



COOK COUNTY COMMISSION ON HUMAN RIGHTS SUBJECT MATTER INDEX

DECISIONS AND ORDERS FROM NOVEMBER, 1993 THROUGH MAY 30, 2003

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 May 30, 2003.

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 Cook County Commission on Human Rights 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. When it is first entered, a Commission Order is not a final order. Either party may request that the Commission reconsider the Order at a later date in accordance with the applicable Commission Procedural Rules. 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. Like a Commission Order, when a Hearing Officer Order is entered, it is not a final order. 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. As a final order, this order has the most significant precedential value.

EXPLANATION OF ABBREVIATIONS IN INDEX: Complaint numbers denoting "**E**" are employment complaints; "**H**" indicate housing complaints; "**PA**" signify public accommodation complaints; "**C**" indicate credit complaints.

AVAILABILITY OF DECISIONS AND ORDERS: Hard copies of the complete Commission decisions and orders are kept at the **Commission's Office** and may be copied for the cost of \$0.25 per page. Copies are also kept at the **Cook County Law Library Reference Desk on the 29th floor of the Daley Center.**

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ADMINISTRATIVE HEARING

BRIEFS ON EXCEPTIONS

Commission adopts hearing officer's initial proposed decision and order. 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**; Lacy v. Cook County Hospital, 1992E033, 6-8-95, **CDO**.

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**.

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 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 on October 7, 1996, 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 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**.

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 should not be dismissed. Koop v. Drs. Pick & Amadeo, 1994E016, 11-9-95, **CDO**; Sampson v. Cermak Health Services, 1993E009, 4-27-95, **CDO**; Burns v. Sam's Warehouse Club, 1996E033, 5-26-98, **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**.

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**.

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, 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 undermines 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**.

PRO SE PARTIES

Obligation to Participate

The Commission finds *pro se* parties have an obligation to respond to Commission orders. Commission cannot fulfill its public duty in the absence of cooperation. Where 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**.

REMAND TO HEARING OFFICER

In accordance with Commission Procedural Rule 470.105(B), the Commission remanded case back to hearing officer to address the issue of whether the Commission should consider, and for what purpose, pre-Ordinance conduct. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

REQUEST FOR RECONSIDERATION

After Final Commission Decision and Order

Pursuant to Commission Procedural Rule 480.115(C), after an administrative hearing, complainant may file a request for reconsideration or file a petition for writ of certiorari in accordance with applicable law. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 9-21-95, **CO**.

SUBPOENAS

See SUBPOENAS

AFFIRMATIVE DEFENSE

The Commission generally will not dismiss either a complaint or any affirmative defenses 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**.

AGE DISCRIMINATION

***PRIMA FACIE* CASE**

Complainant made out *prima facie* case of discrimination on the basis of age. Complainant alleged the following: 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

PRINCIPALS/OWNERS

Liability Found

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**.

AIDING AND ABETTING

INDIVIDUAL LIABILITY

Under Article IX(B) of the Ordinance, individuals may be held liable when they aid and abet another person (including the corporation they work for) to commit a violation under the Ordinance. 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**.

AMENDMENT OF COMPLAINT

POST-EVIDENCE DETERMINATION

Add Claims

Commission grants motion to amend complaint pursuant to Commission Procedural 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, 1996E026, 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 Parties

Commission grants motion to amend complaint to add an additional respondent prior to evidence determination. Harmon v. SRC/21st Century Healthcare Management, 1999E066, 12-14-99, **CO**.

Commission grants motion to amend complaint to add an additional respondent prior to evidence determination. Laiser and S&L Management v. Baldwin Greens Homeowners Association et al, 1997H009, 4-26-00, **CO**.

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, 1-04-00, **CO**

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 in the Ordinance, the Commission's Procedural Rules and this order. 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**.

Deceased Respondent

In accordance with Commission Procedural Rule 420.140(H), a legal successor may be substituted for deceased respondent. The complainant's responsibility, in this case, is to determine who the legal successor is. The Commission will consider the motion to amend. Absent such amendment, the Commission will be unable to take further action on this case. Benson v. Affordable Carpet Cleaning and Alfonso Houston, 1996E0106, 12-21-00, **CO**.

AMICUS CURIAE BRIEFS

PERMISSION TO FILE GRANTED

Where a motion to dismiss is pending, Commission grants motion of civil rights organization with considerable expertise in the area 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

ATTORNEY WITHDRAWAL PERMITTED

Conflict of Interest

Commission grants attorney leave to withdraw as counsel for complainant because of conflict of interest. Lamet v. Niles Township Jewish Congregation, 1995E041, 6-11-96, **CO**.

Commission grants attorney leave to withdraw as counsel for complainant 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**.

Commission grants respondent's attorney leave to withdraw from representing an individually named respondent. At the time counsel initially entered his appearance on behalf of respondent UBS, and Ricky Quinones, individually, Mr. Quinones was employed by respondent. Mr. Quinones is no longer employed by the respondent and due to the nature of the underlying sexual harassment allegations, a conflict or potential conflict exist between representing the interests of UBS respondent and Mr. Quinones. Commission finds attorney's request to withdraw representation from individually named respondent reasonable. Tsimogiannis v. United Buying Service and Ricky Quinones, 1995E074, 3-24-98, **CO**.

Respondent's motion to disqualify complainant's counsel for a conflict of interest between counsel's former representation of respondent and current representation of complainant withdrawn. Parties agreed to the erection of a "Chinese Wall." The agreement provided in pertinent part, that counsel Caffarelli withdraw his appearance on

behalf of complainant; that his partner, Siegel, would be given leave to file his appearance on behalf of complainant; that no discussion or contact of any kind concerning this matter shall take place between these individuals; that files on this matter will be kept in a separate location; that counsel Caffarelli will have no access to these files; and, all personnel at complainant's law firm shall be advised of these precautions. Valencia v. LaFrancaise Bakery, 2001E055, 3-26-02, **HO**.

During Administrative Hearing

Commission grants complainant's attorney's motion to withdraw because of irreconcilable differences with complainant. San Ramon v. Cook County Hospital, 2000E014, 6-13-00, **HO**.

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 Services and Karen Doroski, 1994H009, 4-7-99, **HO**.

Inability to Continue

Commission grants complainant's 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. Rule 3.7 of the Illinois Rules of Professional Conduct state in pertinent part, that "an attorney shall not accept or continue employment....if he or she may be called as a witness." Boughton v. Zonac Aluminum Siding and Jerry Malinowski, 1998E032, 3-27-2002, **CO**.

In General

Commission finds that withdrawal of attorney will be permitted when such withdrawal would neither delay Commission proceedings nor otherwise affect administrative efficiency or prejudice complainant. Lopez v. Advanced Transformer Co., 1995E013, 2-13-97, **CO**; McAndrew v. Goodyear Tire and Rubber Co., 1995E057, 5-28-96, **CO**; Brown v. Lutheran General Hospital, 1995E038, 10-3-95, **CO**; Elrod v. Elementary School District #159, 1995E053, 3-5-97, **CO**; Mareske v. Omega World Travel, 1996E119, 4-3-97, **CO**; Banks v. Cook County Juvenile Temporary Detention Center, 1994E088, 10-30-95, **CO**; Soumpholphakdy v. Circuit Services, Inc., 1996E016, 5-30-97, **CO**; Flood v. J.S. Computer Learning Center and Jay Saffarzadeh, 1997E009, 4-30-97, **CO**; Yanes v. Avon Products, Inc., 1996E008, 5-5-98, **CO**; Blobaum v. Village of Morton Grove, 1998H025, 1-14-99, **CO**; Wollscheid v. Village of Morton Grove, 1998H026, 1-14-99, **CO**; Yacko v. Village of Morton Grove, 1998H019, 1-14-99, **CO**; Silverman v. Kendall College and Kathleen M. Sheridan, 1999E026, 10-5-99, **CO**; Huggins v. Ace Hardware, 1999E046, 4-17-00, **CO**; Lucas v Zeta International and Branco Jevtic, 1996E022, 6-12-00, **CO**; Stagailo v. Salton-Maxim Housewares, Inc. and Mark Kasper, 1999E017, 7-21-00, **CO**; Starks v. Whole Foods Mid-Atlantic, Inc., d/b/a Whole Foods Market, 1997E041, 11-20-00, **CO**; Jaber v. Allen Management Services and Karen Doroski, 1994H009, 4-7-99, **HO**; Kelley v. Glenwood School, 2000E056, 9-28-01, **CO**; Meagher v. Target, a subsidiary of Dayton-Hudson, 1996E058, 6-1-99, **CO**; Hedquist v. GameWorks, 2001E026, 11-15-01, **CO**; Korziuk v. Krex Computer, Inc., Stephen Krex and Howard Adlam, 2002E002, 7-26-02, **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**.

Irreconcilable Differences

Commission grants attorney leave to withdraw because of irreconcilable differences with complainant. Spector v. ARA Cory Refreshment Services, 1995E098, 12-20-96, **CO**; Berger v. Hilfiger, 1995E033, 6-28-95, **CO**; West v. Amdahl Corporation, 1995E118, 3-25-96, **CO**; Klein v. Sprint/Centel Illinois, 1997E035, 7-28-97, **CO**; Dudnik v. Impressions Unlimited, 1996E109, 7-28-97, **CO**; Florczyk v. MBC Mortgage Corp., 2002E086, 3-13-03, **CO**.

No Agreement for Representation on Appeal

Commission grants attorney leave to withdraw where there was no agreement of counsel to represent complainant in any appeal 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**.

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 & Panzarrotto, 5-16-03, **CO**.

PRO HAC VICE

Leave Granted

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. Wicklund v. Nimrod Natural Gas, Chicago Energy Management, Inc., and Charles Forman, 1995E076, 12-19-95, **CO**; Ripoli v. Stewart Warner Electronics Company, Herly Industries, Inc., 1996E085, 11-18-96, **CO**; Krzyszton v. Falcon and American Golf Corporation d/b/a Mission Hills Country Club, 1995E089, 9-5-95, **CO**; Eklin v. Farmers Insurance Group and Kenneth C. More Agency, 1996E018, 4-24-96, **CO**; Headrick v. The Body Shoppe and Seif E. Sharif, **CO**; 1997E045, 12-12-97, **CO**; High v. Gart Brothers d/b/a Sportmart, 1998E089, 12-29-98, **CO**; Lane v. Strouds, Inc., 1998E085, 12-31-98, **CO**; Smith v. Bell Packaging, 1999E008, 2-8-99, **CO**; Groves v. Landis Plastics, 1999E038, 8-18-99, **CO**; Hunt v. Landis Plastics, 1999E040, 8-18-99, **CO**; Glasser v. Heartland Payment Systems, LLC, 1999E045, 8-18-99, **CO**; Baggs v. Clarus Corporation, 1999E031, 7-17-00, **CO**; Schwartz v. webMethods, Inc., 2000E061, 3-20-01, **CO**; Lund v. Express Technologies, 2001E035, 9-12-01, **CO**; Holloway v. Wolf Camera & Video, 1999E050, 9-9-99, **CO**; Vanaman v. Safety-Klean, Inc., 1999E052, 9-24-99, **CO**.

ATTORNEY'S FEES

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, citing Pace v. McGill Management et al., 1996H009, 11-30-99,

CDO. 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, Pace at 4. Pirrone v. Wheeling Industrial Clinic, 1997E006, 9-19-01, CDO.

Fees Awarded

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 in the amount of \$12,897.00. Pace v. McGill Management, et al., 1996H009, 11-30-99, CDO.

Fee Shifting Provision

The Cook County Human Rights Ordinance in Article X(C)(1)(g) provides for 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 Ordinance. 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, citing Pace v. McGill Management et al, 1996H009, 11-30-99, CDO; Pirrone v. Wheeling Industrial Clinic, 1997E005, 9-19-01, CDO.

Prevailing Complainant

Pursuant to Commission Rule 470.110, a prevailing complainant may submit a petition for attorney fees and costs. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, CDO; Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, CDO; Pace v. McGill Management, 1996H009, 2-25-99, CDO; McClellan v. Cook County Law Library, 1996E026, 6-7-99, CDO.

Prevailing Condominium Unit Owners

Prevailing unit owners, suing a board managing a condominium or townhome association under the Ordinance 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. Board of Managers of the Courts of Randview Townhome Association, 1996H009, 9-13-00, CO.

Prevailing Respondent

Commission finds that 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.

Proportionality Not Required

Commission finds that 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, **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 is 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 July 31, 1998, 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**.

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**.

BURDEN OF PROOF

See **DISPARATE TREATMENT**

BURDEN SHIFTING

See **DISPARATE TREATMENT**

COMMISSION AUTHORITY

AVAILABILITY OF DAMAGES

Pursuant to the Ordinance, Commission can order statutory fines, damages for emotional harm, payment of interest on damages awarded. Remedies and relief set forth in Article X of the Ordinance not meant to be exclusive. The Preamble in Article I expressly provides that the Ordinance is to be liberally construed for the accomplishment of its purposes. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

COMMISSION DEADLINES

180-Day Investigation Period Not Jurisdictional

The 180-day investigation period is directory, not mandatory, and thus 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 an Ordinance violation. Iverson v. Horwitz, 1994E021, 4-6-95, **HO**.

COMPLAINTS

AMENDMENT OF COMPLAINT

See **AMENDMENT OF COMPLAINT**

COMPLAINT CONTENT

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 decision in Gluszek, 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**.

Particularity Not Required

Motion to dismiss denied. Commission finds that Commission Procedural Rule 420.105 does not require a complaint to be stated with particularity, but rather provides that a complaint substantially apprise a respondent of dates, places and facts of an alleged

violation of the Ordinance. Bohn v. Il Primo Foods, Ltd., 1994E120, 2-16-95, **CO**;
Hudok v. Quality Transportation System, Inc., 1994E031, 12-27-94, **CO**.

Commission finds that pursuant to Commission Procedural 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 Ordinance if she sets forth the basic elements of her discrimination claims so as to apprise a respondent of the nature of her allegations. Hudok v. Quality Transportation Systems, Inc., 1994EO31, 12-27-94, **CO**; Seaphus et al v. Laiser et al., d/b/a S&L Management, 1994H007, 4-11-95, **CO**.

