

IMPLEMENTATION OF EXECUTIVE ORDER NO. 18-08

A Strategic Plan to Eliminate Backlog at the Illinois Human Rights Commission and Improve Overall Service

2018



AN INTERGOVERNMENTAL COLLABORATIVE APPROACH

{ The Illinois Department of Human Rights
The Illinois Human Rights Commission
The Department of Central Management Services

TABLE OF CONTENTS

I.	Executive Summary.....	2
II.	Background: State Adjudication of Human Rights Violations.....	7
III.	Backlog: A Ballooning Problem at the Commission.....	10
IV.	Comprehensive Plan to Eliminate Backlog & Improve Overall Service.....	24
V.	External Factors Potentially Impacting Progress.....	35
VI.	Next Steps.....	36
VII.	Acknowledgments.....	37
VIII.	Appendices	
	A. Executive Order No.18-08.....	38
	B. Path of a Charge at the Department of Human Rights.....	42
	C. Review of Department Determination	43

I. EXECUTIVE SUMMARY

Introduction

The combined work of the Illinois Department of Human Rights (Department) and the Illinois Human Rights Commission (Commission) improves the quality of life in our State by promoting and enforcing one of the most comprehensive human rights protection statutes in the nation—the Illinois Human Rights Act (Act).

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

Yet despite the State's critical role in eradicating discrimination, for more than a decade Illinois has fallen down on its efforts to provide justice to the thousands of people that have trusted it to discern their civil rights. Notwithstanding the efforts of its hardworking staff and devoted Commissioners, the backlog of cases at the Commission continues to grow, forcing participants to wait years for resolution of their complaints. Without action, the pending caseload at the Commission could top 3,000 by FY20.

Without action, caseload at the Commission could top 3,000 by FY20.

Languishing cases harm not only those awaiting decision, but also the public as a whole. Excessive delays diminish the enforcement of human rights in our State, endangering the rule of law. Unresolved cases also impede confidence in Illinois' business climate.

Illinois Administrative Law Reform

While the scope of the backlog at the Commission may represent the most egregious in our State, delay is not confined to adjudication of civil rights violations.

Governor Rauner's administration early-on recognized problems with the State's existing adjudicative structure. Under the current system, more than 150,000 annual hearings are held under the authority of more than 25 State agencies. Each agency has its own system of administrative regulations, with some agencies having as many as three different regulatory schemes. This makes life exponentially more difficult for practitioners and self-represented litigants who must work to master a new procedural process for each agency before which they appear. Moreover, **agencies have vastly different caseloads, staffing, and technological resources**, leading to unwieldy backlogs at individual agencies.

I. EXECUTIVE SUMMARY

In pursuit of providing better service, Governor Rauner signed Executive Order 2016-06 in April 2016, which created a Pilot Bureau of Administrative Hearings to work collaboratively with State agencies. The role of the Bureau was to develop and promote shared resources, uniform rules of procedure, a professional code of conduct for adjudicators, comprehensive, uniform training, an electronic filing and case management system, and to make recommendations to reduce backlogs and more efficiently manage case assignments for administrative hearings.

3



Since its inception, the Bureau has worked across executive branch agencies to share best practices and identify ongoing structural impediments. The Bureau authored a draft set of model hearings rules to reduce the length of hearings, drive efficiencies, and preserve due process; launched an informative website, which compiles information regarding the State's many hearings processes and allows citizens to make suggestions for improvement; implemented the first-in-State Administrative Law Judge (ALJ) Code of Professional Conduct to provide guidance on ethical dilemmas unique to administrative adjudication; implemented uniform training for adjudicators and authored helpful resources including a

Bench Book of best practices to assist in conducting hearings; and worked with the Department of Innovation and Technology (DoIT) and the Illinois Workers' Compensation Commission to develop an enterprise case management solution that will transform the State's outdated processes into a state of the art system simplified for use by State agencies and litigants alike.

To combat backlog, the Bureau tested consolidation of hearings functions – a concept already in place in more than 30 jurisdictions across the nation. To do this, the Bureau facilitated the sharing of human resources between agencies. A pilot case sharing effort between the Department of Public Health, the Department of Revenue, and the Department of Labor **doubled the speed of Labor adjudications with no expense to the State.** The Bureau further centralized hearings functions for agencies whose caseloads do not justify employing their own ALJ, allowing agencies to eliminate costs of contracting with private attorneys to serve as ALJs while still ensuring that their cases are heard by an experienced adjudicator.

Based on the successes of the Pilot Bureau, Governor Rauner signed Executive Order 2017-04 to permanently cement the Bureau of Administrative Hearings within the Illinois Department of Central Management Services, continuing its work in collecting data, exploring centralization, and improving administrative efficiencies.

I. EXECUTIVE SUMMARY

Collaboration to Improve Human Rights Adjudication in Illinois

Illinois can only succeed at delivering high-quality service if it is transparent in its efforts to monitor caseloads and continuously elevate its processes and services. With wait times at the Commission in many cases exceeding five years to resolution, it is clear that the current process produces poor results. Yet until recently, it was not clear exactly why, nor how to apply sustainable solutions.

Both staff and Commissioners, through standing and ad hoc committees, have brainstormed ideas for improving service and eliminating backlog, but without a full array of resources available, they were not equipped with the tools to move forward with those changes. Executive action, however, **merged the transformational experiences of the Bureau, with the technical expertise and resources of the Commission and Department** to maximize progress.

On June 20, 2018, Governor Rauner, issued Executive Order 2018-08 to reform Illinois' human rights adjudication and eliminate the backlog pending at the Commission. In doing so, Governor Rauner created an opportunity for leaders at the Department and Commission to partner with one another, and with the Department of Central Management Services' Bureau and its Office of Rapid Results, as well as DoIT, to attack the backlog collectively by sharing resources, ideas, and applying

best practices to achieve greater efficiencies. Per the Order, this team was required to produce this Plan within 60 days that will fully eliminate the backlog within 18 months.

Legal, technical, and operational leaders at each agency quickly mobilized a transformation team to implement the Order. Those tasked with this charge recognize that justice is not an assembly line, and that each backlogged case reflects human experience. Our approach to reduction of backlog, therefore, must be carefully crafted to ensure due process and thoughtful consideration of each matter. Taking shortcuts in an effort to reach a time goal would be an even greater injustice than the current delay, and would fail to deliver "better, not simply faster" service as the Governor urges.

Recommendations

By increasing staffing as needed, applying efficient business processes, leveraging technology platforms, and continuously monitoring, reporting, and adapting our performance, the Plan as set forth herein will not only deliver **elimination of current backlog within 15 months**, but also ensure that by December 2019, **incoming Requests for Review are completed within 365 days**, without sacrificing due process or quality of decisions.

Ensuring the vitality of our people, processes, and platforms, will enhance performance, delivering the level of

I. EXECUTIVE SUMMARY

service Illinoisans expect and deserve. The transformation team's recommendations are briefly stated here, and more fully explained within this Plan.

5 First, ill-defined time goals and inefficient case processing exacerbates delays, depriving participants of a timely resolution of their disputes. Delays also deprive the Department of the Commission's decision-making; this reasoning could better inform the Department's investigations of civil rights violations. Adopting consistent, streamlined processes and articulated timeframes for anticipated resolution will improve the State's service to participants. Moreover, consistency and predictability will boost public confidence in the State's process.

Second, a temporary injection of additional human resources is necessary to reverse the growing backlog and drive caseload down to a manageable number. Current projections include long-range plans for normalizing staffing levels once backlog has been eliminated.

Lastly, migrating the Department and upgrading the Commission to a modern, shared electronic case management system is a sensible investment that cannot only improve transparency, accountability, and customer service, but is also expected to provide significant time savings once fully implemented—time better spent on case resolution than the mechanics of paper processing. Moreover, the development of electronic case workflows will cement newly

improved processes as routine in each agency.

Having already begun an aggressive turnaround in these first 60 days, **we strive to earn back the public's trust and confidence and become a model for government transformation and service.**

ACTION IN FIRST 60 DAYS

- ✓ Mobilized staff at HRC, DHR, CMS, and DoIT, to examine root causes and challenges to eliminating backlog, and formed working groups in key areas staffed by legal, technical, and operational leaders who continue to propose new solutions to better customer service.
- ✓ Executed an Intergovernmental Agreement between HRC, DHR, and CMS to promote resource sharing whilst protecting confidentiality of information.
- ✓ Initiated procurement of a shared technology platform that will allow DHR and HRC real-time access to robust case information, and eliminate duplicative entries.
- ✓ Clearly defined current caseload and progression for a complete picture of backlog.
- ✓ Conducted comprehensive analysis of the way cases are processed at both DHR and HRC.
- 6 ✓ Over one dozen employees trained to deploy Rapid Results techniques for continuous process improvement.
- ✓ Recruited experienced attorneys to assist in reviewing and finalizing over 300 draft Commission orders for aged cases dating to 2010 and 2011.
- ✓ Expedited service of Notices of No Exceptions, allowing final disposition of more than 100 additional cases, and providing parties enforceable Commission Orders.
- ✓ Established two additional attorney positions, and one additional support staff position to optimize staffing levels at the Commission, commensurate with the incoming caseload. An additional seven temporary contractual attorney positions have been posted to assist with processing backlog.
- ✓ Created training materials for onboarding of new employees, which encompass process changes, and will lead to consistent standards in work product.
- ✓ Identified knowledgeable internal staff for appointment to a Deputy General Counsel position, responsible for overseeing quality and productivity of incoming attorneys' work.
- ✓ Improved case assignment process to increase oversight in monitoring backlog.
- ✓ Publicly posted Commission decisions issued, dating to 2015, thereby eliminating a repeat audit finding of the Commission.

