of discrimination in employment. Complainant argues that language in the CCHRO, because it refers to "any individual," allows her to pursue a claim of employment discrimination with any employer even absent an employment relationship with them. The Commission does not agree. Respondents, who were the attorneys for complainant's former employer, argue that complainant never had nor sought any employment relationship with respondents and therefore, cannot have violated the CCHRO's prohibition against

disability discrimination in employment. Munda v. Polish, Cramer, et al., 2004E044A, 2-10-05, **CO**.

Standing
The Commission denies respondent's motion to dismiss and restates its position that the CCHRO protects any individual from unlawful discrimination in employment. This means no specific label such as independent contractor will determine whether an individual has standing to file a complaint. There is no language in the CCHRO reading only an employee may file a complaint. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-1-95, **CO**.

Temporary/Leased Employees
A temporary or leased employee may bring suit against an employment agency and its client under the joint-employer doctrine. Thompson v. Premier Delivery, Inc., 1995E085, 8-15-97, **CO**.

Volunteers
Commission finds complainant engaged in employment was an employee protected by the Ordinance, whether paid or unpaid. Zaccardo and Zaccardo v. Circle Hill Apartments et al., 1994E025, 7-20-95, **HO**.

Employer Defined

Covered

Fire Protection District
Municipal corporations and other units of local government other than governments of municipalities are not exempt from the CCHRO's definition of "employer." Pearce v. Lemont Fire Protection District, 1997E016, 4-14-97, **CO**.

Township Highway Department
Commission finds township highway department not exempt from the CCHRO's definition of employer. It is not a government of a municipality. Fiore v. Bloom Township Highway Department, 1993E074, 2-8-96, **CDO**.

Water Reclamation District
Respondent argues that it is either a municipal corporation or a unit of municipal government. Commission finds respondent, while it may be either a municipal corporation or a unit of municipal government, or both, it is not a government of a municipality and, therefore, is not exempt from the CCHRO's definition of employer. Palmer v. Metropolitan Water Reclamation District of Greater Chicago, 1994E057, 3-31-95, **CO**.

School Districts
Commission rejects school districts' argument that the application of the CCHRO to public schools amounts to an unconstitutional violation of the state legislature's exclusive authority to create and regulate public schools. The regulation imposed by the CCHRO parallels legal obligations already imposed by state and federal law and are not unconstitutional. The CCHRO does not impose any additional burden that is incompatible with or in conflict with state law. Jiminez v. Maine Township High School District #207, 2003E005, 11-24-06; Johnson v. Maine Township District #207, 2001E062, 11-24-06; Knowles v. Cicero Public High School District #99, 2001E056, 11-24-06; Robinson v. Leyden School District #212, 2002E054, 11-24-06.

Respondent argues that it is a municipal corporation and, therefore, exempt from the CCHRO's definition of employer. Governments of municipalities are distinct from other units of local government, such as municipal corporations. Commission finds school district is an "employer" under the CCHRO. Kelly v. Morton High School District No. 201, 1995E039, 3-28-96, **CO**.

The Commission finds a school district, while it may be a "quasi-municipal corporation" created by the state, is not part of the state government itself, or an agency of the state for the purposes of being considered an exempt employer under § 42-31 (E) of the CCHRO. Elrod v. Elementary School District No. 150, 1995E053, 3-28-96, **CO**

Not Covered

Clerk of the Circuit Court
Interpreting the language of the Illinois Constitution, the Supreme Court of Illinois has held that the government of the State of Illinois and Clerks of the Circuit Court are clearly state, not county, officers. As a state official, the Clerk of the Circuit Court is part of the government of Illinois and therefore, expressly exempt from the definition of an employer under the CCHRO. Eischen v. Cook County, 2000E002, 11-21-01, **CO**.

States' Attorney of Cook County
Complaint dismissed for lack of jurisdiction. § 42-31 (E) of the CCHRO specifically exempts from its definition of employer, the government of the State of Illinois and any agency or department thereof. In interpreting the language of the Illinois Constitution and in examining relevant case law, including decisions of the Illinois Supreme Court, it is clear that the State's Attorney is a state official, and employees of the office of the State's Attorney are state, not county employees. Based on the foregoing, the Commission lacks jurisdiction over respondent, the office of the Cook County State's Attorney and its employees. Vaughn v. Office of the State's Attorney of Cook County, 1993E062, 11-21-01, **CO**; Young v. Office of the Cook County States Attorney, 2003E048, 11-25-03, **CO**.

Interpreting the language of the Illinois Constitution, the Supreme Court of Illinois has held that the government of the State of Illinois and the State's Attorney of Cook County are state, not county, officers. As a state official, the State's Attorney of Cook County is part of the government of Illinois and therefore, expressly exempt from the definition of an employer under the CCHRO. John Doe v. Cook County State's Attorney, 1999E061, 11-21-01, **CO**; Vaughn v. Cook County State's Attorney, 1993E062, 11-21-01, **CO**.

Employment Relationship

Respondent, in support of its motion to dismiss, argues that complainant was an independent contractor and that because respondent was never complainant's "employer" as defined by the CCHRO, the Commission has no jurisdiction over this matter. Commission denies respondent's motion to dismiss and orders a jurisdictional hearing to resolve the issue of whether the type of employment arrangement, regardless of how it is labeled, is covered by the CCHRO. Munda v. Block Medical Center, 2003E032, 10-9-03, **CO**.

Affecting Opportunities Test
Commission applies the "affecting opportunities" test to determine status of the employment relationship. This test looks to whether an employer has the power to affect an individual's access to employment opportunities in a discriminatory manner. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-1-95, **CO**.

In applying the principles of the "affecting opportunities" to complainant's employment, the Commission finds that respondent had the opportunity to negatively affect every member of its work force equally, but respondent exercised that opportunity only with respect to the complainant, and in a discriminatory way. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-26-98, **CDO**.

Economic Realities Test
Commission applies the "economic realities" test to determine status of the employment relationship. The "economic realities" test looks to whether the employer has the right to control and direct the work of the individual, not only as to the result to be achieved, but also as to the details by which that result is achieved. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-1-95, **CO**.

In applying the principles of the "economic realities" test to complainant's employment, the Commission finds that, regardless of her title and some aspects of her employment relationship with respondent, the "economic reality" was that she was treated similarly to respondent's other employees and as such, complainant should be regarded as a covered individual. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-26-98, **CDO**.

Joint Employer Test
In evaluating a shared employment situation involving temporary or leased employment, the Commission finds the joint employer test instructive. In assessing whether a joint employment situation exists, the Commission looks to whether each employer exercises substantial control over significant aspects of the compensation, terms, conditions or privileges of a complainant's employment. The most important factor to evaluate is the extent of the employer's right to control the means and manner of a worker's performance. Thompson v. Premier Delivery Inc., 1995E085, 8-15-97, **CO**.

Remuneration Not Required
Commission finds complainant engaged in employment was an employee protected by the Ordinance, whether paid or unpaid. Zaccardo and Zaccardo v. Circle Hill Apartments et al., 1994E025, 7-20-95, **HO**.

Hostile Work Environment

Race Discrimination

An employer has an affirmative duty to maintain a working environment free of harassment on the basis of membership in any protected class covered by the CCHRO. Respondent had an affirmative duty to maintain a work environment free of harassment directed at any employee based on his race (African-American) and/or his sexual orientation (homosexual). Complainant proved by a preponderance of the evidence that he was subjected to a hostile environment as a result of racist and homophobic slurs directed at him by his supervisor. Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **CDO**.

Sexual Harassment

Respondent owner found liable for manager's sexual harassment toward complainant, for creating a sexually hostile work environment and for retaliatory discharge of complainant. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Complainant proved by a preponderance of the evidence that she was sexually harassed during her employment at respondent in that she was subjected to a hostile environment. Complainant failed to prove by a preponderance of the evidence that respondent's response to her allegations were insufficient or ineffective, therefore, respondent not held liable for sexual harassment. McClellan v. Cook County Law Library, 1996E026, 6-7-99, **CDO**.

The CCHRO codifies the current understanding of the meaning of sexual harassment in the workplace as it has developed by the Supreme Court. The Commission has adopted the Court's middle position that actionable conduct falls between conduct that is merely offensive and conduct that causes a tangible psychological injury. Additionally, the Commission's analysis requires both (1) an objective component--a reasonable person must find the conduct sufficient to create a hostile environment; and (2) a subjective component--the complainant perceived the conduct as creating a hostile environment. Language and behavior may both objectively and subjectively rise to the level of sexual harassment. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

To determine whether both the subjective and objective elements are present, the Commission will consider the following factors: (1) the frequency of the discriminatory conduct; (2) the severity of the discriminatory conduct; (3) whether it is physically threatening or humiliating, or a mere offensive utterance; and (4) whether it unreasonably interferes with an employee's work performance. The effect on the complainant's psychological well-being is also an issue to consider to determine whether the person subjectively found the environment hostile but it is not dispositive. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Sexual Orientation Discrimination

Complainant proved by a preponderance of the evidence that he was subjected to a hostile environment as a result of racist and homophobic slurs directed at him by his supervisor. Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **CDO**.

Prior to complainant's termination, respondent did not give complainant any counseling, written warning, or probation pertaining to the alleged conflict and creation of a hostile work environment for another employee. Respondent's failure to follow their own progressive discipline policy may be evidence that the respondent did not view the incident with the other employee as an instance of poor job performance by the complainant. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**.

National Origin Discrimination

Commission finds no hostile work environment but that complainant had resigned voluntarily and employer reasonably believed so when she was replaced. Commission finds, in accordance with United States Supreme Court precedent, that mere utterance of an epithet that engenders offensive feelings does not establish employment conditions so severe and pervasive so as to create a hostile work environment based on national origin or religion. The remarks were not frequent, complainant could not remember more than one or two remarks a year, nor were they threatening or humiliating. Iverson v. Horwitz, 1994EO21, 2-8-96, **CDO**.

Harm suffered from disparate treatment by employer not a function of complainant's national origin (Italian), and that employer did not intentionally discriminate against complainant for prohibited reason. Fiore v. Bloom Township Highway Department, 1993E074 2-8-96, **CDO**.

Progressive Discipline

Prior to complainant's termination, respondent did not give complainant any counseling, written warning, or probation pertaining to the alleged conflict and creation of a hostile work environment for another employee. Respondent's failure to follow their own progressive discipline policy may be evidence that the respondent did not view the incident with the other employee as an instance of poor job performance by the complainant. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**.

Retaliation
See RETALIATION

ENFORCEMENT OF COMMISSION ORDERS

In accordance with Commission Procedural Rule 480.125, failure to fully comply with a Commission order may result in the referral to the Office of Cook County State's Attorney for judicial enforcement. Pace v. Board of Managers of the Courts of Randview Townhome Association, 1996H009, 9-13-00, **CO.**

ENFORCEMENT OF SETTLEMENT AGREEMENT
See SETTLEMENT AGREEMENT

EVIDENCE

Admissibility

Commission denies motion to compel deposition of Commission investigator, whose testimony most likely will not be admissible, as required by Commission Procedural Rule 460.175, inasmuch as his information is a work product and is subject to the Commission's Executive Review Committee for a final evidence determination. Iverson v. Horwitz, 1994E021, 4-6-95, **HO**.

After-Acquired Evidence

When an employer seeks to rely upon "after-acquired" evidence of wrongdoing, it must establish that it was unaware of the evidence at the time of discharge and that the wrong doing was of such severity that the employee, in fact, would have been terminated on those grounds alone if the employer had known of it at the time of discharge. The Commission finds that while the record is not clear as to when respondent first became aware of the allegation that complainant had illegally used credit card information to the detriment and substantial financial cost to the respondent, a reasonable inference can be drawn that it was not apprised of the allegations until after termination of the complainant. Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **CDO**.

Circumstantial Evidence

"Circumstantial" evidence is thought of as such evidence as "suspicious timing, ambiguous statements, oral or written, behavior towards or comments directed at other employees in the protected group, and other bits and pieces ... of evidence none conclusive in itself but together composing a convincing mosaic of discrimination against the plaintiff." The Commission finds the testimony and exhibits in this case replete with evidence that is a direct indication that one of respondent's supervisors was hostile toward complainant in particular or toward homosexual males in general or from which such hostility could be easily inferred. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**; Dwyer v. Il Pescatore Palace Restaurant & Banquet Hall and Vito Barbenente, individually, 2001PA017, 6-12-03, **CDO.**

Credibility

When the respondent's and complainant's depiction of events is in question, no credibility determination is necessary and the burden of proof falls upon the complainant. Dwyer v. Il Pescatore Palace Restaurant & Banquet Hall and Vito Barbenente, individually, 2001PA017, 6-12-03, **CDO.**

Despite the lack of credibility of one of the main defense witnesses, there was sufficient evidence to find in respondent's favor and for termination of complainant. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95 **CDO**.

When respondent's pretextual argument rebutting charge of retaliation found not credible, the complainant prevailed on her claims of unlawful sexual harassment and retaliation. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

When credibility of parties and witnesses is at issue during a Commission investigation, a substantial evidence determination is appropriate. The choice of whom to believe should be made by an administrative hearing officer with witnesses under oath and applying the rules of evidence. Ehlers v. United Parcel Service, 1997E027, 9-21-98, **CO**.

When respondents were not present at the administrative hearing to challenge complainant's evidence or offer any of their own, the only real issue was for the Hearing Officer to decide whether he believed complainant and her only witness, her mother, who testified principally about damages. Her demeanor added to her credibility because her emotions seemed sincere, and not manifested to impress the Hearing Officer. Similarly, the Hearing Officer found complainant's mother a credible witness about her daughter's emotional distress, based on her straightforward testimony and her demeanor in that she also did not testify in an overly emotional manner so as to evoke sympathy. Desparte v. Arlington Heights Kirby et al., 2002E020, 5-6-06, **CO**.

Direct Evidence

"Direct" evidence is thought of as "evidence that can be interpreted as an acknowledgment of discriminatory intent by the defendant or its agents." The Commission finds the testimony and exhibits in this case replete with evidence that is a direct indication that one of respondent's supervisors was hostile toward complainant in particular or toward homosexual males in general. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**; Dwyer v. Il Pescatore Palace Restaurant & Banquet Hall and Vito Barbenente, individually, 2001PA017, 6-12-03, **CDO.**

Evidence Depositions

Commission denies complainant's motion to hold open the record and for leave to take an evidence deposition of an out-of-town witness, where complainant proffered no support that the deposition might have a significant impact on the issues in the case. Commission concluded that it would be burdensome for respondent to undergo the expense and delay occasioned by an out-of-state deposition. Rush v. Ford Motor Company, 1996E013, 4-27-00, **HO**.

Prior Bad Acts

Prior bad acts may be admissible as background in assessing impact of post-CCHRO conduct but not admissible for determining liability or assessing damages. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

EXCEPTIONS TO RECOMMENDED DECISIONS

Commission adopts the Hearing Officer's final proposed decision and order after the Hearing Officer found that complainant's brief on exceptions to his initial proposed decision and order simply reargued the interpretation of facts and failed to argue any legal basis for reversal or modification of the hearing officer's legal conclusions. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95, **CDO**.

Hearing officer filed a separate ruling on complainant's exception to initial proposed decision and order, and incorporated that ruling as appropriate in the final proposed decision and order. Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**; Lacy v. Cook County Hospital,1992E033, 6-8-95, **CDO**; Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants. 1996E101, 9-10-98, **CDO**; Carroll et al v. Chicago District Campground Assoc. et al, 1999H006-009, 2-24-06, **CDO**.

The Commission ruled that complainant failed to prove his allegations by a preponderance of the evidence both at the administrative hearing and in his exceptions. Rush v. Ford Motor Company, 1996E013, 9-13-00, **CDO**.

Exceptions properly filed when motion stated complainant was not aware that his previous attorney filed a motion to dismiss the case. Lacy v. Cook County Hospital, 1992E033, 6-8-95, **CDO**.

FAILURE TO COOPERATE

Administrative Hearing

Dismissed
Dismissal of complaint for want of prosecution due to failure to attend administrative hearing, failure to otherwise cooperate in administrative hearing process and failure to show cause why complaint should not be dismissed. Banks v. Cook County Juvenile Temporary Detention Center, 1994E088, 11-14-95, **CO**; Henderson v. Office of Cook County Medical Examiner, 1995E016, 3-13-97, **CDO**; Klegerman v. Heritage Manor Condominium Association and Rowell Property Mgt., 1998H009, 1-13-05, **CDO**.

After Commission found substantial evidence to support allegations of complaint, complainant failed to attend a mandated pre-hearing meeting, failed to respond to respondent's requests for discovery, failed to respond to respondent's motion to dismiss, in the face of a clear statement that silence would result in dismissal of her complaint, Commission dismissed the complaint with prejudice. Sampson v. Cermak Health Services, 1993E009, 4-27-95, **CDO**; Klegerman v. Heritage Manor Condominium Association and Rowell Property Mgt., 1998H009, 1-13-05, **CDO**; D'Adam v. Bridgeview Sports Club Association, Inc., 2004PA004, 8-11-05, **CDO**.

After hearing officer issued an order to show cause why the matter should not be dismissed for failure of both parties to attend a scheduled pre-hearing meeting for which notice was provided, the matter was dismissed when both parties failed to respond to the Order to Show Cause. Swift v. Signs Unlimited, 2000E042, 7-27-01 (Show Cause); 9-19-01 (Dismissal), **HO.**

Complainant had ample time to hire substitute counsel or to present her case *pro se***.** The Commission finds that failure to appear at the administrative hearing was unexcused. The complaint was dismissed for complainant's failure to cooperate. Banks v. Cook County Juvenile Temporary Detention Center, 1994E088, 11-14-96, **CDO**.

***Pro Se* Parties**
Even *pro se* parties have an obligation to the Commission to respond to Commission orders, to abide by Commission rules and procedures, and to attend scheduled Commission proceedings. The Commission cannot fulfill its public duty in the absence of such cooperation by those invoking its processes. Sampson v. Cermak Health Services, 1993E009, 4-27-95, **CDO**; Banks v. Cook County Juvenile Temporary Detention Center, 1994E088, 11-14-96, **CDO**.

When, after Commission found substantial evidence to support allegations of complaint, *pro se* complainant failed to attend a mandated pre-hearing meeting, failed to respond to respondent's requests for discovery, failed to respond to respondent's motion to dismiss, in the face of a clear statement that silence would result in dismissal of her complaint, Commission dismissed the complaint with prejudice. Sampson v. Cermak Health Services, 1993E009, 4-27-95, **CDO**.

Complainant had ample time to hire substitute counsel or to present her case *pro se***.** The Commission finds that failure to appear at the administrative hearing on was unexcused. The complaint was dismissed for complainant's failure to cooperate. Banks v. Cook County Juvenile Temporary Detention Center, 1994E088, 11-14-96, **CDO**.

Show Cause Order
After hearing officer issued an order to show cause why the matter should not be dismissed, for failure of both parties to attend a scheduled pre-hearing meeting for which notice was provided, the matter was dismissed when both parties failed to respond to the order to show cause. Swift v. Signs Unlimited, 2000E042, 7-27-01 (Show Cause), 9-19-01 (Dismissal), **HO**.

Conciliation Conference

Complaint dismissed for want of prosecution for complainant's failure to attend a Commission-scheduled conciliation conference. Hamilton v. David Kilheeney and any other owners of 13612 State Street, Riverdale, IL, 1999H004, 7-13-00, **CO**; Triqueros v. Sprint PCS, 2002E039, 5-02-05, **CO**.

Discovery Order

The Commission entered an order denying complainants' motion for sanctions for respondent's failure to comply with discovery, which had been entered in response to respondent's failure to respond to complainants' request to produce documents, complainants' interrogatories, and complainants' request for admission of fact. The order provided that appropriate sanctions would be entered should respondent fail to respond to all outstanding discovery, and provided a deadline of three weeks. Six weeks after the entry of the order, following a status conference at which both respondent and complainants appeared, the hearing officer granted complainants' motion for sanctions, ordering that all paragraphs of the complainants' request for admission of fact would be deemed to be admitted for the purpose of this action and a default would be entered in favor of the complainants and against the respondent pursuant to Section 460.145(E) of the Commission's Procedural Rules. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **HO**.

Want of Prosecution

Dismissal of complaint for want of prosecution due to failure to attend pre-hearing meeting, failure to otherwise cooperate in administrative hearing process and failure to show cause why complaint shouldn't be dismissed. Sampson v. Cermak Health Services, 1993E009, 4-27-95, **CDO**; Koop v. Drs. Pick & Amadeo, 1994E016, 11-9-95, **CDO**; Burns v. Sam's Warehouse Club, 1996E033, 5-26-98, **CDO**.