Pleading Individual Liability

There must be specific acts of wrongdoing alleged against individual board members for them to be individually named as respondents. Complainant pled sufficient facts implicating individually-named respondent board members of a corporation in the alleged acts of discrimination to survive a motion to dismiss. Fallico v. Radiology Imaging Specialists, Ltd., et. al., 1995E010, 7-29-98, **CO**.

COMPLAINT REINSTATEMENT

Relying on Article X(D)(5) of the Cook County Human Rights Ordinance, 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 Ordinance 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 Ordinance nor the Commission's Rules specifically address the issue of reinstatement, the Commission finds that the Ordinance 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**.

CONCILIATION CONFERENCE

FAILURE TO APPEAR

Complaint Dismissed

Complaint dismissed for complainant's failure to attend a Commission-scheduled conciliation conference. Hamilton v. David Kilheeny and any other owners of 13612 State Street, Riverdale, IL, 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 respondent \$112.50 for costs of conciliator's fee after failing to appear at a Commission ordered conciliation conference. Marrero v. Injectec, Inc., 1995E052, 5-7-96, **CO**.

CONCURRENT JURISDICTION

See **JURISDICTION**

CONDOMINIUMS

Attorneys Fees And Costs

Prevailing unit owners, suing a board managing a condominium or townhome association under the Ordinance 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. Board of Managers of the Courts of Randview Townhome Association, 1996H009, 9-13-00, **CO**.

CONSTITUTIONAL CLAIMS

FIRST AMENDMENT/FREE SPEECH

Respondent's argument that their 1st 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**.

COSTS

PREVAILING COMPLAINANT

Attorneys Fees And Costs

Prevailing unit owners, suing a board managing a condominium or townhome association under the Ordinance 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. Board of Managers of the Courts of Randview Townhome Association, 1996H009, 9-13-00, **CO**.

Costs Awarded

The Complainants are awarded reasonable costs in the amount of \$128.18. Pace v. McGill Management, 1996H009, 11-30-99, **CDO**.

Proof Required

Prevailing complainant may file petition for costs, pursuant to Commission Procedural Rule 470.110. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**; Pace v. McGill Management, 1996H009, 2-25-99, **CDO**; McClellan v. Cook County Law Library, 1996E026, 6-7-99, **CDO**; Pace v. McGill Management, 1996H009, 11-30-99, **CDO**.

PREVAILING RESPONDENT

Commission finds that where 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**.

CREDIBILITY

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 the rules of evidence applying. Ehlers v. United Parcel Service, 1997E027, 9-21-98, **CO**.

DAMAGES

ACTUAL DAMAGES

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 suffered by the complainant in the amount of \$50,000.00. After complainant was fired, he was in shock, was depressed, 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 sizeable award for emotional distress damages sought by complainants is 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**.

The Commission awards emotional distress damages and interest thereon, for pain, suffering and mental anguish suffered by complainant 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**.

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 and that a \$6,500.00 compensatory damage award is justified, which includes reimbursement for her sessions with a social worker. 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 and 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. Any less of an 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**.

BACK PAY

Awarded

Upon a showing of proof at an administrative hearing, complainant, pursuant to an order of default for respondent's failure to respond, 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 July 31, 1998, 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**.

Not Awarded

Claimed back pay is speculative because of 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**.

EMOTIONAL DISTRESS

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 suffered by the complainant in the amount of \$50,000.00. After complainant was fired he was in shock, was depressed, 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 sizeable award for emotional distress damages sought by complainants is 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**.

The Commission awards emotional distress damages and interest thereon, for pain, suffering and mental anguish suffered by complainant 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**.

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 and that a \$6,500.00 compensatory damage award is justified, which includes reimbursement for her sessions with a social worker. 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 and 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. Any less of an 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; (c) 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 effects of the discriminatory conduct; (e) whether medical treatment was sought and/or whether there were 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; (j) whether serious medical or psychological reactions to the discriminatory acts were present. McClellan v. Cook County Law Library, 1996E026, 6-7-99, **CDO**.

FRINGE BENEFITS

Stock Options

Article X(C)(1)(c) and (h) of the Ordinance provides that the Commission may order a respondent to provide such fringe benefits as a 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 to complainant stock options 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**.

IN GENERAL

Pursuant to the Ordinance, Commission can order statutory fines, damages for emotional harm, payment of interest on damages awarded. Remedies and relief set forth in Article X of the Ordinance are not meant to be exclusive. The Preamble in Article I expressly provides that the Ordinance is to be liberally construed for the accomplishment of its purposes. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

INTEREST

Commission can award interest on damages. Calculates such at prime rate, adjusted quarterly, compounded annually starting from first incident of sexual harassment. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

Interest on all damages is awarded by the Commission at the prime rate, adjusted quarterly, compounded annually. Hall v. GMRI, Inc., d/b/a Red Lobster Restaurants, 1996E101, 9-10-98, **CDO**; McClellan v. Cook County Law Library, 1996E026, 6-7-99, **CDO**; Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**; Conway v. Trans-Action Database Marketing, Inc., 1999E010, 3-13-03, **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

Hearing on Default

Upon a showing of proof, complainant, pursuant to an order of default for respondent's failure to respond, 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**.

PUNITIVE DAMAGES

See PUNITIVE DAMAGES

DEFAULT

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**.

Judgment Entered

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**.

MOTION FOR DEFAULT

Denied

A strict application of the default rule would violate the spirit of the Ordinance 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 allow 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**.

REQUEST TO VACATE

After Final Order and Judgment

The Ordinance 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**.

For Failure to Respond

To vacate a default order and judgement, 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, and (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**.

In a motion to vacate order of default, respondent has the burden of proof to show existence of a meritorious defense and the exercise of due diligence. Having failed in its burden, motion is denied. 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 Commission's authority to defer investigation of a complaint is discretionary. Article X(B)(2)(b) of the Ordinance states that "the Commission *may defer* investigation." 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**.

DEFERRAL DENIED

Motion to defer denied. Interests of administrative efficiency dictate that this

investigation not be deferred. No indication that the other agency (I.D.H.R.) has assigned this case to an investigator or has otherwise commenced its investigation. Respondent has submitted to the Commission their written response to the complaint. Yourazeris v. Champion Technologies, 1995E096, 12-28-95, **CO**

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. Donoho v. American Golf Corporation d/b/a Ruffled Feathers Golf Club, 1997E002, 7-17-97, **CO**; Welch v. Cook County Clerk's Office, 1997E047, 7-3-97, **CO**; Heavrin v. Health O'Meter Products, 1997E020, 7-31-97, **CO**; Jean-Paul v. Oakton Community College 535, 1997EO037, 5-30-97, **CO**; Harper v. Foster Wheeler Constructors, 1996E069, 4-2-97, **CO**.

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, this in and of itself does not warrant deferral. Ferguson v. Foster Wheeler Constructors, Inc., 1996E093, 4-2-97, **CO**; Harper v. Foster Wheeler Constructors, Inc., 1996E069, 4-2-97, **CO**; Nelson v. Foster Wheeler Constructors, Inc., 1996E073, 4-2-97, **CO**; Malone v. Foster Wheeler Constructors, Inc., 1996EO71, 4-2-97, **CO**; Green v. Avon Products, Inc., 1996E096, 3-31-97, **CO**; Flood v. J.S. Computer Learning Center and Jay Saffarzadeh, 1997E09, 6-2-97, **CO**; Sheehan v. Warren Johnson Architects, Inc., 1998E013, 3-27-98, **CO**; Stagailo v. Salton-Maxim Housewares, 1999E017, 7-20-99, **CO**.

Motion to defer denied. The Commission determined that information was lacking on the similarity of charge/complaint allegedly filed with other administrative agency. Hudok v. Quality Transportation Systems, Inc., 1994E031, 12-27-94, **CO**; Collum v. Forest Health Systems et al., 1996E110, 2-19-97, **CO**; Thomas v. Cook County Juvenile Temporary Detention Center, 1994E118, 2-2-95, **CO**; Heard v. Nelson, Nelson and McDonald's, 1995E024, 7-27-95, **CO**.

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

Motion to defer denied where the respondent failed to notify the Commission as to the procedural posture of the charge filed at the other agency. The Commission will not defer its investigation merely because a charge has been filed in another forum. Taylor v. EMRO Marketing d/b/a Speedway Gas Station, 1997PA011, 10-14-97, **CO**; Nesmith v. Woodfield Chevrolet & Geo, 1995E031, 7-27-95, **CO**; Wicklund v. Nimrod Natural Gas et al., 1995E076, 12-19-95, **CO**.

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**.

Respondents' motion to defer denied. The complaint filed at the Commission contains allegations (national origin discrimination) which are not alleged in the IDHR charge. 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. Torres-Munoz v. Cook County Clerk et al., 2002E075, 2-03-03, **CO**.

Respondent's motion to defer denied. Even though the EEOC charges are substantially similar to the allegations contained in the Commission complaint, respondent's motion is denied. Respondent notified the Commission that the EEOC dismissed the charges, this action renders respondent's request for deferral of the Commission investigation moot. Green v. D & K Machine, 1999E014, 7-2-99, **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. Considering that 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 IDHR, or that a resolution on the merits was forthcoming, the Commission has not been persuaded that its investigation should be delayed. In fact, the Commission is ready to continue with its investigation. Eisman v. Evanston Northwestern Healthcare, 2000E009, 3-28-00, **CO**; Williams v. Cook County Sheriff et al., 1999E028, 2-14-00, **CO**; Bohn v. Il Primo Foods, Ltd., 1994E120, 5-15-95, **CO**; Taylor v. EMRO Marketing d/b/a Speedway Gas Station, 1997PA011, 8-14-97, **CO**; Trzos v. Cook County Sheriff's Department, 2001E047, 11-27-01, **CO**. Copney v. Cook County Auditor, 2002E007, 3-18-02, **CO**; Jamison v. Rowland-Borg Corporation, Tom Balle, Norm Kidder, and Kenneth Krucks, individually, 2001E045, 5-30-02, **CO**.

DEFERRAL GRANTED

Commission granted deferral of investigation for a six month period of time where identical complaint filed with the Illinois Human Rights Department ("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 investigation 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**.

Commission granted **complainant's** 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**.

Complainant filed with the Commission a complaint alleging retaliation in violation of the Ordinance. Complainant also filed at the Illinois Department of Human Rights (“I.D.H.R.”) 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**, Lee v. DaVita d/b/a Logan Square Dialysis, 2002E082, 12-19-02, **CO**.

Pursuant to Intergovernmental Agreement

The Equal Employment Opportunity Commission and the Commission have entered into an intergovernmental agreement which covers cases which are parallel filed with each respective agency. The agreement provides in pertinent part that either the Commission or the EEOC may defer their fact finding investigation into 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 theirs. Abelman v. G.E. Financial Assurance, 2001E034, 5-30-02, **CO**; Brigman v. Symons Corporation, 2002E072, 10-21-02, **CO**; McDowell v. J.B. Hunt Transport, Inc., 2002E045, 11-21-02, **CO**.

DEPOSITIONS

See **DISCOVERY**

DISABILITY DISCRIMINATION

BARRIER’S MODEL

Liability Found

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**.

Prima Facie Case

Complainant sought to use the barriers model to prove her *prima facie* case, the first element that complainant must prove is that she is disabled, as defined by the Ordinance. She must also allege that her disability is unrelated to her ability to perform her job with accommodation, and further, that the employer failed to accommodate her disability, citing Green v. Avon, Inc., 1996E096, 1-20-98, **CO**; Boykin v. Provident Hospital, 1997E018, 3-6-02, **CDO**; San Ramon v. Cook County Hospital, 2000E014, 5-2-01, **CO**.

The barriers model requires complainant to establish a *prima facie* case that (1) she is disabled, (2) her disability is unrelated to 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 knowledge of the disability and that the complainant had made some effort to seek accommodation. Green v. Avon Products, Inc., 1996E096, 1-20-98, **CO**; Sotelo v. J.F. Schroeder, 2001E014, 5-21-02, **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 barrier's theory of disability discrimination, that she was disabled within the meaning of the Ordinance. Adams v. Cook County Juvenile Temporary Detention Center, 2001E013, 1-23-02, **CO**.

During the complaint investigation stage, complainant has met her limited burden of providing substantial evidence that she is disabled within the meaning of the Ordinance, 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**.

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

Undue Hardship

Respondent must rebut a *prima facie* showing of a barrier's theory of discrimination by proving that such an accommodation would impose an undue hardship on the employer. The barrier's model is premised on an obligation by the employer to provide a reasonable accommodation to the known disabilities of the employee. During the investigation stage, respondent has been unable to offer sufficient evidence to show that providing complainant with the accommodation she sought would have caused undue hardship. Green v. Avon Products, Inc., 1996E096, 1-20-98, **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. Complainant's preferred accommodation was not reasonable because it would have imposed undue hardship on respondent, in terms of 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**.

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 Ordinance'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**.

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 has (1) 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) a record of such impairment; or (3) being regarded as having such an impairment. Complainant failed to establish a *prima facie* case that she has a disability as defined by the Ordinance. Boykin v. Cook County Hospital, 1997E018, 3-6-2002, **CDO**; Sotelo v. J.F.Schroeder Co. Inc., 2001E014, 5-21-02, **CO**; Adams v Cook County Juvenile Temporary Detention Center, 2001E013, 1-23-02, **CO**; San Ramon v. Cook County Hospital, 2000E014, 5-2-01, **CO**.

Major Life Activity - Working

The ability to work has been considered a major life activity. Where working is the major life activity in question, an individual must demonstrate a significant restriction. The factors to be considered in determining substantial limitation are (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 Ordinance. Boykin v. Provident Hospital, 1997E018, 3-6-2002, **CDO**; Sotelo v. J.F.Schroeder Co. Inc., 2001E014, 5-21-02, **CO**.

Substantially Limited

The first element of the Ordinance'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 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 of 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. The factors to be considered in determining substantial limitation are (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 Ordinance. Boykin v. Provident Hospital, 1997E018, 3-6-02, **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

Legitimate Non-Discriminatory Reason

Respondent has 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**.

