

Examining Employment Discrimination and Administrative Closures



A Report of the
Iowa Advisory Committee to the
U.S. Commission on Civil Rights

December 2022

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. They are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Acknowledgments

The Iowa Advisory Committee (Committee) would like to acknowledge the Iowa Civil Rights Commission, Iowa-Nebraska NAACP, Gina Battani, SHRM Iowa, and other individuals who have contributed to this project.

**Iowa Advisory Committee to the
U.S. Commission on Civil Rights**

The Iowa Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding employment discrimination and administrative closure of discrimination complaints. The Committee submits this report as part of its responsibility to study and report on civil rights issues in Iowa. The contents of this report are primarily based on testimony the Committee heard during public meetings held via videoconference on April 1, 2022; May 13, 2022; and June 6, 2022. The Committee also includes related testimony and other supplemental information submitted in writing during the relevant period of public comment.

This report begins with a brief background of the issues to be considered by the Committee. It then presents primary findings as they emerged from this testimony, as well as recommendations for addressing areas of civil-rights concerns. This report is intended to focus on civil-rights concerns regarding administrative closures, fair practices, and due process. Specifically, the Committee sought to consider the impact of the Iowa Civil Rights Commission’s screening process in developing an accurate record from which an impartial decision can be made; if its screening process comports with traditional notions of due process, such as the right to view, respond and question adverse evidence; and potential improvements for consideration. While additional important topics may have surfaced throughout the Committee’s inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion.

**Iowa Advisory Committee to the
U.S. Commission on Civil Rights**

Juan Manuel Garcia, *Chair*, Waukee
Henry Hamilton, *Vice Chair*, West Des Moines

Kyle Burgason, Ames
Paul Fessler, Sioux Center
Katie Fiala, Johnston*
Adam Freed, Urbandale

Cynthia Koehler, Cedar Rapids
Stefanie Munsterman, Cedar Rapids
Alan Ostergren, Altoona
Donald Roth, Sioux Center

*Recused from project

Overview

On February 11, 2022, the Iowa Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) adopted a proposal to undertake a study of employment discrimination and administrative closure of discrimination complaints. The focus of the Committee's inquiry was to examine the effectiveness of the Iowa Civil Rights Commission's (ICRC) screening process in protecting the employment rights of persons based upon their protected category. From a civil rights perspective, the Committee sought to consider the impact of the ICRC's screening process in developing an accurate record from which an impartial decision can be made; if its screening process comports with traditional notions of due process, such as the right to view, respond and question adverse evidence; and potential improvements for consideration.

As part of this inquiry the Committee heard testimony via videoconference held on April 1, 2022; May 13, 2022; and June 6, 2022.¹ The following report results from a review of testimony provided at these meetings, combined with written testimony submitted.² It begins with a brief background of the issues to be considered by the Committee. It then identifies primary findings as they emerged from this testimony. Finally, it makes recommendations for addressing related civil rights concerns. While other important topics may have surfaced throughout the Committee's inquiry, matters that are outside the scope of this specific civil rights mandate are left for another discussion. This report and the recommendations included within it were adopted by a majority of the Committee on December 6, 2022.

Background

Nearly every state has a designated agency, often known as a federal employment practices agency (FEPA), responsible for investigating complaints of alleged civil rights violations.³ In Iowa, it was

¹ Meeting records and transcripts are available in Appendix. Briefing before the *Iowa Advisory Committee to the U.S. Commission on Civil Rights*, April 1, 2022, (web-based), Transcript (hereafter cited as *4/1/22 Web Hearing*); Briefing before the *Iowa Advisory Committee to the U.S. Commission on Civil Rights*, May 13, 2022, (web-based), Transcript (hereafter cited as *5/13/22 Web Hearing*); Briefing before the *Iowa Advisory Committee to the U.S. Commission on Civil Rights*, June 6, 2022, (web-based), Transcript (hereafter cited as *6/6/22 Web Hearing*).

² Written testimony is available in the Appendix.

³ The states of Arkansas and Mississippi do not have a state Fair Employment Practice Agencies.

the Iowa Civil Rights Act of 1965 that created the Iowa Civil Rights Commission⁴ (ICRC) as a neutral, fact-finding administrative agency responsible for enforcement. Specifically, the ICRC is authorized “to receive, investigate, mediate, and determine the merits of complaints alleging unfair or discriminatory practices.”⁵ Its jurisdiction includes discrimination cases related to employment, housing, public accommodation, education, and credit.⁶ Out of the complaints submitted to the ICRC, 75 percent are employment related.⁷ The ICRC also covers a range of protected classes in the areas noted above. Within employment, the ICRC examines complaints related to age, color, gender identity, mental disability, national origin, physical disability, pregnancy, race, religion/creed, sex, and sexual orientation.⁸ Similar to other state enforcement agencies, Iowa has contracts with the U.S. Equal Employment Opportunity Commission (EEOC) and U.S. Department of Housing and Urban Development to assist in enforcement of employment and housing laws.⁹

⁴ Unless it is specifically noted, all references to the Iowa Civil Rights Commission refer to the positions and work of the staff and management. Commissioners of the Iowa Civil Rights Commission may hold differing views regarding a specific matter.