When a party fails to appear at an administrative hearing, hearing officer may recommend some other remedy deemed appropriate and just, other than dismissal or default. Respondent ordered to pay $70 costs of court reporter. Lacy v. Cook County Hospital, 1992E033, 6-8-95, **CDO**.

FAILURE TO RESPOND
See DEFAULT

FINDINGS OF FACT

Findings of fact in a Commission decision and order after administrative hearing do not have to include every statement made during the hearing nor need they repeat the contents of documentary evidence that has been admitted into evidence. Findings should succinctly recite all relevant factual matters necessary to support the hearing officer's adjudication of the claims. Findings of fact should not include argument in addition to the factual content. Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **CDO**.

FINES

Abuse of Process

Commission denies respondent's motion to compel discovery that came more than five weeks past the deadline to file such motions, effectively closing discovery, as an appropriate sanction for respondent's disregard for the Commission's processes. Borio v. ANCA Management, Inc, Willow Creek #7 Condo Association, 1996H008, 4-24-97, **HO**.

Complainant's motion to compel granted in part, effectively closing discovery, as an appropriate sanction for respondent's disregard of the Commission's post-conciliation processes, its published Procedural Rules, and hearing officer's scheduling order. Respondent's actions are an affront to the Commission and significantly undermine the public interest in swift and fair adjudication of discrimination complaints. Respondent shall serve its responses to complainant's interrogatories, requests for production and requests for admission without objection. Complainant shall have the right to amend her complaint to reflect discovery responses. McCoy v. United Airlines, 1996E111, 10-3-01, **HO**.

While entering an order of default is an appropriate sanction for failure to participate in the Commission procedures, the hearing officer in her discretion determined that certain mitigating factors in this case furnished sufficient reason for not imposing such a severe sanction. The Commission cautions this respondent and all others who exhibit a blatant disregard for Commission process and procedure that the Commission will not hesitate to impose as warranted stricter sanctions than those imposed in this case. McCoy v. United Airlines, 1996E111, 10-10-02, **CDO**.

The Commission entered an order denying complainants' motion for sanctions for respondent's failure to comply with discovery, which had been entered in response to respondent's failure to respond to complainants' request to produce documents, complainants' interrogatories, and complainants' request for admission of fact. The order provided that appropriate sanctions would be entered should respondent fail to respond to all outstanding discovery, and provided a deadline of three weeks. Six weeks after the entry of the order, following a status conference at which both respondent and complainants appeared, the hearing officer granted complainants' motion for sanctions, ordering that all paragraphs of the complainants' request for admission of fact would be deemed to be admitted for the purpose of this action and a default would be entered in favor of the complainants and against the respondent pursuant to Section 460.145(E) of the Commission's Procedural Rules. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **HO**.

After Administrative Hearing

Pursuant to § 42-34 (C)(1)(k), of the CCHRO, the Commission can order a respondent to pay a fine of not less than $100 nor more than $500 for each violation. The Commission orders that respondent pay a fine of one thousand fifty dollars ($1,050.00). Five hundred dollars ($500.00) of the fine is to be imposed because of the unlawful discharge of complainant. Two hundred fifty dollars ($250.00) is imposed because of the supervisor's unwelcome slap on Complainant's buttock. The remainder of the fine is imposed for at least three separate acts of verbal abuse, at one hundred dollars ($100.00) for each incident. These fines are necessary to ensure that this respondent and other potential violators of the CCHRO understand and fully appreciate the consequence of such violations. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; see also Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO** (employment discrimination based on complainant's parental status [pregnant]).

Respondent found liable for fine of $500.00 for having so flagrantly violated complainant's human rights by creating a hostile work environment and ultimately terminating complainant based on his sexual orientation. Feges v. The New Embers Restaurant, 1993E013, 6-16-94, **CDO**.

Respondent did not act with evil motive or intent when it refused complainants' request for accommodation. The Commission imposed the minimum fine of $100.00. Pace v. McGill Management, 1996H009, 2-25-99, **CDO**.

Here, based upon the egregiousness of respondent's behavior in evicting complainant based solely on her parental status (pregnant) and with little notice to find a new place to live, respondent is assessed a fine in the maximum amount of $500.00. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Commission orders that respondents be jointly and severally liable to pay a fine of $500 for each incident of sexual harassment in this case, for a total of $1,500.00. These fines are necessary to ensure that respondents and other potential violators of the CCHRO understand and fully appreciate the consequences of unlawful acts of discrimination. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

In light of the seriousness of respondents' violations towards the complainants, the Commission shall impose a total fine of $1,000.00 for the separate offenses of unlawful discrimination in denying the Carroll complainants housing; and a total fine of $1,000.00 for taking away the Grahams' right to occupy their cottage in retaliation for their opposition to the Respondents' offenses against the Carroll complainants. Carroll et al v. Chicago District Campground Assoc. et al., 1999H006-009, 8-15-06, **CDO**.

Failure to Attend Conciliation Conference

The decision to dismiss or to impose sanctions for failure of a party to participate in a mandatory conciliation conference is discretionary on the part of the Commission. Parchim v. TLR Enterprises, Inc. d/b/a The Living Room, 2001PA001, 9-25-02, **CO**.

Commission assessed respondent $112.50 costs of conciliator's fee after failing to appear at a Commission-ordered conciliation conference. Marrerro v. Injectec, Inc., 1995E052, 5-7-96, **CO**.

Respondents had ample time to advise the Commission prior to the date of the scheduled conference that they would be unable to attend. The disregard for Commission process and procedure exhibited by the respondents in their unexcused failure to attend the conciliation conference, warrants the imposition upon respondents, of the cost of the Commission conciliator's fees for the time incurred in preparing and attending to this matter. Desparte v. Arlington Heights Kirby et al., 2002E020, 5-6-05, **CO**.

HEARING OFFICER

Authority

Pursuant to Commission Procedural Rule 460.105, Commission's hearing officer has full authority to control the procedures of Commission hearings. Lacy v. Cook County Hospital, 1992E033, 6-8-95, **CDO**.

At the administrative hearing, the hearing officer determines the admissibility of any testimonial evidence and exhibits and "shall not be bound by the strict rules of evidence applicable in courts of law or equity." Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Disqualification

Respondent's motion to disqualify hearing officer denied where respondent has not complied with Commission Procedural Rule 460.110 in setting forth details for such disqualification including, but not limited to circumstances set forth in Illinois Supreme Court Rule 63(c). As required by Supreme Court Rule 63(c), respondent failed to allege that the hearing officer has personal bias concerning respondent or his lawyer; or had personal knowledge of evidentiary facts; or had represented any party in the complaint; or had substantial financial interest affected by the outcome of the complaint; or that any person closely related to him was involved in the proceeding. Romain v. Hawthorne Racecourse, 1994E052, 9-28-95, **HO**.

Respondent's motion to disqualify hearing officer cited several grounds that were dismissed by hearing officer as an insufficient basis for disqualification. Respondent does not claim that hearing officer has any direct financial interest in the case, or personal knowledge of disputed facts. Respondent does claim hearing officer has an indirect financial interest in the outcome of this case because it will benefit her law firm's reputation. Respondent's claim of inherent bias because of past representation or decisions is also not supported by the facts, nor is this claim a basis for disqualification. Gilich v. LaGrange Memorial Hospital, 1995E036, 8-31-00, **HO.**

Respondent's motion to disqualify a Commission hearing officer on the ground that he briefly represented two employees of respondent in an attempt to informally resolve claims of employment discrimination which the employees had filed or intended to file, is denied. Neither Commission case law nor Illinois Supreme Court Rule 63(c) provides any grounds warranting recusal. Moreover, the matter in which the hearing officer was briefly involved concerned a claim by employees of respondent, rather than a claim of discrimination in access to public accommodations, such as the instant case concerns. Thus, even if the hearing officer were to recall any details of the previous matter, it would be wholly irrelevant to the issues in the case at bar. Blakemore v. Metropolitan Pier and Exposition Authority, 2002PA015, 6-24-05, **CO**.

Complainant's motion to disqualify Commission Hearing Officer denied. Complainant alleges that the Hearing Officer was biased and had an interest in the case because she filed administrative actions against him. First, the Commission found no facts to support an allegation of bias. Second, simply filing an action against a hearing officer is not necessarily a basis for disqualification. Munda v. Block Medical Center, 2003E032, 6-16-04, **HO**.

Recusal

Hearing officer made voluntary disclosure that she had litigated against one of respondent's attorneys over ten years previously, and that her law firm is currently involved in a legal matter with respondent's attorney's law firm. Complainant supported retaining the hearing officer, and respondent's attorney respectfully requested that hearing officer recuse herself. Hearing officer recused herself immediately. No substantive rulings were issued by her prior to recusal. McCoy v. United Airlines, 1996E111, 8-17-01, **HO**.

Complainant's motion to disqualify Commission Hearing Officer denied; however, the Hearing Officer recuses himself. Because complainant, in her motion, alleged coercion, duress and undue influence, and has further alleged that these claims are based at least in part by statements made by the Hearing Officer during the off the record settlement conference, the Hearing Officer believes that it would be most prudent to recuse himself and let the Commission or another Hearing Officer decide how to proceed in this case. Munda v. Block Medical Center, 2003E032, 6-16-04, **HO**.

HOME RULE AUTHORITY

The CCHRO as applied to a public school district is an authorized regulation by a home rule unit of government. Kelly v. Morton High School District No. 201, 1995E039, 3-28-96, **CO.**

The CCHRO as applied to a public library located within Cook County is an authorized regulation by a home rule unit of government. Gannello v. Oak Park Public Library, 1998E001, 4-17-98, **CO**.

Inasmuch as Cook County is a home rule unit of local government, and pursuant to the Illinois Constitution may exercise its powers liberally, that enacting and enforcing the provisions of the CCHRO is a valid exercise of the County's home rule authority. Flood v. Saffarzadeh and J.S. Computer Learning Center, 1997E009, 4-21-97, **CO**.

It is possible for a home rule city and home rule county to adopt and concurrently enforce consistent ordinances. §42-39 (6)(c) of the Illinois Constitution does not deprive Cook County of the power to regulate human rights within the City of Chicago. Rather, the County Commission on Human Rights may enforce the CCHRO within the jurisdictional limits set forth in § 42-33 of the CCHRO. The language of § 42-33 of the CCHRO places a self limitation on the County's jurisdiction over certain claims. The first sentence of Section 2 of § 42-33 allows that to the extent that a municipal ordinance is consistent with or duplicates the provisions of the CCHRO and provides remedies, the County will cede its concurrent jurisdiction over the subject matter. The second sentence of Section 2 is a limitation on the first sentence. It clarifies that where a municipal ordinance is silent with respect to some conduct covered by the County Ordinance, the County Ordinance shall be enforceable with respect to such conduct not covered by the municipal ordinance to the extent permitted under the Illinois Constitution. Blakemore v. Chicago Commission on Human Relations, et al., 2001PA019-20, 8-21-02, **CO**.

HOUSING DISCRIMINATION

Advocacy Organizations

Advocacy organizations may be proper parties under the ordinance and can be awarded damages. The Commission determined that the South Suburban Housing Center (SSHC), an advocacy agency that is involved in monitoring, training, and remedying unlawful housing practices that are included in the CCHRO may be a proper complainant under the CCHRO. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Covered Transactions

The term "real estate transaction" encompasses those residential housing transactions in which no monetary consideration is exchanged, including where only occupancy is at issue. Articles VI(A)(2) and VI(B)(2) of the CCHRO provide that occupancy or the provision of services in connection with occupancy of residential real property are covered real estate transactions. Respondents' transitional housing facility is real property being used for residential purposes. The Commission finds that complainants need not pay rent in order to be entitled to the protection of the CCHRO. Brown v. Strictly for Christ Church and LaRavierre, 1997H008, 11-12-97, **CO.**

Disability

The complainants proved by a preponderance of the evidence that the board is liable because the complainants proved that: 1) they are disabled, 2) their request for a disabled parking space is a reasonable request that affords them an equal opportunity to use and enjoy their townhome; and 3) the board refused to grant their request for a reasonable accommodation. Pace v. McGill Management, 1996H009, 2-25-99, **CDO**.

Failure to Rent

The Commission finds that complainant failed to prove that respondent's decision in September, 1998, to revoke his agreement to rent one of his apartments to complainant and her companion was due to her marital status (single). Piesen v. Fleurisca, 1998H032, 4-11-02, **CDO**.

Homeless Shelters

Homeless shelters are covered as housing units under the language of the CCHRO. In light of the broad language

used in § 42-38 (A)(1) of the CCHRO, the liberal construction language set forth in the CCHRO's Preamble, and in keeping with both local and federal holdings, the Commission finds that homeless shelters are housing units covered by the CCHRO and those persons who occupy such shelters for residential purposes are entitled to protection from unlawful discrimination during their residency. Brown v. Strictly for Christ Church and LaRavierre, 1997H008, 11-12-97, **CO**.

Indirect Discrimination

Commission denies motion to dismiss one of two complainants. Complainants, husband and wife, reside in separate, but adjoining apartment units. Neither of complainants' leases was renewed by respondent. The Commission finds a sufficient nexus between the alleged disability of the complainant husband and the failure of the respondents to renew the lease of complainant wife as stating a claim of indirect discrimination based on complainant wife's actual association with her husband, a person with a disability. James and Marjorie Anderson v. Town Management, Howard Fink, Barrington Lakes Apartments, and Lois Phelps, 1996H012, 6-9-97, **CO**.

Managing Agent Liability

Commission denies motion to dismiss and finds that the managing agent or individual working on behalf of a managing agent (individual condominium board member) is a person within the meaning of § 42-38 (A) of the CCHRO and may be found individually liable for his discriminatory actions." Spurgash v. 7041-49 O'Connell Condominium Association and Philip Kiner, Treasurer, 1994H006, 6-20-97, **HO**; Klegerman v. Heritage Manor, 1998H009, 1-5-99, **CO**.

The CCHRO prohibits conduct that denies disabled persons equal terms, conditions and privileges in real estate transactions. The denial by a management authority of a reasonable accommodation in rules, policies, practices or services that would afford a disabled person an equal opportunity to use and enjoy the privileges that come with his or her dwelling is unlawful under the CCHRO. Pace v. McGill Management et al., 1996H009, 2-25-99, **CDO**.

The board of managers is liable to complainants for refusing to grant a reasonable accommodation because the board was authorized to act, and did act as the agent of the owners of the townhomes with respect to the operation and regulation of the open parking spaces that are provided as a service in connection with the purchase and occupancy of the complainant's townhome. Pace v. McGill Management et al., 1996H009, 2-25-99, **CDO**.

Respondents are the alleged owners and or operators of a homeless shelter; as such, they are persons defined by § 42-38 (A)(1) of the CCHRO and are therefore intended to be covered by the CCHRO. Brown v. Strictly for Christ Church and LaRavierre, 1997H008, 11-12-97, **CO**.

Marital Status

To prove a *prima facie* case of housing discrimination based on marital status, a complainant must show that (1) she is a member of a group protected by the CCHRO; (2) she had applied for and was qualified to rent the property in question; (3) she was rejected as a prospective tenant; and (4) the rental property remained available thereafter. Commission finds that although complainant, who is single, established a *prima facie* case, complainant did not establish by a preponderance of the evidence that the landlord declined to rent to her due to her marital status. Piesen v. Fleurisca, 1998H032, 5-9-02, **CDO.**

Methodist Campground

Complainants established a prima facie case of retaliation with direct evidence. Respondents admitted that they took away complainants' license to occupy their cottage because of complainants' opposition to unlawful discrimination on the basis of sexual orientation. Complainants also established a prima facie case of retaliation with indirect evidence because (1) they engaged in expression protected under the Ordinance; (2) they suffered an adverse housing action; and (3) there was a causal link between the protected expression and the adverse action. Carroll et al v. Chicago District Campground Assoc. et al., 1999H006-009, 10-14-06, **CDO**.

Respondents admittedly denied complainants housing solely because they had created disturbances at respondent campground. Other individuals who were similarly at fault for disruptions were not barred from renting or owning cottages at respondent. There is no evidence of any legitimate basis for this unequal treatment. Thus, respondents unlawfully discriminated against complainants on the basis of their sexual orientation, and against complainants'

foster son because the only reason he could not return to live at respondent was because of his family relationship with complainants. Carroll, et al v. Chicago District Camp Ground Assoc., et al., 1999H006-009, 10-14-06, **CDO**.

Parental Status

By entering a default order was entered against respondent for failing to respond to discovery requests, the Commission deemed admitted the factual allegations of the complaint, which supported a finding of housing discrimination on the basis of parental status. Respondent evicted complainants from the apartment they rented from her when complainant was three months pregnant. Respondent provided no explanation when she evicted the complainants. On various occasions, respondent told complainant that she refused to rent to people with children. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Prima Facie Case

Complainant alleged a *prima facie* case. She was single when she sought to rent the apartment from respondent and hence a member of a group protected by the CCHRO. Second, she sought to rent an apartment from respondent and proved that she was qualified because he originally agreed to rent her one. Third, she was denied the opportunity to rent the apartment when respondent decided to revoke his acceptance of her tenancy. Fourth, the apartment remained open and un-rented for another month. Piesen v. Fleurisca, 1998H032, 4-11-02, **CDO**.

Complainant alleged a *prima facie* case that respondent discriminated against her by evicting her from her apartment one month after being informed that complainant was pregnant and told complainants that she refused to rent to people with children. Parental status is a protected status under the CCHRO. Because complainant alleged a prima facie case of housing discrimination, the Commission entered a default order against respondent after respondent repeatedly refused to participate in the procedures of the Commission. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Reasonable Accommodation

Because the language and intent of the CCHRO's housing provisions and those of the Fair Housing Act, the Illinois Human Rights Act, and the Chicago Fair Housing Ordinance are similar, that it is also unlawful under the CCHRO to refuse to make a reasonable accommodation, when a reasonable accommodation is necessary to afford a disabled person equal opportunity to use and enjoy housing. Pace v. McGill Management et al., 1996H009, 2-25-99, **CDO**.

The complainants have the right to a reasonable accommodation that provides them with an equal opportunity to use and enjoy the privileges that come with their townhome under the CCHRO. The complainants' requested accommodation that the Board convert one of the open spaces to a disabled space for the use of any owner or guest who needs disabled parking was reasonable because the number of spaces that can be made into disabled parking is so limited. Pace v. McGill Management et al, 1996H009, 2-25-99, **CDO**.

Retaliation
See RETALIATION

HOUSING STATUS

The protected basis of "housing status," is not included in the Chicago Human Rights Ordinance. Therefore, discriminatory conduct based on a person's housing status is not prohibited by the Chicago Human Rights Ordinance. Although the conduct of housing status discrimination occurred within the City of Chicago, in accordance with § 42-33 of the County Ordinance, the County Commission has jurisdiction to proceed with the investigation of housing status allegations asserted in the complaint. See, e.g., Blakemore v. Chicago Temple Building, Building Manager, and Janitorial Staff, 2002PA006, 5-13-02, **CO**; Blakemore v. City of Chicago Fire Department and Metropolitan Pier & Exposition Authority, 2002PA015, 10-26-04, **CO** (public accommodations cases).

To establish a *prima facie* case of discrimination in access to a public accommodation due to her/his housing status or perceived housing status, a complainant must show (1) (she is a member of a protected class; (2) (s)he was denied full enjoyment of the public accommodation; and (3) others not within her/his protected class were allowed full enjoyment of those services and/or (s)he received services in a markedly hostile manner and in a manner which

a reasonable person would find objectively unreasonable. Blakemore v. Kinko's, Inc., 2002PA011, 7-14-03, **CO**; Blakemore v. The Market Place, 2004PA008, 6-7-04, **CO**; Blakemore v. City of Chicago Fire Department & MPEA, 2002PA015, 10-26-04, **CO**; Blakemore v. Trizec Holdings, Inc., (a/k/a) Trizec Office Properties, 2003PA007, 4-21-06, **CDO**.

In a commercial context the courts have allowed for an alternative method of establishing a *prima facie* case of public accommodation discrimination by showing that a complainant received services in a "markedly hostile manner and in a manner which a reasonable person would find objectively unreasonable." In this case, the complainant failed to indicate any evidence of record to show that complainant was treated in such a manner or in anyway discriminated against because of her/his (perceived) housing status, and thus the complaint was dismissed. Blakemore v. Kinko's, Inc., 2002PA011, 7-14-03, **CO**; Blakemore v. The Market Place, 2004PA008, 6-7-04, **CO**; Blakemore v. City of Chicago Fire Department & MPEA, 2002PA015, 10-26-04, **CO**; Blakemore v. Trizec Holdings, Inc., (a/k/a) Trizec Office Properties, 2003PA007, 4-21-06, **CDO**.