Liability Not Found

At administrative hearing, complainant failed to establish the third prong of her disparate treatment argument, that the treatment she received was different from Respondent's treatment of similarly situated non-disabled employees. Green v. Avon Products, Inc., 1996E096, 4-29-99, **CDO**.

Prima Facie Case

At the investigation stage, to establish substantial evidence of a *prima facie* case of discriminatory discharge based on complainant's disability, complainant had to offer evidence that he is disabled; he was discharged and other similarly situated employees who were not members of the protected group were not discharged. Complainant has not shown even a scintilla of evidence 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**.

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 the following: 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**.

During the investigation stage, complainant has shown substantial evidence that her discharge was the result of disparate treatment discrimination in violation of the Ordinance. Complainant has met her limited burden of providing substantial evidence that she has a disability within the meaning of the Ordinance. 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**.

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**.

In a discharge case involving allegations of disability discrimination based on disparate treatment, there are two alternative methods which a complainant may use in establishing and proving a *prima facie* case of discrimination. In the first method complainant alleges the following: (1) she is disabled; (2) an adverse action related to her disability was taken against the complainant; and, (3) the disability is unrelated to the complainant's ability to perform the job. Under 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 employer; and, (3) she was treated 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**.

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 were 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, 1996HO12, 6-9-97, **CO**.

REASONABLE ACCOMMODATION

The Commission finds that a duty to reasonably accommodate the disability of employees is implicit in the Ordinance'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**; Sotelo v. J.F. Schroeder Co., Inc., 2001E014, 5-21-02, **CO**; 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 Ordinance's disability definition. Complainant also presented evidence that her disability was unrelated to her ability to perform her job. 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**.

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 Ordinance. 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**.

The Ordinance 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**.

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, citing Seventh Circuit cases of Bultemeyer v. Fort Wayne Community Sch. (100F3rd, 1281,1285 (1996) and Beck v. U. of Wisc. Bd. Of Regents (75 F3d. 1130, 1134, 1135 (1996). Although the Commission has not previously held that this interactive process is required under the Ordinance, 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**.

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 Ordinance. Boykin v. Provident Hospital, Cook Cty. Comm'n H.R. 1997E018. Previously the Commission has considered "these interpretations to be reasonable explanations of the requirements of the Ordinance that an impairment substantially limit one or more major life activities" that should be followed "in adjudicating claims of disability discrimination under the Ordinance." Green v. Avon Products, Inc., Cook Cty. Comm'n H.R. 1996E096 at 9; Sotelo v. J.F. Schroeder Co., Inc., 2001E014, 5-21-02, **CO**.

DISCOVERY

DEPOSITIONS

Commission Investigator

Commission denied motion to compel deposition of Commission investigator and to call investigator as witness at an administrative hearing. Commission finds no "good cause" as required by Commission Procedural Rule 460.145(A) and (B) to grant motion 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**.

Not Favored

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 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**.

Request Denied

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**.

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. and Graham et al. v. Chicago District Campground Association et al., 1999H006, H007, H008, H009, 4-5-02, **HO**.

GOOD CAUSE

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 and Graham et al v. Chicago District Campground Association et al., 1999H006, H007, H008, H009, 4-5-02, **HO**.

MOTIONS 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 conversation 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's actions are an affront to the Commission and significantly undermines 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**.

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**.

Respondents' motion to compel granted. Respondents sought production of a tape recording of an interview by counsel for complainants of a voluntary interview of one of the named respondents in the presence of respondent's attorney. Respondent was not under oath at the time. Complainants' claim that the tape recording is protected by the work product doctrine was rejected by the Commission, inasmuch as presence by respondent's and complainants' attorney at the interview constitutes waiver of the protection. Carroll et al and Graham et al v. Chicago District Campground Association et al, 1999H006, H007, H008, H009, 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**.

SANCTIONS

See **SANCTIONS**

SUBPOENAS

See **SUBPOENAS**

WORK PRODUCT DOCTRINE

Privilege Waived

Illinois Supreme Court Rule 201(b)(2), the work product doctrine, states that material prepared for 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 Court further held that the work product doctrine protects a mixture of factual material and counsel's work product in the form of his conclusions, characterizations and summaries. Here, complainants made no effort to protect their questions to a named respondent from disclosure to a party opponent and to opposing counsel; this is the clearest example of waiver of the protection afforded by the work product doctrine by failing to protect material from disclosure. Carroll et al and Graham et al v. Chicago District Campground Association et al, 1999H006, H007,H008, H009, 1-15-02, **HO**.

DISMISSAL OF COMPLAINT

LOCATION OF VIOLATION OUTSIDE COOK COUNTY

Ordinance 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. Commission finds lack of 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**.

SIMILAR ALLEGATION FILED IN CIRCUIT COURT

Pursuant to Article X(D)(5), the Commission must dismiss a complaint filed with the Commission when a suit filed in circuit court contains 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**.

SIMILAR ALLEGATION FILED IN FEDERAL COURT

Pursuant to Article X(D)(5) of the Ordinance, 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. Hill v. Household International, 1995E061, 2-1-96, **CO**; Veremis v. Interstate Steel Co., 1994E096, 6-14-95, **CO**; Enzenbacher v. Interstate Steel Co., 1994E105, 6-14-95, **CO**; Stevens v. Continental Mobile Telephone, Inc., 1994E114, 9-12-95, **CO**; Jumfuoh v. United States Tobacco, Inc., 1995E068, 8-22-96, **CO**; Odigie v. Motorola, Inc., 1996E056, 4-7-97, **CO**; Taylor v. Zenith Electronics Corporation, 1996E089, 4-3-97, **CO**; Boyland v. Wendy's International and Clinton Harris, 1995E025, 10-6-95, **CO**; Pruitt v. Coca Cola Bottling Company, 1996E044, 4-30-97, **CO**; Donmez v.

Premier Salons International, 1997E004, 6-18-97, CO; Schuler v. SAP America, Inc., 1997E019, 11-3-97, CO; Jean-Paul v. Oakton Community College, 1997E037, 11-3-97, CO; Kennedy v. Bloom Township High School Dist. 206, 1997E090, 12-11-97, CO; Lederer v. Argonaut Insurance Company, 1997E031, 6-3-98, CO; Nelson v. Argonaut Insurance Company, 1997E030, 6-3-98, CO; Schuler v. SAP America, 1997E088, 1-26-98, CO; Nelson v. Foster Wheeler Constructors, 1996E073, 4-16-98, CO; Malone v. Foster Wheeler Constructors, 1996E071, 4-16-98, CO; Harper v. Foster Wheeler Constructors, 1996E069, 4-16-98, CO; Ferguson v. Foster Wheeler Constructors, 1996E093, 5-4-98, CO; Kaushal v. Hyatt Regency Woodfield, 1998E022, 10-29-98, CO; Jayne v. ABF Freight System, Inc., 1996E039, 11-12-98, CO; Vasquez v. Weber-Stephens Products, Co., 1994E048, 12-23-98, CO; Lahey v. JM Mortgage Services, Inc., 1999E022, 11-17-99, CO; Paquet v. PACE Suburban Bus, 1997E068, 10-14-99, CO; Cotton and HOPE v. Sprovieri, 1998H011, 1-31-00, CO; Donnell and HOPE v. Sprovieri, 1998H011, 1-31-00, CO; Beck v. FIMAT, 1998E085, 2-16-00, CO; Lee v. Cook County Sheriff and Earl Tucker, 1997E036, 3-17-00, CO; Williams v. McGaw YMCA, 1999E051, 4-7-00, CO; Pickett v. Ingalls Memorial Hospital, 2000E007, 4-7-00, CO; Calderon v. A.M. Castle Metals, 2000E033, 8-8-00, CO; Kessell v. Cook County Sheriff, 1998E068, 9-18-00, CO; Potokar-Gledhill v. AAA Employment Inc., 1998E044, 10-6-00, CO; O'Loughlin v. Dominick's Finer Foods, Inc., 1996E078, 10-19-00, CO; Taylor v. Hilton Chicago & Towers, 2001E011, 9-20-01, CO; Smart v. Bretford Mfg. Co., 2000E049, 10-19-01, CO; Alzabat v. Gas City, Inc., 1999E081, 11-2-01, CO; San Ramon v. Cook County Hospital, 2000E014, 10-10-02, CO; Dillon v. Cook County Recorder of Deeds and Mike Magness, individually, 2001E063, 10-22-02, CO. Walls v. Campagno-Turano Baking Co., 2000E051, 8-30-01, CO; Taylor v. Hilton Chicago & Towers, 2001E011, 9-20-01, CO; Smart v. Bretford Manufacturing Inc., 2000E049, 10-18-01, CO; Lamb v. Ameritech, 1999E048, 2-25-02, CO; San Ramon v. Cook County Hospital, 2000E014, 10-10-02, CO.

TIMELINESS OF FILING

Commission lacks jurisdiction and will dismiss a complaint when the complaint is filed beyond the 180-day filing limit. Kwok-Keung Law v. Real Estate Buyer's Agent, Inc., 1994H003, 4-15-94, CO; Jones v. Motorola, Inc., 1995E086, 10-24-95, CO.

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 and failure to show cause why complaint shouldn't be dismissed. 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.

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**.

Complaint dismissed for complainant's failure to attend a Commission-scheduled conciliation conference. Hamilton v. David Kilheaney and any other owners of 13612 State Street, Riverdale, IL, 1999H004, 7-13-00, **CO**, Pope v. Berkely Auto Service et al., 2000PA007, 1-21-03, **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 (Show Cause); 9-19-01 (Dismissal), **HO**.

DISMISSAL OF RESPONDENT

EVIDENCE OF EMPLOYMENT RELATIONSHIP LACKING

Commission grants respondent's motion to dismiss respondent. Complainant made no allegations which either directly or indirectly implicate that respondent, Farmers Insurance Group, was complainant's employer. Eklin v. Farmers Insurance Group and Kenneth C. More Agency, 1996E018, 6-25-96, **CO**.

Commission grants respondent Cook County Forest Preserve District's motion to dismiss respondent. Complainant made no allegations directly or indirectly that the District and complainant had an employment relationship. The Zoological Society admits that it was complainant's employer. Dixon v. Chicago Zoological Society and the Forest Preserve District of Cook County, 1996E082, 4-2-97, **CO**.

Commission grants respondent Nancy Dorner's motion to dismiss. Complaint contained no allegations directly or indirectly that Nancy Dorner as "office manager" of respondent Dr. Debbie Tekdogan's office had an employment relationship with complainant, nor did the complaint allege that complainant specifically intended to name Nancy Dorner as an individual respondent. Hilgendorf v. Dr. Debbie Tekdogan, 1997E097, 3-27-98, **CO**.

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**.

LACK OF JURISDICTION

Respondents Located in the City of Chicago

Commission dismisses the allegations of race discrimination against all respondents for

lack of jurisdiction, based on Article XII of the Cook County Human Rights Ordinance, which provides that the Ordinance does not apply to complaints of discrimination occurring within the City of Chicago, which involve conduct covered by the Chicago Human Rights Ordinance. Blakemore v. City of Chicago, Argus Security and Two Unknown White Argus Security Officers, 2002PA019, 4-23-02, **CO**; Blakemore v. Chicago Temple Building, et al., 2002PA006, 5-13-02, **CO**; Blakemore v. Metropolitan Pier & Exposition Authority, et al., 2001PA006, 7-12-01, **CO**; Blakemore v. Metropolitan Water Reclamation District, 2001PA004, 3-14-02, **CO**; Lindberg v. CTA, 1994E063, 7-27-95, **CO**; Blakemore v. Chicago Commission on Human Relations, et al., 2001PA019 & 020, 8-21-02, **CO**; Blakemore v. Palmer House, et al., 2002PA009, 5-14-02, **CO**; Blakemore v. Chicago Fire Department et al., 2002PA015, 5-14-02, **CO**; Blakemore v. Metropolitan Water Reclamation District, 2002PA014, **CO**;

SUFFICIENT KNOWLEDGE OF DISCRIMINATORY CONDUCT LACKING

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**.

DISPARATE IMPACT

Not Pled

Commission finds that while complainant could not prove that respondent's prior failure to assign him to "election duty" (resulting in additional pay) was caused by his race, rather than his job title, this may suggest the possibility of a disparate impact theory--i.e., that respondent's prior practice of selecting only employees above a certain rank had a discriminatory statistical impact upon African-Americans or other persons of color. Disparate impact, although suggested, was neither pled nor proven at the administrative hearing in this case, 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

ANALYTICAL FRAMEWORK

No Direct Evidence

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. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**; Fiore v. Bloom Township Highway Department, 1993E074, 2-8-96, **CDO**; Iverson v. Horwitz, 1994E021, 2-8-96, **CDO**; Hudok v. Quality Transportation Systems, Inc., 1994E031, 12-27-94, **CO**; Green v. Avon Products, Inc., 1996E096, 1-20-98, **CO**; McCoy v. United Airlines, Inc., 1996E111, 10-10-02, **CDO**.

BURDEN OF PRODUCTION

Not Sustained

Two nondiscriminatory reasons for discharge 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**.

Sustained

Respondent must introduce, not prove, credible evidence sufficient to establish a non-discriminatory basis for its treatment of complainant. Respondent articulated 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 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**.

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

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 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 has 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**.

Respondent, through specific, credible testimony has articulated a legitimate non-discriminatory reason for terminating complainant, 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 has met its burden of producing an articulated non-discriminatory reason for a disciplinary suspension of complainant, which 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, 11-15-01, **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

Not Sustained

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 ultimate termination of employment was proximately caused by unlawful discrimination in violation of the Ordinance. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95 **CDO**.

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 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 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 failed to sustain her burden of proof 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**.

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 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, 11-15-01, **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**.

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 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**.

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 Ordinance. Complainant has met her limited burden of providing substantial evidence that she has a disability within the meaning of the Ordinance. 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's Burden

Complainant bears burden of proving by a preponderance of the evidence a causal connection between adverse action and protected basis. Fiore v. Bloom Township Highway Department, 1993E074, 2-8-96, **CDO**; Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95 **CDO**; Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**; Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-26-98, **CDO**; Scardine v. Zenith Electronics Corporation, 1996E79, 11-30-99, **CDO**.