⁵ IA Code § 216.5 (3).

⁶ *Id.*

⁷ Thompson Testimony, *4/1/22 Web Hearing*, p. 3.

⁸ IA Code § 216.5 (6).

⁹ See Appendix



Figure 1: Non Housing Complaint Process Overview

Unique to state enforcement agencies are their procedures for investigating a complaint (Figure 1). The ICRC uses a “screening” process (Figure 2) following the submission of a verified complaint. The ICRC then forwards the Complainant’s verified complaint¹⁰ to the Respondent and mails written questionnaires to the parties to receive details. The Respondent and complainant are required to respond in writing to their respective questionnaires within 30 days. In lieu of answers responsive to the particular questions, the ICRC accepts written position statements. The parties are encouraged to submit as much supporting documentation as possible including affidavits of witnesses and documentation of treatment of individuals comparable to the complainant. The questionnaires, position statements and supported documents are not shared with the parties. Notably, during the screening process the complainant is not allowed to view or respond to the respondent’s submissions.

¹⁰ IA Code § 216.15 (1); Iowa Admin. Code § 161-2.1(9). The term “verified” means (a) sworn to or affirmed before a notary public, or other person duly authorized by law to administer oaths and take acknowledgments, or (b) supported by an unsworn declaration which recites that the person certifies the matter to be true under penalty of perjury, states the date of the statement’s execution and is subscribed by the person. Such an unsworn declaration may be in substantially the following form: “I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct. Executed on (date). (Signature).”

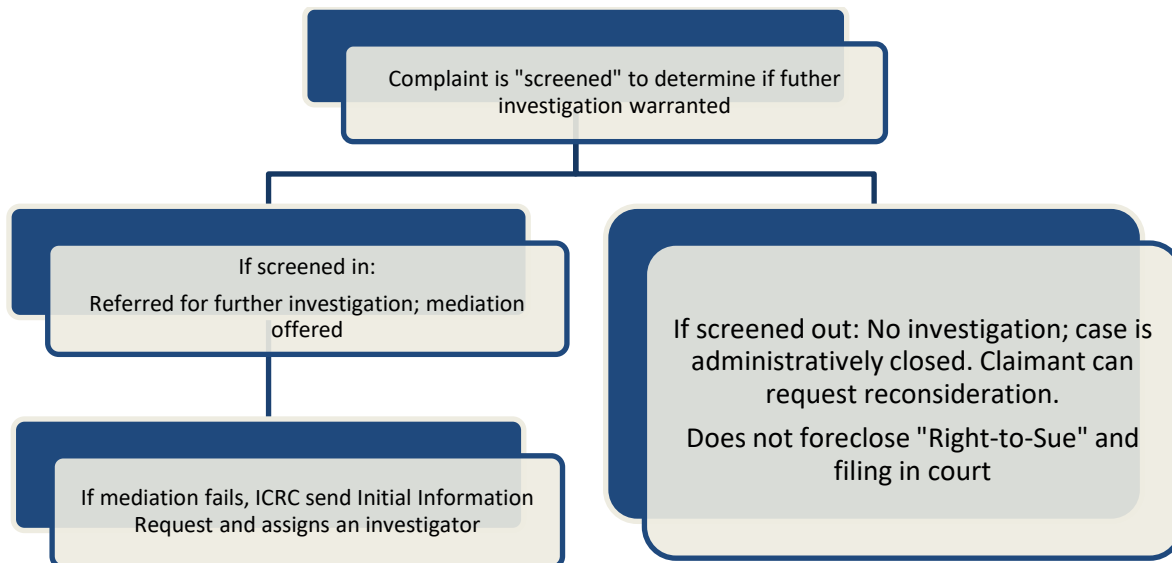


Figure 2: Screening Process

After receipt of all materials responsive to the questionnaires, the executive director or designee of the agency, who are attorneys, screens¹¹ the submitted answers and materials. The executive director or designee then determines whether the case will be “screened in” as warranting further processing or “screened out” as not warranting further consideration.¹² The screening process is based upon a review of the documents submitted by the parties. During the screening, the claimant is typically not interviewed.

A case is screened in when further processing is warranted and that occurs when the collected information indicates a reasonable possibility of a probable cause determination or when the legal issues in the complaint need development. At this juncture, mediation is offered. This point in the process allows both parties to see the preliminary case review from the attorney responsible for screening the complaint. The goal is to mediate after both parties have reviewed the case; however, if mediation fails, the ICRC sends an Initial Information Request, and a case is assigned to an investigator.

Another possible finding in this step is when a complaint is “screened out” and will not be investigated by the ICRC. This is the first possible determination of an administrative closure. If

¹¹ IA Civ. Rts. Comm’n Outline of Complaint Process. <https://icrc.iowa.gov/file-complaint/outline-complaint-process>

¹² Ibid.

administrative closure is decided, the complainant has the right to request reconsideration which is explained in the closure letter.¹³

The ICRC administrative closure rate has averaged 60 percent.¹⁴ Because more than half of these screened employment-related cases have been administratively closed by the ICRC, the Iowa Advisory Committee chose to focus their inquiry on the screening process to learn more about this trend and potential concerns for the administration of justice and civil rights concerns. It is within the Committee’s jurisdiction to learn how the ICRC’s work, especially the investigation and processing of complaints, affects the administration of justice and whether their procedures satisfy due process concerns.