To state a claim of retaliation for his opposition to housing status discrimination, the complaint needs to contain allegations that complainant expressed or communicated to respondent his opposition to what he reasonably believed to be housing status discrimination. The complaint contains no allegations that complainant opposed housing status discrimination with respondent and, therefore, fails to state a claim of retaliation based on housing status discrimination. Blakemore v. Walgreens, 2005PA001, 4-4-05, **CO**.

Complainant failed to establish a *prima facie* case of discrimination in access to a public accommodation on the basis of perceived housing status because he failed to prove that any agent of the respondent was involved in the alleged adverse action taken against him. Blakemore v. Metropolitan Pier and Exposition Authority, 2002PA015, 4-21-06, **CDO**.

INDIVIDUAL LIABILITY

Aiding and Abetting

Under § 42-41 (B) of the CCHRO, individuals may be held liable when they aid and abet another person (including the corporation they work for) in the commission of a violation under the CCHRO. The Commission will look to Illinois case law construing the requirements for finding aiding and abetting under other statutes, as well as cases interpreting aiding and abetting provisions in similar anti-discrimination laws for guidance. Fallico v. Radiology Imaging Specialists, Ltd., et. al., 1995E010, 7-29-98, **CO**.

Although the complainant asserts that respondents aided, abetted, compelled or coerced Commission personnel to commit a violation under the CCHRO, the complaint fails to identify what CCHRO violation was alleged to have been committed by Commission personnel or specifically how respondents aided, abetted, compelled or coerced the Commission in committing this unidentified CCHRO violation. Respondents' motion to dismiss granted. Even construed most liberally, complainant's allegations neither identify nor implicate a protected basis of discrimination under the CCHRO, nor do they constitute conduct of unlawful discrimination under § 42-38 I of the CCHRO. Munda v. Block Medical Center, et al., 2004E061, 2-10-05, **CO**; Munda v. Polish et al., 2004E044A, 2-10-05, **CO**.

While legal representatives, including non-lawyers, might be proper respondents in a complaint filed under the CCHRO, the Commission finds that, based on the facts as alleged in this complaint, the respondents named in this case are not proper respondents. Specifically, complainant's characterization of respondents' conduct and complainant's legal conclusions about this conduct do not state a claim for either retaliation or aiding and abetting, and do not otherwise rise to a violation of the CCHRO. Munda v. Polish, et al., 2004E044A, 2-10-05, **CO**.

Employment

Corporate Board Members

There must be specific acts of wrongdoing alleged against individual board members for them to be individually named as respondents. Fallico v. Radiology Imaging Specialists, Ltd., et. al., 1995E010, 7-29-98, **CO**.

Motion to dismiss individually named corporate board members as respondents is denied. When board members have the ability to make decisions affecting complainant's employment, they may be liable for acts of discrimination for which they were responsible in whole or in part. Fallico v. Radiology Imaging Specialists, Ltd., et. al., 1995E010, 7-29-98, **CO**; Gordon v. Enclave Condominium Association, 2002H002, 8-12-05, **CO**.

Decision-Makers
Under § 42-35 (B)(1) of the CCHRO, individual decision makers, supervisors, agents of the company/employer, as well as the human representative of a company may be held individually liable when they are responsible in whole or in part for acts of discrimination. Fallico v. Radiology Imaging Specialists, Ltd., et. al., 1995E010, 7-29-98, **CO**; Gordon v. Enclave Condominium Association, 2002H002, 8-12-05, **CO**.

Individuals that fall within the definition of § 42-35 (E) of the CCHRO can be held personally liable for their own acts of discrimination and sexual harassment that violate § 42-35(E) of the CCHRO. Urbach v. Amelio's Restaurant et al., 1997E089, 7-1-98, **CO**.

Owners/Principals
Respondent owner found liable for manager's sexual harassment toward complainant, and for retaliatory discharge. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

Pursuant to an order of default for respondent's refusal to respond to complaint, respondent found liable for manager's unlawful discharge on the basis of sexual orientation. Feges v. The New Embers Restaurant, 1993E013, 6-16-94, **CDO**.

A managing agent may be liable to the complainant for sexual harassment committed by a volunteer maintenance worker that the managing agent hired. Zaccardo and Zaccardo v. Circle Hill Apartments, et al., 1994E025, 7-20-95, **HO**.

Housing Discrimination

Managing Agent
Commission denies motion to dismiss and finds that the managing agent or individual working on behalf of a managing agent (individual condominium board member) is a person within the meaning of § 42-38 (A) of the CCHRO and may be found individually liable for his discriminatory actions." Spurgash v. 7041-49 O'Connell Condominium Association and Philip Kiner, Treasurer, 1994H006, 6-20-97, **HO**.

INJUNCTIVE RELIEF

The Commission has broad power to award remedies as set forth in § 42-34 (C). § 42-34 (C)(1)(c) and (a) of the CCHRO provides that the Commission may order appropriate injunctive relief to prevent future discriminatory practices. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**; Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Awarded

§ 42-34 (C)(1)(a) and (c) of the CCHRO provides that the Commission may order injunctive relief as appropriate. The Commission ordered the following injunctive relief: reinstatement of complainant in his position; cease and desist unlawful discrimination in general; cease and desist unlawful discrimination against complainant; commence diversity training/sensitivity training for managers of respondent; and the issuance of written communications to all employees that unlawful discrimination in all of its forms will not be tolerated. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**.

The Commission ordered respondent to designate the open space next to complainants' space as disabled parking and to make and enforce rules for parking in such space. Pace v. McGill Management et al., 1996H009, 2-25-99, **CDO**.

The Commission ordered that respondent cease and desist from forms of unlawful discrimination; be enjoined from reassigning violator to respondent's place of business; reassign complainant to her shift if she so desires; conduct diversity/sensitivity training for all management level employees of respondent; issuance of written communication to all employees that such discrimination will not be tolerated. McClellan v. Cook County Law Library, 1996E026, 6-7-99, **CDO**.

The respondent is permanently enjoined from discriminating against any person because of his or her parental status in any of the terms or conditions of housing. The respondent will cooperate with South Suburban Housing

Center ("SSHC") in future monitoring and will attend training provided by SSHC. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Respondents shall cease and desist from all acts of discrimination, sexual harassment and constructive discharge due to that harassment, as are found to have occurred in this case. Further, respondent shall post notices as required in § 42-34 (C)(1)(j) of the CCHRO. Desparte v. Arlington Heights Kirby et al., 2002E020, 5-6-05, **CO**.

The Commission shall order respondents to cease discriminating in the rental or "sale" of cottages on the basis of sexual
orientation, or on the basis of an individual's opposition to such discrimination, and shall be ordered to entertain applications from the Carroll complainants. Similarly, if the Grahams complainants' cottage is still within the respondents' inventory, respondents shall be ordered to reinstate their right to occupy that cottage. Carroll et al v. Chicago District Campground Assoc. et al., 1999H006-009, 10-14-06, **CDO**.

Factors Considered

Numerous factors are to be considered in determining whether injunctive relief is appropriate, or in fashioning relief under an injunctive decree once the court has determined that such a remedy is necessary. These factors include the bona fide intention of the party found guilty of discrimination to presently comply with the law, the effective discontinuance of the discriminatory practices in question, and in some cases, the character of past violations. In other words, affirmative injunctive relief for past discriminatory practices is appropriate where the court believes that the lingering effects of discrimination have yet to be remedied. Here, respondent testified that she had no intention of changing her rental policies in the future. Clearly, an equitable remedy is necessary to ensure that respondent does not continue to discriminate against tenants on the basis of parental status. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

INVESTIGATION

Complaint Consolidation

For the purposes of investigation and other Commission procedures, consolidation of two complaint numbers is appropriate and will not prejudice the parties. Due to the substantial similarities between the facts of each complaint, the commonality of parties, and the common questions of law, consolidation is warranted. Donnell, Cotton, HOPE v. Sprovieri, 1998H011-012, 11-30-98, **CO**; Carroll, et al v. Chicago District Campground Association, et al., 1999H006-009, 7-23-01, **HO**.

Evidence of Pattern and Practice

In the context of a complaint, conduct which may in and of itself be outside the 180-day filing period may nonetheless be included in a complaint and be of significance during the investigatory stage if the conduct established a pattern and practice of discriminatory conduct or behavior. As stated in the Commission's previous decisions, such incidents, where appropriate, may be used to assess credibility, motive or bias of the respondent. Martin v. Club Fever, 1998PA009, 11-10-98, **CO**.

Fact-Finding Conference

It is within the discretion of the Commission investigator assigned to a case to determine whether a fact-finding conference would assist in gathering relevant information and documentation which would otherwise be obtainable through witness interviews or the Commission's questionnaire process. Phillips v. Howard E. Gilbert & Associates, 1997E101, 1-9-01, **CO**, Hart v. Market Facts, Inc., 1999E009, 4-22-04, **CO**.

Investigation Standard

The Commission's neutral fact finding investigation will look at the conduct alleged as a whole. At the complaint filing stage, the complainant does not need to prove the elements of a *prima facie* case, the complainant must simply articulate those elements. Blucher v. Wilkes and McClean, Ltd., 2004E015, 5-24-05, **CO**.

Investigation Type/Method

Complainant's request for reconsideration denied when the request was based on complainant's allegations of a denial of due process. However, simply because a complainant does not get the exact type of investigation that he or she would like, and arguably the corresponding results, does not mean that a complainant was denied due process during the course of the investigation. Hart v. Market Facts, Inc., 1999E009, 4-22-04, **CO**.

Commission finds that if it granted a motion to dismiss because the investigation was not completed within 180 days, complainant would be denied access to the Commission's investigatory process and effectively denied her due process right to an investigation of her complaint. Commission follows the U.S. Supreme Court in Logan v. Zimmerman Brush Co. 455 U.S. 422 (1982). Montgomery v. Rosenthal, 1994H001, 10-18-94, **CO**; J. Eugene O'Neill v. Handy Andy Home Improvement Centers, 1994E053, 6-20-95, **CO**.

Timeline for Investigation

§ 42-34 (B)(2)(a) of the CCHRO provides that an "investigation shall be completed within 180 days after filing...unless impractical to do so within that time." The Commission finds that due to delays in service, and requests for extension of time for response, it was impractical for the Commission to complete investigation within 180 days. Montgomery v. Rosenthal, 1994H001, 10-18-94, **CO**; Conway v. Transaction Database Marketing, Inc. 1999E010A, 7-17-02, **HO**.

Commission finds that if it granted a motion to dismiss because the investigation was not completed within 180 days, complainant would be denied access to the Commission's investigatory process and effectively denied her due process right to an investigation of her complaint. Commission follows the U.S. Supreme Court in Logan v. Zimmerman Brush Co. 455 U.S. 422 (1982). Montgomery v. Rosenthal, 1994H001, 10-18-94, **CO**; J. Eugene O'Neill v. Handy Andy Home Improvement Centers, 1994E053, 6-20-95, **CO**.

JURISDICTION

Complaint Reinstatement

Relying on the right to sue provisions of the CCHRO, four different complainants chose to remove their complaints from the Commission to various Cook County circuit courts. In separate decisions or orders, the courts declared the CCHRO subsection relied upon by these complainants to be invalid, dismissed complainants court complaints, thereby, depriving complainants of any forum for their complaints. The individual complainants then sought to have their complaints reinstated at the Commission. Although neither the CCHRO nor the Commission's Rules specifically address the issue of reinstatement, the CCHRO was drafted as remedial legislation. Equity concerns support the Commission consideration and subsequent granting of complainants' respective motions for resuming jurisdiction and reinstatement of the original complaints of discrimination at the Commission. Lucas v. Zeta International and Branco Jevtic, 1996E022, Gilich v. LaGrange Memorial Hospital, 1995E036, Newman v. Humana, Inc., 1998E047, and Hakim v. Payco-General American Credits, Inc. 1999E021, 5-23-00, **CO**.

Concurrent Jurisdiction

§ 42-34 (B)(2)(b) of the CCHRO is an acknowledgment of the Commission's concurrent jurisdiction with other similar agencies over discrimination complaints. Solis v. Hi-Temp Incorporated, 1994E046, 11-5-94, **CO**; Blakemore v. Dublin Bar and Grill, Inc., an Illinois Corporation d/b/a Dublin Pub, 2005PA008, 4-3-06, **CO**; Harrington v. John H. Stroger, Jr. Hospital, 2005E010, 3-30-2005, **CO**; Diggs v. Dollar General, Inc., 2005E016, 5-16-2005, **CO.**

Commission has concurrent jurisdiction with other administrative agencies. The Illinois Human Rights Act confers authority to localities to create a department or commission which promotes the purposes of the Act and contemplates concurrent jurisdiction with local departments and commissions. Lindberg v. Chicago Transit Authority, 1994E063, 7-27-95, **CO**; Urban v. Westchester School District 92 2, 2000E008, 2-26-00, **CO**.

The Ordinance's preamble expressly provides that the CCHRO is to be liberally construed for the accomplishment of its purposes, and nothing in the CCHRO shall be construed to limit rights granted under the laws of the state of Illinois or the United States. Thus, no person can be barred from seeking any other remedy or right of action.

Commission has concurrent jurisdiction with the IDHR and will not dismiss the Commission complaint simply because a similar action has been filed with that agency. Langille v. Baldwin Court Condominium Assn., 1994H012, 9-20-95, **CO**.

In accordance with § 42-33 of the CCHRO, the Commission generally does not exercise its concurrent jurisdiction over complaints of discrimination or harassment which can be properly filed with the City of Chicago Commission on Human Relations. Alternatively, where the Chicago Ordinance does not cover conduct which is covered by the County Ordinance, a complainant may file with the County Commission. Ehrsam v. National Casein Co. et al., 1994E126, 10-16-95, **CO**.

Commission denied respondent's motion for deferral of complaint, when complainant also filed with the Chicago Commission on Human Relations. Pursuant to concurrent jurisdiction, Commission normally would have deferred the complaint filed with the Commission if the allegations of violation are the same or similar; However, in this case the Chicago Commission could not entertain jurisdiction over an allegation of retaliation in housing, inasmuch as the CCHRO, while it covers sexual harassment, does not cover retaliation in housing. Stovall v. Metroplex, Inc. et al., 1995H010, 10-19-95, **CO**.

Deferral

§ 42-34 (B)(2)(b) of the CCHRO provides in relevant part that "the Commission may defer investigation of a timely filed complaint where the same complaint, or a substantially similar complaint, has been filed by the complainant with another administrative agency." This provision is an acknowledgment of the Commission's concurrent jurisdiction with other agencies over certain discrimination complaints. It is designed to give the Commission the discretionary authority to defer investigation of a complaint when it would serve the goal of conserving administrative resources and minimize the burden on respondents without compromising the due process rights of the complainant to an investigation of the complaint. Practically speaking, the deferral operates like a grace period which allows the opportunity for a complaint to be resolved in another forum before the Commission begins its investigation. If the dispute is not resolved in the alternative forum on the merits or through settlement or mediation which would result in the voluntary dismissal of the complaint filed with the Commission, the Commission will commence its investigation. See, e.g., Hudok v. Quality Transportation Systems, Inc., 1994E031, 12-27-94, **CO**; Lee v. DaVita d/b/a Logan Square Dialysis, 2002E082, 12-19-02, **CO**; Barnes v. United Parcel Service, 2003E024, 6-26-03, **CO**; Peters v. Lyons School District No. 103, 2004E067, 1-7-05, **CO**; Harrington v. John H. Stroger, Jr. Hospital, 2005E010, 3-30-2005, **CO**; Diggs v. Dollar General, Inc., 2005E016, 5-16-2005, **CO**.

Governmental Entities/Agencies

Municipal corporations and other units of local government other than governments of municipalities are not exempt from the CCHRO's definition of "employer." Pearce v. Lemont Fire Protection District, 1997E016, 4-14-97, **CO**.

Respondent argues that it is either a municipal corporation or a unit of municipal government. Commission finds respondent, while it may either be a municipal corporation or a unit of municipal government, or both, it is not a government of a municipality and, therefore, is not exempt from CCHRO's division of employer. Palmer v. Metropolitan Water Reclamation District of Greater Chicago, 1994E057, 3-31-95, **CO**.

City of Chicago Commission on Human Relations

The Cook County Commission on Human Rights has no authority or jurisdiction to enforce the Chicago Human Rights Ordinance. A complaint alleging a violation of the Chicago Human Rights Ordinance must be filed with the Chicago Commission on Human Relations. Eischen v Cook County, 2000E002, 5-4-00, **CO**; Blakemore v. Dublin Bar and Grill, Inc., an Illinois Corporation d/b/a Dublin Pub, 2005PA008, 4-3-06, **CO**.

Clerk of the Circuit Court of Cook County

Interpreting the language of the Illinois Constitution, the Supreme Court of Illinois has held that the government of the State of Illinois and Clerks of the Circuit Court are clearly state, not county, officers. As a state official, the Clerk of the Circuit Court is part of the government of Illinois and therefore, expressly exempt from the definition of an employer under the CCHRO. Eischen v. Cook County, 2000E002, 11-21-01, **CO**.

Cook County Commission on Human Rights

Due to a conflict of interest the Commission cannot hold jurisdiction over complaints filed against the Commission or Commission staff. Complaints filed against the Commission will be handled by the Chicago Commission on Human

Relations. Blakemore v. Cook County Commission on Human Rights and Jennifer Vidis, 2002PA025, 6-12-03, **CO.**

Employees of Cook County
Commission has authority to investigate complaints of discrimination and violations filed under the County Ordinance by County employees whose offices are located within the City of Chicago. Eischen v. Cook County, 2000E002, 5-4-00, **CO.**

Illinois Department of Human Rights
The government of the State of Illinois is clearly and plainly excluded from the CCHRO's definition of person as set forth in § 42-31(N). The IDHR is a department of the government of the State of Illinois. Blakemore v. State of Illinois Department of Human Rights, 2001PA003, 4-27-01, **CO.**

Regional Transportation Authority
Commission concludes that it may exercise jurisdiction over CTA because to do so would not be inconsistent with the intent of either the RTA Act or the Illinois Human Rights Act. Complainant's claim is one of discrimination based on housing status, specifically perceived homelessness. Neither the Illinois Human Rights Act, nor the Chicago Commission on Human Relations, covers housing status discrimination. To exclude from the Commission's jurisdiction all of CTA would contradict the intent of the Illinois Human Rights Act, and would provide no outlet for an individual who felt he had been discriminated against by the CTA based on his perceived housing status. Blakemore v. Chicago Transportation Authority, et. al., 2006PA008, 11-30-06, **CO**.

Based on the language of the Regional Transportation Act and the Illinois Human Rights Act, the Illinois General Assembly did not intend to exclude the respondent Regional Transportation Authority from the Commission's jurisdiction. Paquet v. PACE Suburban Bus, 1997E068, 7-28-98, **CO.**

States Attorney of Cook County
Interpreting the language of the Illinois Constitution, the Supreme Court of Illinois has held that the government of the State of Illinois and the State's Attorney of Cook County are state, not county, officers. As a state official, the State's Attorney of Cook County is part of the government of Illinois and therefore, expressly exempt from the definition of an employer under the CCHRO. Vaughn v. Cook County State's Attorney, 1993E062, 11-21-01, **CO**; John Doe v. Cook County State's Attorney, 1999E061, 11-21-01, **CO**; Young v. Office of the Cook County State's Attorney, 2003E048, 11-25-03, **CO**.

School Districts
While a school district may be a "quasi-municipal corporation" created by the state, it is not part of the state government itself, or an agency of the state for the purposes of being considered an exempt employer under § 42-31(E) of the CCHRO. Elrod v. Elementary School District No. 159, 1995E053, 3-28-96, **CO**.

The application of the Ordinance to a public school district is an authorized regulation by a home rule unit of government. Kelly v. Morton High School District No. 201, 1995E039, 3-28-96, **CO**.

Township Highway Department
A township highway department is not exempt as an employer under § 42-31(E)(2)(d) of the CCHRO. The township highway department is not a government of a municipality, but rather it is a unit of local government which is not exempt from the CCHRO. Fiore v. Bloom Township Highway Department, 1993E074, 4-26-95, **HO**.