Complainant bears burden of proving by a preponderance of the evidence a causal connection between adverse action and protected basis. Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**; Hardimon v. Allied Tube and Conduit Corporation, 1996E003, 11-15-01, **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 bears the burden of proving by a preponderance of the evidence that respondent's 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**.

PRETEXT

Complainant's Burden

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; etc. Iverson v. Horwitz, 1994E021, 2-8-96, **CDO**.

Pretext Not Proven

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. Rush v. Ford Motor Company, 1996E013, 9-13-00, **CDO**; Scardine v. Zenith Electronics Corporation, 1996E079, 11-30-99, **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, 11-15-01, **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**.

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**.

Pretext Shown

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**.

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 Article X(D)(5) of the Cook County Human Rights Ordinance, 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 Ordinance 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 Ordinance nor the Commission's Rules specifically address the issue of reinstatement, the Commission finds that the Ordinance 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 a motion to dismiss based on absence of proof for a *prima facie* case were granted, complainant would be denied access to Commission's investigatory process and effectively denied her due process right to an investigation of her complaint. Commission follows U.S. Supreme Court 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 a motion to dismiss because the investigation was not completed within 180 days were granted, complainant would be denied access to 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**.

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. Brown v. LaRavierre and Strictly for Christ Church, 1997H008, 11-12-97, **CO**.

EMPLOYEES

COVERED

Clerk of the Court Employees

Motion to dismiss denied. Commission finds non-judicial employees of the Office of the Clerk of the Circuit Court of Cook County are not employees of the State of Illinois for purposes of coverage under the Ordinance. Rys v. Clerk of the Circuit Court of Cook County, 1993E020, 11-8-93, **CO**. (**See**, Eischen v. Cook County, 2000E002, 11-21-01, **CO**, opposite conclusion).

Independent Contractor

Commission denies respondent's motion to dismiss and restates its position that the Ordinance 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 Ordinance 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 Ordinance, 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 that complainant's coverage under the Ordinance. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-26-98, **CDO**.

Temporary/Leased Employee

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**.

EMPLOYMENT RELATIONSHIP

Affecting Opportunities Test

Commission applies "affecting opportunities test" to determine status of employer/employee relationship. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-1-95, **CO**.

In applying the principles of the "affecting opportunities test" to complainant's employment, the Commission finds that respondent's opportunities to discriminate against her were alike in virtually all respects to its opportunities to discriminate against the balance of respondent's work force. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-26-98, **CDO**.

Economic Realities Test

Commission applies "economic realities test" to determine status of employer/employee relationship. 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 order to determine whether a complainant is protected by the Ordinance the Commission reviews the totality of the circumstances surrounding the employment relationship between the parties. Collins v. Freiberg, 1994E068 at 6, 6-26-98. Where the facts involve a temporary or leased employment situation, the Commission applies the joint-employer test. Thompson v. Premier Delivery, 1995E085, 8-5-97, at 3. Under this test, the Commission determines whether each employer exercises substantial control over significant aspects of the compensation, terms, conditions or privileges of the complainant's employment. The most important factor is the employer's right to control the means and manner of a worker's performance. Schuster v. Manpower Technical, Computer Sciences Corp., and Nortel Networks, Inc., 2001E019, 8-23-01, **CO**.

REMUNERATION NOT REQUIRED

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

EMPLOYERS

COVERED

Fire Protection District

Municipal corporations and other units of local government other than governments of municipalities are not exempt from the Ordinance'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 Ordinance'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 Ordinance's definition of employer. Palmer v. Metropolitan Water Reclamation District of Greater Chicago, 1994E057, 3-31-95, **CO**.

High School District No. 201

Respondent argues that it is a municipal corporation and, therefore, exempt from the Ordinance'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 Ordinance. Kelly v. Morton High School District No. 201, 1995E039, 3-28-96, **CO**.

Elementary School District No. 150

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 Article II(E) of the Ordinance. Elrod v. Elementary School District No. 150, 1995E053, 3-28-96, **CO**.

Cook County State's Attorney's Office

The Ordinance Preamble expressly provides that Ordinance is to be liberally construed for the accomplishment of its purposes, thus while not expressly stating that the Office of State's Attorney is covered by the Ordinance, the intent was to provide protection for all employees of Cook County government, for which the State's Attorney performs in part as an arm of Cook County government. Vaughn v. Office of State's Attorney of Cook County, 1993E062, 1-4-95, **CO**. (**over-ruled**, Vaughn v. Office of the State's Attorney of Cook County, 1993E062, 11-21-01, **CO**)

JOINT EMPLOYER

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**.

NOT COVERED

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 Ordinance. Eischen v. Cook County, 2000E002, 11-21-01, **CO**.

State's 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 Ordinance. 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**.

EMPLOYMENT DISCRIMINATION

AGE DISCRIMINATION

Prima Facie Case

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 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**.

BURDEN OF PROOF

Complainant's Burden

Complainant has the burden to show by preponderance of evidence that he or she was subject to unlawful discrimination. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, **CDO**; Fiore v. Bloom Township Highway Department, 1993E074, 2-8-96, **CDO**; Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95, **CDO**; Iverson v. Horwitz, 1994E021, 4-6-95, **HO**; Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-26-98, **CDO**; Rush v. Ford

Motor Company, 1996E013, 9-13-00, CDO; Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, CDO; McCoy v. United Airlines, Inc., 1996E111, 10-10-02, 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 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; Meallet v. Cook County Department of Purchasing, 1992E016, 8-18-94, CDO; Fiore v. Bloom Township Highway Department, 1993E074, 2-8-96, CDO; Hudok v. Quality Transportation Systems, Inc., 1994E031, 12-27-94, CO; Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-26-98, CDO; Rush v. Ford Motor Company, 1996E013, 9-13-00, CDO; Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, CDO; Hardimon v. Allied Tube and Conduit Corporation, 1996E003, 11-15-01, CDO; McCoy v. United Airlines, Inc., 1996E111, 10-10-02, CDO.

CONSTRUCTIVE DISCHARGE

See **CONSTRUCTIVE DISCHARGE**

COVERED EMPLOYEES AND EMPLOYERS

See **EMPLOYEES and EMPLOYERS**

DISABILITY DISCRIMINATION

In cases of employment discrimination based on disability three models or theories have been developed and recognized by Illinois courts 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

Where, as in this case, complainant is seeking to use the barriers model to prove her *prima facie* case, the first element that complainant must prove is that she is disabled, as defined by the Ordinance. She must also allege that her disability is unrelated to her ability to perform her job with accommodation, and further that the employer failed to accommodate her disability, citing Green v. Avon, Inc., 1996E096, 1-20-98, CO; Boykin v. Provident Hospital, 1997E018, 3-6-2002, CDO; San Ramon v. Cook County Hospital, 2000E014, 5-2-02, CO

The barriers model requires complainant to establish a *prima facie* case that (1) she is disabled, (2) her disability is unrelated to 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 knowledge of the disability and that the complainant had made some effort to seek accommodation. Green v. Avon Products, Inc., 1996E096, 1-20-98, CO; Sotelo v. J.F. Schroeder, 2001E014, 5-21-02, 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 barrier's theory of disability discrimination, that she was disabled within the meaning of the Ordinance. Adams v. Cook County Juvenile Temporary Detention Center, 2001E013, 1-23-02, **CO**.

During the complaint investigation stage, complainant has met her limited burden of providing substantial evidence that she is disabled within the meaning of the Ordinance, 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**.

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

Respondent must rebut a *prima facie* showing of a barrier's theory of discrimination by proving that such an accommodation would impose an undue hardship on the employer. The barrier's model is premised on an obligation by the employer to provide a reasonable accommodation to the known disabilities of the employee. During the investigation stage, respondent has been unable to offer sufficient evidence to show that providing complainant with the accommodation she sought would have caused undue hardship. Green v. Avon Products, Inc., 1996E096, 1-20-98, **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. Complainant's preferred accommodation was not reasonable because it would have imposed undue hardship on respondent, in terms of 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**.

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 Ordinance'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**.

Disability Defined

In order to prove a *prima facie* case of discrimination based on disability, the complainant must have offered substantial evidence that she has (1) 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) a record of such impairment; or (3) being regarded as

having such an impairment. Complainant failed to establish a *prima facie* case that she has a disability as defined by the Ordinance. Boykin v. Cook County Hospital, 1997E018, 3-6-02, **CDO**; Sotelo v. J.F.Schroeder Co. Inc., 2001E014, 5-21-02, **CO**; Adams v Cook County Juvenile Temporary Detention Center, 2001E013, 1-23-02, **CO**; San Ramon v. Cook County Hospital, 2000E014, 5-2-01, **CO**.

Major Life Activity - Working

The ability to work has been considered a major life activity. Where working is the major life activity in question, an individual must demonstrate a significant restriction. The factors to be considered in determining substantial limitation are (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 Ordinance. Boykin v. Provident Hospital, 1997E018, 3-6-02, **CDO**; Sotelo v. J.F.Schroeder Co. Inc., 2001E014, 5-21-02, **CO**.

Substantially Limited

The first element of the Ordinance'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 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 of 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. The factors to be considered in determining substantial limitation are (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 Ordinance. Boykin v. Provident Hospital, 1997E018, 3-6-02, **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

Respondent has 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**.

At administrative hearing, complainant failed to establish the third prong of her disparate treatment argument, that the treatment she received was different from Respondent's treatment of similarly situated non-disabled employees. Green v. Avon Products, Inc., 1996E096, 4-29-99, **CDO**.

At the investigation stage, to establish substantial evidence of a *prima facie* case of discriminatory discharge based on complainant's disability, complainant had to offer evidence that he is disabled; he was discharged and other similarly situated employees who were not members of the protected group were not discharged. Complainant has not shown even a scintilla of evidence 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**.

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 the following: 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**.

During the investigation stage, complainant has shown substantial evidence that her discharge was the result of disparate treatment discrimination in violation of the Ordinance. Complainant has met her limited burden of providing substantial evidence that she has a disability within the meaning of the Ordinance. 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**.

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**.

In a discharge case involving allegations of disability discrimination based on disparate treatment, there are two alternative methods which a complainant may use in establishing and proving a *prima facie* case of discrimination. In the first method complainant alleges the following: (1) she is disabled; (2) an adverse action related to her disability was taken against the complainant; and, (3) the disability is unrelated to the complainant's ability to perform the job. Under 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 employer; and, (3) she was treated 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**.

Reasonable Accommodation

The Commission finds that a duty to reasonably accommodate the disability of employees is implicit in the Ordinance'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**; Sotelo v. J.F. Schroeder Co., Inc., 2001E014, 5-21-02, **CO**; 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 Ordinance's disability definition. Complainant also presented evidence that her disability was unrelated to her ability to perform her job. 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**.

The Ordinance 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**.

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, citing Seventh Circuit cases of Bultemeyer v. Fort Wayne Community Sch. (100F3rd, 1281,1285 (1996) and Beck v. U. of Wisc. Bd. Of Regents (75 F3d. 1130, 1134, 1135 (1996). Although the Commission has not previously held that this interactive process is required under the Ordinance, 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**.

EMPLOYMENT CONSTRUED

Remuneration Not Required

Commission finds employment to be performance of services for remuneration or as a volunteer. Zaccardo and Zaccardo v. Circle Hill Apartments et al., 1994E025, 7-20-95, **HO**.

JOINT-EMPLOYER TEST

In order to determine whether a complainant is protected by the Ordinance the Commission reviews the totality of the circumstances surrounding the employment relationship between the parties. Collins v. Freiberg, 1994E068 at 6, 6-26-98. Where the facts involve a temporary or leased employment situation, the Commission applies the joint-employer test. Thompson v. Premier Delivery, 1995E085, 8-5-97, at 3. Under this test, the Commission determines whether each employer exercises substantial control over significant aspects of the compensation, terms, conditions or privileges of the complainant's employment. The most important factor is the employer's right to control the means and manner of a worker's performance. Schuster v. Manpower Technical, Computer Sciences Corp., and Nortel Networks, Inc., 2001E019, 8-23-01, **CO**.

NATIONAL ORIGIN DISCRIMINATION

Commission finds, citing Harris v. Forklift, that mere utterance of an epithet which engenders offensive feelings does not establish employment conditions so severe and pervasive 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**.

Commission finds harm suffered from disparate treatment by employer not a function of complainant's national origin, and that employer did not intentionally discriminate against complainant nor discharge him for prohibited reason. Fiore v. Bloom Township Highway Department, 1993E074 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 ultimate termination of employment was proximately caused by unlawful discrimination on the basis of national origin (Haitian) in violation of the Ordinance. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95, **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**.

RACE DISCRIMINATION

Commission finds that complainant failed by a 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 ultimate termination of employment was proximately caused by unlawful discrimination on the basis of race or color in violation of the Ordinance.

Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95, **CDO**.

Commission finds that 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**.

Commission finds that complainant has not met his burden of proof that (1) he was unlawfully discriminated against on the basis of his race and (2) has failed to rebut respondent's articulated non-discriminatory reasons for its actions. Rush v. Ford Motor Company, 1996E013, 9-13-00, CDO; Hardimon v. Allied Tube and Conduit Corporation, 1996E003, 11-15-01, **CDO**.

Hostile Work Environment

The Commission determined that 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 Ordinance. 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**.

RETALIATION

Opposition to Discrimination

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**.

Protected Expression

Complainant has proven a *prima facie* case in that her letter of November 15, 1996 was protected expression and she was discharged on November 22 during a discussion about that letter. 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. Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**.

Retaliatory Discharge

Respondent found liable for retaliatory discharge. Gluszek v. Stadium Sports Bar and

Grill, 1993E052, 3-16-95, **CDO**.

Commission finds that complainant failed to show 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**.

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 Cook County Commission on Human Rights. 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**.

SEX DISCRIMINATION

Commission finds that 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**.

Commission finds that complainant has not met her burden of proof that (1) she was unlawfully terminated on the basis of her sex and (2) has failed to prove by a preponderance of the evidence that respondent's articulated reason for her termination was a pretext for sex discrimination. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-26-98, **CDO**.

Complainant, in a case other than discharge, 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 training program. McCoy v. United Airlines, Inc., 1996E111, 10-10-02, **CDO**.