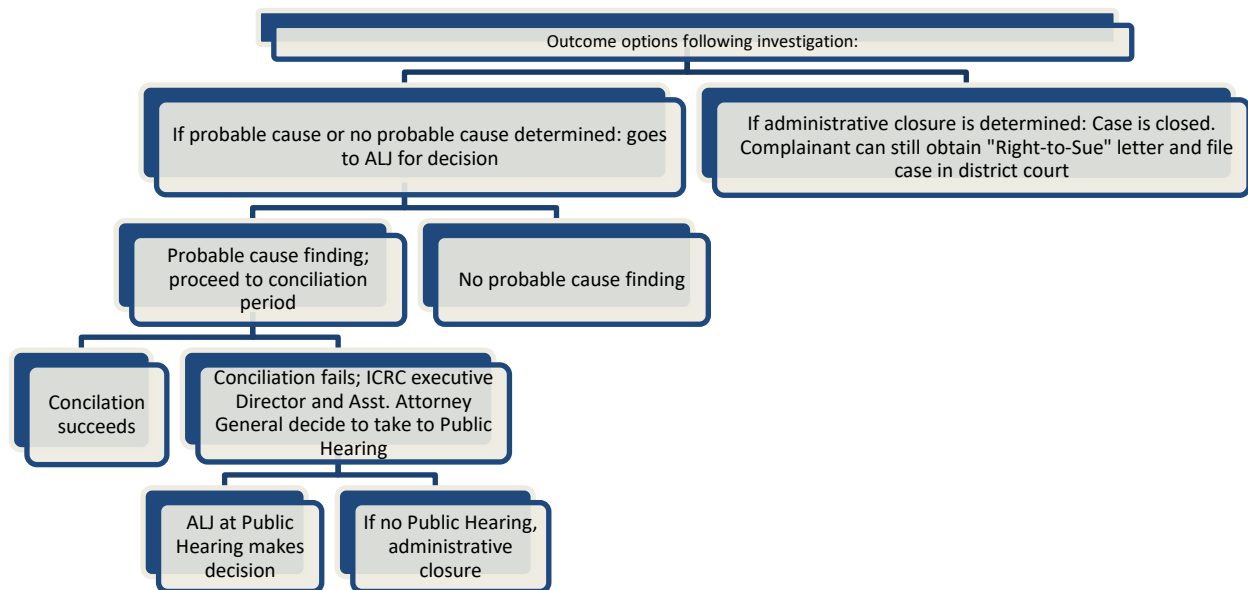


Figure 3: Outcome Options Following an Investigation

While the next steps are outside the scope of the Committee’s inquiry, this information may offer useful background and context regarding the ICRC complaint process (Figure 3).

When a case is investigated and completed, the investigator can issue a finding of either probable cause, no probable cause, or recommend an administrative closure.¹⁵ This is the second stage at

¹³ IA Code § 161-3.12 (d-g).

¹⁴ FY 2022 Iowa Civ. Rts. Comm’n Ann. Rep., at 12.

https://icrc.iowa.gov/sites/default/files/documents/Annual%20Report%20FY22%20Final_0.pdf

¹⁵ IA Admin. Code Rule § 161-3.13(1).

which an administrative closure can be presented.¹⁶ When an investigator makes a recommendation of probable cause or no probable cause, the case goes to an administrative law judge (ALJ) in the Department of Inspections and Appeals for a decision.¹⁷ The ALJ may issue a probable cause or no probable cause finding.¹⁸ When the ALJ determines there is no probable cause, Executive Director Stan Thompson noted that at this juncture, it “limits the viable options for complainant[s].”¹⁹ When the ALJ determines there is probable cause, the mandatory conciliation period of 30 days follows.²⁰ If conciliation fails, the executive director of the ICRC and the Iowa Assistant Attorney General determine whether to take the complaint to a public hearing before the ALJ.²¹ If the case is selected to go to public hearing, a new ALJ will preside on the case.²² The standard of proof is preponderance of the evidence and the ALJ will make a determination on whether or not discrimination occurred.²³ If the case is not selected to proceed to a public hearing, the complaint will be administratively closed.²⁴ This is the third instance in which a case may reach an administrative closure determination.

Following the conclusion of an investigation and issuance of findings, the ICRC administers a 10-question “Quality Survey” that requests voluntary feedback regarding the complaint process, experience with staff, and overall satisfaction.²⁵ Results are not available online to review but made available upon request.²⁶ Based on results from 2017 – 2021 provided by the executive director of the ICRC, 84 respondents participated in the survey.²⁷ Classification of survey respondents are largely made up of claimants (73 percent) while 7 percent were respondents and 8 percent declined to answer.²⁸ An estimate of 36 percent of survey respondents strongly agreed

¹⁶ IA Admin. Code Rule § 161-3.13(5).