Village Departments
Commission finds that complainant's employer was not the department of parks and recreation, but the Village of Orland Park, which is exempt from the employment provisions of the CCHRO; thus, the Commission is without jurisdiction to investigate or adjudicate the complaint. Limanowski v. Orland Park Parks and Recreation, 1998E090, 6-30-00, **CO.**

Harm Required

The only allegation of the complaint that might be considered timely (removal of a lien) was not actionable because complainant was not injured by the action and, therefore, it did not constitute a violation of the CCHRO. Spurgash v. 7041-49 O'Connell Condominium Association and Kiner, 1994H006, 10-19-98, **CDO**.

The Commission will examine claims on a case by case basis and will consider the totality of the facts alleged in

order to determine whether a claim or allegation is too trivial to constitute adverse action or to otherwise state a claim of public accommodation discrimination under the CCHRO. Mere inconvenience or an alteration of expectations is not sufficient to constitute adverse action or a violation of the CCHRO. Blakemore v. Chicago Commission on Human Relations, et al., 2001PA019-020, 8-21-02, **CO**.

Jurisdiction Lacking

Alleged Violation in Cook County
The Commission has long held that the County Ordinance does not apply to complaints of discrimination occurring within the City of Chicago which involve conduct covered by the Chicago Human Rights Ordinance. See, e.g., Blakemore v. Metropolitan Water Reclamation District of Greater Chicago, 2001PA004, 3-14-01, **CO** (public accommodation discrimination/race); Tortorello v. Oracle Corporation, 2002E060, 7-24-02, **CO** (public accommodation discrimination/race); Blakemore v. Chicago Commission on Human Relations, 2001PA019-020, 8-21-02, **CO** (public accommodation discrimination/race).

Alleged Violation Outside Cook County
CCHRO applies to discrimination in employment that is or would be located in whole or in part in Cook County or when the act of unlawful discrimination takes place in Cook County. The Commission lacks jurisdiction over alleged discriminatory conduct occurring in Buffalo Grove, which is in Lake County. Kajiwara v. John S. Swift Company, 1994E028, 8-10-94, **CO**; see also Esquivel v. Cherry Creek Nursery, Inc., (location in Will County) 1995E084, 10-10-95, **CO**; Rosas v. Arrow Plastic Manufacturing Co. and Illinois Bottle Manufacturing Co., (location in DuPage County) 1999E015, 3-17-99, **CO**.

Jurisdiction Retained

Alleged Violation in Cook County
For the purposes of surviving a motion to dismiss prior to the completion of the Commission's fact finding investigation, the Commission finds that the complainant has articulated facts which, if proven, would show that the location of the alleged violation is in Cook County, where complainant worked in the CTA's maintenance shop in Rosemont. Pursuant to § 42-35 (A), the CCHRO covers employment that is or would be in whole or in part of Cook County. Lindberg v. Chicago Transit Authority, 1994E063, 7-27-95, **CO**; Gutzmer v. Midwest Mechanical, Inc., (alleged violation occurred in Mount Prospect, which is located in Cook County), 1997E054, 8-8-97, **CO**; Borelli v. Presidential Mortgage Company, (alleged violation occurred in Arlington Heights, which is located in Cook County), 1998E058, 10-1-98, **CO**; Schwartz v. webMethods, Inc. (alleged violation occurred in Oak Park, which is located in Cook County), 2000E061, 3-19-01, **CO.**

County Employees in the City of Chicago
The Commission has authority to investigate complaints of discrimination and violations filed under the County Ordinance by County employees whose offices are located within the City of Chicago. Eischen v. Cook County, 2000E002, 5-4-00, **CO**.

Housing Status Discrimination in the City of Chicago
The protected basis of "housing status," is not included in the Chicago Human Rights Ordinance. Therefore, discriminatory conduct based on a person's housing status is not prohibited by the Chicago Human Rights Ordinance. Although the conduct of housing status discrimination occurred within the City of Chicago, in accordance with § 42-33 of the County Ordinance, the County Commission has jurisdiction to proceed with the investigation of housing status allegations asserted in of the complaint. See, e.g., Blakemore v. Chicago Temple Building, Building Manager, and Janitorial Staff, 2002PA006, 5-13-02, **CO**; Blakemore v. City of Chicago, Argus Security, et al., 2002PA019, 4-23-02, **CO**.

Location of Alleged Violation
Motion to dismiss denied. Resolving respondent's claim that the Commission is lacking subject matter jurisdiction because respondent's principal place of business was outside of Cook County would require the Commission to look beyond the face of the pleadings to rule on the truth and substance of the allegations from both parties, and thus not properly resolved on a motion to dismiss at this phase of the proceedings. Perez v. Lake Park Construction, Inc., 2004E063, 8-1-06, **CO**.

Retaliation in the City of Chicago
Commission denied respondent's motion for deferral of complaint which was also filed with the Chicago Commission

on Human Relations. Pursuant to concurrent jurisdiction, Commission normally would have deferred the complaint filed with the Commission if the allegations of violation are the same or similar; However, in this case the Chicago Commission could not entertain jurisdiction over an allegation of retaliation in housing, inasmuch as that Ordinance while it covers sexual harassment, does not cover retaliation in housing. Stovall v. Metroplex, Inc. et al., 1995H010, 10-19-95, **CO**.

Complainant filed with the Commission a complaint alleging retaliation in violation of the CCHRO. The alleged discriminatory conduct and retaliation occurred within the City of Chicago. Complainant also filed at the IDHR a charge alleging unlawful discrimination based on national origin and retaliation. In this case, since the IDHR has jurisdiction over both the national origin discrimination charge and the retaliation charge, the Commission, in the interests of administrative efficiency, will defer its investigation into complainant's retaliation allegation while the IDHR proceeds with its investigation into both allegations. Nemoyer v. Video 44/Telemundo of Chicago, Inc., 2002E038, 6-21-02, **CO**.

Separate Causes of Action

The filing of a complaint with the Commission does not preclude a complainant from seeking redress for other rights that may have been violated arising out of the same incident(s) set forth in the complaint and which are enforced by other administrative agencies or the courts. Lindberg v. Chicago Transit Authority, 1994E063, 7-27-95, **CO**; Urban v. Westchester School District 92 2, 2000E008,2-26-00, **CO**.

Claims filed in circuit court for breach of contract or tortuous claims of intentional infliction of emotional distress and fraud are distinctly different than those discrimination claims filed at the Commission. The Commission will dismiss a complaint in the interest of administrative efficiency and to avoid duplication of litigation only when a complaint filed in court also contains allegations of discrimination. Rabe v. Michael's Funeral Home, et al., 1994PA008, 10-22-96, **CO**; Doe v. Riverside-Brookfield Township High School Dist. 206, 1995PA006, 11-25-96, **CO**; Etnire v. PRP Wines International, Inc. et al., 1999E012, 7-8-99, **CO**, Conway v. Trans-Action Database Marketing, 1999E010, 3-13-03, **CO**.

Commission will not dismiss an age discrimination complaint filed with the Commission where a complaint filed in federal court involving the same facts and parties did not allege age discrimination. Alpert v. Evanston Hospital Corporation, 1996E105, 3-20-97, **CO**; Willis v. The Prescription Computer Store, Inc., d/b/a Micro Age, 1996E023, 1-27-98, **CO** (race).

Jurisdictional Hearing

In order to resolve the jurisdictional question of whether an employment relationship existed between the respondent and complainant, and whether this relationship is one which was intended to be covered by § 42-31 of the CCHRO, a jurisdictional hearing is ordered to specifically answer the question of jurisdiction. Munda v. Block Medical Center, 2003E032, 10-9-03, **CO**.

Newspapers

Commission denies respondent's motion to dismiss, finding respondent is a public accommodation, distributing a written periodical as a product or service. Respondent's First Amendment argument could be a valid defense to the complaint but it raises factual issues not appropriate for consideration in a motion to dismiss. Reyes v. Penny Saver Publications, 1995PA005, 9-21-95, **HO**.

Res Judicata

The doctrine of *res judicata* is not applicable to the question of concurrent jurisdiction. The Commission did not decide whether *res judicata* is applicable when another administrative agency or even when a court of general jurisdiction has decided the issue. Rabe v. Michael's Funeral Home et al., 1994PA008, 10-22-96, **CO**.

Settlement Enforcement

Commission Procedural Rule 440.155 requires that a settlement agreement must be reduced to writing, signed by the parties and submitted to the Commission for approval. Absent these or other special conditions, the Commission has no jurisdiction to enforce the terms of the settlement. Commission Procedural Rule 440.155(B) specifies that to retain jurisdiction to enforce a settlement agreement, each party to the agreement must acknowledge in the

agreement that the Commission has jurisdiction to enforce it. Lacy v. Cook County Hospital, 1992E033, 6-8-95 **CDO**; Banks v. Cook County Juvenile Temporary Detention Center, 1994E088, 3-14-96, **CO**. But see Jaber v. Allan Management Services and Karen Doroski, 1994H009, 6-30-98, **CO** (Commission will enforce a non-private oral settlement agreement in certain circumstances).

The parties to a Commission approved settlement agreement specifically acknowledge that the Commission retains jurisdiction for the purposes of enforcing the agreement, including seeking judicial enforcement where appropriate. Commission Procedural Rule 440.160 provides that if a party believes there is non-compliance with the terms of the settlement agreement, the party is required to notify the Commission which will commence an investigation into the alleged non-compliance. Marquez v. Kostich, 1996H001, 11-12-98, **CO**.

The Commission lacks jurisdiction to proceed to hear a matter which the parties have settled. Thus, unless the parties have agreed that the Commission will retain jurisdiction over a matter for the purposes of enforcing the terms of a settlement, the Commission must dismiss a complaint which has been settled. Munda v. Block Medical Center, 2003E032, 09-23-04, **HO**.

Statute of Limitations
See STATUTE OF LIMITATIONS

Termination of Jurisdiction

Discrimination Complaint Filed Elsewhere
Pursuant to § 42-34 (D)(5)of the CCHRO, the Commission's jurisdiction automatically terminates and the Commission will dismiss a complaint *sua sponte* or by motion of either party when a suit filed in federal court contains same or substantially similar allegations of discrimination. See, e.g., Veremis v. Interstate Steel Co., 1994E096, 6-14-95, **CO**; Enzenbacher v. Interstate Steel Co., 1994E105, 6-14-95, **CO**; Thompson v. Cook County Department of Supportive Services, 2005E012, 1-5-06, **CO**; McDowell v. J.B. Hunt Transport, Inc., 2002E045, 3-7-06, **CO**; Kemp v. Schoops Hamburgers/ Mantel Enterprise, 2005E049, 3-16-06, **CO**.

LOCATION OF VIOLATION

In Cook County

For the purposes of surviving a motion to dismiss prior to the completion of the Commission's fact finding investigation, the Commission finds that the complainant has articulated facts which, if proven, would show that the location of the alleged violation is in Cook County, where complainant worked in the CTA's maintenance shop in Rosemont. Pursuant to § 42-35 (A), the CCHRO covers employment that is or would be in whole or in part of Cook County. Lindberg v. Chicago Transit Authority, 1994E063, 7-27-95, **CO**; see also Gutzmer v. Midwest Mechanical, Inc., 1997E054, 8-8-97, **CO** (alleged violation occurred in Mount Prospect, which is located in Cook County); Borelli v. Presidential Mortgage Company, 1998E058, 10-1-98, **CO** (alleged violation occurred in Arlington Heights, which is located in Cook County); Schwartz v. webMethods, Inc. (alleged violation allegedly occurred in Oak Park, which is located in Cook County) 2000E061, 3-19-01, **CO**.

Outside Cook County

CCHRO applies to discrimination in employment that is or would be located in whole or in part in Cook County or when the act of unlawful discrimination takes place in Cook County. The Commission lacks jurisdiction over alleged discriminatory conduct occurring in Buffalo Grove which is in Lake County. Kajiwara v. John S. Swift Company, 1994E028, 8-10-94, **CO**; Esquivel v. Cherry Creek Nursery, Inc., (location in Will County) 1995E084, 10-10-95, **CO**; Rosas v. Arrow Plastic Manufacturing Co. and Illinois Bottle Manufacturing Co., (location in DuPage County) 1999E015, 3-17-99, **CO**.

Within the City of Chicago

County Employees
The Commission has authority to investigate complaints of discrimination and violations filed under the County Ordinance by County employees whose offices are located within the City of Chicago. Eischen v. Cook County, 2000E002, 5-4-00, **CO**.

The Commission has long held that the County Ordinance does not apply to complaints of discrimination occurring within the City of Chicago which involve conduct covered by the Chicago Human Rights Ordinance. See, e.g., Blakemore v. Metropolitan Water Reclamation District of Greater Chicago, 2001PA004, 3-14-01, **CO**; Blakemore v. Chicago Commission on Human Relations, 2001PA019-020, 8-21-02, **CO**. Blakemore v. Kinko's, Inc., 2002PA011, 7-14-03, **CO**.

Housing Status

The protected basis of "housing status," is not included in the Chicago Human Rights Ordinance. Therefore, discriminatory conduct based on a person's housing status is not prohibited by the Chicago Human Rights Ordinance. Although the conduct of housing status discrimination occurred within the City of Chicago, in accordance with § 42-33 of the County Ordinance, the County Commission has jurisdiction to proceed with the investigation of housing status allegations asserted in of the complaint. See, e.g., Blakemore v. Chicago Temple Building, Building Manager, and Janitorial Staff, 2002PA006, 5-13-02, **CO**; Blakemore v. Dublin Bar and Grill, Inc., an Illinois Corporation d/b/a Dublin Pub, 2005PA008, 4-3-06, **CO**.

Retaliation

Commission denied respondent's motion for deferral of complaint which was also filed with the Chicago Commission on Human Relations. Pursuant to concurrent jurisdiction, Commission normally would have deferred the complaint filed with the Commission if the allegations of violation are the same or similar; however, in this case the Chicago Commission could not entertain jurisdiction over an allegation of retaliation in housing, inasmuch as the CCHRO, while it covers sexual harassment, does not cover retaliation in housing. Stovall v. Metroplex, Inc. et al., 1995H010, 10-19-95, **CO**.

Complainant filed with the Commission a complaint alleging retaliation in violation of the CCHRO. The alleged discriminatory conduct and retaliation occurred within the City of Chicago. Complainant also filed at the IDHR alleging unlawful discrimination based on national origin and retaliation. In this case, since the IDHR has jurisdiction over both the national origin discrimination charge and the retaliation charge, the Commission, in the interests of administrative efficiency, will defer its investigation into complainant's retaliation allegation while the IDHR proceeds with its investigation into both allegations. Nemoyer v. Video 44/Telemundo of Chicago, Inc., 2002E038, 6-21-02, **CO**.

MARITAL STATUS DISCRIMINATION

Liability Not Found

Commission follows Illinois Supreme Court decision construing language identical to the CCHRO, and holds that the CCHRO's definition of marital status protects individuals allegedly harmed due to their marital status, and does not protect individuals who are subjected to adverse employment decisions based solely on the identity of their spouse. Smith v. Bell Packaging Corp., d/b/a Visy Packaging, 1999E008, 7-13-99, **CO**.

Commission finds that although complainant established a *prima facie* case, complainant was not able to show that the landlord revoked his agreement to rent the apartment to complainant due to her marital status (single). Piesen v. Fleurisca, 1998H032, 5-9-02, **CDO**.

Prima Facie Case

To prove a *prima facie* case of housing discrimination, specifically failure to rent based on marital status, a complainant must show that (1) she is a member of a group protected by the CCHRO; (2) she had applied for and was qualified to rent the property in question; (3) she was rejected as a prospective tenant; and (4) the rental property remained available thereafter. Piesen v. Fleurisca, 1998H032, 5-9-02, **CDO.**

MOTIONS

Extension of Time

Commission denies complainant's objection to respondent's motion for extension of time in which to file its response. A response to a complaint provides respondent with its first formal opportunity to provide its version of the facts surrounding an allegation of discrimination. A response also provides the Commission staff with information which will facilitate its neutral fact-finding process. Nor did complainant articulate to the Commission

how the complainant would be prejudiced by a motion for a two-week extension of time. Berger v. Hilfiger Retail, Inc., 1995E033, 6-8-95, **CO**; Valencia v. LaFrancaise Bakery, 2001E055, 11-19-01, **CO**.

When respondent files a good faith request for an extension of time and proffers good cause, Commission is inclined to grant request. Commission grants respondent's motion for extension of time based on good faith representation that respondent will be investigating and preparing a response. Schickel v. Advocate South Suburban Hospital, 2006E041, 11-1-06, **CO**.

Respondent's motion for extension of time granted based on respondent's representation the parties were in settlement discussions. The Commission strongly encourages the parties to reach a mutually agreed-upon resolution of the complaint as an alternative to formal action by the Commission. Rosin v. C. Foster Toys, 2001E027, 8-6-01, **CO**.

Motion to Dismiss

Commission finds instructive Section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615) which allows a respondent to file a motion to dismiss a complaint based solely on a defect in the pleadings, but respondent has the burden of pointing out any defect with specificity. In this case, respondent has failed to demonstrate that no set of facts set forth by complainant can be proven which would entitle complainant to recover, or that the complaint does not set forth the essential elements of a *prima facie* case. Hudok v. Quality Transportation Systems, Inc., 1994E031, 12-27-94, **CO**; Munda v. Polish et al., 2004E044A, 2-10-05, **CO**; Perez v. Lake Park Construction, Inc., 2004E063, 8-1-06, **CO**.

In evaluating a motion to dismiss, the Commission cannot go beyond the face of the pleadings and must take complainant's allegations as true and view them together with reasonable inferences to be drawn from them in the most favorable light to complainant. See, e.g., Thomas v. Cook County Treasurer's Office, 1995EO34, 12-6-95 **CO**; Blucher v. Wilkes & McClean Ltd., 2004E015, 5-24-05, **CO**; Perez v. Lake Park Construction, Inc., 2004E063, 8-1-06, **CO**.

Summary Judgment

Commission Procedural Rule 460.160 does not allow for summary judgment motions and thus such motions will not be considered. See, e.g., Seaphus et al v. Laiser et al d/b/a. S&L Management, 1994H007, 4-11-95, **CO**; Borelli v. Presidential Mortgage Company, 1998E058, 10-1-98, **CO**; Munda v. Block Medical Center, 2003E032, 10-9-03, **CO**.

Respondent, in submitting a motion to dismiss with supporting documentation countering complainant's allegations, is actually filing a motion for summary judgment, which is specifically prohibited by Commission Procedural Rule 460.160. Respondent raises disputed issues of fact which are more appropriately resolved during the fact finding investigation, not in a motion to dismiss. Seaphus et al v. Laiser et al d/b/a. S&L Management, 1994H007, 4-11-95, **CO**; Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-1-95, **CO**; Reyes v. Penny Saver Publications, 1995PA005, 9-21-95, **HO**; Thomas v. Cook County Treasurer's Office, 1995E034, 12-6-95 **CO**; Borelli v. Presidential Mortgage Company, 1998E058, 10-1-98, **CO**; Morris v. Perfecto Cleaners, 1999E019, 6-4-99, **CO**; Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **CO**; Gerick v. Airoom Architects, Inc. et al., 2002E080, 6-30-03, **CO**; Munda v. Block Medical Center, 2003E032, 10-9-03, **CO**; Perez v. Lake Park Construction, Inc., 2004E063, 3-21-05, **CO**; Perez v. Lake Park Construction, Inc., 2004E063, 8-1-06, **CO**.

Respondent's motion to dismiss raises factual issues that require the Commission to look beyond the face of the pleadings for their relevance and resolution. Respondent's statements present genuine issues of material facts of which the truth, falsity and significance are more properly addressed through a Commission fact-finding investigation. See, e.g. Seaphus et al v. Laiser et al d/b/a. S&L Management, 1994H007, 4-11-95, **CO**; Munda v. Block Medical Center, 2003E032, 10-9-03, **CO**; Blucher v. Wilkes and McClean, Ltd., 2004E015, 5-24-05, **CO**.

MUNICIPAL ORDINANCE

Coextensive coverage

The CCHRO does not apply to complaints of discrimination occurring within the City of Chicago which involve conduct covered by the Chicago Human Rights Ordinance. This rule, embodied in § 42-33 of the CCHRO is in line

with Article VII, Section 68 of the State of Illinois Constitution. § 42-39 provides in part that if a county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction. The Chicago Human Rights Ordinance regulates conduct which is prohibited under the CCHRO and provides remedies; thus the CCHRO shall not apply within the jurisdiction of Chicago with respect to such conduct. See, e.g., Blakemore v. Metropolitan Water Reclamation District of Greater Chicago, 2001PA004, 3-14-01, **CO**; Blakemore v. City of Chicago Dept. of Consumer Services, 2001PA005, 8-16-01, **CO**; Blakemore v. Metropolitan Pier & Expo. Authority, Chicago Department of Procurement Services and Chicago Police Department, 2001PA006, 7-12-01, **CO**; Blakemore v. Chicago Comm'n Human Relations et al., 2001PA019- 020, 8-21-02, **CO**.