Pregnancy

Although not specifically referenced in the Ordinance, discrimination based on pregnancy is prohibited. The Commission adopted Commission Rule 500.100 which specifically prohibits discrimination or harassment based on pregnancy. Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**.

SEXUAL HARASSMENT

Hostile Work Environment

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 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**.

SEXUAL ORIENTATION DISCRIMINATION

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 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**.

Hostile Work Environment

The Commission determined that 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 Ordinance. 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**.

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

COMMISSION APPROVAL REQUIRED

Commission finds that where parties have not sought Commission approval of a settlement, Commission cannot retain jurisdiction over the case 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**.

COMMISSION ENFORCEMENT

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 then 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 reached between parties subject to its jurisdiction. Jaber v. Allan Management Services and Karen Doroski, 1994H009, 6-30-98, **CO**.

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 wrongdoing 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**.

CREDIBILITY

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**.

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**.

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-Ordinance 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 hearing officer's initial proposed decision and order after he 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**.

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**.

Commission finds 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

Complaint Dismissed

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**.

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 shouldn't 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**.

Order to Show Cause

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**.

Pro Se Parties

The Commission finds *pro se* parties have an obligation to respond to Commission orders. Commission cannot fulfill its public duty in the absence of cooperation. When 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**.

CONCILIATION CONFERENCE

Complaint Dismissed

Complaint dismissed for want of prosecution for complainant's failure to attend a Commission-scheduled conciliation conference. Hamilton v. David Kilheeny and any other owners of 13612 State Street, Riverdale, IL, 1999H004, 7-13-00, CO.

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

FLAGRANT VIOLATIONS

Commission can order statutory fines which are necessary to ensure that this respondent and other potential violators understand and fully appreciate the consequence of such violations. Respondent found liable for fine of \$500.00 for unlawful discharge, \$250.00 for unwelcome slap on complainant's buttock, \$100.00 each for 3 separate incidents of verbal abuse. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, CDO.

Respondent found liable for fine of \$500.00 for having so flagrantly violated complainant's human rights. 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.

Commission orders respondent to pay a fine of \$500.00 to the Commission because of the unlawful discharge of complainant. This fine is necessary to ensure that respondent and other potential violators of this Ordinance understand and fully appreciate the consequence of unlawful acts of discrimination. Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, CDO.

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**.

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 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 which 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 request for reconsideration of hearing officer's dismissal of respondent's motion to disqualify hearing officer is denied by Commission where respondent's argument does not support disqualification. Gilich v. LaGrange Memorial Hospital, 1995E036, 10-10-00, **CO**.

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 hearing officer's retention, 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**.

HOME RULE AUTHORITY

The Commission finds the Ordinance 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 Commission finds the Ordinance 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**.

Commission finds that, inasmuch as Cook County is a home rule unit of local government, and pursuant to the Constitution may exercise its powers liberally, that enacting and exercising the provisions of the Ordinance 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. Article VII, Section 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 County Human Rights Ordinance within the jurisdictional limits set forth in Article XII of the Ordinance. The language of Article XII of the Ordinance places a self limitation on the County's jurisdiction over certain claims. The first sentence of Section 2 of Article XII allows that to the extent that a municipal ordinance is consistent with or duplicates the provisions of the County Ordinance 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**.

HOSTILE ENVIRONMENT

EMPLOYMENT

National Origin/Religion

Commission finds no hostile work environment but that complainant had resigned voluntarily and employer reasonably believed so when she was replaced. Commission finds, citing Harris v. Forklift, that mere utterance of an epithet which 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**.

Race/Sexual Orientation

The Commission determined that 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 Ordinance. 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

The Commission finds by preponderance of evidence that complainant subjected to a sexually hostile work environment. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **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**.

HOUSING DISCRIMINATION

CHURCH OWNED AND OPERATED SHELTERS

Article VI(C)(2) of the Ordinance provides a limited exemption for religious organizations that limit the sale, rental, or occupancy of a dwelling to individuals of the same religion or that give preferences to such individuals. There is no blanket exception for churches or other religious organizations from other Ordinance provisions. Therefore, church owned and operated shelters are not exempt from allegations of unlawful discrimination, including race discrimination under Article VI(C)(2) of the Ordinance, unless, they fit within the exception enumerated in VI(C)(2). A homeless shelter run by a church that discriminates on the basis of race is not exempt from the Ordinance under Article VI(C)(2). Brown v. Strictly for Christ Church and LaRavierre, 1997H008, 11-12-97, **CO**.

COVERED TRANSACTION

The Commission finds that the term real estate transaction encompasses those residential housing transactions in which no monetary consideration is exchanged, such as, where only occupancy is at issue. Articles VI(A)(2) and VI(B)(2) of the Ordinance provide that occupancy or the provision of services in connection with occupancy of residential real property are covered real estate transactions. Respondents' Strike Two Center 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 Ordinance. 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 Bellwood apartments to complainant and Mr. Sanders 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 Ordinance. In light of the broad language used in Article VI(A)(1) of the Ordinance, the liberal construction language set forth in the Ordinance's Preamble, and in keeping with both local and federal holdings, the Commission finds that homeless shelters are housing units covered by the Ordinance 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 were 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**.

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 Ordinance; (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 show that the landlord declined to rent to her due to her marital status. Piesen v. Fleurisca, 1998H032, 5-9-02, **CDO**.

PERSONS POTENTIALLY LIABLE

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 Article VI(A) of the Ordinance 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**.

The plain language of the Ordinance provides that managing agents and other individuals working on behalf of another may be liable for acts of unlawful discrimination under Article VI of the Ordinance. Klegerman v. Heritage Manor, 1998H009, 1-5-99, **CO**.

The Ordinance 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 Ordinance. 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 in the courts of randview, 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, the Strictly for Christ Church and Pastor Russell LaRavierre are the alleged owners and or operators of the Strike Two Center, a homeless shelter, as such they are persons defined by Article VI(A)(1) of the Ordinance and are therefore intended to be covered by the Ordinance. Brown v. Strictly for Christ Church and LaRavierre, 1997H008, 11-12-97, **CO**.

REASONABLE ACCOMMODATION

The Commission finds that because the language and intent of the Ordinance'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 Ordinance 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 Ordinance. 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**.

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 Ordinance. 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**.

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 investigation of the complaint filed if the allegations 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 does not cover retaliation in housing. Stovall v. Metroplex, Inc. et al., 1995H010, 10-19-95, **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 Article XII of the County Ordinance, the County Commission has jurisdiction to proceed with the investigation of housing status allegations asserted in the complaint. Blakemore v. Chicago Temple Building, Building Manager, and Janitorial Staff, 2002PA006, 5-13-02, **CO**; Blakemore v. Palmer House, Ernest (last name unknown), Janitor, Steve Zeranc, Head of Security, Security Guard (name unknown), 2002PA009, 5-14-02, **CO**; Blakemore v. Chicago Fire Department and Metropolitan Pier and Exposition Authority, 2002PA015, 5-14-02, **CO**; Blakemore v. Borg-Warner Corp., et al., 2002PA018, 4-26-02, **CO**; Blakemore v. City of Chicago, Argus Security, et al., 2002PA019, 4-23-02, **CO**.

INDEPENDENT CONTRACTOR

EMPLOYMENT RELATIONSHIP

Affecting Opportunities Test

Commission applies "affecting opportunities" test to determine status of the employment relationship. The "affecting opportunities" 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's opportunities to discriminate against her were alike in virtually all respects to its opportunities to discriminate against the balance of respondent's work force. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-26-98, **CDO**.

Economic Realities Test

Commission applies "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" 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**.

STANDING TO FILE

Individuals Protected

The Commission denies respondent's motion to dismiss and restates its position that the Ordinance 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 Ordinance 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 Ordinance, 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 that complainant's coverage under the Ordinance. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-26-98, **CDO**.

INDIRECT DISCRIMINATION

DISABILITY DISCRIMINATION

Commission denies motion to dismiss one of two complainants. Complainants, husband and wife, reside in separate, but adjoining apartment units in respondents' complex. Neither of complainants' leases were renewed by the respondents. 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**.

INDIVIDUAL LIABILITY

AIDING AND ABETTING

Under Article IX(B) of the Ordinance, individuals may be held liable when they aid and abet another person (including the corporation they work for) to commit a violation under the Ordinance. 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**.

EMPLOYMENT

Corporate Board Members

Motion to dismiss individually named corporate board members as respondents is denied. Commission finds board members had the ability to make decisions affecting complainant's employment and 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**.

Decision Makers

Under Article III(B)(1) of the Ordinance, individual decision makers, supervisors, agents of the company/employer, as well as the *alter ego* 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**.

Individuals that fall within the definition of Article III(E) of the Ordinance can be held personally liable for their own acts of discrimination and sexual harassment that violate Section III(E) of the Ordinance. 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**.

Commission finds managing agent who hired volunteer maintenance worker who violated prohibition against sexual harassment, may also be liable for unlawful discrimination against the complainant. 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 Article VI(A) of the Ordinance 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

AFTER HEARING

Article X(C)(1)(c) and (a) of the Ordinance provides that the Commission may order as appropriate, injunctive relief. The Commission ordered the following injunctive relief: reinstatement of complainant; 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 the following injunctive relief: cease and desist from all 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**.

INVESTIGATION

COMPLAINT CONSOLIDATION

For the purposes of investigation and other Commission procedures, consolidation of

complaint numbers 1998H011 and 1998H012 is appropriate and will not prejudice the parties. Due to the substantial similarities between the facts of each complaints, the commonality of parties, and the common questions of law, consolidation is warranted. Donnell, Cotton, HOPE v. Sprovieri, 1998H011, 1998H012, 11-30-98, **CO**.

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 decision in Gluszek, 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**.

TIME FOR INVESTIGATION

Article X(B)(2)(a) of the Ordinance provides "...investigation shall be completed within 180 days after filing...unless impractical to do so within that time." Commission finds that due to delays in service, and requests for extension of time for response, that 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**.

JURISDICTION

CONCURRENT JURISDICTION

Article X(B)(2)(b) of the Ordinance 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**.

Commission has concurrent jurisdiction with other administrative agencies. Significantly, 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**.

When the Commission has concurrent jurisdiction, the Commission will not dismiss a complaint when a similar complaint or charge of discrimination is pending with

another administrative agency. Article X(B)(2)(6) of the Ordinance permits deferral of investigation, but does not require complaint dismissal. Vaughn v. Office of State's Attorney of Cook County, 1993E062, 1-4-95, **CO**.

Preamble expressly provides in Article I of the Ordinance that the Ordinance is to be liberally construed for the accomplishment of its purposes, and nothing in the Ordinance shall be construed to limit rights granted under the laws of the State of Illinois or the United States, and thus no person can be barred from seeking any other remedy or right of action. Commission has concurrent jurisdiction with the Illinois Department of Human Rights 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**.

Commission has concurrent jurisdiction with other administrative agencies. Significantly 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. Urban v. Westchester School District 92 1/2, 2000E008, 2-26-00, **CO**.

Res Judicata Not Applicable

Commission finds that doctrine of *res judicata* is not applicable to the question of concurrent jurisdiction. Rabe v. Michael's Funeral Home et al., 1994PA008, 10-22-96, **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 Ordinance. Spurgash v. 7041-49 O'Connell Condominium Association and Kiner, 1994H006, 10-19-98, **CDO**.

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 Ordinance. The factors the Commission will consider include but are not limited to, 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; and how obviously discriminatory or retaliatory was the action. Not everything that makes a complainant unhappy constitutes adverse action. In this case, the conduct complained of by the complainant was not severe, invidious or obviously discriminatory or retaliatory. The Commission finds that mere inconvenience or an alteration of expectations is not sufficient to constitute adverse action or a violation of the Ordinance. Blakemore v. Chicago Commission on Human Relations, et al., 2001PA019 & 020, 8-21-02, **CO**.

JURISDICTION RETAINED

Different 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 1/2, 2000E008, 2-26-00, **CO**.

Claims filed in circuit court for breach of contract or tortious 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 the federal court complaint did not allege age discrimination. Alpert v. Evanston Hospital Corporation, 1996E105, 3-20-97, **CO**.

Commission will not dismiss a complaint where allegations differ significantly from the discrimination allegations contained in a federal court complaint. Willis v. The Prescription Computer Store, Inc., d/b/a Micro Age, 1996E023, 1-27-98, **CO**.

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 Article III(A), the Ordinance 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 allegedly occurred in Mount Prospect, which is located in Cook County), 1997E054, 8-8-97, **CO**; Borelli v. Presidential Mortgage Company, (alleged violation allegedly occurred in Arlington Heights, which is located in Cook County), 1998E058, 10-1-98, **CO**; Schwartz v. webMethods, Inc. (alleged violation allegedly occurred in Oak Park, which is located in Cook County), 2000E061, 3-19-01, **CO**.

County Employees in the City of Chicago

Commission does have 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 Article XII of the County Ordinance, the County Commission has jurisdiction to proceed with the investigation of housing status allegations asserted in of the complaint. Blakemore v. Chicago Temple Building, Building Manager, and Janitorial Staff, 2002PA006, 5-13-02, **CO**; Blakemore v. Palmer House, Ernest (last name unknown), Janitor, Steve Zeranc, Head of Security, Security Guard (name unknown), 2002PA009, 5-14-02, **CO**; Blakemore v. Chicago Fire Department and Metropolitan Pier and Exposition Authority, 2002PA015, 5-14-02, **CO**; Blakemore v. Borg-Warner Corp., et al., 2002PA018, 4-26-02, **CO**; Blakemore v. City of Chicago, Argus Security, et al., 2002PA019, 4-23-02, **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 Ordinance. The alleged discriminatory conduct and retaliation occurred within the City of Chicago. Complainant also filed at the Illinois Department of Human Rights ("I.D.H.R.") 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**.