A. Initiating a Discrimination Charge at the Department



The Department receives, investigates, and conciliates charges of unlawful discrimination and undertakes affirmative action and public education activities to prevent discrimination.

Victims of discrimination are often members of vulnerable populations and historically disadvantaged groups. Indigent complainants who believe they have been discriminated against have access to the State's forum regardless of their financial ability. There are no filing fees and legal representation is not required. The Department works with complainants during the intake process to gather sufficient information to determine the allegations, whether the Department has jurisdiction, and the preparation of a charge that initiates an investigation by the Department. Where agreed by the parties, the Department also provides mediation services to aid expedient and satisfactory resolution at an early stage.

7

By statute, the Department has 365 days from the date a perfected charge of discrimination is filed to investigate and determine whether or not substantial evidence of discrimination exists. The parties to a charge may mutually agree to extend the time for investigation.

Where the Department's investigation finds substantial evidence of discrimination, a Complainant has the option of:

1. requesting, within 30 days, the Department to file a complaint on Complainant's behalf with the Commission, a separate adjudicatory agency;
2. filing a complaint with the Commission within 90 days; or
3. commencing, within 90 days, a civil action in a State circuit court of appropriate venue.

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

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

Prior to 2008, Requests for Review (appeals) were determined by the Department's Office of Chief Legal Counsel. However, to provide independent review for individuals seeking appeal of the Department's dismissals, the General Assembly amended the Act to transfer this function to the Commission, effective January 2008.

Appendices B & C at the end of this Report contains process maps of stages detailed above.

B. Adjudicating a Discrimination Complaint at the Commission



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

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

8

The Board of Commissioners is comprised of 12 Governor-appointed Commissioners and one Chair, diverse in experience and geographic representation of our State. Contested matters, Requests for Review, approval of settlement agreements, and various motions and petitions are determined by three-member Commission panels. The Commissioners en banc (as a whole) determine petitions for rehearing and certified questions. In contrast to the Department's mandate to complete investigation within 365 days, **the Act is silent as to Commission timeframe to dispose of pending matters.** As the vast majority of the Commission's work, and subsequent backlog, is determining Requests for Review and contested case matters, a brief overview of each is presented for background.

1. Requests for Review

Where a party requests, Commission panels review Department defaults and dismissals. When reviewing a default, if the Commission panel finds the respondent showed good cause for failure to participate in the Department proceedings, the Commission will vacate the Notice of Default; otherwise, the Commission panel will enter an Order of Default against the respondent. When reviewing a dismissal, the Commission panel shall determine whether to sustain (uphold) the dismissal, or vacate (undo/reverse) the dismissal. If sustained, a final Commission order dismissing the charge will issue. If vacated, the Commission will issue an order either remanding the matter to the Department for further investigation, or finding substantial evidence of discrimination, thus allowing the complainant to move forward with filing a Complaint with the Commission.

II. BACKGROUND: State Adjudication of Human Rights Violations

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

2. *Contested Cases*

Upon conclusion of an evidentiary hearing on a Complaint, the ALJ issues a Recommended Order and Decision (ROD). The parties have an opportunity to file exceptions to the ROD if they disagree. If parties file exceptions to the ALJ's ROD, the exceptions go to the Commissioners for determination. If no exceptions are filed, then the ROD becomes the Commission's final decision. Historically, the Commission's Office of General Counsel has been tasked with mailing the parties Notices of No Exception, which allows the ROD to stand as the final enforceable order of the Commission.

C. State Forum Essential to Access by the Self-Represented

9

Maintaining a highly functioning State administrative forum for the timely resolution of human rights disputes is imperative to preserving access to justice, particularly for the self-represented. Formal litigation is often cost prohibitive for self-represented litigants, not to mention difficult to navigate. In a court, most cases are disposed of prior to trial by motions to dismiss or summary judgment. Dismissals are even greater in discrimination cases where the evidence is largely in the possession of the defendant. Thus, unless the self-represented plaintiff is adept at conducting discovery to obtain the evidence needed to bring a case to trial, most self-represented plaintiffs will not see their case go to trial.

To the contrary, the Department is required by statute to investigate every complaint in which it has jurisdiction, and the Commission must adjudicate to final resolution any Complaint properly before it. Thus, before the Department, a victim of discrimination will obtain an investigation into their allegations and a final determination made by the Department within 365 days. Moreover, the Department's decision can be appealed to the Commission through the Request for Review process, at no cost. No comparable procedural protection after dismissal is offered in a similar federal forum.

Additionally, Illinois law offers extended protection than federal law, both in terms of more statutorily protected classes, and broader interpretation of what it means to be a member of a protected class. As opposed to circuit courts of general jurisdiction, administrative agencies serve as subject matter experts, and are well poised to make difficult determinations under State anti-discrimination law. Thus, there is great utility in preserving and enhancing a robust State administrative forum to investigate and adjudicate civil rights violations. Elimination of backlog is of utmost importance in restoring this function.

A. Current Caseload at the Commission

1. Case Inventory

To develop an effective plan for elimination of backlog at the Commission, the transformation team first gathered a detailed inventory of present caseload. As the Commission's case management system does not run comprehensive reports across case types, and attorneys track their own dockets, this was a time-consuming, manual task requiring input from many staff. In the end, a comprehensive analysis revealed the following caseload pending within the Commission's Office of General Counsel:



10

a. Requests for Review Caseload

The bulk of backlogged cases by far are Requests for Review, comprising nearly 90% of present caseload. This backlog has been a **ballooning problem** as incoming Requests for Review have outpaced those disposed of by Commission order each year. Over the past decade this imbalance led to excessive accumulation of untouched cases, which has now grown so large in number as to be insurmountable with present staffing levels.

Historical context is germane to an understanding of the present backlog of Requests for Review. Effective in 2008, the Legislature tasked the Commission with determining Requests for Review, a process previously carried out by the Department's Office of Chief Legal Counsel. Anticipated funding for additional staff to absorb this new caseload was never established, resulting in an unfunded mandate for the Commission.

At the same time the Commission began determining Requests for Reviews, Illinois, like the rest of the nation, was enduring negative effects from the Great Recession. Job loss and unemployment due to economic downturn was linked to a seismic increase in the number of discrimination charges filed with the Department. This phenomenon was not limited to Illinois. In fact, federal Equal Employment Opportunity Commission (EEOC)

III. BACKLOG: A Ballooning Problem at the Commission

filings also skyrocketed in the years following the Great Recession, with EEOC reporting a “record number of new charges of discrimination” two years in a row.¹

The increase in charges filed with the Department, in turn, led to a corresponding increase in Requests for Review of the Department’s determinations—tallying **more than 500 filings at the Commission for three consecutive years**. Whether discrimination did in fact rise under the Great Recession is not critical to our analysis of the Commission’s caseload because the Commission was required to consider *de novo* all incoming Requests for Review. All Requests had to funnel through one of four Commission panels for full consideration and written determination.

Either the unfunded mandate or recessionary increase in Requests for Review on its own would have presented exceptional challenge for the Commission. Combined, however, these two forces made conditions dire.



To manage the rapid influx of Requests for Review, the Office of General Counsel increased Commission panel meeting frequency from twice per month to four times per month. Meeting frequency of Commissioners is affected largely by the ability of Commission staff to prepare cases for review and determination by the Commissioners, and draft Commission orders. One Assistant General Counsel and the then-Deputy General Counsel each prepared and presented 6 Requests for Reviews to the 4 monthly panels, thus producing at least 24 Requests for Review each month, and more whenever possible.

Simple calculation of incoming cases compared to cases disposed of demonstrates an unsustainable model. Notwithstanding best efforts of staff to keep up during this time, cases continued to accrue as backlog. Yet, **despite this obvious growing problem no comprehensive plan was ever implemented** to tackle the voluminous Requests received during this period. There was no adjustment in staffing to adequately stem the tide of incoming cases. Nor was there a long-term plan to dig out of the backlog that was quickly growing.

With the departure of the Commission’s General Counsel in 2011, the Deputy General Counsel assumed the greater duties of the General Counsel, leaving just one Assistant General Counsel to handle all day-to-day legal work of the Commission, including

¹ EEOC Press Release, Private Sector Bias Charges Hit All-Time High (January 25, 2012), available at <https://www.eeoc.gov/eeoc/newsroom/release/1-24-12a.cfm>

III. BACKLOG: A Ballooning Problem at the Commission

Requests for Review. **By FY12, Requests for Reviews peaked at 559 filed, yet the Commission had just one attorney regularly preparing and presenting such high volume of cases to Commission panels for determination.** This attorney also worked on non-Request for Review assignments including contested case matters, motions for rehearing, and ordinary agency legal work expected of an Office of General Counsel. Additionally, near the same time the Commission began receiving high volume Requests for Review, the non-Request for Review caseload also rose. This is likely due to an increase in the number of ALJs hearing cases at the Commission, making decisions issue faster than they had before. Issuance of more decisions in a shorter timeframe meant that litigants' filings of exceptions and petitions for rehearing were more concentrated.