NATIONAL ORIGIN DISCRIMINATION

Harm suffered from disparate treatment by employer not a function of complainant's national origin (Italian), and that employer did not intentionally discriminate against complainant for prohibited reason. Fiore v. Bloom Township Highway Department, 1993E074 2-8-96, **CDO**.

Mere utterance of an epithet that engenders offensive feelings does not establish employment conditions so severe and pervasive as to create a hostile work environment based on national origin (Polish). The remarks were not frequent, complainant could not remember more than one or two remarks a year, nor were they threatening or humiliating. Iverson v. Horwitz, 1994E021, 2-8-96, **CDO**.

Commission finds that complainant failed by preponderance of the evidence to sustain his burden of proof that his failure to be selected for election duty (resulting in additional pay) or the termination of his employment was proximately caused by unlawful discrimination based on his national origin (Haitian) in violation of the CCHRO. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95, **CDO**.

PRECEDENT

Commission Orders

Decisions from other tribunals are not binding on the Commission, but the Commission does follow its own prior decisions and orders in adjudicating new complaints. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**.

Other Agency Decisions

Commission found decisions from other tribunals to be helpful, but not binding on Commission. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

Chicago Ordinance

Where issues have been adjudicated frequently under the Chicago Human Rights Ordinance, it is appropriate to seek guidance from such decisions, but the CCHRO is a different law and the Commission need not follow unquestioningly the precedents established under the Chicago Ordinance. Meallet v. Cook County Department of Purchasing, 1992E016, 8-19-94, **CDO**.

An examination of emotional distress awards by the City of Chicago Commission on Human Relations, while non-binding upon this Commission reveals precedent supporting the award for emotional distress damages in this case. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

It is appropriate to award costs proximately related to a move forced by discriminatory conduct. The Commission considered the Chicago Commission on Human Relations decisions, as the Commission had not yet addressed this exact question. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Illinois Human Rights Act

At the time this matter was filed with the Commission, the Commission did not have regulations that further delineated any of the CCHRO's disability definitions or indicate in which circumstances existing physical barriers to the entry of a public accommodation constitute discrimination in the full use of such a public accommodation or whether there is a duty to reasonably accommodate the disability of someone attempting to use the public accommodation. The Commission followed Jones v. Chicago Transit Authority, a landmark IHRC case, finding that the CCHRO implicitly requires that a public accommodation must reasonably accommodate the disabilities of

persons seeking to use the facility. Additionally, the Commission interprets the CCHRO to include the ADA requirements that structural barriers be removed when readily achievable because the preamble to the CCHRO requires that it be interpreted liberally to effectuate its purposes, one of which is to ensure that persons with disability can fully participate in the programs and services offered at place of public accommodation. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**; Smith v. Michael Anthony's Restaurant, 2002PA028, 4-12-05, **CO**.

Other Court Decisions

Federal Court Decisions
Advocacy organizations may be proper parties under the ordinance and can be awarded damages. Federal courts have routinely awarded damages to this type of complainant and to agencies with similar functions as long as those awards are not excessive. The Commission follows this precedent. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Illinois Supreme Court Decisions
The Commission follows Illinois Supreme Court precedent in holding that non-judicial employees of the Office of the Clerk of the Circuit Court of Cook County are employees of the State of Illinois for purposes of coverage under the CCHRO. Eischen v. Cook County, 2000E002, 11-21-01, **CO**.

United States Supreme Court Decisions
In adhering to United States Supreme Court precedent, the Commission finds that if the Commission granted a motion to dismiss, complainant would be denied access to Commission's investigatory process and effectively denied her due process right to an investigation. Hudok v. Quality Transportation Systems, Inc., 1994EO31, 12-27-94, **CO**; Montgomery v. Rosenthal, 1994H001, 10-18-94, **CO**; J. Eugene O'Neill v. Handy Andy Home Improvement Centers, 1994E053, 6-20-95, **CO**; Hart v. Market Facts, Inc., 1999E009, 4-22-04, **CO**.

PREGNANCY DISCRIMINATION
See SEX DISCRIMINATION

PRE-ORDINANCE CONDUCT

Admissibility at Hearing

Limited Purpose
Conduct that predates the effective date of the CCHRO is not admissible for determining liability or assessing damages. Such conduct may, however, be considered as background by the trier of fact in assessing other issues, such as credibility, bias or motive which relate to post-CCHRO conduct. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Iverson v. Horwitz, 1994EO21, 2-8-96, **CDO**.

The Commission does not have jurisdiction over conduct that occurred before the effective date of the CCHRO, May 21, 1993, or over allegations in a complaint, which occurred outside of the 180-day complaint filing period unless a continuing violation. However, any such conduct may be used by the Commission as evidence to help assess conduct over which the Commission does have jurisdiction. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**.

During Complaint-Filing Stage

Lack of Jurisdiction
Commission grants respondent's motion to dismiss because the Commission lacks jurisdiction to consider a violation where the violation, alleged to have occurred on May 15, 1992, occurred prior to the effective date of the CCHRO on May 21, 1993. Chen v. Northwestern University, 1993E054, 9-1-94, **CO**.

PRIMA FACIE CASE

Default Hearing

Having received no written verified response to the Commission complaint, no response to the notice of default, and no response or request for reconsideration of the Commission's order of default, the Commission scheduled this

matter for an administrative hearing. At an administrative hearing in a default case, a complaint must establish a *prima facie* case of discrimination and prove-up any damages. Even though this is a default case, complainant has failed to meet his obligation of proving a *prima facie* case. Therefore, the complaint is dismissed. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**.

Employment

To establish a *prima facie* case of discrimination in employment, complainant must show that: (1) he or she is a member of the protected class; (2) that he or she was meeting the respondent's legitimate performance expectations for the assignment; (3) that there was an adverse action against complainant; and (4) there was a causal connection between the adverse action and discriminatory act. Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**; Hudok v. Quality Transportation Systems, Inc., 1994E031, 12-27-94, **CO**.

Housing

To prove a *prima facie* case of housing discrimination , a complainant must show that: (1) she is a member of a group protected by the CCHRO; (2) she applied for and was qualified to rent the property in question; (3) she was rejected as a prospective tenant; and (4) the rental property remained available thereafter. Commission finds that although complainant, who is single, established a *prima facie* case, complainant did not show that the landlord declined to rent to her due to her marital status. Piesen v. Fleurisca, 1998H032, 5-9-02, **CDO**.

Public Accommodations

To establish a *prima facie* case of discrimination in access to a public accommodation, a complainant must show (1) she is a member of a protected class; (2) she was denied full enjoyment of the public accommodation; and (3) others not within her protected class were allowed full enjoyment of those services and/or she received services in a markedly hostile manner and in a manner which a reasonable person would find objectively unreasonable. See, e.g., Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO** (disability); Smith v. Michael Anthony's Restaurant, 2002PA028, 4-12-05, **CO** (disability); Blakemore v. Trizec Holdings, Inc., (a/k/a) Trizec Office Properties, 2003PA007, 4-21-06, **CDO** (perceived housing status).

In a commercial context the courts have allowed for an alternative method of establishing a *prima facie* case of public accommodation discrimination by showing that a complainant received services in a "markedly hostile manner and in a manner which a reasonable person would find objectively unreasonable." In this case, the complainant failed to indicate any evidence of record to show that complainant was treated in such a manner or in anyway discriminated against because of her/his protected status. See, e.g., Gilmore v. Menard's, Inc. 1999PA002, 5-9-02, **CDO** (race); Blakemore v. Kinko's, Inc., 2002PA011, 7-14-03, **CO** (perceived housing status); Blakemore v. The Market Place, 2004PA008, 6-7-04, **CO** (perceived housing status); Blakemore v. City of Chicago Fire Department & MPEA, 2002PA015, 10-26-04, **CO** (perceived housing status).

In the alternative, a complainant may still prove a *prima facie* case by showing that it was futile to attempt to enter or use the public accommodation. Complaint has failed to make out a *prima facie* case since complainant is unable to show (1) that he sought to enter or expressed an interest in dining or drinking at respondent, and (2) that the removal of any architectural barrier was readily achievable. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**; Smith v. Michael Anthony's Restaurant, 2002PA028, 4-12-05, **CO**.

Retaliation

Complainant must show: (1) she engaged in protected expression; (2) the employer took an adverse action against her; and (3) a causal link exists between the expression and adverse action. Hudok v. Quality Transportation Systems, Inc. 1994E031, 12-27-94, **CO**; Gluszek v. Stadium Sports Bar and Grill. 1993E052, 3-16-95, **CDO**; Alcegueire v. Cook County Department For Management of Information Systems. 1992E003 and 1992E026, 8-10-95, **CDO**; Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**; Carroll et al v. Chicago District Campground Assoc. et al., 1999H006-009, 10-16-06, **CDO**.

Sexual Harassment

In determining whether a complainant has established a prima facie case of sexual harassment, the facts will often vary and the specific prima facie proof required is not necessarily applicable in every respect to differing

factual situations. A prima facie case under McDonnell Douglas raises an inference of discrimination only because it is presumed that the acts complained of, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

The Commission has adopted the position that actionable conduct falls between conduct that is merely offensive and conduct that causes a tangible psychological injury. Additionally, the Commission's analysis requires both (1) an objective component--a reasonable person must find the conduct sufficient to create a hostile environment; and (2) a subjective component--this particular person perceived the conduct as creating a hostile environment. Language and behavior may both objectively and subjectively rise to the level of sexual harassment. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

To determine whether both the subjective and objective elements are present, the Commission will consider the following factors: (1) the frequency of the discriminatory conduct; (2) the severity of the discriminatory conduct; (3) whether it is physically threatening or humiliating, or a mere offensive utterance; and (4) whether it unreasonably interferes with an employee's work performance. The effect on the complainant's psychological well-being is also an issue to consider in determining whether the person subjectively found the environment hostile, but it is not dispositive. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

See also Individual Categories of Discrimination

***PRO SE* PARTIES**

See ADMINISTRATIVE HEARING - *Pro Se* Parties

PROTECTIVE ORDERS

During Administrative Hearing

Hearing officer finds that due to sensitive nature of the case, the entry of a protective order pertaining to discovery and depositions (if any) appears to be appropriate and warranted. Tolf v. Kuenster and Thompson-Kuenster Funeral Home, 1995E037, 6-26-96, **HO**; Carroll et al v. Chicago District Campground Assoc. et al., 1999H006-009, 8-15-06, **CO**.

Hearing officer finds that due to sensitive nature of information about respondent's income and assets, the entry of a protective order pertaining to respondent's tax returns for the last two years and a statement setting forth net worth as of the present time is appropriate and warranted for purposes of ascertaining the amount of punitive damages. Nunnery v. Staley and Alice Lewy, 1998H008, 8-3-01, **HO**; Interfaith Housing Center of the Northern Suburbs, 1998H010, 8-3-01, **HO**.

During Investigation

Commission entered a protective order applying to student disciplinary files during the investigative stage. Ramirez, on behalf of her minor child, Valles v. St. Laurence High School, 1995PA013, 10-11-95, **CO**.

PUBLIC ACCOMMODATIONS

The CCHRO's definition of public accommodation is far more expansive than the contemplation of a "physical location." The CCHRO's definition which allows a "person" as well as a "place or facility" to be a public accommodation, indicates a specific legislative intent to expand beyond the more literal concept of "facility" and "place" relied on by the respondents in this case. In addition, unlike other statutes, the CCHRO does not contain an illustrative list of entities that are considered public accommodations. This lack of limiting language supports a more expansive interpretation of the County definition of public accommodation. Reyes v. Penny Saver Publications, 1995PA005, 9-21-95, HO.

The public accommodation language of the CCHRO is more expansive than other statutory definitions of public accommodation. An event which may typically be viewed as a private function but to which the general public, in reality, is allowed to attend, may fall within the definition and scope of the CCHRO's public accommodation language. Blakemore v. City of Chicago Fire Department & MPEA, 2002PA015, 10-26-04, **CO**.

Although the CCHRO does not expressly contain the Americans with Disabilities Act requirement that structural barriers be removed when readily achievable nor does it contain an express requirement that owners or operators of public accommodations reasonably accommodate the disabilities of persons desiring to use the facility, the Commission interprets the CCHRO as including such requirements because the Preamble to the CCHRO requires that it be interpreted liberally to effectuate its purposes. One of those purposes is to ensure that persons with disabilities can fully participate in programs and services offered at places of public accommodations. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**; Smith v. Michael Anthony's Restaurant, 2002PA028, 4-12-05, **CO**.

Access Limited or Curtailed

Respondent argued that complainant was never denied services by respondent and thus the complaint should be dismissed. The Commission denied this request stating that the prohibition against discrimination in public accommodations in the CCHRO states that a provider of public accommodations cannot, "withhold deny, curtail, limit, or discriminate concerning the full use of such public accommodations." Complainant alleges that his use of respondent's services was limited and curtailed, therefore the complaint will proceed. Blakemore v. Kinko's Inc., 2002PA011, 7-14-03, **CO.**

The public accommodation language of the CCHRO is more expansive than other statutory definitions of public accommodation. An event which may typically be viewed as a private function but to which the general public, in reality, is allowed to attend, may fall within the definition and scope of the CCHRO's public accommodation language. Blakemore v. City of Chicago Fire Department & MPEA, 2002PA015, 10-26-04, **CO**.

Adverse Action Required

The Commission will examine on a case by case basis and will consider the totality of the facts alleged in order to determine whether a claim or allegation is too trivial to constitute adverse action or to otherwise state a claim of public accommodation discrimination under the CCHRO. Blakemore v. Chicago Commission on Human Relations, et al., 2001PA019-020, 8-21-02, **CO**.

Commission dismisses complaint against City of Chicago for failure to state a claim of public accommodations discrimination because no adverse action by respondent was alleged. Blakemore v. City of Chicago, Argus Security and Two Unknown White Argus Security Officers, 2002PA019, 4-23-02, **CO**, Blakemore v. Walgreens, 2005PA001, 4-4-05, **CO** (merely hearing an announcement calling for "security on the floor" does not constitute an adverse action sufficient to state a claim of public accommodation discrimination under the CCHRO).

Complainant failed to establish a *prima facie* case of discrimination in access to a public accommodation on the basis of perceived housing status because he failed to prove that any agent of the respondent was involved in the alleged adverse action taken against him. Blakemore v. Metropolitan Pier and Exposition Authority, 2002PA015, 4-21-06, **CDO**.

Complainant failed to prove that he was denied full access to or enjoyment of the public accommodation because he was given access in exactly the same manner as other visitors. Blakemore v. Trizec Holdings, Inc., (a/k/a) Trizec Office Properties, 2003PA007, 4-21-06, **CDO**.

Even taking all of complainant's allegations as true and drawing all reasonable inferences from them in a light most favorable to complainant, the allegations do not state a claim of retaliation as defined by the CCHRO because the letter complainant claimed embodied the allegations that denied public accommodation contain no indication that respondents gave complainant the letter in question because of complainant's opposition to discrimination or because he filed under the CCHRO or testified, assisted or participated in an investigation, proceeding, or hearing under the CCHRO as mandated by Art. IX(A). Blakemore v. Cook County Commission on Human Rights et al., 2002PA025, 6-12-03, **CO**.

Covered

Newspapers
Commission denies respondent's motion to dismiss, finding respondent is a public accommodation. The respondent is in the business of publishing a written periodical for distribution to the general public. The Commission finds that respondent's periodical is a "product" or "service" and, therefore, falls within the broad definitional language of a

public accommodation under the CCHRO. Reyes v. Penny Saver Publications. 1995PA005, 9-21-95, **HO**.

Retail Merchants
Respondent is licensed to do business in Illinois, and operates a retail store in Illinois. Respondent is a public accommodation as defined by the CCHRO. Gilmore v. Menard's, Inc. 1999PA002, 5-9-2002, **CDO**.

Schools - Harassment
Because the CCHRO specifically exempts single-sex schools from sex discrimination in the public accommodations provision of the CCHRO, the drafters intended that schools otherwise be covered as public accommodations. In addition, the protections of the CCHRO are intended to cover students while in school, not just while attending sporting events or certain school related activities. M. Mario Doe v. Riverside-Brookfield Township High School District 208, 1995PA006, 3-28-96, **CO**.

Futile Gesture Doctrine

The futile gesture doctrine has been applied to claims of disability discrimination in the public accommodations context. The doctrine protects an individual with a disability from having to make repeated efforts to gain access to a public accommodation but require that such individual be genuinely interested in its use and express that interest in some manner designed to give the owner or operator some notice of that interest. In this case, the complainant has not shown that he had any interest in partaking of the use of respondent. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**; Smith v. Michael Anthony's Restaurant, 2002PA028, 4-12-05, **CO**.

Markedly Hostile Behavior

The Commission finds that complainant failed to establish a *prima facie* case of discrimination in a public accommodation. Complainant failed to show that she received services in a markedly hostile manner and in a manner which a reasonable person would find objectively unreasonable. To establish a "markedly hostile manner," complainant would have to show that the conduct exhibited by respondent is: (1) so profoundly contrary to the manifest financial interests of the merchant; (2) so far outside of widely accepted business norms; and (3) so arbitrary on its face, that the conduct supports a rational inference of discrimination. Gilmore v. Menard's, Inc., 1999PA002, 5-9-2002, **CDO**; Blakemore v. City of Chicago Fire Department & MPEA, 2002PA015, 10-26-04, **CO**; Blakemore v. The Market Place, 2004PA008, 6-7-04, **CO**; Blakemore v. Kinko's, Inc., 2002PA011, 7-14-03, **CO**; Blakemore v. Trizec Holdings, Inc., 2003PA007, 4-21-06, **CDO**.

In reviewing the totality of the circumstances in a public accommodation case based on a markedly hostile theory, the factors that the Commission will consider shall include factors such as how severe, invidious and/or long-lasting the underlying conduct was; whether the behavior was pervasive, that is, whether it "polluted" the entire interaction between the parties or was more an isolated instance; was the behavior so profoundly contrary to the financial interests of the merchant; was the conduct so far outside widely accepted business norms; or how obviously discriminatory or retaliatory was the action that was taken. Blakemore v. The Market Place, 2004PA008, 6-7-04, **CO**.

The Commission finds that complainant failed to establish a *prima facie* case of race discrimination in access to a public accommodation. Complainant, a black female, failed to show that she received services in a markedly hostile manner and in a manner which a reasonable person would find objectively unreasonable. Gilmore v. Menard's, Inc., 1999PA002, 5-9-02, **CDO**.

Not Covered

Access to a Particular Investigator
Access to a particular investigator for the purpose of handling either the intake or investigation of a complaint is not a public accommodation within the meaning of the CCHRO. Blakemore v. Chicago Commission on Human Relations, 2001PA019-020, 8-21-02, **CO**.

Illinois Department of Human Rights
The government of the State of Illinois is clearly and plainly excluded from the CCHRO's definition of "person" as set forth in § 42-31 (N). The IDHR is a department of the government of the State of Illinois. Blakemore v. State of Illinois Department of Human Rights, 2001PA003, 4-27-01, **CO**.

Police Department Conduct
Commission grants respondent Police Department's motion to dismiss complaint on the grounds that the Commission does not have jurisdiction in this case in that the Police Department does not provide a service to the general public. The police department is not providing a service to an individual against whom it is exercising its law enforcement activity. The fact that an agency provides some services to the general public does not mean that the agency is a public accommodation for all purposes. Blakemore v. Metropolitan Pier & Expo. Authority, Chicago Department of Procurement Services and Chicago Police Department, 2001PA006, 7-12-01, **CO**; Nwaezeigwe v. Desplaines Police Department and City of Desplaines, 2001PA012, 8-10-01, **CO**.

Schools - Internal Discipline
While the CCHRO prohibits discrimination in access to services provided by public accommodations, school disciplinary measures are directed to admitted students and are not "services" offered to the general public; hence, for that function, a school is not a public accommodation within the definition of the CCHRO. Jackson v. Thornton Fractional South High School, 1996PA004, 8-16-01, **CO**; Ramirez ex rel Valles v. St. Laurence High School, 1995 PA013, 8-16-01, **CO**.