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. Blakemore v. Metropolitan Water Reclamation District of Greater Chicago, 2001PA004, 3-14-01, **CO**; Blakemore v. Metropolitan Water Reclamation District of Greater Chicago, 2002PA014, 4-25-02, **CO**; Blakemore v. City of Chicago, Argus Security, and Two Unknown Argus Security Officers, 2002PA019, 4-23-02, **CO**; Sellers v. Outland, 2002H001, 5-6-02, **CO**; Blakemore v. Borg-Warner Corp., Omni Janitorial Service & Donald Kosteki, Insignia/ESG Property Management , Laura Hurst, Securitas and Craig Nelson, 2002PA018, 4-26-02, **CO**; Blakemore v. Chicago Temple Building, Building Manager and Janitorial Staff, 2002PA006, 5-13-02, **CO**; Blakemore v. Palmer House, Ernest (Last name unknown), Janitor, Steve Zeranc, Head of Security, Security Guard (name unknown), 2002PA009, 5-14-02, **CO**; Blakemore v. Chicago

Fire Department and Metropolitan Exposition and Pier Authority, 2002PA015, 5-14-02, CO; Springer v. Trizechahn Office Properties, Inc. and Leroy Brown, 2002E017, 5-14-02, CO; Tortorello v. Oracle Corporation, 2002E060, 7-24-02, CO; Blakemore v. Chicago Commission on Human Relations, 2001PA019 & PA020, 8-21-02, CO.

Alleged Violation Outside Cook County

Ordinance 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. Commission finds lack of 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.

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 1st 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.

OTHER GOVERNMENTAL ENTITIES OR AGENCIES

Municipal corporations and other units of local government other than governments of municipalities are not exempt from the Ordinance'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 Ordinance's division of employer. Palmer v. Metropolitan Water Reclamation District of Greater Chicago, 1994E057, 3-31-95, CO.

City of Chicago

In accordance with Article XII of the Ordinance, 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 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**.

The allegations of unlawful race discrimination occurred in the City of Chicago. Commission dismisses the allegations of race discrimination against all respondents including the City of Chicago for lack of jurisdiction, based on Article XII of the Cook County Human Rights Ordinance, which provides that the Ordinance does not apply to complaints of discrimination occurring within the City of Chicago, which involve conduct covered by the Chicago Human Rights Ordinance. Blakemore v. City of Chicago, Argus Security and Two Unknown White Argus Security Officers, 2002PA019, 4-23-02, **CO**; Blakemore v. Metropolitan Water Reclamation District of Greater Chicago, 2001PA004, 3-14-01, **CO**; Blakemore v. Metropolitan Water Reclamation District of Greater Chicago, 2002PA014, 4-25-02, **CO**; Sellers v. Outland, 2002H001, 5-6-02, **CO**; Blakemore v. Borg-Warner Corp., Omni Janitorial Service & Donald Kosteck, Insignia/ESG Property Management, Laura Hurst, Securitas and Craig Nelson, 2002PA018, 4-26-02, **CO**; Blakemore v. Chicago Temple Building, Building Manager and Janitorial Staff, 2002PA006, 5-13-02, **CO**; Blakemore v. Palmer House, Ernest (Last name unknown), Janitor, Steve Zeranc, Head of Security, Security Guard (name unknown), 2002PA009, 5-14-02, **CO**; Blakemore v. Chicago Fire Department and Metropolitan Exposition and Pier Authority, 2002PA015, 5-14-02, **CO**; Springer v. Trizechahn Office Properties, Inc. and Leroy Brown, 2002E017, 5-14-02, **CO**; Tortorello v. Oracle Corporation, 2002E060, 7-24-02, **CO**; Blakemore v. Chicago Commission on Human Relations, 2001PA019 & PA020, 8-21-02, **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**. (See below, Eischen v. Cook County, 2000E002, 11-21-01, **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 Ordinance. Eischen v. Cook County, 2000E002, 11-21-01, **CO**; Rys v. Clerk of the Circuit Court of Cook County, 1993E020, 11-8-93, **CO** (effectively overruled by Eischen).

Employees of Cook County

Commission does have 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** (See above, Eischen v. Cook County, 2000E002, 11-21-01, **CO**, employees of the Clerk of the Circuit Court are not County employees).

Illinois Department of Human Rights

Commission finds that the government of the State of Illinois is clearly and plainly excluded from the Ordinance's definition of person as set forth in Article II(N). The Illinois Department of Human Rights 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

The Commission finds that 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**.

State's 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 Ordinance. 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**.

School Districts

The Commission finds that 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 Article II(E) of the Ordinance. Elrod v. Elementary School District No. 159, 1995E053, 3-28-96, **CO**.

Commission finds Ordinance as applied to 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

Commission finds township highway department is not exempt as an employer under Article II(E)(2)(d) of the Ordinance. 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 Ordinance. 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 Ordinance, and thus the Commission is without jurisdiction to investigate or adjudicate the complaint. Limanowski v. Orland Park Parks and Recreation, 1998E090, 6-30-00, **CO**.

PUBLIC ACCOMMODATIONS

Access to a Particular Investigator Not a Public Accommodation

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 Ordinance. Blakemore v. Chicago Commission on Human Relations, 2001PA019 & PA020, 8-21-02, **CO**.

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 Ordinance. Reyes v. Penny Saver Publications, 1995PA005, 9-21-95, **HO**.

Police Departments' Conduct Not a Public Accommodation

Commission grants respondent Chicago Police Department's motion to dismiss complaint on the grounds that the Commission does not have jurisdiction in this case where the Chicago Police Department is not providing 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, however, 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. Des Plaines Police Department and City of Desplaines, 2001PA012, 8-10-01, **CO**.

Retail Merchants

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. Gilmore v. Menard's, Inc. 1999PA002, 5-9-02, **CDO**.

Schools

Commission finds that since the Ordinance specifically exempts from its public accommodations provision single-sex schools from sex discrimination complaints, the drafters of the Ordinance intended that schools otherwise be covered under the public accommodations provision of the Ordinance. In addition, the protections of the Ordinance 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**.

While the Ordinance 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 Ordinance. 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**.

REINSTATEMENT

Relying on Article X(D)(5) of the Cook County Human Rights Ordinance, 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 Ordinance 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 Ordinance nor the Commission's Rules specifically address the issue of reinstatement, the Commission finds that the Ordinance 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**.

SETTLEMENTS

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 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**.

Under appropriate circumstances, the Commission will enforce a non-private, properly made oral settlement agreement reached between parties subject to its jurisdiction. Jaber v. Allan Management Services and Karen Doroski, 1994H009, 6-30-98, **CO**.

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**.

STATUTE OF LIMITATIONS

Equitable Tolling

The language of the Ordinance in Article X(B)(1)(a) does not explicitly refer to the 180-day filing period as jurisdictional. The Commission finds that 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**.

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 Ordinance 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. Equitable tolling allowed. Ross v. Orthopedic Specialists, S.C., 1998E043, 7-9-98, **CO**; Borelli v. Presidential Mortgage Company, 1998E058, 10-1-98, **CO**.

TERMINATION OF JURISDICTION

Discrimination Allegation(s) Filed in Circuit Court

Commission will dismiss a Commission complaint *sua sponte* or by motion of either party when a suit filed in circuit court contains 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**.

Discrimination Allegation(s) Filed in Federal Court

Pursuant to Article X(D)(5) of the Ordinance, 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. Hill v. Household International, 1995E061, 2-1-96, **CO**; Veremis v. Interstate Steel Co., 1994E096, 6-14-95, **CO**; Enzenbacher v. Interstate Steel Co., 1994E105, 6-14-95, **CO**; Stevens v. Continental Mobile Telephone, Inc., 1994E114, 9-12-95, **CO**; Jumfuoh v. United States Tobacco, Inc., 1995E068, 8-22-96, **CO**; Odigie v. Motorola, Inc., 1996E056, 4-7-97, **CO**; Taylor v. Zenith Electronics Corporation, 1996E089, 4-3-97, **CO**; Boyland v. Wendy's International and Clinton Harris, 1995E025, 10-6-95, **CO**; Pruitt v. Coca Cola Bottling Company, 1996E044, 4-30-97, **CO**; Donmez v. Premier Salons International, 1997E004, 6-18-97, **CO**; Schuler v. SAP America, Inc., 1997E019, 11-3-97, **CO**; Jean-Paul v. Oakton Community College, 1997E037, 11-3-97, **CO**; Kennedy v. Bloom Township High School Dist. 206, 1997E090, 12-11-97, **CO**; Lederer v. Argonaut Insurance Company, 1997E031, 6-3-98, **CO**; Nelson v. Argonaut Insurance Company, 1997E030, 6-3-98, **CO**; Schuler v. SAP America, 1997E088, 1-26-98, **CO**; Nelson v. Foster Wheeler Constructors, 1996E073, 4-16-98, **CO**; Malone v. Foster Wheeler Constructors, 1996E071, 4-16-98, **CO**; Harper v. Foster Wheeler Constructors, 1996E069, 4-16-98, **CO**; Ferguson v. Foster Wheeler Constructors, 1996E093, 5-4-98, **CO**; Kaushal v. Hyatt Regency Woodfield, 1998E022, 10-29-98, **CO**; Jayne v. ABF Freight System, Inc., 1996E039, 11-12-98, **CO**; Vasquez v. Weber-Stephens Products, Co., 1994E048, 12-23-98, **CO**; Lahey v. JM Mortgage Services, Inc., 1999E022, 11-17-99, **CO**; Paquet v. PACE Suburban Bus, 1997E068,

10-14-99, **CO**; Cotton and HOPE v. Sprovieri, 1998H011, 1-31-00, **CO**; Donnell and HOPE v. Sprovieri, 1998H011, 1-31-00, **CO**; Beck v. FIMAT, 1998E085, 2-16-00, **CO**; Lee v. Cook County Sheriff and Earl Tucker, 1997E036, 3-17-00, **CO**; Williams v. McGaw YMCA, 1999E051, 4-7-00, **CO**; Pickett v. Ingalls Memorial Hospital, 2000E007, 4-7-00, **CO**; Calderon v. A.M. Castle Metals, 2000E033, 8-8-00, **CO**; Kessell v. Cook County Sheriff, 1998E068, 9-18-00, **CO**; Potokar-Gledhill v. AAA Employment Inc., 1998E044, 10-6-00, **CO**; O'Loughlin v. Dominick's Finer Foods, Inc., 1996E078, 10-19-00, **CO**; Walls v. Campagno-Turano Baking Co., 2000E051, 8-30-01, **CO**; Taylor v. Hilton Chicago & Towers, 2001E011, 9-20-01, **CO**; Smart v. Bretford Manufacturing Inc., 2000E049, 10-18-01, **CO**; Alzabat v. Gas City, Inc., 1999E081, 11-2-01, **CO**; Lamb v. Ameritech, 1999E048, 2-25-02, **CO**; San Ramon v. Cook County Hospital, 2000E014, 10-10-02, **CO**; Dillon v. Cook County Recorder of Deeds and Mike Magness, individually, 2001E063, 10-22-02, **CO**; Ableman v. G.E. Financial Assurance, 2001E034, 3-18-03, **CO**.

TIME FOR FILING COMPLAINT

Continuing Violation

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**.

Article X(B)(1)(a) of the Ordinance and Commission Procedural Rule 420.100(A) recognize that a violation of the Ordinance 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**.

Date of Alleged Violation

Complaint dismissed due to lack of jurisdiction because complaint was filed beyond the 180-day filing limitations period. 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**.

Commission finds that disputed facts of 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 Ordinance (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 Ordinance. 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 Article X(B)(1) of the Ordinance 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**.

Commission finds that complainant received notice of termination, 173 days before her filing of the complaint, denying respondent's motion to dismiss, that it was highly unlikely complainant received that notice. Pleasant v. The Thresholds, 2001E007, 4-3-01, **CO**.

Notice of Discriminatory Act

Commission finds 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**; Complainant's subsequent appeals of the board's decisions do not constitute independent acts of discrimination and, there, do not delay the tolling of the complaint filing period. Totten v. Chicago District Campground Association, 2001H003, 8-16-01, **CO**.

The Commission finds 180-day filing limitation period begins to run with notice of the

discriminatory act. Notice of the discriminatory act complained of must be definitive and unambiguous. Unlike the Commission's decision in Chen, 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 until April 18, 1995, 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 180-day limit for filing complaints begins to run when the complainant has notice of the alleged violation of the Ordinance. Spurgash v. 7041-49 O'Connell Condominium Association and Kiner, 1994H006, 10-19-98, **CDO**.

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 Commission finds that 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. Totten v. Chicago District Campground Association et al, 2001H003, 8-16-2001, **CO**.

LOCATION OF 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 Article III(A), the Ordinance 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**.

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. 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

Ordinance 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. Commission finds lack of 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 - COVERED

County Employees

Commission does have 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

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 Article XII of the County Ordinance, the County Commission has jurisdiction to proceed with the investigation of housing status allegations asserted in of the complaint. Blakemore v. Chicago Temple Building, Building Manager, and Janitorial Staff, 2002PA006, 5-13-02, **CO**; Blakemore v. Palmer House, Ernest (last name unknown), Janitor, Steve Zeranc, Head of Security, Security Guard (name unknown), 2002PA009, 5-14-02, **CO**; Blakemore v. Chicago Fire Department and Metropolitan Pier and Exposition Authority, 2002PA015, 5-14-02, **CO**; Blakemore v. Borg-Warner Corp., et al., 2002PA018, 4-26-02, **CO**; Blakemore v. City of Chicago, Argus Security, et al., 2002PA019, 4-23-02, **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 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 Ordinance. The alleged discriminatory conduct and retaliation occurred within the City of Chicago. Complainant also filed at the Illinois Department of Human

Rights (“I.D.H.R.”) 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**.

WITHIN THE CITY OF CHICAGO - NOT COVERED

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. Blakemore v. Metropolitan Water Reclamation District of Greater Chicago, 2001PA004, 3-14-01, **CO**; Blakemore v. Metropolitan Water Reclamation District of Greater Chicago, 2002PA014, 4-25-02, **CO**; Blakemore v. City of Chicago, Argus Security and Two Unknown White Argus Security Officers, 2002PA019, 4-23-02, **CO**; Sellers v. Outland, 2002H001, 5-6-02, **CO**; Blakemore v. Borg-Warner Corp., Omni Janitorial Service & Donald Kostecki, Insignia/ESG Property Management, Laura Hurst, Securitas and Craig Nelson, 2002PA018, 4-26-02, **CO**; Blakemore v. Chicago Temple Building, Building Manager and Janitorial Staff, 2002PA006, 5-13-02, **CO**; Blakemore v. Palmer House, Ernest (Last name unknown), Janitor, Steve Zeranc, Head of Security, Security Guard (name unknown), 2002PA009, 5-14-02, **CO**; Blakemore v. Chicago Fire Department and Metropolitan Exposition and Pier Authority, 2002PA015, 5-14-02, **CO**; Springer v. Trizechahn Office Properties, Inc. and Leroy Brown, 2002E017, 5-14-02, **CO**; Tortorello v. Oracle Corporation, 2002E060, 7-24-02, **CO**; Blakemore v. Chicago Commission on Human Relations, 2001PA019 & PA020, 8-21-02, **CO**.