With limited staff to prepare and present Requests for Review to Commission panels, and other non-Request for Review work that required timely completion, the frequency of Commission panels was strategically decreased to 2 panels per month, with the previous target of 6 Requests for Review per panel maintained.

After suffering the effects of years of understaffing, the Commission gained a second Assistant General Counsel in November 2013 and a third in February 2016. Incoming Requests for Reviews had tapered and began steadily decreasing, though the backlog had already grown quite large by this time.

Staff Attorneys in Relation to Requests for Review Filed

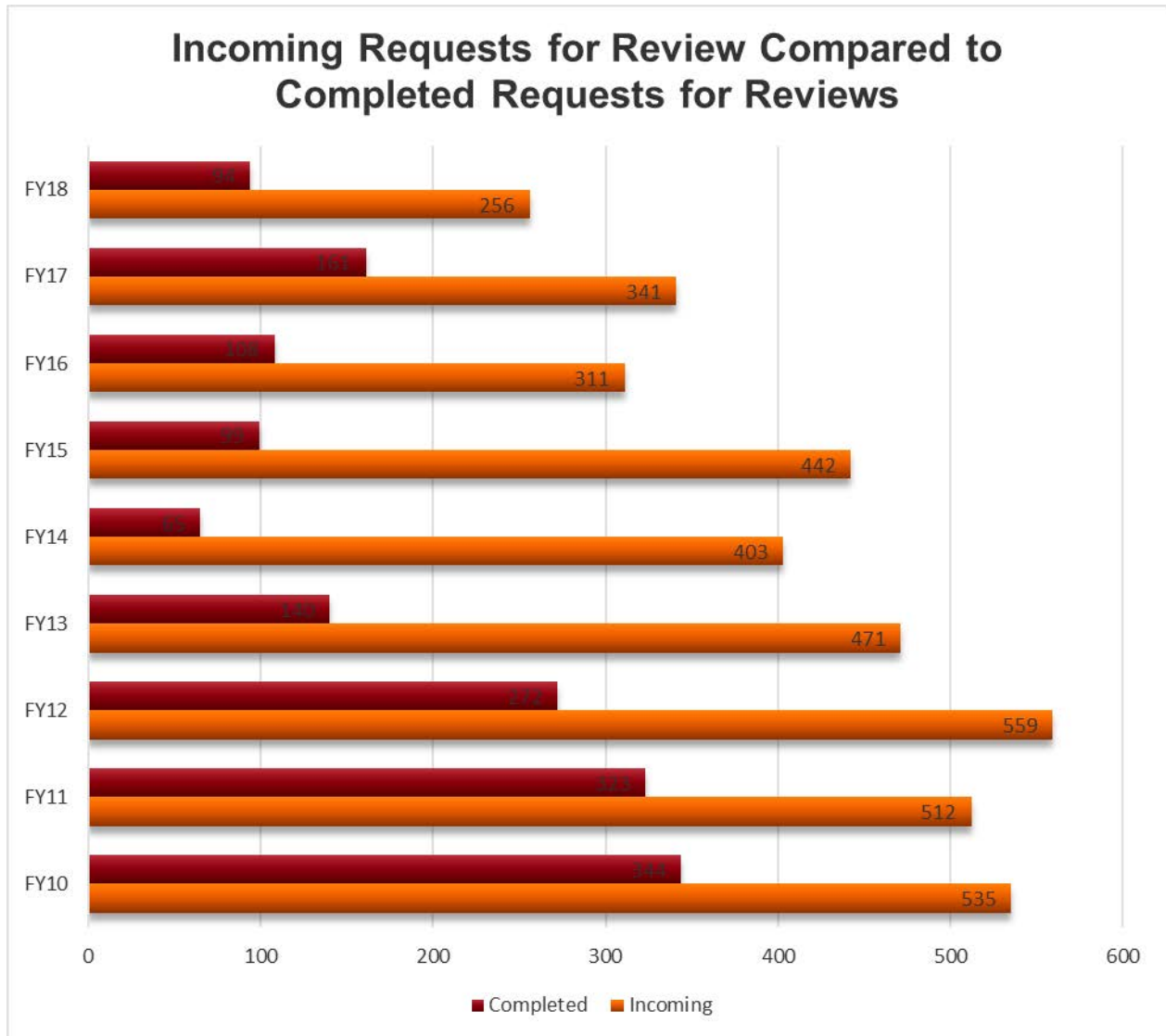
<i>Fiscal Year</i>	<i>Requests for Review Filed</i>	<i>Staff Attorneys to Prepare</i>
2010	535	2
2011	512	2
2012	559	1
2013	471	1
2014	403	2
2015	442	2
2016	311	3
2017	341	3
2018	256	3

Despite increased staffing, the Office of General Counsel never increased the target number of cases attorneys each prepared for panel, nor did it increase the frequency of Commission panel meetings from two per month. Implementation of an increased staffing plan necessary to catch up to the backlog appears to have been flawed in this respect. As a result, the staffing that was there was not positioned to adequately address the needs to eliminate backlog, leading to further accumulation of untouched cases. As

III. BACKLOG: A Ballooning Problem at the Commission

incoming Requests for Review tapered and began to decrease, so too did Request for Review output decrease. As a result, the backlog continued to grow rather than stabilize.

The below chart demonstrates the ratio of incoming Requests for Reviews to those disposed of by written Commission order each year since FY10.



13

This chart illustrating output compared to incoming Requests for Review, while informative, does provide not an all-inclusive picture. The Commission was not collecting data on case complexity or number of charges in each Request, which could account for decreased number of orders issued in comparison to prior years. Making matters more

III. BACKLOG: A Ballooning Problem at the Commission

complex, two of the three Assistant General Counsels experienced frequent, unforeseen and unavoidable leaves of absence, impacting overall ability to prepare and present cases to Commission panels. Though we cannot definitively explain the reduction in output, seeing prior output levels does help to inform our projection moving forward that an attorney dedicated solely to Requests for Review might reasonably complete at least 15 cases per month, and current attorneys, with non-legal tasks removed from their purview reasonably complete at least 10 cases per month.

b. Non-Request for Review Caseload

A total of 271 Non-Request for Review matters are pending with the Commission's Office of General Counsel, of which 39 are contested matters, including 29 awaiting Commission determination, and 10 awaiting written Commission orders instructing remand to the ALJ.

Total Contested Matters Pending: 39

<i>Calendar Year Exceptions Filed</i>	<i>Contested Matters Awaiting Commission Determination</i>	<i>Contested Remanded by Commission Where No Order Has Issued</i>	<i>Matters</i>
2010	0	1	
2011	0	4	
2012	0	1	
2013	0	2	
2014	0	2	
2015	1	0	
2016	9	0	
2017	13	0	
2018	6	0	
TOTAL	29	10	

Though volume of contested matters pending before the Commission is small in comparison to Requests for Review, the **timeframes to disposition are likewise abysmal**.

Parties that have litigated their cases before an ALJ and have filed exceptions to the ALJ's Recommended Order and Decision (ROD) may wait **up to another two years** for their case to make it to Commission panel for final determination. If the Commission panel determines the matter should be remanded to the ALJ for further consideration of some issue, added delay in communicating a written remand order prevents the ALJ from conducting further action on the case until it is received.

Even procedurally simple final dispositions, such as those in which the parties did not file exceptions to the ALJ's ROD, have waited in line for years behind other backlogged cases for a standard form Notice of No Exceptions to be issued. This standard form allows the ROD to stand as the final enforceable order from the Commission, without which the parties do not have true resolution.

Additional matters pending in the Office of General Counsel include: (1) 1 certified question order (2014); (2) 209 Recommended Orders and Decisions Awaiting Issuance of Notices of No Exceptions (oldest dates to 2012); (3) 2 Petitions for Rehearing (2016 and 2017); (4) 7 settlements for Commission approval; (5) 8 appellate court appeals from Commission determinations; and (6) 5 default matters.

c. Administrative Law Unit Caseload

For completeness measuring case inventory at the Commission, the Administrative Law Unit (separate from the Office of General Counsel) has 126 active cases. As each case is consistently moving toward a well-articulated target, and is closely managed by an assigned ALJ, this unit does not suffer backlog of dormant, aging cases.