Prima Facie Case

Not everything that makes a complainant unhappy rises to the level of a violation of the CCHRO. Instead, in determining whether an allegation is too trivial to constitute adverse action, or to otherwise articulate a *prima facie* claim of public accommodation discrimination under the CCHRO, such as under a markedly hostile theory, the Commission will examine each case individually and consider the totality of the facts as alleged. Blakemore v. The Market Place, 2004PA008, 6-7-04, **CO**

A complainant may establish a *prima facie* case of denial of the full use of a public accommodation by showing that (1) complainant is a member of a protected class; (2) complainant was denied enjoyment of the public accommodation; and (3) others not within complainant's protected class were allowed full enjoyment of these services, and or complainant received services in a markedly hostile manner and in a manner which a reasonable person would find objectively unreasonable. Blakemore v. The Market Place, 2004PA008, 6-7-04, **CO**; Blakemore v. City of Chicago Fire Department & MPEA, 2002PA015, 10-26-04, **CO** Blakemore v. Trizec Holdings, Inc., (a/k/a) Trizec Office Properties, 2003PA007, 4-21-06, **CDO**.

Complainant failed to make out a *prima facie* case in that he failed to provide any evidence that he sought to enter or that he expressed an interest in dining or drinking at respondent and that the means of entrance into respondent could be made accessible to the complainant in a readily achievable way. Smith v. McCafferty's Pub, 2002PA029, 11-29-04, **CDO**; Smith v. Michael Anthony's Restaurant, 2002PA028, 4-12-05, **CO**.

Having received no written verified response to the Commission complaint, no response to the notice of default, and no response or request for reconsideration of the Commission's order of default, the Commission scheduled this matter for an administrative hearing. At an administrative hearing in a default case, a complaint must establish a *prima facie* case of discrimination and prove-up any damages. Even though this is a default case, complainant has failed to meet his obligation of proving a *prima facie* case. Therefore, the complaint is dismissed. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**.

Readily Achievable Accommodations

The Commission applies two different standards for determining liability in an artificial barrier case: (1) if a public facility was built before September 1985 and has not been altered at a cost of more than 15% of the reproduction cost of the facility, that facility must comply with the Illinois Environmental Barriers Act (410 ILCS 25/1) and its accompanying regulations, the Illinois Accessibility Code (71 Ill. Admin. Code ' 410.110 *et seq*.); (2) if a public facility was built before September 1985 and has not been altered at a cost of more than 15% of the reproduction cost of the facility, the removal of any architectural barrier must be readily achievable. Smith v. McCafferty's Pub, 2002PA029, 11-29-04, **CDO**; Smith v. Michael Anthony's Restaurant, 2002PA028, 4-12-05, **CO**.

The Commission defines accommodations as "readily achievable" as "easily accomplishable and able to be carried out without much difficulty or expense." Smith v. McCafferty's Pub, 2002PA029, 11-29-04, **CDO**; Smith v. Michael Anthony's Restaurant, 2002PA028, 4-12-05, **CO**.

The CCHRO does not expressly contain the ADA requirement that structural barriers be removed when readily

achievable and it does not contain an express requirement that owner or operators of public accommodation reasonably accommodate the disability of person desiring to use the facility. However, the Commission interprets the CCHRO as including such requirements because the preamble to the CCHRO requires that it be interpreted liberally to effectuate its purposes, one of which is to ensure that persons with disability can fully participate in the programs and services offered at place of public accommodation. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**; Smith v. Michael Anthony's Restaurant, 2002PA028, 4-12-05, **CO**.

PUNITIVE DAMAGES

See DAMAGES - Punitive Damages

RACE DISCRIMINATION

Liability Not Found

Commission finds that complainant has not met her burden of proof that she was unlawfully discriminated against on the basis of her race and/or sex because she has failed to rebut respondent's articulated non-discriminatory reasons for its adverse actions. Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**.

Commission finds that complainant could not prove that respondent's prior failures to assign him to election duty (resulting in additional pay) were caused by race, rather than his job title. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95 **CDO**.

Complainant failed to provide any evidence that respondent's articulated reason for the two-week disciplinary suspension was a pretext for race discrimination and failed to counter respondent's evidence that it was unaware of any similar conduct on the part of any Caucasian supervisor. Rush v. Ford Motor Company, 1996E013, 9-13-00, **CDO**.

Commission finds that assuming complainant met his *prima facie* case of discrimination, unlawful discharge based on race, that respondent articulated his legitimate non discriminatory reasons for its actions and complainant was unable to establish respondent's actions were pretext. Hardimon v. Allied Tube and Conduit Corporation, 1996E003, 10-11-01, **CDO**.

Mixed Liability Found

The Commission entered an order finding mixed liability. Complainant proved by a preponderance of the evidence that he was subjected to a hostile environment as a result of racist slurs directed at him by his supervisor. However, complainant failed to prove discrimination based on unequal discipline due to his race. The Commission limited the damage award to emotional distress damages for the hostile environment. Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **CO**.

Prima Facie Case

Complainant, who is African American, presented a *prima facie* case that respondent unlawfully discriminated against her on the basis of her race and sex, by reassigning her duties to a white male employee and then paying that employee more than she had been paid for performing those duties. Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**.

Complainant presented a *prima facie* case of disparate treatment based upon race by coming forward with evidence that he is African-American, that he suffered the adverse action of a two-week disciplinary suspension, and that at least one Caucasian supervisor who had committed a similar act with respect to the authorization of overtime pay was not similarly disciplined. Rush v. Ford Motor Company, 1996E013, 9-13-00, **CDO**.

The Commission finds that complainant failed to establish a *prima facie* case of race discrimination in access to a public accommodation. Complainant, a black female, failed to show that she received services in a markedly hostile manner and in a manner which a reasonable person would find objectively unreasonable. Gilmore v. Menard's, Inc. 1999PA002, 5-9-02, **CDO**.

RELIGIOUS DISCRIMINATION

Liability Not Found

Mere utterance of an epithet that engenders offensive feelings does not create employment conditions so severe and pervasive as to create a hostile environment of religious discrimination. The remarks were not frequent, complainant could not remember more than one or two remarks a year, nor were they threatening or humiliating. Iverson v. Horwitz, 1994EO21, 2-8-96, **CDO**.

***Prima Facie* Case**

Complainant made out a *prima facie* case of discrimination on the basis of religion and unlawful discharge. Hudok v. Quality Transportation Systems, Inc., 1994E031, 12-27-94, **CO**.

REMAND

After Administrative Hearing

In accordance with Commission Procedural Rule 470.105, the Commission remanded to the hearing officer for consideration, the limited legal issue of whether the Commission should consider and for what purpose pre-CCHRO conduct. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

The Commission remanded the decision to the Hearing Officer to review and consider: (1) whether respondent waived its opportunity to present and rely upon the Burlington Industries v. Ellerth affirmative defense; (2) how and why such waiver occurred; and (3) if the hearing officer determines that respondent did not waive its opportunity to present an affirmative defense, whether Burlington applies to Commission cases in general, whether it may be applied in this case, and if so, whether respondent adequately established its existence as a viable defense. Upon reconsideration, the hearing officer found that respondent waived its opportunity to present and rely upon the Burlington affirmative defense because respondent did not assert such defense until after reviewing the Initial Recommended Order and Decision. Thus, since respondent waived any potential affirmative defense, it is not necessary to resolve whether this defense applies to Commission cases in general and/or whether respondent adequately established its existence as a viable defense in this case. Conway v. Trans-Action Database Marketing, Inc., 1999E010, 10-09-03, **HO**.

After considering the Hearing Officer's final proposed decision and order, the Commission remanded the case to the Hearing Officer for the limited purpose of reviewing the damage award and supplementing the discussion portion of the decision and order to incorporate relevant Commission case law. Carroll et al v. Chicago District Campground Assoc. et al., 1999H006-009, 8-15-06, **CO**

REMEDIES

See DAMAGES or INJUNCTIVE RELIEF

REQUEST FOR RECONSIDERATION

A complainant may request reconsideration of a dismissal of a complaint or dismissal of a portion of a complaint because of a lack of substantial evidence determination. Pursuant to Section 480.105 of the Rules, the party making a request for reconsideration of a Commission order must state with specificity the reason(s) supporting the request, such as the existence of relevant evidence which is newly discovered and was not available at the time of the original determination, or the presentation of new, legal precedent not available at the time of the original determination or the Commission's misapprehension or misapplication of law. A request for reconsideration must be filed with the Commission within 30 days of receipt of the Commission's evidence determination order. In considering a request for reconsideration, the Commission will not reconsider the same facts and arguments originally raised unless the requesting party can demonstrate that the Commission made a mistake of fact or law, which if corrected, would alter the outcome of the finding. See, e.g., Hart v. Market Facts, Inc., 1999E009, 04-22-04, **CO**; Onichuk v. Bruce Noxon, DPM, PC, DBA Glenbrook Podiatry, 2005E039, 4-7-06, **CO**; McBride v. Cermak Health Services, 2003E045, 12-13-06, **CO**.

After Dismissal for Lack of Substantial Evidence

Request Granted

Complainant's request for reconsideration and reinstatement of complaint granted. The Commission misapplied the law when it dismissed the complaint as being untimely. The Commission initially determined that the 180-day filing limitations period began to run prior to when the complainant had definitive, unambiguous communication of respondent's decision to terminate complainant. Clay v. Cook County Hospital, 1996E059, 8-8-97, **CO**.

Complainant's request for reconsideration granted. Upon re-examination of the evidence, the Commission finds that there is more than a mere scintilla of evidence that respondent perceived complainant to have a disability and discriminated against complainant because of his perceived disability. Gannello v. Oak Park Library, 1998E001, 3-16-00, **CO.**

Complainant's request for reconsideration granted. Upon re-examination of the law, the Commission concludes that Joyce Lane, a member of the Enclave Condominium Board Association Board of Directors, should be reinstated as a respondent in this matter. §§ 42-31(O) and 42-38(1) of the CCHRO provide that individuals may be named as respondents in complaints of discrimination or harassment brought under the CCHRO. In addition, Commission precedent has allowed individuals to be held personally liable for their own acts of unlawful employment discrimination, as long as these individuals were decision makers, supervisors, agents of the company/employer, or the alter ego of a company. Gordon v. Enclave Condominium Association, 2002H002, 8-12-05, **CO**.

Request Denied

Commission treated respondent's motion to vacate a default order as a request for reconsideration. Nonetheless, the request failed to set forth with any specificity the basis for reconsideration and failed to set forth any cause as to why the response to the complaint was not timely filed. Feges v. The New Embers Restaurant, 1993E013, 1-26-94, **CO**.

Commission denies request for reconsideration, which is required to state with specificity new and relevant evidence which is newly discovered and was not available, and where respondent merely seeks to have the Commission reconsider facts and arguments in a light more favorable to the movant. Complainant's challenges to evidence found unsubstantial. See, e.g., Basith v. Cook County Hospital Pharmacy Department, 1993E042, 9-1-94, **CO**; Harris v. Cook County Hospital/ Department of Medicine, 1994EO95, 6-26-96, **CO**; Harding v. Cook County Hospital, 1994E078, 11-12-98, **CO**; Saraiya v. O'Hare Kitchenette Apartments West, 2003E062, 1-10-05, **CO**; Calloway v. Provident Hospital of Cook County, 2001E046, 10-4-06, **CO**.

Commission finds request for reconsideration did not present any evidence which was relevant and/or was unavailable at the time of investigation. Nor did the complainant make a coherent or persuasive argument supported by any evidence that a mistake of fact or law was made by the Commission. Complainant's unsupported allegations that investigator was biased are deemed irrelevant. Thomas v. Cook County Treasurer's Office, 1995EO34, 6-26-96, **CO**; McBride v. Cermak Health Services, 2003E045, 12-13-06, **CO**.

Commission denies request for reconsideration as simply arguments for reinterpretation of facts and evidence gathered by Commission investigator. See, e.g., Hedges v. Cook County Juvenile Temporary Detention Center, 1994EO38, 5-16-96, **CO**; Blandin v. fed Ex Ground Package System, Inc., and Howard Trudo, 2004E001, 7-12-05, **CO**.

Complainant filed a request for reconsideration after her complaint was dismissed due to lack of substantial evidence. The Commission issued an order to respondent directing respondent to provide additional documentation in support of its non-discriminatory reasons for discharging complainant. After reviewing this additional information, the Commission concludes that respondent articulated and adequately supported its legitimate and non-discriminatory reason for terminating and replacing complainant. The Commission did not uncover any evidence that the proffered reasons for complainant's termination were pretext for national origin discrimination, and thus denied complainant's request for reconsideration. Gonzalez v. MetalStik, Inc., 1996E030, 12-28-01, **CO.**

Commission denied the Request for Reconsideration when the request was based solely on allegations that the investigator failed to interview witnesses who witnessed alleged harassment over five years before the complaint was filed. Ramona Esquibel v. John E. Hughes Company, 2002E046, 3-20-03, **CO**.

Complainant's Request is based on arguments which were fully considered by the Commission during its investigation. Complainant's Request does not make an argument that a mistake of fact or law was made by the Commission in its investigation which would alter the lack of substantial evidence determination. Complainant's Request does not argue the existence of relevant, newly discovered evidence, nor does it argue the existence or applicability of new legal precedent that was unavailable at the time of the Commission's evidence determination. Rather, the Request, which includes copies of witness statements (which had previously been submitted to the Commission), argues that the Commission failed to interview witnesses to incidents of alleged sexual harassment which occurred in October 1997. Candelaria v. Cermak Health Services, 1998E051, 5-6-05, **CO**.

Request for reconsideration denied because complainant may not interject new facts which were not previously alleged prior to the filing of the Request. Laiser et al. v. Baldwin Greens Homeowners Association et al. 1997H009, 7-22-04, **CO**.

Complainant's request now provides the names of two witnesses that complainant states must be interviewed if the Commission's investigation is to be properly completed. These witnesses were unknown to the Commission at the time of the investigation and no reason is provided by complainant as to why the names of these witnesses were not provided earlier. Complainant's Request reargues facts already considered by the Commission. It does not argue that a mistake of fact or law was made by the Commission in its investigation which would alter the Commission's lack of substantial evidence determination, and to the extent that complainant's Request attempts to assert new allegations of discrimination or harassment not raised in the original complaint, a request for reconsideration is not the appropriate vehicle for consideration of these new or different allegations. Copney v. Cook County Auditor, 2002E007, 4-22-05, **CO**.

An investigator's discretionary decision to not conduct a fact finding conference does not warrant a determination of any new evidence by the Commission. Evidence that existed and could have been disclosed before the Commission investigator made its finding is not "newly discovered relevant evidence" where (1) the complainant had ample time to disclose but failed to disclose that evidence to the investigator, or (2) failed to state with specificity any reasons for the claim that the evidence was not available at the time of the original determination, or (3) show how the "newly discovered relevant evidence" would alter the Commission's finding. Complainant's use of counsel's alleged statements in another forum does not constitute "new evidence" since there is no assertion that respondent's counsel was a witness to any alleged discriminatory conduct or that respondent's counsel even had personal knowledge of discriminatory conduct. Hart v. Market Facts, Inc., 1999E009, 04-22-04, **CO**.

The Commission determines that the conduct that occurred over five years prior to the filing of the complaint was outside of the Commission's jurisdiction, having occurred outside of the Commission's 180-day jurisdictional filing period, and not part of a continuing violation. Since the Commission is without jurisdiction over that conduct, there is nothing for the Commission to reconsider at this time. Candelaria v. Cermak Health Services, 1998E051, 5-6-05, **CO**; Vermeer v. Peter F. Olesen & Assoc., 2004E002, 3-13-06, **CO**.

Complainant's Request attempts to assert new allegations of discrimination or harassment not raised in the original complaint, a request for reconsideration is not the appropriate vehicle for consideration of these new or different allegations. Barnes v. United Parcel Service, 2003E024, 2-8-05, **CO.**

The Commission will not reconsider the same facts and arguments originally raised unless the requesting party can demonstrate that the Commission made a mistake of fact or law which, if corrected, would alter the outcome of the finding. Vachula v. Flower Fantasy, 2003E053, 3-8-06, **CO**; Ortiz v. Orchard Medical Group, 2005E020, 3-14-06, **CO**; Onichuk v. Bruce Noxon, DPM, PC, DBA Glenbrook Podiatry, 2005E039, 4-7-06, **CO**.

Providing the Commission with the addresses of two witnesses who allegedly support his complaint is not sufficient to support a Request for Reconsideration. Vachula v. Flower Fantasy, 2003E053, 3-8-06, **CO**.

Complainant's Request fails to provide relevant information which was unavailable at the time of the investigation and which if presented to the Commission at the time of the investigation would have changed the evidence determination. Calloway v. Provident Hospital of Cook County, 2001E046, 10-4-06, **CO**; Diaz v. Market Advantage, 2003E038, 12-18-06, **CO**.

Complainant's request for reconsideration is denied because, among other things, complainant did not rebut, nor did the investigation reveal any evidence that respondent's reason for termination was pretext for discrimination based

on *age* and race. Esquibel v. John E. Hughes & Company, 2002E46, 3-20-03, **CO**.

Additional Documentation Needed
Commission finds that in order to rule on complainant's request for reconsideration, additional documentation and evidence should be presented to the Commission. Gonzalez v. Metalstik, Inc., 1996E030, 5-28-97, **CO**.

After Settlement Agreement

Request denied. The Commission issued an Order dismissing the complaint on the basis that the parties had entered into a settlement agreement during a settlement conference. Complainant filed a request for reconsideration of the order on the basis that the parties did not reach a settlement. Complainant's motion essentially repeats the arguments which she raised in her previous brief in opposition to respondent's original motion to enforce the settlement. Munda v. Block Medical Center, 2003E032, 11-23-04, **HO**.

Time for Filing

Commission finds request for reconsideration was not timely filed, having been filed 30 days late, hence not in accordance with Commission Procedural Rule 480.100(A) which requires filing within 30 days after decision by the Commission. Lifter v. Cook County Hospital, 1995E014, 2-27-97, **CO**; Berger v. Hilfiger, Retail, Inc., 1995E033, 6-9-97, **CO**; Constantini v. Motorola, Inc., 1994E129, 5-12-97, **CO** (request for reconsideration denied when filed 15 months late with no explanation for untimeliness); Scott v. Tastee Donut, 1999E074, 8-17-00, **CO** (request denied when filed 18 days late).

A request by respondent seeking reconsideration or rehearing of facts at the heart of a substantial evidence determination which is made prior to the commencement of an administrative hearing is premature. Commission Procedural Rule 440.1208 states that when a substantial evidence determination is made, a request for reconsideration of this Commission order may be made only in accordance with Commission Procedural Rule 480.100(B), which states that when an order finding substantial evidence is entered reconsideration of this order is proper only as part of that parties briefs on exceptions to a hearing officer's initial proposed decision and order. Thezan v. Georgios Bar & Grill, Ltd., 1995E071, 11-20-98, **CO**.

A request for reconsideration must be filed with the Commission within 30 days of receipt of the Commission's evidence determination order. Respondent states that the Request was filed 9 days after the Request was due. In accordance with the Commission's Rules, service of a Commission document is presumed to be complete 3 business days after mailing. In this case, the Commission initially served the order and report on complainant at an incorrect address. The Commission re-served the order and report on complainant ten days later. Based on the foregoing, the Commission considered complainant's request for reconsideration to be timely filed. Gordon v. Enclave Condominium Association, 2002H002, 8-12-05, **CO**.

RES JUDICATA
See CONCURRENT JURISDICTION

RESPONSE

Amendment to Response

At a disability evidentiary conference, respondent's motion to amend its verified response with substantive changes is denied. Respondent cannot, under any circumstances, simply undo the judicial admissions it made in its original verified response. Respondent's motion alleges that its original verified response was a product of mistake and inadvertence, but its proposed amended verified response contains no such allegations. At this stage, complainant is at least entitled to rely on the statements in respondent's original verified response that are most favorable to complainant's case. The hearing officer denied respondent's motion to amend its verified response without prejudice, but allowed respondent to revisit the issue after a substantial evidence determination and before any administrative hearing. Sotelo v. J.F. Schroeder Co. Inc., 2001E014, 1-2-02, **HO**.

A respondent's failure to timely respond undermines the public interest in swift and fair adjudication of discrimination complaints. The public interest assumes that the parties follow the cardinal rules of due process which require respondents to respond to complaints. Communication with a deadline should be answered, and a quasi-judicial

agency's rules such as, the Commission's, should be followed. McCoy v. United Airlines, 1996E111, 10-03-01, **CO**; Jacob v. Northwestern University, 2002E037, 10-24-02, **CO**.