MARITAL STATUS DISCRIMINATION

Liability Not Found

Commission follows Illinois Supreme Court decision which construed language identical to the Ordinance and holds that the Ordinance’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, failure to rent, based on marital status, a complainant must show that (1) she is a member of a group

protected by the Ordinance; (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. La Francaise Bakery, 2001E055, 11-19-01, **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**.

MOTIONS TO DISMISS

Legal Standards

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. Commission finds that 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**.

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. Thomas v. Cook County Treasurer's Office, 1995E034, 12-6-95 **CO**; Seaphus et al v. Laiser et al d/b/a. S&L Management, 1994H007, 4-11-95, **CO**; Hudok v. Quality Transportation Systems, Inc., 1994E031, 12-27-94, **CO**; Spurgash v. 7041-49 O'Connell Condominium Association and Kiner, 1994H006, 7-20-97, **HO**; Howard v. Pappas Transport, 1999E033, 2-8-00, **CO**; Pleasant v. The Thresholds, 2001E107, 4-3-01, **CO**; Paquet v. PACE Suburban Bus, 1997E068, 7-28-98, **CO**.

SUMMARY JUDGMENT

Factual Dispute

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. Thomas v. Cook County Treasurer's Office, 1995E034, 12-6-95 **CO**; Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-1-95, **CO**; 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**.

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. Brown v. LaRavierre and Strictly for Christ Church, 1997H008, 11-12-97, **CO**.

Commission Procedural Rule 460.160 does not allow for summary judgement motions. Reyes v. Penny Saver Publications, 1995PA005, 9-21-95, **HO**.

Not Permitted

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. Jaber v. Allen Management Services and Karen Doroski, 1994H009, 4-7-99, **HO**; Paquet v. PACE Suburban Bus, 1997E068, 7-28-98, **CO**; 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**.

MUNICIPAL ORDINANCES

COOK COUNTY HUMAN RIGHTS ORDINANCE

Article XII - Applicability

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. This holding, embodied in Article XII of the Ordinance is in line with Article VII, Section 6(c) of the State of Illinois Constitution. Article VII provides in pertinent 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 County Ordinance and provides remedies, thus the County Ordinance shall not apply within the jurisdiction of Chicago with respect to such conduct. 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 & 2001PA020, 8-21-02, **CO**.

NATIONAL ORIGIN DISCRIMINATION

Liability Not Found

Commission finds 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**.

Commission finds that mere utterance of an epithet which 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 Ordinance. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95, **CDO**.

PERSONAL LIABILITY

See INDIVIDUAL LIABILITY

PRECEDENT

OTHER LAWS

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

Commission finds that where issues have been adjudicated frequently under the Chicago Human Rights Ordinance, it is appropriate to seek guidance from such decisions, but the County Ordinance 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**.

PREGNANCY DISCRIMINATION

Pursuant to Article X(E)(5) of the Ordinance, and Commission's Procedural Rule 200.100, on February 8, 2001, the Commission unanimously adopted Commission Rule 500.100 which specifically prohibits discrimination or harassment based on pregnancy. Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**.

PRE-ORDINANCE CONDUCT

ADMISSIBILITY AT HEARING

Limited Purpose

The Commission finds that conduct which predates the effective date of the Ordinance 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-Ordinance conduct. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**; Iverson v. Horwitz, citing Gluszek, 1994EO21, 2-8-96, **CDO**.

The Commission does not have jurisdiction over conduct that occurred before the effective day of the Ordinance, 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. 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 Ordinance on May 21, 1993. Chen v. Northwestern University, 1993E054, 9-1-94, **CO**.

PRETEXT/DEFENSE REBUTTAL

PRETEXT NOT SHOWN

Respondent's articulation of its legitimate non-discriminatory reason for refusal to rent to complainant was specific and credible. Complainant failed to prove pretext. Piesen v. Fleurisca, 1998H032, 5-9-02, **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**.

Respondent articulated a legitimate non-discriminatory reason business-related

reason for terminating complainant from the flight dispatch program, namely, complainant's unsatisfactory performance on two consecutive desk checks in the flight dispatch training program. McCoy v. United Airlines, Inc., 1996E111, 10-10-02, **CDO**.

Respondent's articulation of its legitimate non-discriminatory reason for complainant's suspension was specific and credible. Complainant failed to prove pretext. Rush v. Ford Motor Company, 1996E013, 9-13-00, **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, 11-15-01, **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**.

PRETEXT SHOWN

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**.

PRIMA FACIE CASE

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**.

Age

Complainant made out *prima facie* case of discrimination on the basis of age. Complainant alleged the following: 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 finds that 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 Ordinance if she sets forth the basic elements of her discrimination claims so as to apprise a respondent of the nature of her allegations. To prevail, however, complainant must ultimately prove the *prima facie* elements of her claim later in the administrative hearing stage. Hudok v. Quality Transportation Systems, Inc., 1994E031, 12-27-94, **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, **CO** as to the articulation of a *prima facie* case of age discrimination. Scardine v. Zenith Electronics Corporation,

1996E079, 11-30-99, **CDO**.

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**.

Disability

At the investigation stage, Commission finds that complainant has not produced even a scintilla of evidence that he was disabled and that respondent knew he was disabled. In order to prove a *prima facie* case of discrimination based on disability, the complainant must have offered substantial evidence that he has a physical or mental impairment that substantially limits one or more of his major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. The ability to work has been considered a major life activity. Where "working" is the major life activity in question, an individual must demonstrate a significant restriction. The factors to be considered in determining substantial limitation are (1) the nature and severity of the impairment; (2) the duration of the impairment; (3) and the actual long-term impact of the impairment. Sotelo v. J.F.Schroeder Co. Inc., 2001E014, 5-21-02, **CO**.

Where, as in this case, complainant is seeking to use the barriers model to prove her *prima facie* case, the first element that complainant must prove is that she is disabled, as defined by the Ordinance. She must also allege that her disability is unrelated to her ability to perform her job with accommodation, and further that the employer failed to accommodate her disability, citing Green v. Avon, Inc., 1996E096, 1-20-98, **CO**. Boykin v. Provident Hospital, 1997E018, 3-6-2002, **CDO**.

In order to prove a *prima facie* case of discrimination based on disability, the complainant must have offered substantial evidence that she 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 and working. The ability to work has been considered a major life activity. Where working is the major life activity in question, an individual must demonstrate a significant restriction. The factors to be considered in determining substantial limitation are (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 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 Ordinance. Boykin v. Provident Hospital, 1997E018, 3-6-2002, **CDO**.

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 the following: 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**.

The barriers theory of disability discrimination requires complainant to establish a *prima facie* case that (1) she is disabled, 2) her disability is unrelated to 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 knowledge of the disability and that the complainant had made some effort to seek accommodation. Green v. Avon Products, Inc., 1996E096, 1-20-98, **CO**.

At administrative hearing complainant failed to establish the third prong of her disparate treatment *prima facie* case, that the treatment she received was different from respondent's treatment of similarly situated non-disabled employees. Furthermore, complainant was unable to show that she was able, with or without accommodation, to perform the essential functions of her position, and therefore, could not establish a *prima facie* case of discrimination under the barriers model of disability discrimination. Green v. Avon Products, Inc., 1996E096, 4-29-99, **CDO**.

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

The first element of the Ordinance'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 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**.

To demonstrate that the employer has violated the Ordinance by failing to make a reasonable accommodation, the complainant must show that she is disabled, that her disability is unrelated to her ability to perform her job with accommodation, and that the employer failed to provide a meaningful accommodation to the know disability of complaint which would have permitted the complaint to perform the essential functions of her job. 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 Ordinance's disability definition. Complainant also presented evidence that her disability was unrelated to her ability to perform her job. 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**.

National Origin

Complainant failed to establish a *prima facie* case of discrimination based on national origin (Italian) in regard to his discharge. However, assuming complainant had substantiated a *prima facie* case of national origin discrimination, i.e., that

complainant was a member of a protected group; that complainant, who was discharged suffered a specific harm; and, that complainant was treated more harshly than employees who were not Italian, respondent rebutted the *prima facie* case by articulating a clear and specific explanation for his discharge. Complainant failed to prove that respondent's articulated reason for his discharge was pretext. Fiore v. Bloom Township Highway Department, 1993E074, 2-8-96, **CDO**.

Race

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**.

Complainant presented a *prima facie* case of disparate treatment based on race by coming forward with evidence that he is African-American, that he suffered the adverse employment 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**.

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, 11-15-01, **CDO**.

Religion

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**.

Retaliation

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**.

Complainant has proven a *prima facie* case in that her letter of November 15, 1996, was protected expression and she was discharged on November 22 during a discussion about that letter. 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 the adverse action. Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**.

Sex

Complainant made out a *prima facie* case of sex discrimination. She is in a protected category, she was meeting legitimate expectations of her employer, she was terminated by the respondent, and she was essentially replaced by males. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-26-98, **CDO**.

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**.

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 training program. McCoy v. United Airlines, Inc., 1996E111, 10-10-02, **CDO**.

Pregnancy

In the absence of a specific reference in the Ordinance 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 Ordinance. Pirrone v. Wheeling Industrial Clinic, 1997E005, 4-12-01, **CDO**.

Sexual Orientation

Commission finds that complainant has set forth sufficient facts to establish a *prima facie* case of prohibited sexual orientation. At the complaint-filing stage, a complainant need only minimally allege facts which set forth the elements of a *prima facie* case of discrimination. Paquet v. PACE Suburban Bus, 1997E068, 7-28-98, **CO**.

HOUSING

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**.

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 Ordinance; (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 show that the landlord declined to rent to her due to her marital status. Piesen v. Fleurisca, 1998H032, 5-9-02, **CDO**.

PUBLIC ACCOMMODATION

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. 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 race. Gilmore v. Menard’s, Inc. 1999PA002, 5-9-02, **CDO**.

PRO SE PARTIES

FAILURE TO APPEAR AT ADMINISTRATIVE HEARING

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 on October 7, 1996, was unexcused. Banks v. Cook County Juvenile Temporary Detention Center, 1994E088, 11-14-96, **CDO**.

FAILURE TO APPEAR AT 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**.

OBLIGATION TO PARTICIPATE

Pro se parties have an obligation to attend Commission-ordered pre-hearing meetings, to respond to Commission orders, and to abide by Commission rules and procedures. Koop v. Drs. Pick & Amadeo, 1994E016, 11-9-95, **CDO**; Burns v. Sam's Warehouse Club, 1996E033, 5-26-98, **CDO**.

Although the Commission recognizes that complainant appeared *pro se*, without the assistance of counsel or any other representative, even *pro se* parties have an obligation to the Commission to respond to Commission orders. Commission cannot fulfill its public duty in the absence of cooperation. Sampson v. Cermak Health Services, 1993E009, 4-27-95, **CDO**.

Although the Commission recognizes that complainant appeared *pro se*, without the assistance of counsel or any other representative, even *pro se* parties have an obligation to the Commission to respond to Commission orders. Commission cannot fulfill its public duty in the absence of cooperation. The Commission finds that failure to appear at the Conciliation Conference was excused because of illness. Parchim v. TLR Enterprises, Inc. d/b/a The Living Room, 2001PA001, 9-25-02, **CO**.

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**.

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 Ordinance's definition of public accommodation is far more expansive than the contemplation of a "physical location." The Ordinance'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 Ordinance 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**.

ADVERSE ACTION REQUIRED

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**.

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 Ordinance. Reyes v. Penny Saver Publications. 1995PA005, 9-21-95, **HO**.

Retail Merchants

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

Schools - Harassment

Commission finds that since the Ordinance specifically exempts single-sex schools from sex discrimination in the public accommodations provision of the Ordinance, the drafters intended that schools otherwise be covered as public accommodations. In addition, the protections of the Ordinance 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**.

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, citing Callwood v. Dave and Buster's, Inc. 98 F. Supp. 2nd 694, 705-08 (D. Md. 2000), (cited favorably in Christian v. Wal-Mart Stores, Inc., 252 F 3rd 862, 870-3, Sixth Circuit Court of Appeals, 2001). Gilmore v. Menard's, Inc. 1999PA002, 5-9-2002, **CDO**.

NOT COVERED

Access to a Particular Investigator Not a Public Accommodation

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 Ordinance. Blakemore v. Chicago Commission on Human Relations, 2001PA019 & PA020, 8-21-02, **CO**.

Illinois Department of Human Rights

Commission finds that the government of the State of Illinois is clearly and plainly excluded from the Ordinance's definition of "person" as set forth in Article II (N). The Illinois Department of Human Rights 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's Conduct Not A Public Accommodation

Commission grants respondent Chicago Police Department's motion to dismiss complaint on the grounds that the Commission does not have jurisdiction in this case where the Chicago Police Department is not providing 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, however, 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 Ordinance 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 Ordinance. 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**.

PUNITIVE DAMAGES

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**.

AUTHORITY TO AWARD

Preamble expressly provides that Ordinance is to be liberally construed for the accomplishment of its purposes. Thus Article X of the Ordinance, while not expressly providing for punitive damages, does not explicitly prohibit them. The list of remedies in Article X 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**; Randle El et al v. Pizza Hut of America, Inc., 1996PA013, 4-14-97, **CO**.

CALCULATION OF AWARD

Commission finds that 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**.

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**.

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**.

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 Ordinance, 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 finds that it 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**.

PURPOSE

The purpose of punitive damages is to punish [defendant] 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**.

RACE DISCRIMINATION

Liability Not Found

Commission finds that 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**.