In fact, the Administrative Law Unit, eager to join improvement efforts early on, volunteered to prepare all 209 Notices of No Exceptions previously backlogged within the Office of General Counsel. The Notices are comprised of a standard template administrative staff serve on parties verifying that no exceptions have been filed, making the ALJ's ROD the final Order of the Commission. The transformation team is happy to report that at the 60-day mark, the Administrative Law Unit has nearly completed this task. Not an easy feat, given that some cases date to 2012, and service on parties required considerable search to locate them. The Administrative Law Unit has permanently assumed the role of sending these Notices in all cases, and have been sending within 1-2 weeks of expiration of the time for parties to file exceptions.

d. Backlog of Decisions Not Published

Not surprising given present workload, the Commission received audit findings for its failure to timely publish its decisions. Less than 60 days into reform, administrative staff at the Commission devoted tremendous effort to **post decisions from 2015 to present.**

2. Breakdown of Requests for Review by Case Progression

A closer look behind the raw number of inventory gives a better picture of the overall caseload, and informs a proper plan to dispose of aging cases. For instance, of the 2,287 pending Requests for Review, 84 should have been dismissed when Petitioner was granted an extension of time to file their Request, but never filed. **Without proper tracking and monitoring, such cases go unnoticed and unnecessarily inflate the**

III. BACKLOG: A Ballooning Problem at the Commission

backlog. Worse, failure to timely dismiss cases where the Commission clearly lacks jurisdiction detracts staff's attention from the many substantive cases that are pending.

Further analysis of Request for Review caseload within the Commission's Office of General Counsel revealed that **Commission panels had already issued publicly their oral determinations on 685 Requests for Review.** However, without written orders required to dispose of these matters, all 685 cases remain pending on the docket.

Of those 685 Requests for Review with previous oral determinations, **306 had a draft order** completed by an Assistant General Counsel attorney which needed only proofreading and supervisor check of proper legal analysis prior to issuance. The majority of the 306 draft orders addressed Requests for Review filed with the Commission in 2010 and 2011. Many had been awaiting supervisor review and approval for over one year.

The transformation team recruited the assistance of experienced ALJs, acutely familiar with the Act, to proofread such orders for any potential error. Under this approach,

all 306 drafts were successfully finalized and issued in less than 60 days, providing long-awaited closure for the parties.

16

In 60 Days Since Executive Order 18-08:

- ✓ 306 draft orders reviewed and issued
- ✓ More than 100 Notices of No Exceptions served
- ✓ 84 Dismissals for Failure to File Request
- ✓ = **Nearly 500 Cases Resolved**

The remaining 379 that need orders drafted will be made priority, either through case sharing initiatives with skilled attorneys in agencies across the State, or additional attorneys hired at the Commission. In preparing to present these 379 cases to Commission panels, the Commission's attorneys previously wrote briefs summarizing facts and law of each case, making drafting these 379 orders less labor-intensive than beginning from scratch.

This leaves **a total of 1,518 cases that are awaiting assignment to a Commission panel for determination.** Aging Requests for Review must be addressed swiftly to ensure justice. At this stage, the Commission is in effect reviewing the appropriateness of Department's dismissal after investigation. If the Commission vacates a dismissal and enters a finding of substantial evidence, formal hearing on a Complaint still lies ahead for the parties. Waiting years for a determination from the Commission at this early stage, participants become disadvantaged in future proceedings as evidence that may be needed for hearing grows stale, and witnesses may become unavailable.

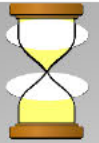
III. BACKLOG: A Ballooning Problem at the Commission

The Plan outlined herein ensures each backlogged Request for Review is presented to the Commission and completed by issuance of written order **within the next 15 months.**

JUSTICE DELAYED IS JUSTICE DENIED.



685 Commission Determined Requests for Review with no written Order



1,518 Requests for Review Awaiting Scheduling to a Commission Panel



495 Requests for Review Aged 7 Years or Older with No Final Disposition

B. Executive Action to Eliminate Backlog & Improve Service

Recognizing the need to improve service to the public, Governor Rauner issued Executive Order 2017-02, seeking consolidation of the Department and Commission to improve operating efficiencies. Without explanation, the General Assembly rejected his proposal. Not willing to give up on the thousands of people awaiting timely resolution of their cases, Governor Rauner sought a different approach to eliminate delay and improve service. **Executive Order 2018-08 is a call to action:** CMS Bureau of Administrative Hearings, the Department and the Commission are to coordinate to achieve efficiencies and eliminate existing backlog of cases pending before the Commission.

*“Our
administration
has made
government
transformation
a priority from
day one.”*

- Governor
Rauner

Said coordination includes: (1) developing a benchmark system and (within 60 days) a plan for complete elimination of backlog within 18 months; (2) identifying where legislation, rules, and internal policies may be amended to streamline process; (3) executing intergovernmental agreements to share resources; (4) developing (with DoIT) technological solutions and shared case management systems; (5) tracking and reporting (at least quarterly) total number of pending cases, average and median length of time for case resolution, and other information necessary to capture backlog or delay; (6) soliciting feedback and surveying parties appearing before the Commission and the Department and incorporating suggestions for better service; and (7) developing and participating in training programs, including Rapid Results training program.

The Order establishes regular reporting requirements on coordination efforts and backlog data. The 60-day accelerated timeframe to produce a comprehensive improvement Plan ensures the attention and focus of senior staff at the Commission, Department, CMS, and DoIT. The Order draws upon the centralized support and process improvement experience of the CMS Bureau of Administrative Hearings and the CMS Office of Rapid Results to help in arriving at best possible solutions.

To fulfill the goals of the Order, the transformation team created working groups, each comprised of and led by existing State employees involved in the State’s legal,

III. BACKLOG: A Ballooning Problem at the Commission

technical and operational areas. The groups quickly went to work in implementing the Order, sharing resources, ideas, and best practices.

1. *Rapid Results Continuous Process Improvement Training*

The pathway to effective transformation includes mapping every major business process to identify and eliminate waste and streamline steps to provide better service. Through the CMS Office of Rapid Results, **over one dozen senior staff have been**



trained in continuous process improvement principles in the past 60 days—a valuable tool in eliminating backlog.

The Office of Rapid Results engages employees throughout Illinois government to harness their ideas in delivering services faster, better, and with fewer resources. From its inception in early 2016, the program has trained more than 694 state employees throughout Illinois resulting in 200 individual rapid results projects. These projects have generated \$1,235,794 in annual cost savings for Illinois taxpayers with a combined savings of 81,719 employee hours re-

deployed to other areas.

The picture above shows a first-of-its-kind, specially targeted workshop to equip the transformation team with tools needed to succeed in this monumental task, including an experienced facilitator for guidance.

Through this exercise, the team was able to define root causes of the backlog, identify precisely at which process steps unnecessary waiting occurs, and test ideas to streamline the current process. The workshop also generated discussion of substantive legal issues that while not bearing on process, were important discussions to have, and likely would not have been prompted but for the team's collective involvement. Lastly, participation produced a deeper understanding of the detrimental impact delay has had across both the Department and Commission. Such understanding has afforded the team

"The Rapid Results Workshop should be mandatory for any new manager."

-Rapid Results Attendee

confidence in the global Plan it has developed, and in just 60 days, team collaboration has propelled tremendous progress in furtherance of this Plan. The team will continue ongoing reassessment of processes to ensure smooth and efficient operations.

2. Intergovernmental Agreements to Promote Resource Sharing

Rapid Results workshop allowed the team to discover the overlap in agency processes and the many ways in which we could work together to benefit one another, and in turn, provide better service to the Illinois residents we serve. To continue to reap the benefits of this working relationship, the Department, the Commission, and CMS entered into an Intergovernmental Agreement to facilitate the sharing of information and resources whilst maintaining confidentiality and separation of duties. Executive Order 18-08 specifically directs such cooperation and agreement pursuant to the Intergovernmental Cooperation Act which provides, in relevant part, “any power or powers, privileges, functions or authority exercised or which may be exercised by a public agency of this State may be exercised, combined, transferred, and enjoyed jointly with any other public agency of this State.” See 5 ILCS 220/1, *et seq.*

Additionally, drawing on the successful case sharing arrangements facilitated by the CMS Bureau of Administrative Hearings in which Department of Labor wage claim case output was doubled without any additional expenditures, the team prepared a draft Intergovernmental Agreement to allow experienced attorneys from other State agencies to assist in research and drafting on behalf of the Commission where appropriate. If bandwidth exists, such an arrangement could be achieved without any additional spending. The transformation team will continue to explore potential for such an option.

C. Root Causes and Challenges to Eliminating Backlog

Rapid Results process mapping exercises helped the team to pinpoint precisely where unnecessary waits occur, in order to implement process changes to reduce delay. Moreover, fruitful discussion between the three agencies resulted in a better understanding of the various factors leading to the massive backlog we face today. With this deeper understanding of the backlog and challenges we face in its elimination, we are better prepared to effect meaningful, lasting change.

1. Expanded Jurisdiction Without Staffing, Combined with External Forces

Over the past decade, the Commission saw its jurisdiction expand in several ways without corresponding increase in resources. Beginning in 2008, the Act was amended and the Commission was tasked with determining Requests for Review, a process previously carried out by the Department’s Office of Chief Legal Counsel. Funding for

III. BACKLOG: A Ballooning Problem at the Commission

additional staff was never established, resulting in an unfunded mandate. This change also coincided with the Great Recession, resulting in a spike of well over 500 Requests for Review for three consecutive years, with no long-range plan to dig out of the quickly forming backlog. Similarly, an expansion in protected classes under the Act increased the Commission's jurisdiction to hear more categories of cases, which may have also contributed to an increase in filings.

