



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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Jim Ryan
ATTORNEY GENERAL

FILE NO. 96-022

ADMINISTRATIVE LAW:
Equivalency of Illinois Human Rights
Commission's Proceedings to Judicial
Proceedings in Illinois' Circuit Courts

Ms. Rose Mary Bombela
Director, Illinois Department
of Human Rights
100 West Randolph Street
James R. Thompson Center, Suite 10-100
Chicago, Illinois 60601

Dear Ms. Bombela:

I have your letter wherein you inquire whether, for purposes of determining eligibility for compensation from the Federal Equal Employment Opportunity Commission, the administrative proceedings conducted by the Illinois Human Rights Commission, when hearing or reviewing cases of alleged violations of the Illinois Human Rights Act (775 ILCS 5/1-101 et seq. (West 1994)), are functionally equivalent to judicial proceedings in Illinois' circuit courts. For the reasons hereinafter stated, it is my opinion that under the provisions of the Illinois Human Rights

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Act, the administrative proceedings of the Illinois Human Rights Commission are essentially equivalent to judicial proceedings in other circumstances.

By way of background, the General Assembly has, pursuant to the provisions of the Illinois Human Rights Act (775 ILCS 5/1-101 et seq. (West 1994)), granted the Illinois Department of Human Rights (hereinafter referred to as "the Department") jurisdiction over allegations of employment discrimination occurring in the State of Illinois by labor unions, employment agencies and employers where such charges are based on race, religion, national origin, color, sex, age or disability. In carrying out its duties under the Act, the General Assembly has authorized the Department to coordinate its activities with and to enter into contractual agreements with agencies of the federal government. (775 ILCS 5/7-101, as amended by Public Act 89-370, effective August 18, 1995 and 775 ILCS 5/7-109(B).)

Similarly, the federal Equal Employment Opportunity Commission (hereinafter referred to as "the EEOC") has jurisdiction over allegations of employment discrimination occurring throughout the United States where such charges are based on race, color, religion, sex or national origin pursuant to Title VII of the Civil Rights of 1964 (42 U.S.C. § 2000e et seq.). The EEOC also has the power to investigate and determine charges of discrimination based on age under the Age

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Discrimination in Employment Act of 1967 (29 U.S.C. § 621 et seq.) and allegations of employment discrimination based on disability pursuant to the Americans with Disabilities Act of 1991 (42 U.S.C. § 12101 et seq.). To assist the EEOC in meeting its statutory mandate to enforce these laws, Congress has authorized the EEOC to utilize, where appropriate, the services of State and local agencies charged with the administration of State fair employment practice laws. (See 42 U.S.C. § 2000e-8, 29 U.S.C. § 625, and 42 U.S.C. § 12117.)

Pursuant to their respective grants of power, the EEOC and the Department have entered into a contract under which the Department has agreed to serve as a part of EEOC's national, integrated employment discrimination law enforcement and charge resolution system. Under the terms of the contract, the Department has agreed, inter alia, to process, evaluate, investigate and resolve individual charges of employment discrimination filed with it or the EEOC during prescribed periods of time. In return, the EEOC has agreed, inter alia, to compensate the Department at a negotiated rate for all final dispositions of charges and for performing certain investigations and intake services.

You have indicated that although the EEOC reimburses other jurisdictions for case investigations prior to being heard at trial, the EEOC will not reimburse the Department for its case investigation costs until the administrative proceedings

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conducted by the Illinois Human Rights Commission (hereinafter referred to as "the Commission") are completed. The EEOC has indicated, however, that it will reimburse the Department for case investigation costs prior to the conclusion of the Commission's administrative proceedings upon confirmation that the Commission's administrative proceedings are functionally equivalent to judicial proceedings in Illinois' circuit courts. Therefore, you have requested that I determine whether, when hearing or reviewing cases alleging a violation of the Illinois Human Rights Act, the Commission's administrative proceedings are essentially equivalent to the proceedings in Illinois' circuit courts.

In order to respond fully to your inquiry, it is necessary to review the statutory provisions governing the conduct of a civil case in Illinois' circuit courts and the Supreme Court Rules related thereto. Section 2-201 of the Code of Civil Procedure (735 ILCS 5/2-201(a) (West 1994)) provides that a civil action is generally instituted by the filing of a complaint. Subsequent to the filing of a complaint and at the request of the plaintiff, the clerk is required to issue summons. (735 ILCS 5/2-201(a) (West 1994); 155 Ill. 2d R. 101(a).) Promptly upon issuance, the summons is to be placed for service with the sheriff or another person authorized to serve process. (735 ILCS 5/2-202 through 5/2-213 (West 1994); 134 Ill. 2d R. 102.) Upon service, a defendant is allowed to respond to any

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allegations by filing an answer to the complaint. (735 ILCS 5/2-602 (West 1994); 134 Ill. 2d R. 181.) To assist in the resolution of a case, information related to an action is obtainable by all parties (735 ILCS 5/2-1003 (West 1994)) by "* * * depositions upon oral examination or written questions, written interrogatories to parties, discovery of documents, objects or tangible things, inspection of real estate, requests to admit and physical and mental examination of persons. * * *" (166 Ill. 2d R. 201(a).)