Content

Commission denies complainant's motion to strike and determines that respondent has filed a verified response in conformity with Commission Procedural Rule 420.165. In pertinent part, Rule 420.165 states that a response shall identify the names and addresses of any representatives of respondent, and that the response, in short and plain terms, shall state the respondent's defense to each claim asserted. The Commission finds that respondent's failure to articulate a defense to each claim asserted does not constitute substantial non-compliance with Commission Procedural Rule 420.165(B). Freiberg v. South Cook Broadcasting Inc., 1994E068, 10-24-95, **CO**.

Commission denies complainant's motion to strike and finds respondent's amended and verified response in substantial compliance with Commission Procedural Rule 420.165. Respondent's failure to specifically address the issue of damages in the complaint does not constitute non-compliance with the abovementioned rule. Donnell, Cotton and HOPE v. Sprovieri, 1998H011, 1998H012, 11-30-98, **CO**.

Default for Failure to Respond

Commission enters default order for respondent's failure to respond to Commission complaint. Respondent failed to respond to Commission contacts and notices pursuant to Commission Procedural Rule 420.165. Commission must consider complainant's allegations as true. Feges v. The New Embers Restaurant, 1993E013, 11-8-93, **CO**; Matthews v. Eugene's Fireside Restaurant, 1997PA017, 12-29-98, **CO**; White v. Wooten, 1998H033, 8-18-99, **CO**; Smith v. McCafferty's Pub, 2002PA029, 5-29-03, **CO**.

Subsequent to the entry of a default order, an administrative hearing was held to determine complainant's relief, if any. Due to respondent's failure to file a timely response to the complaint, all of complainant's well-pleaded allegations were deemed admitted, complainant established a *prima facie* case of discrimination and damages were awarded. Feges v. The New Embers Restaurant, 1993E013, 6-16-94, **CDO**.

Having received no written verified response to the Commission complaint, no response to the notice of default, and no response or request for reconsideration of the Commission's order of default, the Commission scheduled this matter for an administrative hearing. At an administrative hearing in a default case, a complaint must establish a *prima facie* case of discrimination and prove any damages. Even though this is a default case, complainant has failed to meet his obligation of proving a *prima facie* case. Therefore, the complaint is dismissed. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**.

Extension of Time

The Commission prefers to resolve complaints on their merits. In order to do so, the Commission relies on a respondent's verified response, position statement and answers to the Commission questionnaire to assist in its neutral fact-finding investigation. Thus, when a respondent files a good faith request for an extension of time, and proffers good cause, the Commission is inclined to liberally grant those requests. See, e.g., Arnett v. Cezar's Inn, 2003PA005, 6-20-03, **CO**.

Verification

Respondent's response was appropriately verified in accordance with Commission Procedural Rule 490.190(A). Freiberg v. South Cook Broadcasting Inc., 1994E068, 10-24-95, **CO**.

RETALIATION

Employment Discrimination

Complainant must show: (1) she engaged in protected expression; (2) an adverse action was taken by employer; and (3) a causal link exists between the expression and adverse action. Hudok v. Quality Transportation Systems, Inc.,1994E031, 12-27-94, **CO**; Gluszek v. Stadium Sports Bar and Grill. 1993E052, 3-16-95, **CDO**; Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95, **CDO**; Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**.

Retaliatory Discharge

Liability Found
Respondent found liable for retaliatory discharge when complainant opposed sex discrimination and was subsequently terminated. Complainant showed (1) she engaged in protected expression, (2) an adverse action was taken by her employer, and (3) a causal link exists between the expression and adverse action. Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**.

Respondent proffered two nondiscriminatory reasons for discharging complainant: (1) her allegedly poor performance, and (2) her allegedly poor attitude. However, complainant has shown that both these reasons are pretextual in that they were unworthy of credence and designed to hide the real discriminatory motive. The first reason--allegedly poor performance in a number of areas--was not credible because the supervisor indicated that complainant was not fired for this reason. The second reason also was pretextual because again the evidence did not support a finding that complainant's attitude had undergone such a dramatic change as to cause her discharge. Thus, the Commission finds that complainant has shown by a preponderance of the evidence that she was discharged in retaliation for her complaints about the supervisor's sexually abusive treatment of her offered by respondent shown to be unworthy of credence and designed to hide discriminatory motive. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

Respondent found liable for retaliatory discharge. Complainant established her prima facie case of retaliation in that: she engaged in protected expression when she complained about comments regarding her sexual orientation and practices; respondent's discharge of complainant constitutes an adverse employment decision; and established a causal link because of the proximity in time between the complaint and her discharge. Respondent has met its limited burden by proffering two nondiscriminatory reasons for discharging her. However, complainant has shown that both these reasons are pretextual in that they were unworthy of credence and designed to hide the real discriminatory motive. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

Liability Not Found
Commission finds that complainant failed to prove by a preponderance of the evidence that respondent's articulated reason for his termination was pretextual and hence retaliatory. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95, **CDO**.

Commission does not find discharge was unlawfully based on discrimination due to hostile work environment but that complainant had resigned voluntarily and employer reasonably believed so when she was replaced. Iverson v. Horwitz, 1994E021, 2-8-96, **CDO**.

Complainant proved by a preponderance of the evidence that he was retaliated against by respondent for his protected activity of filing a formal complaint of discrimination with the Commission. However, respondent proved by a preponderance of the evidence that it would have made the same decision to termination complainant absent the unlawful retaliation. Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **CDO**.

Housing Discrimination

Complainants established a prima facie case of retaliation with direct evidence: respondents admitted that they took away complainants' license to occupy their cottage because of complainants' opposition to unlawful discrimination on the basis of sexual orientation. Complainants also established a prima facie case of retaliation with indirect evidence because (1) they engaged in expression protected under the Ordinance; (2) they suffered an adverse housing action; and (3) there was a causal link between the protected expression and the adverse action. Carroll et al v. Chicago District Campground Assoc. et al., 1999H006-009, 10-16-06, **CDO**.

Commission denied respondent's motion for deferral of complaint investigation for a complaint which was also filed with the Chicago Commission on Human Relations. The Chicago Commission did not have jurisdiction over an allegation of retaliation in housing, therefore, the complaint which alleged retaliation for opposing sexual harassment in housing was properly filed with the Commission. Stovall v. Metroplex,Inc. et al., 1995H010, 10-19-95, **CO**; Sellers v. Outland, 2002H001, 5-6-02, **CO**.

Prima Facie Case

The Commission finds that respondent's individual actions of retaliation against complainant when viewed

collectively constitute a clear pattern of retaliatory conduct by respondent in the wake of complainant's informal complaint of sexual harassment to the respondent. Respondent failed to adequately articulate a legitimate non discriminatory reason for any of their adverse actions against the complainant. McClellan v. Cook County Law Library, 1996E026, 6-7-99, **CDO**.

To prove a *prima facie* case of retaliation a complainant must show: (1) she engaged in protected expression; (2) an adverse action was taken by employer; and (3) a causal link exists between the expression and adverse action. Gluszek v. Stadium Sports Bar and Grill. 1993E052, 3-16-95, **CDO**; Hudok v. Quality Transportation Systems, Inc. 1994E031, 12-27-94, **CO**; Alcegueire v. Cook County Department For Management of Information Systems. 1992E003 and 1992E026, 8-10-95 **CDO**; McClellan v. Cook County Law Library, 1996E026, 6-7-99, **CDO**.

Protected Expression

Not all acts of protest of discriminatory treatment are protected from retaliatory activity on part of the employer, such as complaining on a continual basis in exaggerated, inflammatory, disruptive and inappropriate ways. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95 **CDO**.

Complainant has established a *prima facie* case of retaliation in that a letter she wrote to her employer was protected expression and she was discharged one week later during a discussion about that letter. Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**.

Commission finds that while complainant sometimes protested and complained of acts which he legitimately and in good faith believed to be discriminatory, as the body of employment discrimination law makes clear, not all acts of protest of discriminatory treatment are protected from retaliatory activity on part of the employer. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95 **CDO**.

While legal representatives, including non-lawyers, might be proper respondents in a complaint filed under the CCHRO, the Commission finds that in this case, they are not. Specifically, complainant's characterization of respondents' conduct and complainant's legal conclusions about this conduct do not state a claim for either retaliation or aiding and abetting, and do not otherwise rise to a violation of the CCHRO. Munda v. Polish, et al., 2004E044A, 2-10-05, **CO**.

Public Accommodations

Even taking all of complainant's allegations as true and drawing all reasonable inferences from them in a light most favorable to complainant, the allegations do not state a claim of retaliation as defined by the CCHRO because the letter complainant claimed embody the allegations that denied public accommodation contain no indication that respondents gave complainant the letter in question because of complainant's opposition to discrimination or because he filed under the CCHRO or testified, assisted or participated in an investigation, proceeding, or hearing under the CCHRO as mandated by Art. IX(A). Blakemore v. Cook County Commission on Human Rights et al. 2002PA025, 6-12-03, **CO**.

Complainant's remaining allegations, that were not released by settlement and not time-barred under the Commission's Procedural Rule, fail to state a claim in any respect because, other than the unproven charge that a Commission investigator conspired with the respondent's attorneys, there was nothing within the complaint that suggests that any of the named respondents committed any act that could be characterized as aiding and abetting, interfering, or retaliating. Munda v. Block Medical Center et al., 2004E061, 2-10-05, **CO**.

To state a claim of retaliation for his opposition to housing status discrimination, the complaint needs to contain allegations that complainant expressed or communicated to respondent his opposition to what he reasonably believed to be housing status discrimination. The complaint contains no allegations that complainant opposed housing status discrimination with respondent and, therefore, fails to state a claim of retaliation based on housing status discrimination. Blakemore v. Walgreens, 2005PA001, 4-4-05, **CO**.

RETROACTIVITY

Pre-Ordinance conduct may be admissible as background in assessing impact of post-Ordinance conduct but not admissible for determining liability or assessing damages. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

SANCTIONS
See FINES

SETTLEMENT AGREEMENT

Binding Agreement

In determining that the parties have entered into a binding settlement agreement, the commission made the following findings: (1) the commission may examine the statements the parties made during the negotiation leading to the settlement; (2) an oral agreement is not any less valid than a written one in the eyes of the law; (3) respondent's refusal to issue the settlement check until the agreement was reduced to writing does not negate the agreement to settle; (4) no material terms remained to be negotiated; and (5) a settlement may be rendered unenforceable due to coercion or duress include a showing that medical issues caused a party to enter into an agreement that, but for the medical condition, she would never have entered. The Commission rejects Complainant's argument that the normal pressures of the litigation process cause the complainant to make a decision that she now regrets. Munda v. Block Medical Center, 2003E032, 9-23-04, 11-23-04, **HO**.

Coercion/Duress

The types of grounds upon which Illinois courts have found coercion or duress to exist, rendering a settlement unenforceable, include a showing that medical issues caused a party to enter into an agreement that, but for the medical condition, she would never have entered. The Commission rejects Complainant's argument that the normal pressures of the litigation process cause the complainant to make a decision that she now regrets. Munda v. Block Medical Center, 2003E032, 11-23-04, **HO**.

Enforcement of Agreement

Commission Requirements
In order for the Commission to have jurisdiction and to enforce a settlement agreement, the agreement must be reduced to writing, signed by the parties, submitted to the Commission for approval. Each party to a settlement agreement must also acknowledge that the Commission has jurisdiction to enforce the agreement. Absent that acknowledgment, the Commission has no jurisdiction to enforce the settlement. Lacy v. Cook County Hospital, 1992E033, 6-8-95, **CDO**; Banks v. Cook County Juvenile Temporary Detention Center, 1994E088, 3-14-96, **CO**; Munda v. Block Medical Center, 2003E032, 09-23-04, **HO**.

The parties to a Commission approved settlement agreement specifically acknowledge that the Commission retains jurisdiction for the purposes of enforcing the agreement, including seeking judicial enforcement where appropriate. Commission Procedural Rule 440.160 provides that if a party believes there is non-compliance with the terms of the settlement agreement, the party is required to notify the Commission which will commence an investigation into the alleged non-compliance. Marquez v. Kostich, 1996H001, 11-12-98, **CO**.

Oral Settlement Agreement
Under appropriate circumstances, the Commission will enforce a non-private, properly made oral settlement agreement. For an oral settlement agreement to be enforceable, there must be an offer and acceptance, definite and certain terms, and a meeting of the minds as to those terms. In this case, there was no meeting of the minds as to the terms of the proposed oral agreement. Jaber v. Allan Management Services and Karen Doroski, 1994H009, 6-30-98, **CO**.

The Hearing Officer concludes that the parties entered into an enforceable oral agreement to settle this case on specified terms. But because the Commission lacks in this instance the authority to enforce the agreement, it is the responsibility of respondent- should complainant continue to decline to execute the settlement agreement and release- to file an appropriate action in an appropriate state court seeking enforcement. Munda v. Block Medical Center, 2003E032, 9-23-04, **CO**.

Private Settlement Agreement
The Commission lacks jurisdiction to proceed to hear a matter that the parties have settled. Thus, unless the parties have agreed that the Commission will retain jurisdiction over a matter for the purposes of enforcing the terms of a settlement, the Commission must dismiss a complaint that has been settled. Munda v. Block Medical Center,

2003E032, 09-23-04, **HO**.

The Commission's Rules specify at Section 440.125 that a settlement agreement can be enforced by the Commission only after it has been executed in writing and submitted to the Commission for approval. That did not occur in this instance. Nothing, however, in the CCHRO or Rules prevents the Commission from dismissing a complaint which has been settled, nor requires it to continue to hear a case which has been settled, and, in fact, the Commission lacks jurisdiction to proceed to hear a matter which the parties have settled. Munda v. Block Medical Center, 2003E032, 9-23-04, **CO**.

Release of Claims

In evaluating a request for reconsideration after a complaint has been dismissed due to a settlement agreement, the Commission may consider statements made during a settlement agreement to determine whether a binding settlement has occurred. Munda v. Block Medical Center, 2003E032, 11-23-04, **HO.**

The Commission has jurisdiction to determine whether a complaint should be dismissed because the complainant released his Commission claims pursuant to a private settlement agreement. The Commission found that the complainant failed to prove fraud or mutual mistake and, therefore, the release dismissing the Commission complaint is valid. Lacy v. Cook County Hospital, 1992E033, 6-8-95, **CDO**.

Motion to dismiss is granted, given that most of complainant's claims lodged against respondents were released through the parties' settlement of the complaint in question. However, claims after the settlement conference will not be released. If, under the guise of filing new complaints, the complainant is attempting to circumvent or challenge the Commission's dismissal of a prior complaint, her appropriate recourse is to appeal that decision through a petition for writ of *certiorari* in a court of appropriate jurisdiction. Munda v. Block Medical Center, et al., 2004E061, 2-10-05, **CO**.

SEX DISCRIMINATION

Liability Not Found

Commission finds that complainant has not met her burden of proof that she was (1) unlawfully discriminated against on the basis of her race and/or sex and (2) has failed to rebut respondent's articulated non-discriminatory reasons for its actions. Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**; Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-26-98, **CDO** (sex discrimination).

In a case other than a discharge case, complainant, a female, must show that she was in a protected class, was meeting respondent's legitimate job expectations, and was terminated from the training program, while respondent continued to accept new dispatchers through its training program. Complainant failed to prove by a preponderance of the evidence that she was meeting respondent's legitimate expectations for performance in the flight dispatch training program. McCoy v. United Airlines, Inc., 1996E111, 10-10-02, **CDO**.

Pregnancy

In the absence of a specific reference in the CCHRO to pregnancy or a definition of sex discrimination in which sex discrimination is defined as including pregnancy or proof that pregnancy was used as a pretextual basis to hide different treatment given to similarly situated male employees, complainant's claim of pregnancy discrimination is not actionable under the CCHRO. Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO.**

Prima Facie Case

Complainant made out a *prima facie* case of discrimination on the basis of sex and unlawful discharge in violation of the CCHRO. Complainant alleged that she belongs to a protected class, she is female; she was meeting respondent's legitimate performance expectations for her assignment; she was terminated by the respondent; and, she was replaced by a male. Hudok v. Quality Transportation Systems, Inc., 1994E031, 12-27-94, **CO**.

Complainant, who is a black female, presented a *prima facie* case that respondent unlawfully discriminated against her on the basis of her race and sex, by reassigning her duties to a white male employee and then paying that

employee more than she had been paid for performing those duties. Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**.

SEXUAL HARASSMENT

Analytical Framework

The Commission has adopted the analytical framework enunciated in McDonnell Douglas and Texas Department of Community Affairs in adjudicating disparate treatment cases where no direct evidence of discriminatory intent is present. Complainant must establish by a preponderance of the evidence a *prima facie* case of sexual harassment. The burden then shifts to the respondent to articulate a legitimate non-discriminatory reason for its actions. If the respondent articulates a non-discriminatory reason for its actions, the complainant must then prove by a preponderance of the evidence that the articulated reason was pretext for unlawful discrimination. Complainant retains at all times the ultimate burden of proving that the respondent engaged in unlawful behaviors. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

In determining whether a complainant has established a prima facie case of sexual harassment, the facts will often vary and the specific prima facie proof required is not necessarily applicable in every respect to differing factual situations. A prima facie case under the McDonnell Douglas, raises an inference of discrimination only because it is presumed that these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

Co-Employee Harassment

Employer is responsible for acts of sexual harassment between co-employees where employer, (or its agents or supervisors) knew or should have known of the conduct, unless employer can show it took immediate and appropriate corrective action. Urbach v. Amelio's Restaurant, et al., 1997E089, 7-1-98, **CO**.

Constructive Discharge

The CCHRO does not require a tangible employment decision to find an employee's constructive discharge attributed to the employer when it stems from sexually harassing conduct by a supervisor. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Hostile Work Environment

Objective and Subjective Components

To determine whether both the subjective and objective elements are present, the Commission will consider the following factors: (1) the frequency of the discriminatory conduct; (2) the severity of the discriminatory conduct; (3) whether it is physically threatening or humiliating, or a mere offensive utterance; and (4) whether it unreasonably interferes with an employee's work performance. The effect on the complainant's psychological well-being is also an issue to consider to determine whether the person subjectively found the environment hostile, but it is not dispositive. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

See also EMPLOYMENT DISCRIMINATION - Hostile Work Environment

Liability Found

Respondent found liable for sexual harassment toward complainant, for creating a hostile work environment and for retaliatory discharge. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Liability Not Found

Complainant proved by a preponderance of the evidence that she was sexually harassed during her employment at respondent in that she was subjected to a hostile environment. Complainant failed to prove by a preponderance of

the evidence that respondent's response to her allegations were insufficient or ineffective, therefore, respondent not held liable for sexual harassment. McClellan v. Cook County Law Library, 1996E026, 6-7-99, **CDO**.

Supervisory Employees

§ 42-35 (E) of the CCHRO states that "[a]n employer is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence." Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Respondent owner found liable for supervisor's sexual harassment toward complainant, for creating a sexually hostile work environment and for retaliatory discharge of complainant. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

The CCHRO provides for strict liability of the employer for a supervisor's sexual harassment. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

The CCHRO does not require a tangible, adverse employment decision to find an employee's constructive discharge attributed to the employer when it stems from sexually harassing conduct by a supervisor. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, CDO.

SEXUAL ORIENTATION DISCRIMINATION

Hostile Work Environment

An employer has an affirmative duty to maintain a working environment free of harassment on the basis of membership in any protected class covered by the CCHRO. Respondent had an affirmative duty to maintain a work environment free of harassment directed at any employee based on his sexual orientation. Complainant proved by a preponderance of the evidence that he was subjected to a hostile environment as a result of homophobic slurs directed at him by his supervisor. Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **CDO**.

Liability Found

When an employer bases its hiring or firing decisions on an individual's sexual orientation, such discrimination is offensive to the principles of fairness and equal treatment. Firing an individual due to his actual or perceived heterosexuality, homosexuality or bisexuality explicitly violates the CCHRO. Pursuant to an order of default for respondent's refusal to respond to complaint, respondent found liable for manager's unlawful discharge on the basis of sexual orientation. Feges v. The New Embers Restaurant, 1993E013, 6-16-94, **CDO**.

Respondent found liable for termination of complainant due to his sexual orientation. The respondent is still liable if unknowing upper management acted as an unwitting conduit for the discrimination of lower management. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**.