2. *Inefficient Assignment of Tasks*

The Commission's Office of General Counsel is currently staffed by the General Counsel and three Assistant General Counsel attorneys. Over the past decade, the number of Assistant General Counsels has fluctuated, with only one Assistant General Counsel at times to prepare and present Requests for Review to Commission panels. However, after staffing levels increased so as to divide non-Requests for Review work amongst more attorneys, and as the incoming Requests for Review gradually declined, each attorney continued the prior practice of preparing just 6 cases for each Commission panel, without increasing the frequency of panel meetings. Though complexity of cases is likely to vary, the monthly output has regularly stayed at 6 cases per attorney.

<i>Fiscal Year</i>	<i>Incoming Requests for Review Filed</i>	<i>Staff Attorneys to Prepare</i>
2010	535	2
2011	514	2
2012	550	1
2013	471	1
2014	403	2
2015	443	2
2016	327	3
2017	375	3
2018	234	3

Additionally, the balancing act of having to complete written orders from the prior Commission panel while also preparing to present to upcoming scheduled panels often pulls staff in two directions, leaving old work to pile up while new cases are being prepared with no downtime to catch up. Further, attorney self-assignment of cases makes it difficult for a supervisor to oversee collectively all work in the unit and monitor aging cases awaiting written orders.

3. *Ill-Defined Time Goals*

High volume case management is dependent upon strict adherence to time goals to prevent delay. Time goals can be fixed by law, such as the time a party has to file a

Request for Review or the time Department has to respond, or they may be instituted as agency guideline.

Without established time goals at the Commission, and regular review of whether those time goals are consistently being met for each assigned case, it becomes increasingly difficult to prioritize and successfully track case progression. Tasked with many duties, including non-legal duties, attorneys drafting Commission decisions have their attention regularly divided. Without well-articulated time goals, there is no urgency of prioritization, leading to incomplete actions, such as the 685 cases orally determined by Commissioners left idle with no written orders.

4. Failure to Track Sufficient Case Statistics

Failure to collect enough data at case milestones to capture the extent of a building backlog makes it difficult to diagnose and change course to resolve.

Furthermore, tracking cases by Respondent type, area of alleged discrimination, and/or protected class at issue would be a helpful way to forecast any case trends or patterns, but such data is not currently available to the Commission. Moving forward, the Commission will begin tracking additional information, and will incorporate necessary fields into its planned electronic case management upgrade.

5. Unsupported and Fragmented Case Management Systems

Productivity is further impeded by outdated, unsupported and fragmented electronic case management systems which do not facilitate adequate tracking, monitoring or forecasting of case statistics. The Commission's case management system is more than 15 years old and several iterations behind the current version. It is estimated that the Commission is using only a fraction of its system's capabilities, and there is no support to build on the current version without upgrade.

Though the life cycle of a case begins at the Department and may later arrive at the Commission, the two agencies maintain separate case management systems, with no uniform way of inputting and retrieving real-time data. The use of disparate systems leads to duplicative entry of basic case and party contact information, and deprives each agency a comprehensive view of the life cycle of each case.

6. Lack of Proven, Standardized Processes

Lack of standardized processes have led to a patchwork of workflows developed by individual staff members over time. Such disconnect hinders overall productivity. When one person is absent from the office, others are not necessarily aware of how or where to find information quickly, leading to loss of time spent searching for work.

III. BACKLOG: A Ballooning Problem at the Commission

Moreover, failure to establish and enforce standardized processes jeopardizes consistency and predictability. Together with ill-defined time goals, adequate oversight of a unit becomes nearly impossible.

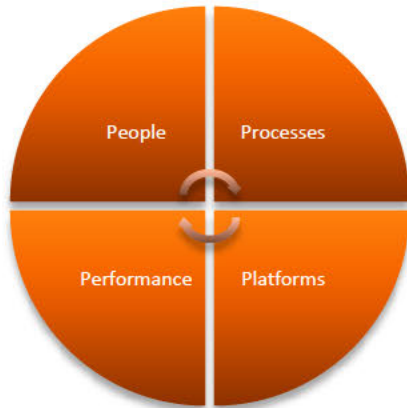
7. Insufficient Guidance for Self-Represented Litigants

Whereas attorneys are largely involved at the contested case stage, anecdotally more than 75% of Requests for Review filings at the Commission are from self-represented litigants. Uncertainty and confusion on the part of litigants can lead to frequent requests for extensions of time in order to adequately prepare their cases, which in turn adds to the time the case remains open. A litigant's difficulty presenting adequate information to the Commission may also damage his or her ability to successfully argue a case.

Additionally, Commission decisions that provide instruction on Illinois' law historically have not been posted contemporaneous to decision-making, thereby depriving useful guidance to both the public and the Department that investigates charges of discrimination.

23 It is against this backdrop that a comprehensive plan has been developed not only to eliminate the present backlog, but to **effectuate lasting change, immunizing the Commission from future backlog and allowing focus on improving litigant experience.**

IV. Comprehensive Plan to Eliminate Backlog & Improve Overall Service



By ensuring the vitality of our people, processes, and platforms, we will enhance performance and accessibility, delivering the level of service Illinoisans expect and deserve. **In an aggressive turnaround, we will earn back the public's trust and confidence and become a model for government transformation and service.**

A. People

24

Knowledge of people – both internal and external stakeholders - are key to reducing backlog and creating a sustainable future with no re-accumulation of backlog.

1. Maintain Staffing Commensurate with Caseload

A short-term injection of additional human resources is necessary to reverse the backlog. Additionally, long-range plans must normalize staffing levels commensurate with incoming cases once backlog has been eliminated.

To address current caseload and ensure future sustainability, the Commission is in the process of hiring two additional permanent attorneys, and one additional permanent support staff to assist processing additional output. The Commission has posted seven temporary contractual attorney positions to help clear backlog. Contractual attorneys present a one-time fixed cost to the Commission. Finally, temporary appointment of a Deputy General Counsel from internal staff will ensure productivity of the new attorneys is monitored closely, and that new attorneys have drafting guidance from an experienced supervisor familiar with the Act.

Apart from advising the Commissioners and drafting Commission orders, the three current Assistant General Counsel attorneys are tasked with additional responsibilities typically afforded legal counsel of a State agency. Presently, two Assistant General Counsel attorneys prepare, on average, 6 Requests for Review cases per month for Commissioner panel determination. The third Assistant General Counsel focuses on preparing contested matters for Commissioner determination. Unable to keep pace with current filings at this rate, little progress has been made on the current Requests for

IV. Comprehensive Plan to Eliminate Backlog & Improve Overall Service

Review backlog. **If attorney staffing and output levels remain constant, new filings will continue to outpace dispositions, driving further backlog and delay.**

Though process improvements create great efficiencies that increase employee productivity, even doubling present productivity in the Office of General Counsel would not eliminate the backlog. If two Assistant General Counsels prepared twice as many Requests for Review (12 per month as opposed to 6), yearly output would increase from 144 to 288 cases. If the number of incoming Requests for Review remains consistent with past years, output of 288 may not be sufficient to meet present demand, much less to chip away at the growing backlog. Even *quadrupling productivity* at 24 cases per month for both attorneys would still take more than 3 years to eliminate the current backlog, not factoring new incoming cases or other duties which may take legal precedence.

With a backlog of 1,518 Requests for Review that need to be prepared and presented to Commission panel, plus an additional 379 cases requiring written Orders memorializing Commissioners' prior determinations, **over 100 orders must issue monthly to eliminate the current backlog in 18 months.** As this does not account for new Requests for Review that will be filed, the required monthly output must be higher to avoid another backlog building.

To gauge staffing needs, the transformation team calculated the additional staffing, both temporary and permanent, necessary to clear the current backlog. It is estimated that an attorney wholly dedicated to Request for Review matters could reasonably and consistently generate 15 orders per month. If non-legal duties were removed from the two Assistant General Counsel attorneys currently assigned, output could increase from 6 to 10 each per month. The following formula may be applied:

$$1897 \text{ Requests for Review} / (20 + [X \times 15]) = \text{Months to Clear Backlog}$$

X = Number of Additional Attorneys Wholly Dedicated to Requests for Review

Backlog	Current Attorneys Monthly Caseload (2 x 10 each)	Each Additional Attorney Monthly Caseload of 15	Additional Attorneys	Months to Clear Backlog
1,897	20	15	X = 1	Over 54
1,897	20	30	X = 2	Nearly 38
1,897	20	45	X = 3	Over 29
1,897	20	60	X = 4	Over 23
1,897	20	75	X = 5	Nearly 20
1,897	20	90	X = 6	Over 17
1,897	20	105	X = 7	Over 15
1,897	20	120	X = 8	Over 13
1,897	20	135	X = 9	Over 12

IV. Comprehensive Plan to Eliminate Backlog & Improve Overall Service

With the addition of 2 permanent attorneys and 7 temporary attorneys, the backlog of Request for Review matters may be cleared within the next 15 months. This timeframe takes into account time for hiring and onboarding of additional attorneys. This Plan frees the current Assistant General Counsel assigned to contested case matters to focus more efforts in this area to improve case processing times at the Commission overall, not merely Requests for Review.

Once improved processes are in place, the case management system upgraded, and all backlog is eliminated, normalized staffing levels commensurate with incoming caseload will operate effectively. Close monitoring will allow us to forecast any unexpected changes and adapt as necessary.