¹⁷ IA Admin. Code Rule § 161-3.13(1).

¹⁸ *Id.*

¹⁹ Stan Thompson, testimony before the Iowa Advisory Committee to the U.S. Comm’n on Civ. Rts., virtual hearing, April 1, 2022, p.8.

²⁰ IA Admin. Code Rule § 161-3.13(6).

²¹ IA Admin. Code Rule § 161-3.13(8).

²² Thompson Testimony, 4-1-22 Hearing Transcript p.9.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ IA Civ. Rts. Comm’n, ICRC Quality Survey, <https://icrc.iowa.gov/icrc-quality-survey> (accessed February 10, 2022).

²⁶ See Appendix; U.S. Commission on Civil Rights staff requested survey results.

²⁷ *Ibid.*

²⁸ *Ibid.*

that the ICRC staff, website, or publications explained the complaint process clearly while almost 30 percent strongly disagreed.²⁹ Roughly a quarter of survey respondents agreed that their complaint was handled in a timely fashion and 31 percent disagreed.³⁰ As for survey respondents' assessment of ICRC staff being knowledgeable and respectful of those interacting with the ICRC, the results were similar: 27 percent strongly agreed and roughly 23 percent strongly disagreed.³¹

General Differences in Screening Complaints Process

The ICRC screening process is materially different from the process utilized by its federal counterpart, the EEOC, and other state FEPAs. Pursuant to EEOC policy, if an individual believes he, she, or they have been discriminated against, the EEOC will assist the claimant with the drafting of a charge of discrimination.³² The charge of discrimination is served upon the respondent.³³ The EEOC ordinarily requests a respondent to submit a position statement and documents supporting its position and asserting non-discriminatory reasons for its actions.³⁴ Upon request, the EEOC will provide the respondent's position statement and attachments to complainant and provide the complainant an opportunity to respond.³⁵

In 2016, the EEOC adopted a procedure to be able to release the respondent's position statements and non-confidential attachments to the complainant upon request during an investigation.³⁶ Prior to this announcement, some EEOC districts had only provided a summary of the respondent's response.³⁷ The EEOC explained that this new procedure would enhance service to the public and would allow the EEOC to share better information with the parties and strengthen investigations.³⁸

²⁹ Ibid.

³⁰ Ibid.

³¹ See Appendix ICRC Satisfaction Survey Results 2017-2021.

³² U.S. Equal Employment Comm'n, Filing a Charge of Discrimination, <https://www.eeoc.gov/filing-charge-discrimination> (accessed January 31, 2023).

³³ Ibid.

³⁴ U.S. Equal Employment Opportunity Commission, *Questions and Answers for Respondents on EEOC's New Position Statement Procedures*, <https://www.eeoc.gov/employers/questions-and-answers-respondents-eeocs-new-position-statement-procedures> (accessed August 14, 2022).

³⁵ U.S. Equal Employment Opportunity Commission, *EEOC Implements Nationwide Procedures for Releasing Respondent Position Statements and Obtaining Responses from Charging Parties*, February 18, 2016, https://www.eeoc.gov/eeoc/newsroom/release/position_statement_procedures.cfm (accessed January 14, 2022).

³⁶ *Questions and Answers for Respondents on EEOC's New Position Statement Procedures*.

<https://www.eeoc.gov/employers/questions-and-answers-respondents-eeocs-new-position-statement-procedures>

³⁷ Ibid.

³⁸ Ibid.

The ICRC's practice differs in that claimants are not formally advised of the respondents' asserted reasons and are not given an opportunity to respond to the asserted reasons prior to the screening decision. Once the ICRC receives a verified complaint, it shares the complaint with the respondent.³⁹ The ICRC does not require the respondent to submit a verified answer, instead as part of ICRC's screening in process, the respondent and complainant are provided with questionnaires and required to submit answers to the questionnaires or alternatively a response through a position statement.⁴⁰ The answers to the questionnaires are not required to be verified and are not shared between the parties.⁴¹ While the respondent is provided the complainant's verified complaint, the complainant never sees any of the respondent's written response or answers.⁴²

The ICRC asserts that its inability to share information is pursuant to Iowa Code §216.15(5), which states:

“The members of the [ICRC] and its staff shall not disclose the filing of a complaint, the information gathered during the investigation, or the endeavors to eliminate such discriminatory or unfair practice, unless such disclosure is made in connection with the conduct of such investigation.”⁴³

In addition, the ICRC asserts that the Iowa Code only allows for the disclosure of information when the ICRC has issued a right-to-sue letter, a party or party's attorney may have access to the ICRC's case file on that complaint.⁴⁴

There is a differing view regarding the interpretation of Iowa Code §216.15(5) that will be discussed later in the report.⁴⁵

FEPA practices vary; however, Connecticut and Kansas are the states with FEPA practices most comparable to the State of Iowa. Connecticut refers to its screening process as a Case Assessment

³⁹ IA Admin. Code Rule § 161-3.6.

⁴⁰ IA Admin. Code Rule § 161-3.12(1).