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, 11-15-01, **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. 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, 5-9-02, **CDO**.

Liability Found

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**.

Prima Facie Case

Complainant, who is black, 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**.

RELIGIOUS DISCRIMINATION

Liability Not Found

Commission finds that mere utterance of an epithet which 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 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-Ordinance conduct. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

REMEDIES

See **DAMAGES**

REQUEST FOR RECONSIDERATION

AFTER DISMISSAL FOR LACK OF SUBSTANTIAL EVIDENCE

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., 1996EO30, 5-28-97, **CO**.

Request Denied

Commission denies request for reconsideration, which pursuant to Section 600.110 of the Interim Rules requires such request 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. Basith v. Cook County Hospital Pharmacy Department, 1993E042, 9-1-94, **CO**.

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 pursuant to Commission Procedural Rule 480.105, requires such request 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. Harris v. Cook County Hospital/ Department of Medicine, 1994EO95, 6-26-96, **CO**; Harding v. Cook County Hospital, 1994E078, 11-12-98, **CO**; Taylor v. Sunset Lake Apartments, 1996H001, 11-12-98, **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**.

Commission denies request for reconsideration as simply arguments for reinterpretation of facts and evidence gathered by Commission investigator. Hedges v. Cook County Juvenile Temporary Detention Center, 1994EO38, 5-16-96, **CO**; Rush v. Ford Motor Company, 1996E013, 9-30-99, **CO**; Krolasik v. MacNeal Hospital, 1995E082, 3-17-00, **CO**; Ballo v. Lab-Line Instruments, 1998E065, 3-20-00, **CO**; Matthews v. Eugene's Fireside Restaurant, 1997PA017, 3-21-00, **CO**; Carrillo v. Cook County Hospital, 1997E029, 5-16-00, **CO**; Vassell v. Riley & Geehr, Inc., 1998E063, 8-17-00, **CO**; Scott v. Tastee Donut, 1999E074, 8-17-00, **CO**; Phillips v. Howard E. Gilbert and Associates, 1997E101, 1-9-01, **CO**; Posadas v. Oakton Pavilion, Inc., 1999E076, 3-28-01, **CO**; Mostowfi v. BankOne, f/k/a First National Bank of Chicago, 1996EO, 11-21-01, **CO**; Grimmer v. Ironworkers Mid-America Pension Plan and Ironworkers TriState Welfare Plan, 1996E072, 11-21-01, **CO**; Moore v. Rollins Leasing Corporation, 1999E018, 2-25-01, **CO**; Adebayo v. Admiral Security Service, 2001E030, 4-1-02, **CO**; Adeyooye v. Cook County Hospital, 2000E017, **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. Commission denied complainant's request for reconsideration. Gonzalez v. MetalStik, Inc., 1996E030, 12-28-01, **CO**.

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**.

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**.

Commission finds request for reconsideration was not timely filed pursuant to Commission Procedural Rule 480.100(A), having been filed 15 months late with no explanation for untimeliness, after presumption that the Commission dismissal order was received timely. Constantini v. Motorola, Inc., 1994E129, 5-12-97, **CO**.

A request 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 440.120(C) 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**.

Commission finds request for reconsideration was not timely filed, having been filed 18 days late. Scott v. Tastee Donut, 1999E074, 8-17-00, **CO**.

RES JUDICATA

CONCURRENT JURISDICTION

Commission finds that 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**.

RESPONSE

CONTENT

Commission denies complainant's motion to strike and finds 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 finds respondent in default, after contacts, notice and failure to respond to Commission complaint, and sets matter for a prove-up of damages at an administrative hearing. Feges v. The New Embers Restaurant, 1993E013, 11-8-93, **CO**.

MOTION FOR 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**.

PRE-EVIDENCE DETERMINATION

Amendment to Response Denied

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. Hearing officer's denial of respondent's motion to amend its verified response is denied without prejudice, allowing 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.

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

HOUSING DISCRIMINATION

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.

NOT ALL ACTIVITY PROTECTED

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.

PRIMA FACIE CASE

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.

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.

RETALIATORY DISCHARGE

Liability Found

Respondent found liable for retaliatory discharge when complainant opposed sexual harassment 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. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

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**.

Liability Not Found

Commission finds that complainant failed by preponderance of the evidence to prove 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**.

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 Cook County Commission on Human Rights. 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**.

RETROACTIVITY

ORDINANCE

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

ABUSE OF PROCESS

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 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 undermines 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**.

An appropriate sanction for failure to participate in the Commission process and adhere to rules of procedure would be to preclude a derelict respondent from litigation the issue of liability. 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**.

FAILURE TO APPEAR AT ADMINISTRATIVE HEARING

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**.

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**.

FAILURE TO APPEAR AT CONCILIATION CONFERENCE

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**;

SETTLEMENT AGREEMENT

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. Banks v. Cook County Juvenile Temporary Detention Center, 1994E088, 3-14-96, **CO**.

Commission finds that where parties have not tendered the settlement agreement to the Commission for Commission approval, the Commission cannot retain jurisdiction over the case to enforce the settlement. Lacy v. Cook County Hospital, 1992E033, 6-8-95, **CDO**.

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**.

RELEASE OF CLAIMS

Valid Release

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**.

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**.

Commission finds that complainant has not met her burden of proof that she was (1) unlawfully terminated on the basis of her sex and (2) has failed to prove by a preponderance of the evidence that respondent's articulated reason for her termination was a pretext for sex discrimination. Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-26-98, **CDO**.

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 Ordinance 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 Ordinance. 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 Ordinance. 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**.

Complainant, who is female, failed to establish a *prima facie* case of sex discrimination. 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**.

SEXUAL HARASSMENT

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**.

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**.

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**.

Objective and Subjective Components

Commission considers two components, an objective and a subjective component, in determining whether a sexually hostile or abusive work environment existed. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

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**.

INDIVIDUAL LIABILITY

The term employer under Article III(E) of the Ordinance could include individual respondents, even if they are not the owners of respondent restaurant, if they are either employees or agents of the employer who knew or should have known of the harassment and failed to take corrective action. Individuals that fall within the definition of Article III(E) can be held personally liable for their own acts of discrimination and sexual harassment that violate Article III(E) of the Ordinance. Urbach v. Amelio's Restaurant, et al., 1997E089, 7-1-98, **CO**.

REASONABLE PERSON STANDARD

Commission finds a reasonable person in the context of sexual harassment is one from perspective of victim of the harassment. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

SUPERVISORY EMPLOYEES

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

SEXUAL ORIENTATION DISCRIMINATION

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 Ordinance. Feges v. The New Embers Restaurant, 1993E013, 6-16-94, **CDO**.

The drawing of inferences from all evidence presented 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**.

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**.

STANDING

EXECUTOR OF ESTATE

Commission finds executor of 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**.

STATUTE OF LIMITATIONS

180-DAY COMPLAINT FILING PERIOD

The language of the Ordinance in Article X(B)(1)(a) does not explicitly refer to the 180-day filing period as jurisdictional. The Commission finds that 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**.

STRICT LIABILITY

SUPERVISORY EMPLOYEES

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**.

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**.

SUBPOENAS

REQUEST DENIED

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**.

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. and Graham et al. v. Chicago District Campground Association et al., 1999H006, H007, H008, H009, 4-5-02, **HO**.

SUBSTANTIAL EVIDENCE

CREDIBILITY

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**.

DEFINED

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

Not Permitted

Respondent in submitting a motion to dismiss with supporting documentation countering complainant's allegations is actually filing a motion for summary judgment, which the Commission is specifically prohibited from considering 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. Thomas v. Cook County Treasurer's Office, 1995E034, 12-6-95 **CO**; Freiberg v. South Cook Broadcasting, Inc., 1994E068, 5-1-95, **CO**; 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**; Morris v. Perfecto Cleaners, 1999E019, 6-4-99, **CO**; Paquet v. Pace Suburban Bus, 1997E068, 7-28-98, **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. Jaber v. Allen Management Services and Karen Doroski, 1994H009, 4-7-99, **HO**.

Commission Procedural Rule 460.160 does not allow for summary judgement motions. Reyes v. Penny Saver Publications, 1995PA005, 9-21-95, **HO**; Ehlers v. United Parcel Service, 1997E027, 7-31-97, **CO**; 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**.

TOLLING

EQUITABLE TOLLING

The language of the Ordinance in Article X(B)(1)(a) does not explicitly refer to the 180-day filing period as jurisdictional. The Commission finds that 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 Ordinance 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. 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**.

UNLAWFUL DISCHARGE

RETALIATORY DISCHARGE

Liability Found

Respondent found liable for retaliatory discharge where complainant opposed sexual harassment and was subsequently discharged. 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. Gluszek v. Stadium Sports Bar and Grill, 1993E052, 3-16-95, **CDO**.

Upon a showing of proof, complainant, pursuant to an order of default for respondent's failure to respond, claimed unlawful discharge and was awarded the equivalent of 12 weeks of pay of \$2247.84 for the period he was unemployed. Feges v. The New Embers Restaurant, 1993E013, 6-16-94, **CDO**.

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**.

Liability Not Found

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**.

Commission finds that complainant failed by preponderance of the evidence to sustain his burden of proof that the ultimate termination of employment was proximately caused by unlawful discrimination in violation of the Ordinance. Alcegueire v. Cook County Department For Management of Information Systems, 1992E003 and 1992E026, 8-10-95, **CDO**.

VERIFIED RESPONSE

See RESPONSE

WANT OF PROSECUTION

COMPLAINT DISMISSED

Dismissal of complaint for want of prosecution due to failure to attend pre-hearing meeting, administrative hearing or failure to otherwise cooperate in administrative hearing process and failure to show cause why complaint shouldn't be dismissed. Koop v. Drs. Pick & Amadeo, 1994E016, 11-9-95, **CDO**; Sampson v. Cermak Health

Services, 1993E009, 4-27-95, **CDO**; Banks v. Cook County Juvenile Temporary Detention Center, 1994E088, 11-14-96, **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**.

Complaint dismissed for complainant's failure to attend a Commission-scheduled conciliation conference. Hamilton v. David Kilheeny and any other owners of 13612 State Street, Riverdale, IL., 1999H004, 7-13-00, **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 (Show Cause); 9-19-01 (Dismissal), **HO**.

WITHDRAWAL OF ATTORNEY

LEAVE GRANTED

During Administrative Hearing

Commission grants attorney leave to withdraw because of irreconcilable differences with complainant. San Ramon v. Cook County Hospital, 2000E014, 6-13-00, **HO**.

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, "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**.

Pre-Administrative Hearing

Commission finds that withdrawal of attorney will be permitted when such withdrawal would neither delay Commission proceedings nor otherwise affect administrative efficiency or prejudice complainant. Lopez v. Advanced Transformer Co., 1995E013, 2-13-97, **CO**; McAndrew v. Goodyear Tire & Rubber Co., 1995E057, 5-28-96, **CO**; Brown v. Lutheran General Hospital, 1995E038, 10-3-95, **CO**; Elrod v. Elementary School District #159, 1995E053, 3-5-97, **CO**; Mareske v. Omega World Travel, 1996E119, 4-3-97, **CO**; Banks v. Cook County Juvenile Temporary Detention Center, 1994E088, 10-30-95, **CO**; Soumpholphakdy v. Circuit Services, Inc., 1996E016, 5-29-97, **CO**; Flood v. J.S. Computer Learning Center and Jay Saffarzadeh, 1997E009, 4-30-97, **CO**; Yanes v. Avon Products, Inc., 1996E008, 5-5-98, **CO**; Blobaum v. Village of Morton Grove, 1998H025, 1-14-99, **CO**; Wollscheid v. Village of Morton Grove, 1998H026, 1-14-99, **CO**; Yacko v. Village of Morton Grove, 1998H019, 1-14-99, **CO**;

Silverman v. Kendall College and Sheridan, 1999E026, 10-5-99, **CO**; Huggins v. Ace Hardware, 1999E046, 4-17-00, **CO**; Lucas v. Zeta International and Branco Jevtic, 1996E022, 6-12-00, **CO**; Stagailo v. Salton-Maxim Housewares, Inc., and Mark Kasper, 1999E017, 11-20-00, **CO**; Jaber v. Allen Management Services and Karen Doroski, 1994H009, 4-7-99, **HO**; Kelley v. Glenwood School, 2000E056, 9-28-01, **CO**; Meagher v. Target, a subsidiary of Dayton-Hudson, 1996E058, 6-1-99, **CO**; Hedquist v. GameWorks, 2001E026, 11-15-01, **CO**; Korziuk v. Krex Computer, Inc., et al., 2002E002, **CO**.

Commission grants attorney leave to withdraw because of conflict of interest. Lamet v. Niles Township Jewish Congregation, 1995E041, 6-11-96, **CO**.

Commission grants attorney leave to withdraw because of irreconcilable differences with complainant. Spector v. ARA Cory Refreshment Services, 1995E098, 12-20-96, **CO**; Berger v. Hilfiger, 1995E033, 6-28-95, **CO**; West v. Amdahl Corporation, 1995E118, 3-25-96, **CO**; Klein v. Sprint/Centel Illinois, 1997E035, 7-28-97, **CO**; Dudnik v. Impressions Unlimited, 1996E109, 7-28-97, **CO**; Florczyk v. MBC Mortgage Corp., 2002E086, 3-19-03, **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**.

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**.

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 McDonalds, 1997E092, 5-14-98, **CO**.

Commission grants motion of complainant's attorney to withdraw when complainant informed counsel that her services are no longer required. Finn v. LaSalle Bank, 1998E078, 9-30-99, **CO**.

Commission grants respondent's attorney leave to withdraw from representing an individually named respondent. At the time counsel initially entered his appearance on behalf of respondent UBS, and Ricky Quinones, individually, Mr. Quinones was employed by respondent. Mr. Quinones is no longer employed by the respondent and

due to the nature of the underlying sexual harassment allegations, a conflict or potential conflict exist between representing the interests of UBS respondent and Mr. Quinones. Commission finds attorney's request to withdraw representation from individually named respondent reasonable. Tsimogiannis v. United Buying Service and Ricky Quinones, 1995E074, 3-24-98, **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**.

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**.

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**.