2. Comprehensive Onboarding and Ongoing Staff Training

a. Onboarding of New Attorneys

To successfully execute this Plan, new staff must be appropriately trained to produce quality work in a timely manner. Training for new attorneys at the Commission will include materials that provide instruction in the substantive law of the Illinois Human Rights Act, its procedures, board governance, as well as access to supportive materials that will facilitate more efficient case disposition. Training and materials to be provided as part of this comprehensive training include: (1) The Act; (2) Commission Procedural Rules; (3) The Illinois Open Meetings Act; (4) Modules Detailing the Request for Review Process; (5) An Illinois Human Rights Legal Digest, which will be regularly updated, and which will provide detailed annotations of the Act; (6) Provision of a Bench Book that will articulate the legal standards for claims commonly encountered in Request for Review Provisions; and (7) Templates for commonly encountered Request for Review orders.

b. Training in Technology to Increase Productivity

Attorneys and support staff will receive training in the new technological resources being developed collaboratively between the Department and Commission, chiefly a significantly upgraded case management system. This upgraded system will facilitate more efficient case tracking within the Commission and create greater accountability relative to ensuring that cases proceed expeditiously from initial filing with the Commission to final disposition. Commission attorneys will learn how to use this technology to track and manage their caseload from beginning to end. Supervisory attorneys will be trained on how to use the system to better manage attorney caseload and output, thus building in greater accountability and benchmarking in the overall Commission process.

c. Ongoing Training & Professional Development Opportunities for Existing Attorneys

As part of the resource sharing initiative between the Department and Commission, training will also include making available to both Department and Commission attorneys substantive on-going civil rights training and development opportunities, such as the opportunity to attend local and national EEOC and HUD seminars and conferences where valuable training on employment and housing discrimination law can be obtained and best practices may be exchanged amongst the various states in attendance.

d. Mock Trial for Investigators and Attorneys

As part of its joint efforts to improve overall service in the investigation and adjudication of human rights claims, the Department and Commission will host a mock trial training for the mutual benefit of both investigators and attorneys. Investigators may gain insight into how attorneys use their investigative reports and learn first-hand the types of information attorneys need to conduct a thorough legal analysis. This knowledge is expected to reduce the number of cases returned to the Department for further investigation, thereby decreasing total timeframe to resolution of a case.

27

3. Meeting Frequency of the Commission

Commissioners have expressed a desire and willingness to hear as many cases as the Commission's attorneys can prepare for panel each month. With an increase in staff preparing more cases, the Commission panels will begin meeting more often, and for longer stretches of time to get through the backlog. The proposal to increase meeting frequency was presented to Commissioners at its August 15, 2018 en banc meeting and was met with great satisfaction. A sample calendar was distributed at this meeting, which the Commission will finalize at its September meeting.

4. Internal and External Stakeholder Feedback

Who better to identify customer satisfaction issues than those who utilize the State's administrative process? The State and local bar, legal aid clinics, parties, and others outside State government will help give a comprehensive critique of struggles facing the system and suggestions for improving this important function. Building upon the work of the Commissioners' previously established Outreach Committee, together, the Department and Commission will solicit feedback in the following ways:

a. Town Hall Forums

Town Hall Forum meetings will allow those interested in voicing concerns an opportunity to engage and address both the Department and Commission in a single

forum. This setup provides interactive feedback from which we can gauge effectiveness of changes being implemented, gather additional ideas for improvement, and promote transparency in operations.

b. Direct Participant Feedback

Through a joint survey, the Department and Commission will target opinions of parties appearing before the two agencies, and where appropriate incorporate their suggestions for better, not simply faster, service. Drawing upon the years of experience in surveying conducted by the Department, the transformation team anticipates circulating a new joint survey by late fall.

c. Internal Stakeholder Feedback

The transformation team will continue its regular meetings to monitor performance, as well as hold additional working group meetings as needed. The team will continue to encourage employee feedback as we test the effectiveness of process changes and implementation of technology solutions to ensure smooth transition. Interested employees will be encouraged to attend a future Rapid Results workshop to join process improvement efforts.

28

B. Processes

1. Use of Templates for Routine Matters

The Commission's Office of General Counsel, with assistance from the Bureau of Administrative Hearings, is exploring ways in which standardized templates may be used for routine procedural matters. Utilizing templates will not only increase speed, but will also ensure consistency and predictability in work amongst the influx of new attorneys.

2. Motion Call Panel

The transformation team has drawn plans for a separate motion call panel of Commissioners each month so that simple motions do not linger on the docket and become trapped behind more complex matters. This will ensure that pending cases keep moving forward toward resolution.

3. Continuation of Recent Proposed Order Practice

Prior to the issuance of Executive Order 2018-08, Commission panels began testing a new, more efficient way of combining the provision of legal counsel to Commission panels with an expedient way of disposing of cases more quickly following panel determination. Rather than prepare written briefings in advance of panel, then drafting orders following the meetings, Office of General Counsel attorneys culminate

their legal analysis of a Request for Review with a proposed order. The proposed order, along with the Request for Review pleadings, are then provided to the Commission panel prior to the meeting. The proposed order essentially becomes another way for counsel to present his or her opinion on the appropriate outcome. However, the Commissioners at the panel are always free to modify or reject the proposed order. If the proposed order does ultimately reflect the Commissioners' desired outcome, then the Commissioners vote accordingly, and the order can be signed and served within the several days following the meeting.

This approach balances the values of efficiency, expediency, and independence in the process. Using this approach, the Office of General Counsel has been able to serve Request for Review orders within 1 to 2 days following a Commission panel ruling. Continued use will prevent cases from aging while waiting for draft orders. Further, increase in frequency of panel meetings allows any rejected proposed order to be revised and presented to the same panel at its next meeting no more than 30 days later.

4. Service of Incoming Requests for Review Notices

Requests for Review will now be processed as they are received, as opposed to grouped in batches. This will keep a steady flow and ensure that large amounts of cases do not bottleneck for either the Department's legal team tasked with responding, or the Commission attorneys preparing cases for Commission panel.

5. Milestone Events Calendared on Every Case

Effective case management dictates that every case has a future event determined and documented in advance. Failure to do so leads cases to "fall off" the radar, so to speak. Regular check-in points also ensure the case is moving forward toward disposition. These check-in points provide a mechanism from which to measure case progression, or lack thereof. Moving forward, every case will have regular check-in points to ensure its continued progression toward resolution. With updated case management technology, electronic notifications will alert supervisors to aging cases with no action.

6. Evaluation of Employee Assignments

Both the Department and Commission conducted staff interviews and examined present workloads to determine day-to-day functioning. This activity revealed that staff often take on far more varied duties than their job descriptions entail. Though this discovery demonstrates staff's firm commitment to providing excellent service, it can sometimes backfire as when staff resources are spread so thin that staff are covering other duties and have less time to complete their own primary duties.

For instance, because front desk staff had not been trained to answer questions regarding scheduling status of cases, each of the three Assistant General Counsel attorneys at the Commission rotate on-call days where they field incoming calls and return messages left throughout the week. Not only does this detract from attorney time drafting opinions, but it forces callers to wait for the next available attorney as opposed to having their questions addressed directly at first point of contact. Moving forward, front desk staff will be trained to answer these routine questions.

C. Platforms

1. Upgraded Case Management System

Vital to transformation is linking new efficient business processes with effective technology solutions. Together the Commission and Department, with assistance from DoIT, are shaping new technological solutions that improve access, drive automation, reduce variance, and enable faster and more efficient operations.

Though both the Department and Commission participate in the life cycle of a discrimination case, both operate using separate, antiquated case management systems that are unable to share basic case information with one another.

Further, both the Department's and Commission's electronic case management systems are in danger of being unsupported, removing flexibility to create new reports to aid in monitoring caseload, and worse, removing meaningful troubleshooting and solutions if systems fail.

AGENCY	SYSTEM	AGE OF SYSTEM	SUPPORT TERMINATION
Human Rights Commission	Evans CaseLoad	2000	December 31, 2018
Department of Human Rights	AS/400 DB/2	1994	January 31, 2019

Sharing of a case management system and creating a bridge between systems will facilitate the electronic transfer of case information, allowing both agencies access to real-time data throughout the life cycle of a case.

Most important, staff need tools that give them visibility into operations, access to information, and assistance in enabling collaboration. Effective electronic case management systems offer the ability to prioritize activities across multiple cases, balance workloads, as well as monitor quality, timeliness and speed. **Using powerful reporting**

tools, supervisors may monitor performance, identify bottlenecks, and make informed decisions.

The Commission and the Department plan to utilize a highly configurable, modern web-based software solution. There will be a 3-prong approach to implementing the solution that includes upgrading the operating system for the computers, migrating to the new Microsoft Office 365 software, and installation of the case management solution. The system will save time by automating basic functions such as scheduling and generation of notices. This will allow staff to support agency operations rather than spend time manually creating new files, drafting form letters, scheduling cases for panel, compiling the record for appellate review action, and compiling data for reporting.