Based on the evidence presented, an inference is drawn to establish a causal connection between one of respondent's supervisor's hostility toward homosexual males in general and complainant in particular and complainant's termination. The respondent, who relied upon and was influenced by, this supervisor's behavior is liable for complainant's unlawful termination. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**.

STANDING

Advocacy Agency

Advocacy organizations may be proper parties under the ordinance and can be awarded damages. The Commission determined that the South Suburban Housing Center (SSHC), an advocacy agency that is involved in monitoring, training, and remedying unlawful housing practices that are included in the CCHRO may be a proper complainant under the CCHRO. Garcia v. Winston, et al., 2003H003, 2003H004, 5-16-06, **CDO**.

Executor of Estate

The executor of an estate has standing to file a complaint for violation of civil rights on behalf of estate, despite absence of contractual relationship between executor and estate. Rabe v. Michael's Funeral Home et al., 1994PA008, 10-22-96, **CO**.

Indirect Discrimination

Commission denies motion to dismiss one of two complainants. Complainants, husband and wife, reside in separate, but adjoining apartment units. Neither of complainants' leases was renewed by respondent. The Commission finds a sufficient nexus between the alleged disability of the complainant husband, his related behavior and the failure of the respondents to renew the lease of complainant wife as stating a claim of indirect discrimination based on complainant wife's actual association with her husband, a person with a disability. James and Marjorie Anderson v. Town Management, Howard Fink, Barrington Lakes Apartments, and Lois Phelps, 1996H012, 6-9-97, **CO**.

Requirements

A complainant has standing to bring an action when a claimed injury is (1) distinct and palpable; (2) fairly traceable to defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief. Lack of standing Is an affirmative defense that must be raised by a defendant or respondent. Smith v. McCafferty's Pub, 2002PA029, 11-18-04, **CDO**; Smith v. Michael Anthony's Restaurant, 2002PA028, 4-12-05, **CO**.

STATUTE OF LIMITATIONS

180-Day Filing Period

Subsequent to an investigation of complainant's allegations, the Commission determined that the complaint was not timely filed in accordance with § 42-34 (B)(1) of the CCHRO and therefore dismissal for lack of jurisdiction is proper. Mendez v. Autozone, 2000E037, 9-24-01, **CO**; Pleasant v. The Thresholds, 2001E007, 7-13-01, **CO**; Totten v. Chicago District Campground Association et al, 2001H003, 8-16-01, **CO.**

The language of the CCHRO in § 42-34 (B)(1)(a) does not explicitly refer to the 180-day filing period as jurisdictional. The 180-day filing period is like a statute of limitations which in appropriate circumstances may be tolled, e.g., where the complainant acts diligently. O'Neill v. Handy Andy Home Improvement Centers, 1994E053, 6-20-95, **CO**.

Motion to dismiss denied. A dispute as to whether a complaint was filed within the 180 day period involves mixed questions of fact and law and is not properly decided on a motion to dismiss. However, through the fact finding investigation, if it becomes clear that the allegations either do not state a cause of action, or that the Commission is without jurisdiction over the complaint itself, the Commission will dismiss the complaint. Munda v. Block Medical Center, et al., 2004E061, 2-10-05, **CO**.

Continuing Violations

§ 42-34 (B)(1)(a) of the CCHRO and Commission Procedural Rule 420.100(A) recognize that a violation of the CCHRO may be of a continuing nature. The continuing violation theory allows incidents which would otherwise be time-barred to be considered timely because they are part of a pattern of related events, at least one of which occurred during the 180-day filing period. In determining whether allegations are of a continuing nature, the Commission considers the following factors: (1) subject matter: do the alleged events involve the same type of discrimination; (2) frequency: are the acts recurring and not isolated or discrete; and (3) permanence: does a pattern or series of acts over a period of time finally alert the individual that his or her rights are being violated. Martin v. Club Fever, 1998PA009, 11-30-98, **CO**; Howard v. Pappas Transport, 1999E033, 2-8-00, **CO**.

The effects or outgrowth of alleged past discrimination may continue in the present but do not create an independent basis for a complaint and do not cause a new filing period to run. Complainant's allegation that the filing of a lien was discriminatory was not timely. The Commission rejected her argument that the removal of the lien (an outgrowth of the original filing) caused a new filing period to begin to run. Spurgash v. 7041-49 O'Connell Condominium Association and Kiner, 1994H006, 10-19-98, **CDO**.

Section 420.100(A) of the Commission's procedural rules provides that a complaint must be filed with 180 days of the date of the alleged occurrence. Here, the only two allegations of the complaint not time-barred are complainant's allegations that respondents aided and abetted, interfered, and retaliated against her. The sole argument available to complainant as to the timeliness defense would be the "continuing violations" theory pursuant to which, under certain narrow circumstances, a discrimination complainant can reach back to events occurring more than 180 days before the filing of a charge or complaint. It is clear from the face of the complaint, however, that the only timely allegations within the complaint have little or no connection at all to the time-barred allegations. Thus, respondent's motion to dismiss is granted. Munda v. Block Medical Center, et al., 2004E061, 2-10-05, **CO**.

Date of Alleged Violation

Complaint dismissed due to lack of jurisdiction because complaint was filed beyond the 180-day filing limitations period. See, e.g., Kwok-Keung Law v. Real Estate Buyer's Agent,Inc., 1994H003, 4-15-94, **CO**; Jones v. Motorola, Inc., 1995E086, 10-24-95, **CO**; Sulls v. McDonald's Restaurant, 1996E117, 6-3-97, **CO**; McBride v. Quebecor Printing, 1999E030, 6-3-99, **CO**; Munda v. Block Medical Center, et al., 2004E061, 2-10-05, **CO**.

Disputed facts regarding whether complaint was timely filed raises a jurisdictional issue whose ultimate resolution, if not evident from the face of the pleadings, would be properly considered during the Commission's fact finding investigation. Thomas v. Cook County Treasurer's Office, 1995E034, 12-6-95, **CO.**

Commission denies motion to dismiss filed subsequent to the commencement of an administrative hearing, where unresolved factual questions exist regarding whether the complaint was timely filed such that, at the administrative hearing, complainant may prove facts to support her claim that the complaint was timely filed. Spurgash v. 7041-49 O'Connell Condominium Association and Philip Kiner, Treasurer, 1994H006, 6-20-97, **HO**.

The Commission lacked jurisdiction of the complaint because the last act that could form the basis of a violation of the CCHRO (the filing of a lien) occurred more than 180 days before the date the complaint was filed. The Commission found that the 180-day filing period began to run when the complainant had notice of the filing of the lien. The Commission rejected arguments that the subsequent removal of the lien be construed as the act which caused the 180-day filing period to run because the removal of the lien was merely an outgrowth of the original filing of the lien (not an independent basis for a complaint) and the removal of the lien was not injury in violation of the CCHRO. Spurgash v. 7041-49 O'Connell Condominium Association and Kiner, 1994H006, 10-19-98, **CDO**.

Commission dismisses respondent's motion to dismiss and finds that complainant's allegation of the date of alleged violation must be taken as true and not an arbitrary date chosen by respondent with no reason in support. Howard v. Pappas Transport, 1999E033, 2-8-00, **CO.**

Subsequent to an investigation of complainant's allegations, the Commission has determined that the complaint was not timely filed in accordance with § 42-34 (B)(1) of the CCHRO and therefore dismissal for lack of jurisdiction is proper. Mendez v. Autozone, 2000E037, 9-24-01, **CO**; Pleasant v. The Thresholds, 2001E007, 7-13-01, **CO**; Totten v. Chicago District Campground Association et al, 2001H003, 8-16-01, **CO.**

The Commission determines that the conduct that occurred during 1997, over 5 years prior to the filing of the complaint, was outside of the Commission's jurisdiction, having occurred outside of the Commission's 180-day jurisdictional filing period, and not part of a continuing violation. Since the Commission is without jurisdiction over that conduct, there is nothing for the Commission to reconsider at this time. Candelaria v. Cermak Health Services, 1998E051, 5-6-05, **CO**.

Section 420.100(B) of the Commission's Rules provides that the Commission may waive any of its complaint filing requirements in Section 420.100(B) upon a showing of extraordinary circumstances. Here, complainant requested to amend complaint to cure a technical defect to place the actual date of discrimination three days earlier, and therefore, placing the alleged violation within the 180 day requirement. Any dispute as to the actual date of discrimination will be addressed during the course of the Commission's neutral fact finding investigation, and therefore, complainant's motion to amend complaint is granted. Perez v. Lake Park Construction, Inc., 2004E063, 3-21-05, **CO**.

Equitable Tolling

The language of the CCHRO in § 42-34 (B)(1)(a) does not explicitly refer to the 180-day filing period as jurisdictional. The 180-day filing period is like a statute of limitations which in appropriate circumstances may be tolled, i.e., where the complainant acts diligently. O'Neill v. Handy Andy Home Improvement Centers, 1994E053, 6-20-95, **CO**.

In deciding whether it is appropriate to toll the 180-day filing period the Commission will consider the following in a given case: (1) the complainant's diligence; (2) the Commission's role, if any, in a late filing; and (3) whether the decision to equitably toll the filing period serves the purposes of both the CCHRO and the Commission's Procedural Rules. Complainant was diligent in pursuing his claim and was in no way at fault for the late filing and should not be penalized for an unintentional mistake made by a Commission investigator; and thus equitable tolling allowed. Ross v. Orthopedic Specialists, S.C., 1998E043, 7-9-98, CO; Borelli v. Presidential Mortgage Company, 1998E058, 10-1-98, **CO**; Muriel Brown v. Lutheran General Hospital, 1995E038, 3-20-96, **CO**.

Notice of Discriminatory Act

The 180-day filing period limitation begins to run with notice of the discriminatory act, not at the point when the consequences of the act become painful. Neither appeals nor a deferral of final date of employment postpone the time within which complainant must make the complaint. Chen v. Northwestern University, 1993E054, 9-1-94, **CO**. See also Spurgash v. 7041-49 O'Connell Condominium Association and Kiner, 1994H006, 10-19-98, **CDO**.

Notice of the discriminatory act complained of must be definitive and unambiguous. The language used herein was too ambiguous to serve as final notice of a decision by respondent to terminate the complainant. Clay v. Cook County Hospital, 1996E059, 8-8-97, **CO**.

The Commission finds that the 180-day filing period did not begin to run the date complainant was discharged. Complainant's suspension five months prior to his termination did not constitute definitive and unambiguous notice of the alleged discriminatory act. Thompson v. Premier Delivery Service, Inc., 1995E085, 8-15-97, **CO**.

The Commission finds that the complaint was not timely filed within the 180-day period and further finds that the 180-day filing period begins to run when employee was notified that he was terminated rather than the subsequent date upon which he received his severance and vacation benefits paychecks. Kracke v. Thorn Creek Basin Sanitary District, 2000E006, 4-6-00, **CO**.

The 180-day filing period begins to run when the complainant had definitive and unambiguous notice of the alleged discrimination. The Commission finds that the complaint was not timely filed because the complainant had notice of the alleged discrimination in excess of 180 days of filing his complaint. Complainant's subsequent appeals of the board's decisions do not constitute independent acts of discrimination and, therefore, do not delay the tolling of the complaint filing period. Totten v. Chicago District Campground Association, 2001H003, 8-16-01, **CO**.

STRICT LIABILITY

The CCHRO provides for strict liability of the employer for a supervisor's sexual harassment. Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

Respondent is liable for discrimination if unknowing upper management acted as an unwitting conduit for the discrimination of lower management. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**.

§ 42-35 (E) of the CCHRO states that "[a]n employer is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence." Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-

Respondent owner found liable for manager's sexual harassment toward complainant, for creating a sexually hostile work environment and for retaliatory discharge of complainant. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Desparte v. Arlington Heights Kirby et al., 2002E020, 6-20-06, **CDO**.

SUBSTANTIAL EVIDENCE

When credibility of parties and witnesses is at issue during a Commission investigation, a substantial evidence determination is appropriate. The choice of whom to believe should be made by an administrative hearing officer with witnesses under oath and the rules of evidence applying. Ehlers v. United Parcel Service, 1997E027, 9-21-98, **CO**.

Substantial evidence is shown when "more than a mere scintilla of relevant evidence exists such that a reasonable mind might find it sufficient to support a conclusion." Green v. Avon Products, Inc., 1996E096, 1-20-98, **CO**, citing Commission Procedural Rule, 440.120(C) and Zunino v. Cook County Commission on Human Rights, 289 Ill. App.3d. 133, 136 (1st Dist. 1997).

SUMMARY JUDGMENT

Commission Procedural Rule 460.160 does not allow for summary judgment motions and as such will not entertain or consider such motions. See, e.g., Seaphus et al v. Laiser et al d/b/a. S&L Management, 1994H007, 4-11-95, **CO**; Borelli v. Presidential Mortgage Company, 1998E058, 10-1-98, **CO**; Munda v. Block Medical Center, 2003E032, 10-9-03, **CO**.

See also MOTIONS

UNLAWFUL DISCHARGE

Complainant must show: (1)she engaged in protected expression; (2) she was subsequently terminated; and (3) a causal link exists between the expression and adverse action. Hudok v. Quality Transportation Systems, Inc.,1994E031, 12-27-94, **CO**; Gluszek v. Stadium Sports Bar and Grill. 1993E052, 3-16-95, **CDO**; Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95, **CDO**; Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**.

See also RETALIATION - Employment Discrimination - Unlawful Discharge

VERIFIED RESPONSE

See RESPONSE

WILLFUL INTERFERENCE

Complainant's allegation relating to interference under § 42-41 (C) of the CCHRO fails to state a claim because, among other things, the allegation does not specifically identify which duty or exercise of power by the Commission was the subject of respondents' willful interference or exactly how respondents willfully interfered with such a duty or power, Moreover, her allegations contain no factual support for such claims. Furthermore, the Commission draws no inference from the allegations that respondents engaged in willful interference with the Commission's exercise of its powers or duties. Finally, it rejects any suggestion by complainant that respondents' advocacy on behalf of their clients constitutes willful interference under the CCHRO. Munda v. Polish et al., 2004E044A, 2-10-05, **CO**.

The allegations in the complaint, which were not released by settlement and not time-barred under the Commission's Procedural Rules, fail to state a claim in any respect and are therefore, dismissed. Other than the unproven charge that a Commission investigator conspired with the respondent's attorneys, there is nothing within the complaint that suggests that any of the named respondents committed any act that could be characterized as aiding and abetting, interfering, or retaliating. The Commission also finds that complainant failed to set forth specific facts that could support any claim that respondents are vicariously liable for their counsel's alleged actions in the matter. Munda v. Block Medical Center et al., 2004E061, 2-10-05, **CO**.

WITHDRAWAL OF ATTORNEY

Leave Granted

Conflict of Interest
Commission grants respondent's attorney leave to withdraw from representing an individually named respondent.

When the counsel initially appeared on behalf of the individual respondent, he was employed by respondent Cook County Juvenile Temporary Detention Center. He is no longer employed by respondent and based on the reasons for his separation of employment from respondent, continued representation would cause a potential conflict of interest. Gilyard v. Cook County Juvenile temporary Detention Center and Donald Person, 2004E069, 12-6-05, **CO**; See also Lamet v. Niles Township Jewish Congregation, 1995E041, 6-11-96, **CO**.

In case with two named respondents, Commission grants attorney leave to withdraw from representing the individually named respondent when individual is no longer employed by the other respondent and a conflict or potential conflict exists between representing the interests of both respondents. Tsimogiannis v. United Buying Service and Ricky Quinones, 1995E074, 3-24-98, **CO**.

Commission grants attorney leave to withdraw because he was hired for a federal position which prohibits continuing representation of complainant, who since had secured a new counsel. Palmer v. Metropolitan Water Reclamation District of Greater Chicago, 1994E057, 8-7-95, **CO**.

During Administrative Hearing
Commission grants attorney leave to withdraw where respondent is no longer in business, no attorney fees have been paid to him, and where attorney lost contact with client. Jaber v. Allen Management Systems and Karen Doroski, 1994H009, 4-7-99, **HO**.

Inability to Continue
Commission grants attorney leave to withdraw where an evidence determination has not yet been made and complainant's attorney might be a witness to one of the key issues in the case, and pursuant to Rule 3.7 of the Illinois Rules of Professional Conduct, an attorney "shall not accept or continue employment...if may be called as a witness". Boughton v. Zonac Aluminum Siding and Jerry Malinowski, 1998E032, 3-27-02, **CO**.

Irreconcilable Differences
Commission grants attorney leave to withdraw because of irreconcilable differences with complainant. See, e.g., Spector v. ARA Cory Refreshment Services, 1995E098, 12-20-96, **CO**; San Ramon v. Cook County Hospital, 2000E014, 6-13-00, **HO**;Florczyk v. MBC Mortgage Corp., 2002E086, 3-19-03, **CO**.

Withdrawal of attorney will be permitted when such withdrawal would neither delay Commission proceedings nor otherwise affect administrative efficiency or prejudice complainant. See, e.g., Lopez v. Advanced Transformer Co., 1995E013, 2-13-97, **CO**; McAndrew v. Goodyear Tire & Rubber Co., 1995E057, 5-28-96, **CO**; Caffarello v. Filene's Basement, Inc., 2004E047, 2-7-05, **CO**; Kramer v. Security Solutions ADT, and Brett Blessen Individually, 2004E029, 1-11-05, **CO.**

Commission grants attorney leave to withdraw. Counsel indicated to the Commission that he believes respondents are no longer in business and he was unaware of any working phone number for respondents. Desparte v. Arlington Heights Kirby et al., 2002E020, 5-06-05, **CO**.

Commission grants respondent's attorney leave to withdraw, where an evidence determination has not yet been made and respondent's president has filed an appearance on behalf of respondent. Hopp v. Bruce Woodworking, Inc., 1997E099, 1-5-98, **CO**.

Commission grants motion of respondents' attorneys to withdraw when respondent informed counsel that their services are no longer required. Diaz v. NBC, Inc. 1997E014, 12-11-97, **CO**; Mitchell v. South Suburban Systems, Inc., d/b/a McDonald's, 1997E092, 5-14-98, **CO**; Finn v. LaSalle Bank, 1998E078, 9-30-99, **CO**.

Commission grants motion of complainant's attorney where complainant had constructively terminated attorney-client relationship. Tobin v. WMC Equity Services and Todd Soronen, 1998E068, 4-21-00, **CO**; Martin v. Club Fever, 1998PA009, 5-13-02, **CO**.

Where attorney's withdrawal is solely a matter of formality, Commission will not withhold leave. Bishop v. H2O Plus, LLP, 2004E026, 1-4-06, **CO**.

Non-Cooperative Client
Commission grants motion of attorney for complainant to withdraw as counsel because of complainant's refusal to respond to phone calls and letters from counsel. Thompson v. Premier Delivery, Inc., 1995E085, 8-5-97, **CO**;

Medina v. LeFebvre Intergraphics Inc., et al., 1996E010A, 5-5-98, **CO**, Aughtry v. Zanayed & Panzarotto, 2003H001, 5-16-03, **CO**.

Post-Administrative Hearing
Commission grants attorney leave to withdraw where there was no agreement of counsel to represent complainant throughout any stage of the appeal process, after the Commission issued its decision and order. Alcegueire v. Cook County Department for Management of Information Systems, 1992E003 and 1992E026, 9-21-95, **CO**.

Settlement Agreement
Commission grants attorney leave to withdraw although complainant's attorney did not file a motion with the Commission and did not wait for Commission leave to withdraw because complainant entered into private settlement agreement with respondent. Bishop v. H2O Plus, LLP, 2004E026, 1-4-06, **CO**.

Substitute Counsel
Respondent's motion to substitute counsel granted. There has been no showing that complainant would be prejudiced by allowing Sachnoff & Weaver to withdraw as attorneys for respondent. Munda v. Block Medical Center, 2003E032, 1-20-04, **HO**.

WRIT OF CERTIORARI

Pursuant to Commission Procedural Rule 480.115 any party may file a petition for writ of certiorari in accordance with applicable law seeking an appeal of a final order or a final decision of the Commission. Alcegueire v. Cook County Department for Management of Information Systems, 1992E003 and 1992E026, 9-21-95, **CO**.

Motion to dismiss is granted, given that most of complainant's claims lodged against respondents were released through the parties' settlement of the complaint in question. However, claims after the settlement conference will not be released. If, under the guise of filing "new" complaints, the complainant is attempting to circumvent or challenge the Commission's dismissal of a prior complaint, her appropriate recourse is to appeal that decision through a petition for writ of *certiorari* in a court of appropriate jurisdiction. Munda v. Block Medical Center et al., 2004E061, 2-10-05, **CO**.