A review of Illinois' trial procedures indicates that the parties in a civil case are authorized to participate in the jury selection process (134 Ill. 2d R. 234), make opening statements (134 Ill. 2d R. 235), compel the appearance of, and conduct an examination of, witnesses (166 Ill. 2d R. 213, 237; 134 Ill. 2d R. 238) and make closing statements (134 Ill. 2d R. 233). When all testimony has been taken and all evidence introduced, the jury returns a verdict or the judge enters judgment, as the case may be (735 ILCS 5/2-1201; 735 ILCS 5/2-1301 (West 1994)). Within thirty days of entry of final judgment, a civil case is appealable to the State's appellate court as of right. (157 Ill. 2d R. 301, 303.)

Under article 7 of the Illinois Human Rights Act (775 ILCS 5/7-101 et seq. (West 1994)), the Department is authorized, inter alia, to investigate an alleged civil rights violation and to file, where appropriate, a complaint with the Commission for

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acts related thereto. (775 ILCS 5/7-101(B), (D) (West 1994).) Within five days of filing a complaint, the Commission is required to serve a copy of the complaint and a notice of hearing upon the respondent. (775 ILCS 5/8A-102(A) (West 1994).) The respondent is required to file an answer within 30 days of service or the allegations of the complaint will be deemed admitted. (775 ILCS 5/8B-102(E) (West 1994).)

Pursuant to the provisions of the Act, a hearing is required to be held in not less than thirty nor more than ninety days after service of the complaint. (775 ILCS 5/8(A)-102(B) (West 1994).) Prior to the hearing, "[d]iscovery of information from parties and witnesses shall be available to the parties as in other civil cases in the circuit courts of the State * * *." (775 ILCS 5/8A-102(F) (West 1994).) At the hearing, both the complainant and the respondent may appear and examine and cross-examine witnesses, in accordance with "* * * the same rules of evidence that apply in courts of this State in civil cases." (735 ILCS 5/8A-102(G) (West 1994).) When all testimony has been taken, the hearing officer is to determine, based upon a preponderance of the evidence, whether the respondent has committed a civil rights violation with respect to the person aggrieved in the complaint. (775 ILCS 5/8A-102(I) (1) (West 1994).)

Subsequent to making a determination, the hearing officer is required to make written findings of fact and to issue

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and cause to be served on the parties a recommended order for disposition of the complaint. (775 ILCS 5/8A-102(I)(2), (3) (West 1994).) The findings and recommended order of the hearing officer are filed with the Commission. (775 ILCS 5/8A-102(I)(4) (West 1994).) Following the filing of the findings, the recommended order of the hearing officer and any written exceptions or responses to the findings or order, the Commission is to review the record and adopt, modify or reverse, in whole or in part, the findings and recommendations of the hearing officer. (775 ILCS 5/8A-103(E)(1) (West 1994).) The Commission is then to file its written order and decision in its office and serve copies of it upon all parties. (775 ILCS 5/8A-103(E)(3) (West 1994).) A party may seek a rehearing before the Commission within thirty days of service of the Commission's order. (775 ILCS 5/8A-103(F) (West 1994).)

Upon entry of a final order by the Commission, section 8-111 of the Illinois Human Rights Act (775 ILCS 5/8-111 (West 1994)) authorizes judicial review of the order, providing, in pertinent part:

"Court Proceedings. (A)(1) Judicial Review. Any complainant or respondent may apply for and obtain judicial review of a final order of the Commission entered under this Act by filing a petition for review in the Appellate Court within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision.

(2) In any proceeding brought for judicial review, the Commission's findings of fact shall be sustained unless the court determines that such findings are contrary to the manifest weight of the evidence.

(3) Venue. Proceedings for judicial review shall be commenced in the appellate court for the district wherein the civil rights violation which is the subject of the Commission's order was committed.

* * *

(C) Limitation. Except as otherwise provided by law, no court of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this Act." (Emphasis added.)

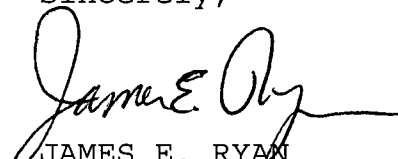
In essence, the hearing before the Commission or its hearing officer takes the place of a trial in the circuit court, and the administrative decision, therefore, is appealable directly to the appellate court.

In reviewing the procedures outlined above, it is clear that in both circuit court proceedings and Commission proceedings, a definite charge or complaint is filed; notice that proceedings have been instituted is given; the opportunity to file an answer or a response is provided; and a full and impartial hearing is held. In addition, the Human Rights Act authorizes the discovery of information as in other civil cases in the circuit courts of this State and the examination and cross-examination of witnesses in accordance with the same rules of evidence that apply in the circuit courts of this State.

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Further, the appellate review process for circuit court decisions and Commission decisions is virtually identical. Upon entry of a final judgment or a final order, decisions from both the circuit court and the Commission are appealable directly to the Appellate Court. Unlike the majority of State administrative proceedings (see 735 ILCS 5/3-101 et seq. (West 1994)), the Human Rights Act does not authorize review of the Commission's decisions in the State's circuit courts. Consequently, it is my opinion that with respect to determining eligibility for compensation from the federal EEOC, the administrative proceedings of the Illinois Human Rights Commission, when hearing or reviewing cases alleging a violation of the Illinois Human Rights Act, are functionally equivalent to the proceedings in Illinois' circuit courts for other civil cases.

Sincerely,


JAMES E. RYAN
Attorney General