Though the cost of a shared case management system is not insignificant, the solution will benefit the public by a reduction in the time to investigate and resolve cases. Specific projections are premature until vendor negotiation has been confirmed, but based upon the past experiences of the Illinois Department of Human Services automated case management system, expected efficiencies have potential to include:

- Up to 55% reduction in time spent scheduling
- Up to 70% reduction in time spent creating appellate review record
- Up to 55% reduction in time spent creating reports

2. Portable Technology in Panel Meetings


By making a laptop available for each Commission panel meeting, attorney advisors may make real-time Word-processing edits to proposed orders, rather than having to go back and do this later from handwritten notes. Seemingly small changes such as this one, applied over hundreds of cases, will have major cumulative impact. Not only will this change ensure faster transmission of Commission written orders, but will also cut down on overall printing of paper materials for meetings, resulting in both time and cost savings.

D. Performance

Ensuring that we successfully eliminate the backlog means continuous monitoring of our performance to determine if we are on track to meet our goals.

1. Tracking and Monitoring Performance

Without continuous monitoring and accountability, cases fall into an abyss otherwise known as “backlog” with no certain date for resolution. Implementation of a



**INVESTING IN OUR PEOPLE
PROCESSES & PLATFORMS
TO YIELD STRONG PERFORMANCE**

case management system will assist tracking and monitoring performance. Increased **training and supervisory guidance will ensure quality is not sacrificed for quantity.**

On the broadest level, measuring performance should take the form of public confidence in the process, and ease of access. Survey responses and external stakeholder outreach will provide feedback in this area.

From an operational standpoint, a future-appointed Deputy General Counsel will conduct weekly case reviews with assigned Commission attorneys to monitor progress and provide guidance on complex matters. Moreover, the Deputy General Counsel and the General Counsel will coordinate with the CMS Bureau of Administrative Hearings to ensure regular reports of case productivity. Reports will include:

- Number of incoming cases still pending attorney assignment;
- Number of cases assigned to each attorney, and age of assignment;
- Number of cases with attorney drafts pending supervisor approval and age of pending approval time;
- Number of decisions issued;
- Number of continuances per case;
- Length of time for cases to reach Commission panel;
- Length of time from Commission determination to written order issuance; and
- Length of time from issuance of order to publication.

Through close monitoring, we will continuously assess progress toward eliminating the backlog, and make early adjustments where necessary to stay on track.

2. Remaining Accountable to the Public Through Reporting

Our team is confident in the Plan we've created to improve the user experience at the Commission, and look forward to keeping not only the Governor and General Assembly apprised of milestones, but also the general public. This is why the team is proposing public reporting on the status of backlog at each Commission en banc meeting. This will hold ourselves accountable to the goals we've set forth herein and allow the public to do the same.

3. Accessibility

Even the most deliberate transformation of processes and performance will lose its significance if adjudication in Illinois is not accessible to litigants. A litigant unsure of how to approach the State forum and interact within its rules and processes won't be able to participate meaningfully which may affect their outcomes. To this end, the transformation team is working on a number of initiatives to improve accessibility. With the time saved

processing paper and sufficient staff to operate and keep up with incoming caseloads, Commission staff may focus on providing better, more transparent service.

a. Revamped Website

The Commission's website, which serves as a ready source of information for those individuals preparing their cases, could be more user-friendly, making it easier for those with language or educational barriers to understand their rights and obligations at the Commission. Commissioners have already, through prior committee work, compiled ideas for a website revamp and have storyboarded their ideas, but prior to this Executive Order did not have the logistical or technological support for execution. With the support of the Bureau, whose focus it has been to make administrative procedures less legalese and more user-friendly, the Commission's website will be revamped.

b. Video Guidance

To provide additional guidance, the Department and Commission plan to script and film a short video explaining their respective roles, services offered, and how the overall process works to help place self-represented litigants at ease and know what to expect. This video will be filmed as an addition to the Department's currently underway public service announcement-type videos to describe its investigative processes, and provide general information to the public on anti-discrimination law in Illinois.

c. Decisions Posted Contemporaneous to Issuance to Provide Guidance

Failure to post decisions in a timely fashion deprives the public and the Department of guidance on the adjudication of human rights in our State. Posting of decisions will now be monitored to ensure timeliness.

4. Global Improvement

The aggressive plan outlined above contemplates elimination of backlog within 15 months – three months earlier than set forth in Executive Order 18-08. However, the transformation does not end with elimination of backlog. The comprehensive plan includes changes that will impact the level of service Illinois provides from initiation of a charge at the Department through adjudication of a Complaint at the Commission.

a. Expanding Mediation Services at the Department

Mediation provides parties a faster, less formal (and perhaps less intimidating) process to resolve a dispute than going to formal hearing or court. Flexibility in procedure allows the parties involved to find the best path to agreement, without the uncertainty of how a judge or Commission may rule. The Department has experienced a high degree of success in its mediation program and demand is now exceeding supply. In FY17, the

IV. Comprehensive Plan to Eliminate Backlog & Improve Overall Service

Mediation Unit held 291 conferences, and assisted in settling cases for a monetary recovery for charging parties of \$1,297,123.

The Department will expand its mediation program by adding one additional mediator at its headquarters in Chicago and expand its mediation program to its Springfield Office. The Department will continue its pilot mediation program for fair housing cases, building upon its successes. This expansion in mediation services is expected to allow faster resolution and certainty for more Illinoisans.

b. Improving Investigative Times at the Department

Though the Department generally completes its investigations within the statutorily required timeframe of 365 days, it seeks to improve its performance by reducing investigation time so that parties may proceed to adjudication faster. It will do so while ensuring quality of investigation by additional training and assessment of worker capacity to handle additional caseload.

V. External Factors Potentially Impacting Performance

Transformation efforts are on track to eliminate backlog ahead of schedule based on current workload projections. However, we must continue to evaluate other external factors that could potentially have an impact on progress.

The 100th General Assembly recently passed Senate Bill 20 legislation, under which timeline to file complaints increases from 180 days to 300 days. If signed into law, both Department and Commission may see an increase in the number of cases because complainants whose rights would have been formally extinguished at 180 days will now have nearly double the time to file a complaint for investigation and adjudication. That same legislation also provides a mechanism for a complainant to opt out of Department investigation. It is uncertain how many complainants would exercise their right to opt-out, possibly rebalancing the anticipated increase in caseload.



Another potential external factor includes the availability of funds and future budgeting to contract with temporary staff to help eliminate the backlog.

With the additional data we have begun to collect, and cases being continuously monitored, we will be able to better forecast potential increases prior to backlog forming. As with any plan, we must be flexible in making strategic adjustments and continuing to engage stakeholders throughout the process.

The team must continue its dedicated action toward eliminating backlog at the Commission and continue to explore efficiency opportunity. We must be firm in our efforts to achieve progress, yet malleable in the way in which we do so to adapt to external factors and discovery of opportunities for further improvement. Our joint accomplishments in only 60 days demonstrates the major impact of a diverse group committed to solving a problem together.

Next steps include:

- Continue process to hire and onboard additional staff at the Commission, and seek to enlist temporary assistance from in-house staff where feasible to limit costs
- Continue to improve process for efficient electronic case management workflows
- Enforce newly articulated time goals to ensure prompt resolution of incoming cases
- Collect and maintain expanded data points from which to inform future action and forecast any changes in cases filed
- Engage stakeholders, both internal and external for performance feedback and continuous improvement
- Explore and develop additional tools to assist self-represented litigants in navigating investigation and adjudication of civil rights claims
- Provide the public with information regarding internal steps, including associated timelines, for the movement of a case through the Office of the General Counsel, so that litigants know where their case is in time and so that attorneys are accountable to deadlines reasonably tailored to the work that Requests for Review require
- Continue to explore whether statutory or rule changes would improve efforts to increase efficiency and provide better service
- Craft ongoing recommendations, and test new ideas for improvement

VII. Acknowledgements

It cannot be stated strongly enough that the swift action to date and collaborative development of a comprehensive long-term Plan would not have been possible without the steadfast commitment from employees of the Department, the Commission, CMS, and DoIT, as well as the support from Governor Rauner and his team.

Additionally, many thanks are extended to:

The Office of Rapid Results for facilitating the first of its kind specially targeted Rapid Results workshop, leading senior staff to valuable realizations about existing processes.

To staff at the Department, for sharing their expertise in Visio and creating easy-to-read visual process maps from our handwritten workshop post-it notes.

To the Administrative Law Judges at the Human Rights Commission for their ready and willing assistance, who offered help before it was even requested.

To the administrative support staff at the Commission, the solid backbone of the Agency, that have worked overtime to serve decisions and upload decisions to the Commission's website for public view.

To the legal and policy staff in the Office of Governor for their support, particularly Christina McClernon and Ngozi Okorafor, tireless advocates of good government and service to people, and the Dunn Fellows for their research and review assistance.

To the Department of Innovation and Technology, and operations staff at both the Department and Commission, for their assessment of current technological capability and guidance toward a shared solution.

To the Office of Procurement for their prompt review and input regarding purchase of technology solutions.

Lastly, special thanks and acknowledgement to the Agency Directors, Janice Glenn, Philip Dalmage, and Tim McDevitt, for their wholehearted support.