⁴¹ IA Civ. Rts. Comm'n, Outline of Complaint Process, at 4(a). <https://icrc.iowa.gov/file-complaint/outline-complaint-process> .

⁴² Ibid.

⁴³ IA Code § 216.15(5); Iowa Admin. Code 161-3.12.

⁴⁴ IA Admin. Code r. 161-3.2.

⁴⁵ See Finding VII.

Review. In Connecticut, a case may be closed at the Case Assessment Review level “if there is no reasonable possibility that investigating the claim would result in a reasonable cause finding.”⁴⁶ The Kansas Human Rights Commission (KHRC) has authority to dismiss a complaint for administrative convenience. If the KHRC finds that the complainant’s objections to a proposed conciliation agreement are without substance or that noticing the complaint for hearing would be otherwise undesirable, the KHRC may, at any time prior to a hearing, dismiss the complaint on grounds of administrative convenience. When a complaint is administratively dismissed before hearing, the KHRC shall issue and cause to be served upon each party a copy of the order dismissing the complaint and stating the grounds for such dismissal.⁴⁷

Status of Administrative Closures

Based on the most recent figures, the ICRC received 1640 complaints in 2021, 74 percent of which are employment related.⁴⁸ In 2020 and 2019, about 78 percent of complaints filed with the ICRC were employment related claims,⁴⁹ and in 2018, employment related complaints almost 79 percent of its docket. From 2018 to 2021, the percentage of administrative closures appear to trend downward. Of those employment related claims, roughly 51 percent were administratively closed in 2021.⁵⁰ Historically, an average of 60 percent of cases are concluded at the screening stage.⁵¹ In 2018, 63 percent of claims were administratively closed; in 2019, 61 percent; and in 2020, 59 percent.⁵²

⁴⁶ CT Gen Stat § 46a-83(c).

⁴⁷ KS Hum. Rts. Comm’n, KS Admin. Rule 21-41-8.

⁴⁸ IA Civ. Rts. Comm’n, *Annual Report Fiscal Year 2021*, <https://icrc.iowa.gov/sites/default/files/documents/Annual%20Report%20FY21%20Final.pdf> (accessed July 14, 2022).

⁴⁹ IA Civ. Rts. Comm’n, *Annual Report Fiscal Year 2020*, <https://icrc.iowa.gov/sites/default/files/documents/Annual%20Report%20FY20%20Final.pdf> (accessed July 14, 2022); IA Civ. Rts. Comm’n, *Annual Report Fiscal Year 2019*, <https://icrc.iowa.gov/document/annual-report-fiscal-year-2019> (accessed July 14, 2022).

⁵⁰ IA Civ. Rts. Comm’n, *Annual Report Fiscal Year 2021*.

⁵¹ IA Civ. Rts. Comm’n, Case Management System, Discrimination Cases Processed by ICRC by Fiscal Year, <https://data.iowa.gov/Communities-People/Discrimination-Cases-Processed-by-ICRC-by-Fiscal-Y/29th-k4ti> (accessed January 14, 2022); Approved Minutes – March 23, 2018 Meeting of the ICRC.

⁵² IA Civ. Rts. Comm’n, *Annual Report Fiscal Year 2019*.

In comparison to the ICRC, the Connecticut Commission on Human Rights administratively closes approximately 14 percent of its cases.⁵³ The Kansas Human Rights Commission administratively closes approximately 22 percent of its cases.⁵⁴

Methodology

As a matter of historical precedent, and in order to achieve transparency, advisory committee studies involve a collection of public, testimonial evidence and written comments from individuals directly impacted by the civil rights topic at hand; researchers and experts that have rigorously studied and reported on the topic; community organizations and advocates representing a broad range of backgrounds and perspectives related to the topic; and government officials tasked with related policy decisions and the administration of those policies.

Advisory committee studies require members to utilize their expertise in selecting a sample of panelists that is the most useful to the purposes of the study and will result in a broad and diverse understanding of the issue. This method of (non-probability) judgment sampling requires advisory committee members to draw from their own experiences, knowledge, opinions, and views to gain understanding of the issue and possible policy solutions. Advisory committees are composed of volunteer professionals who are familiar with civil rights issues in their state or territory.⁵⁵ Members represent a variety of political viewpoints, occupations, races, ages, and gender identities, as well as a variety of background, skills, and experiences.⁵⁶ The intentional diversity of each advisory committee promotes vigorous debate and full exploration of the issues. It also serves to assist in offsetting biases that can result in oversight of nuances in the testimony.

In fulfillment of advisory committees' responsibility to advise the U.S. Commission on Civil Rights of civil rights matters in their locales, advisory committees conduct an in-depth review and thematic analysis of the testimony received and other data gathered throughout the course of their inquiry. Advisory committee members use this publicly collected information, often from those

⁵³ CT Hum. Rts. and Opportunities, Annual Report. <https://portal.ct.gov/-/media/CHRO/Reports/CHRO-Case-Processing-Report-FY-2022.pdf> .

⁵⁴ KS Hum. Rts. Comm'n, Annual Report. <http://www.khrc.net/pdf/AR2016.pdf> .

⁵⁵ U.S. Comm'n on Civ. Rts., State Advisory Committees, FAQs. <https://www.usccr.gov/about/faqs> .

⁵⁶ Ibid.

directly impacted by the civil rights topic of study, or others with direct expert knowledge of such matters, to identify findings and recommendations to report to the federal Commission. Drafts of the advisory committee's report are publicly available and shared with panelists and other contributors to ensure that their testimony was accurately captured. Reports are also shared with affected agencies to request clarification regarding allegations noted in testimony.

For the purposes of this study, **Findings** are defined as what the testimony and other data *suggested, revealed, or indicated* based upon the data collected by the advisory committee. Findings refer to a synthesis of observations confirmed by majority vote of members, rather than conclusions drawn by any one member. **Recommendations** are directed at the Commission; they are specific actions or proposed policy interventions intended to address or alleviate the civil rights concerns raised in the related finding(s). Where findings indicate a lack of sufficient knowledge or available data to fully understand the civil rights issues at hand, recommendations may also target specific directed areas in need of further, more rigorous study.

Findings

In keeping with its duty to inform the U.S. Commission on Civil Rights of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the U.S. Commission on Civil Rights to the President and the Congress,⁵⁷ the Iowa Advisory Committee submits the following findings to the U.S. Commission on Civil Rights regarding employment discrimination and administrative closure of discrimination complaints. This report seeks to highlight the most salient civil-rights themes as they emerged from the Committee's inquiry. The complete meeting transcripts and written testimony received are included in the Appendix for further reference.

Finding I: Mediation is underutilized and offers a great opportunity for furthering the mission of the Iowa Civil Rights Commission.

⁵⁷ 45 C.F.R. § 703.2 (2018).

The ICRC cited that it has a robust mediation program that is “designed to assist parties in the voluntary resolution of discrimination complaints at the earliest stage possible.”⁵⁸ It provides opportunities for parties to use mediation services by working with local human and civil rights commissions throughout the state to utilize space at the local commissions’ offices and public libraries to conduct mediations.⁵⁹ More recently, it has used video conferencing, which has been a useful tool especially during the COVID-19 pandemic.⁶⁰ Mediation allows the ICRC to remedy discrimination, harassment, and retaliation earlier in the complaint process and provides significant cost savings to parties and the taxpayers of Iowa.⁶¹

An opportunity for mediation is a key component to resolving complaints. Mediation is a fair and efficient process whereby a neutral mediator assists the parties in reaching a voluntary negotiated agreement.⁶² Mediation promotes a better work environment, reduces costs, and works for the employer and the employee.⁶³ Indeed, due to the many positive outcomes of mediation Iowa courts have mandated mediation in certain lawsuits.⁶⁴

Based on testimony, a complainant whose case is administratively closed is never offered the opportunity for mediation.⁶⁵ This is particularly important, because in any given year more than half of the complaints filed with the ICRC are administratively closed.⁶⁶ The Iowa-Nebraska NAACP contends that the loss of this mediation opportunity due to administrative closure is very costly to complainants.⁶⁷ David Walker, co-chair of the Legal Redress Committee of the Iowa-Nebraska NAACP cited that the failure to offer mediation to all complainants is due to the ICRC being short-staffed and under-resourced for many years.⁶⁸ On the other hand, Executive Director

⁵⁸ Iowa Civil Rights Commission, *Annual Report Fiscal Year 2021*, p. 10, <https://icrc.iowa.gov/sites/default/files/documents/Annual%20Report%20FY21%20Final.pdf> (accessed July 14, 2022).

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ U.S. Equal Employment Opportunity Commission, *Mediation*, <https://www.eeoc.gov/mediation-0> (accessed August 14, 2022).

⁶⁴ In July 2020, the Iowa Supreme Court issued an order requiring mediation in nearly all family law cases. [Scanned Document \(iowacourts.gov\)](#); Agricultural disputes. See Iowa Code § 654A.6 – Mandatory mediation proceedings.

⁶⁵ Walker Testimony, *5/13/22 Web Hearing*, p. 12.

⁶⁶ See citations 22-26 for Iowa Civil Rights Commission Annual Reports from FY 2018-2021 administrative closures for employment-related cases.

⁶⁷ Walker Testimony, *5/13/22 Web Hearing*, p. 8.

⁶⁸ *Ibid.*, pp. 12, 14.

of the ICRC, Stan Thompson, stated that statutory provisions pertaining to the processing of complaints limits its ability to offer mediation.⁶⁹

Speakers urged the ICRC to continue the expansion of its mediation program.⁷⁰ For example, Mark Hudson, an attorney, and President of the Iowa Society of Human Relations Management, recommended that the ICRC return to using outside lawyers to conduct mediations.⁷¹ He stated that an effective mediation program would have a positive effect on respondents and complainants because “a mediated conversation where [] [parties] come to some solution...is always going to be better than some determination...we have the opportunity to actually talk to each other and address what happened, regardless of whether we like what they say.”⁷² Iowa-Nebraska NAACP speakers stated that it is doubtful that the necessary mediations can be handled by staff and volunteer lawyers.⁷³ Mediation is so integral to the fair and full resolution of claims that additional funding should be provided by the Legislature so that mediators can be paid.⁷⁴ The success of mediation in Connecticut demonstrates that such an expenditure of public funds is in the public interest,⁷⁵ would significantly further the goals of the Iowa Civil Rights Act. The community’s loss of confidence in the ICRC was reported by Betty Andrews, President of the Iowa-Nebraska NAACP, due to the high administrative closure rate and the low number of settlements.⁷⁶