FILED
INDEX DEPARTMENT
JUN 20 2018
IN THE OFFICE OF
SECRETARY OF STATE

EXECUTIVE ORDER

2018-08

**EXECUTIVE ORDER REFORMING THE ADMINISTRATION AND ELIMINATING
THE BACKLOG OF
ANTI-DISCRIMINATION AND EQUAL OPPORTUNITY HEARINGS AT THE
HUMAN RIGHTS COMMISSION**

WHEREAS, it has been one of the signature achievements of this administration to track, rationalize, and reform the administrative hearings system within the State of Illinois; and

WHEREAS, more than 150,000 administrative hearings are requested each year across State agencies, and the conduct of these hearings operates as a quasi-judicial court system within State government; and

WHEREAS, our constitutional, democratic principles require the State to afford due process to people and businesses affected by the decisions of agencies that come out of administrative hearings; and

WHEREAS, due process should ensure a speedy disposition of hearings so that people in Illinois receive State services and obtain resolution of their rights and privileges in a timely manner; and

WHEREAS, to ensure this quasi-judicial system operates in a fair, efficient, and transparent way, I signed Executive Order 2016-06 to create a pilot Bureau of Administrative Hearings ("Bureau") within the Department of Central Management Services ("CMS") to provide central, uniform administrative support to State agencies and to recommend consolidation of hearing functions as appropriate; and

WHEREAS, in its pilot year, the Bureau initiated case sharing between the Department of Public Health, the Department of Revenue, and the Department of Labor and doubled the speed of Labor adjudications with no expense to the State; and

WHEREAS, the Bureau has initiated the State's first comprehensive professional development program for administrative law judges, including providing over 1200 hours of professional training, promulgating the State's first bench manual for adjudicators, and developing the State's first orientation program for adjudicators; and

WHEREAS, in recognition of these efforts and the success of the Bureau, I signed Executive Order 2017-04, making the Bureau a permanent part of CMS and directing it to continue and expand its work; and

WHEREAS, recognizing a uniquely problematic backlog in the adjudication of hearings at the Human Rights Commission ("HRC"), I signed Executive Order 2017-02 to consolidate HRC with the Department of Human Rights ("DHR"); and

WHEREAS, DHR receives, investigates, and conciliates charges of unlawful discrimination and undertakes affirmative action and public education activities to prevent discrimination; and

FILED
INDEX DEPARTMENT

JUN 20 2018

IN THE OFFICE OF
SECRETARY OF STATE

WHEREAS, HRC is a body that hears and adjudicates discrimination cases; and

WHEREAS, although a single statute governs these two State agencies, HRC and DHR often have different, conflicting, and inconsistent rules of administrative procedure, which confuse parties, impede transparency, and create redundancies, backlog, and delay; and

WHEREAS, the consolidation of these two State agencies was intended to produce faster investigative and adjudicative processes, because they would have been able to share resources effectively and cut bureaucratic red tape; and

WHEREAS, the General Assembly rejected my reorganization of DHR and HRC and the backlog of cases at HRC continues to grow; and

WHEREAS, under our current outdated and unproductive structure, people and businesses wait at least four years, on average, after filing a charge of discrimination for DHR to investigate and HRC to issue its final decision on their cases; and

WHEREAS, HRC currently has over 1,000 backlogged cases pending two years or more without a decision, and some parties wait as long as three years for a resolution to their case by HRC; and

WHEREAS, these delays are unacceptable and unfair to aggrieved parties and businesses and to the general public; and

WHEREAS, individuals and groups most often harmed by delay are impoverished and minority parties and small businesses without the resources to obtain counsel and pay expensive legal fees to appear in Illinois courts; and

WHEREAS, the State and the public recognize, perhaps more than ever before, the critical importance of ensuring due process in discrimination cases, including discrimination complaints regarding sexual harassment; and

WHEREAS, it is the continued obligation of the Governor as the chief executive of the State to oversee executive branch processes and track and resolve process and organizational problems as they are identified, and my administration is still resolved to cure this backlog despite the General Assembly's rejection of my previous Executive Order; and

WHEREAS, collaboration with the Bureau has proven successful for State agencies, and DHR and HRC can benefit from meaningful partnership with each other and the Bureau to realize better hearings processes; and

WHEREAS, addressing this backlog must feature honest and transparent accounting, rooted in thorough data collection, to understand the scope of problems and opportunities in the hearings process;

THEREFORE, I, Bruce Rauner, Governor of Illinois, by virtue of the executive authority vested in me by Section 11 of Article V of the Constitution of the State of Illinois, do hereby order as follows:

I. DEFINITIONS

"Bureau" means the Bureau of Administrative Hearings at CMS.

"CMS" means the Department of Central Management Services.

"DHR" means the Department of Human Rights.

"DoIT" means the Department of Innovation and Technology.

"HRC" means the Human Rights Commission.

"Rapid Results training" means training provided by the Office of Rapid Results, created under this administration based on the State's philosophy of continuous improvement that encourages State employees to find and eliminate process waste and improve the efficiency and quality of State products and services.

II. COORDINATION BETWEEN THE BUREAU, HRC, AND DHR REQUIRED

Coordination between State agencies to identify economies of scale, model best practices, and develop thoughtful approaches to all aspects of administrative hearings work is a proven success. The Bureau is empowered to partner with State agencies to provide administrative hearings support by entering into interagency contracts with participating State agencies, as authorized by the Intergovernmental Cooperation Act and other applicable law. It develops training programs for adjudicators, promotes shared resources among participating agencies, develops uniform rules of procedure, and recommends revisions, where appropriate, to agency administrative rules on administrative hearings. The Bureau is required to cooperate with DoIT to implement modern, uniform filing and case management systems.

With this model in mind, pursuant to this Executive Order, the Bureau, DHR, and HRC shall coordinate to achieve efficiencies and eliminate backlogs. Coordination shall include:

1. Developing a benchmarking system and a plan for the elimination of the backlog, which will require, at a minimum, the complete elimination of backlog in HRC cases within 18 months. This plan shall be submitted to the Governor within 60 days of the effective date of this Executive Order.
2. Reviewing rights and requirements at DHR and HRC and identifying where legislation, administrative rules, and internal policies can be proposed or amended to highlight similarities between DHR and HRC, thereby streamlining the hearings process for parties.
3. Executing intergovernmental agreements to share resources and smooth workloads through the administrative hearings process.
4. Developing, with DoIT, technological solutions and shared case management systems.
5. Tracking, and reporting at least quarterly to the Governor and the Director of CMS, the total number of pending cases, average and median length of time for resolution to cases, and any other information necessary to capture backlog or delays in processing of cases.
6. Soliciting feedback and surveying parties appearing before HRC and DHR and incorporating, as appropriate, their suggestions for better, and not simply faster, service in the hearings process.
7. Developing and participating in training programs, including at least one Rapid Results training program.

No aspect of coordination should work to limit the constitutional or statutory due process rights of parties before DHR or HRC.

FILED
INDEX DEPARTMENT
JUN 20 2018
IN THE OFFICE OF
SECRETARY OF STATE

III. REPORT TO THE GOVERNOR'S OFFICE

The Bureau shall, no later than December 31, 2018, and annually thereafter for three years, provide a report to the Governor and the Director of CMS on the coordination efforts and data reporting of the Bureau, DHR, and HRC pursuant to this Executive Order. The report shall include: (1) an analysis of current case backlogs and projected backlog reductions; (2) a description of due process and operational improvements at the HRC and DHR; and (3) the effect of such improvements on State government and the public. The report shall also provide recommendations for further executive or legislative action relating to the implementation of this Executive Order. The Bureau shall work with DHR and HRC to prepare this report. The Bureau shall further work with DoIT to include any proposed or implemented technological changes affecting the operations of DHR and HRC. A copy of such report shall be filed with the General Assembly.

IV. SAVINGS CLAUSE

1. This Executive Order does not, and shall not be construed to, transfer any rights, powers, duties, functions, property, personnel, or funds from, to, or among State agencies; each State agency continues to have whatever authority is provided to it pursuant to the Intergovernmental Cooperation Act and other applicable law to enter into interagency contracts, which may include permissible transfers.

2. This Executive Order shall not affect any act undertaken, ratified, or cancelled or any right occurring or established or any action or proceeding commenced in an administrative, civil, or criminal case before this Executive Order takes effect, but these actions or proceedings may be prosecuted and continued by the Bureau in cooperation with the State agency, if necessary.
3. This Executive Order shall not affect the legality of any rules in the Illinois Administrative Code that are in force on the effective date of this Executive Order, which rules have been duly adopted by the pertinent agencies. If necessary, however, the affected agencies shall propose, adopt, or repeal rules, rule amendments, and rule recodifications as appropriate to effectuate this Executive Order.
4. This Executive Order does not contravene, and shall not be construed to contravene, any federal law, State statute, or collective bargaining agreement.

V. PRIOR EXECUTIVE ORDERS

This Executive Order supersedes any contrary provision of any other prior Executive Order.

VI. SEVERABILITY CLAUSE

If any part of this Executive Order is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. The provisions of this Executive Order are severable.

VII. EFFECTIVE DATE

This Executive Order shall take effect upon filing with the Secretary of State.



Bruce Rauner, Governor

Issued by the Governor: June 20, 2018

Filed with Secretary of State: June 20, 2018

FILED
INDEX DEPARTMENT
JUN 20 2018
IN THE OFFICE OF
SECRETARY OF STATE

VIII. Appendices
 B. Path of a Charge at the Department

42