David Walker and Russell Lovell, co-chairs of the Legal Redress Committee of the Iowa-Nebraska NAACP and Drake law professors emeritus, suggested that the ICRC consider permanently offering virtual mediations and cited EEOC’s studies that underscore positive results from mediation.⁷⁷ The EEOC reported two studies indicating satisfaction with the EEOC’s mediation program and a successful transition from in-person to online mediation as a result of the COVID-

⁶⁹ Thompson Testimony, *4/01/22 Web Hearing*, p. 15.

⁷⁰ Ibid., p. 13; Russell Lovell, Co-Chair, Legal Redress Committee, Iowa-Nebraska NAACP, Written Statement for the Iowa Advisory Committee Briefing before the U.S. Commission on Civil Rights, July 6, 2022, p. 2 (hereinafter Lovell Statement); Hudson Testimony, *5/13/22 Web Hearing*, pp. 18-9.

⁷¹ Hudson Testimony, *5/13/22 Web Hearing*, pp. 18-9.

⁷² Ibid.

⁷³ Lovell Statement, at 2.

⁷⁴ Ibid., p. 15; Sam Kooiker Testimony, *6/6/22 Web Hearing*, p. 15.

⁷⁵ Thompson Testimony, *4/01/22 Web Hearing*, p. 15; Dumas Testimony, *5/13/22 Web Hearing*, p. 23.

⁷⁶ Andrews Testimony, *6/6/22 Web Hearing*, p. 4.

⁷⁷ Lovell Statement, at 2.

19 pandemic.⁷⁸ In the first study, 98 percent of employers and 92 percent of charging parties indicated that they would be willing to participate in the EEOC’s mediation program again if they were a party to an EEOC charge.⁷⁹ Roughly 70 percent said they prefer online mediation to in-person mediation in the future because of flexibility, convenience, cost savings, and a “safe space.”⁸⁰ The second study, using participant and mediator survey results, reported that “EEOC mediators found that online mediation is easier to use and more flexible than in-person mediation; achieved similar or better quality and value of settlements for both parties; and increased access to justice for charging parties.”⁸¹ Also notable is that participants found that online mediation significantly increases access to justice for charging parties.⁸² An EEOC study reported that 1 in 5 charging parties stated they do not want to be in the same physical location as their employer and the virtual option provides “a safe space” for those participants.⁸³ Additionally, the virtual format provides employers with more flexibility, which makes them more likely to participate in mediation - 62 percent of employers reported that the availability of online mediation made it more attractive for them to participate in the EEOC’s mediation program.⁸⁴

Online mediation would appear to be a very good option for the ICRC in all mediation cases, but particularly when the complainant does not reside in the Des Moines area. Based on the EEOC Studies, it appears likely that widespread use of online mediation will result in significant costs savings and will enable complainants from all across Iowa to have the benefits of this important

⁷⁸ Equal Employment Opportunity Commission, *EEOC’s Pivot to Virtual Mediation Highly Successful, New Studies Find*; 6/1/22, <https://www.eeoc.gov/newsroom/eeocs-pivot-virtual-mediation-highly-successful-new-studies-find> (accessed July 14, 2022).

⁷⁹ Ibid.

⁸⁰ Equal Employment Opportunity Commission, *The Equal Employment Opportunity Commission Mediation Participants Experience in Online Mediation And Comparison to In-Person Mediation*, by Patrick E. McDermott, and Ruth Obar, February 18, 2022, <https://www.eeoc.gov/equal-employment-opportunity-commission-mediation-participants-experience-online-mediation-and-comparisons> (accessed July 14, 2022).

⁸¹ Equal Employment Opportunity Commission, *Equal Employment Opportunity Commission Mediators’ Perception of Remote Mediation and Comparisons to In-Person Mediation*, by Patrick E. McDermott, and Ruth Obar, February 18, 2022, <https://www.eeoc.gov/equal-employment-opportunity-commission-mediators-perception-remote-mediation-and-comparisons> (accessed July 14, 2022).

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Equal Employment Opportunity Commission, *Equal Employment Opportunity Commission Mediators’ Perception of Remote Mediation and Comparisons to In-Person Mediation*, by Patrick E. McDermott, and Ruth Obar, February 18, 2022, <https://www.eeoc.gov/equal-employment-opportunity-commission-mediators-perception-remote-mediation-and-comparisons> (accessed July 14, 2022).

settlement mechanism. Mediation is of special importance for the vast majority of complainants who do not have retained counsel.⁸⁵

Finding II: Verification is not required of all parties which creates an imbalance in the integrity of the Iowa Civil Rights Commission’s screening process.

Any person claiming to be a victim of discrimination must file a verified, written complaint to the ICRC, setting forth the allegations of discrimination.⁸⁶ The term “verified” means: (a) sworn to or affirmed before a notary public or other person duly authorized by law to administer oaths and take acknowledgements, or (b) supported by an unsworn declaration which recites that the person certifies the matter to be true under penalty of perjury, states the date of the statement’s execution and is subscribed by the person.⁸⁷ Such an unsworn declaration may be in substantially the following form: “I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.”⁸⁸

Panelists raised issue with the lack of verification for employers.⁸⁹ Iowa-Nebraska NAACP speakers believe that what is required of one party should be required of the other.⁹⁰ The concern is that only the claimant is required to verify under the penalty of perjury that statements are true and correct while the respondent is not required to verify the veracity of their position statement nor its answer to the questionnaires.⁹¹ Mr. Walker argued that the lack of a verification requirement applicable to employers erodes confidence in the ICRC’s proceedings.⁹²

On the other hand, Mr. Hudson, who offers the perspective of employers, noted that there is no issue with the lack of verification. He argued that some of the questions sometimes require multiple

⁸⁵ Lovell Statement, at p. 2.

⁸⁶ IA Code § 216.15(1); Iowa Rules of Practice 161 – 3.4.

⁸⁷ IA Code § 216.15 (1); Iowa Admin. Code § 161-2.1(9).

⁸⁸ Iowa Rules of Practice 161 – 2.1(9).

⁸⁹ Andrews Testimony, 6/6/22 *Web Hearing*, p. 3; Walker Testimony, 5/13/22 *Web Hearing*, pp. 5-6; Battani Testimony, 6/6/22 *Web Hearing*, p. 9.

⁹⁰ Andrews Testimony, 6/6/22 *Web Hearing*, p. 3; Walker Testimony, 5/13/22 *Web Hearing*, pp. 5-6.

⁹¹ *Ibid.*

⁹² Walker Testimony, 5/13/22 *Web Hearing*, pp. 5-6.

people to respond, and some of those questions may or may not be relevant to the case, which can be an onerous process to verify all responses.⁹³

Nevertheless, all state FEPAs require individuals alleging employment discrimination to file signed and verified complaints.⁹⁴ Many states require the respondent to verify and serve their responses. For instance, the states of Florida,⁹⁵ Illinois,⁹⁶ Maine,⁹⁷ Maryland,⁹⁸ Massachusetts,⁹⁹

⁹³ Hudson Testimony, *5/13/22 Web Hearing*, p. 16.

⁹⁴ Alaska Statutes § 18.80.100, Arizona Revised Statutes A.R.S. § 41-1481, 2 CA Code of Reg. § 10001, Colo. Rev. Stat. 24-34-306(1)(a), 19 Del. Code § 710, Florida Admin. Rule 60Y-5.001(3), Georgia Code 45-19-36, Idaho Code 67-5907, K.S.A. 44-1005, Kentucky Revised Statutes 344.200, Louisiana Revised Statute 51:2257, Maine Revised Statutes, Part 12, Chapter 331, Subchapter 6, §4611, Md. State Government Code Ann. § 20-1004, 804 Code Mass Reg 1.04(5), Michigan Civil Rights Commission/Michigan Dept of Civil Rights Rules – Rule 37.4, Minnesota Statutes Chapter 363A.28, Revised Statutes of Missouri Chapter 213.075, Montana State Code Annotated 49-2-501(3), NE Code § 48-1118, Nevada Administrative Code 233.070, New Hampshire Revised Statutes Annotated Section 354-A:21, NJ Rev Stat § 10:5-13 (2016), New Mexico Administrative Code 9.1.1.8, NY Exec L § 297 (2021), 26 NCAC 04 .0102, Ohio Revised Code 4112.05, 25 Okla. Stat. § 1502, Oregon Revised Statutes § 659.820, 43 Penn. Stat. § 959, Rhode Island Commission for Civil Rights Rule 4.03, S.C. Code Regs. § 65-2, South Dakota Codified Law 20-13-29, Tennessee Code Annotated 4-21-302, Texas Labor Code Sec. 21.01(b), Utah Code 34A-5-107, 9 Vermont Statutes Annotated § 4554, Virginia Administrative Code 1 VAC 45-20-30(a), Revised Code of Washington (RCW) 49.60.230, West Virginia Code § 5-11-10, Wisconsin Administrative Code DWD 218.03(3), Wyo. Stat. § 27-9-106.

⁹⁵ “. . .The person who allegedly committed the violation may file an answer to the complaint within 25 days of the date the complaint was filed with the commission. Any answer filed shall be mailed to the aggrieved person by the person filing the answer. Both the complaint and the answer shall be verified.” Florida Statute 760.11(1).

⁹⁶ Respondent shall serve a copy of its verified response on complainant and shall show proof to the Department that the copy was served. 775 Illinois Compiled Statutes (“LCS”) 5/7-113; Illinois Administrative Code 56 Section 2520.405.

⁹⁷ A copy of the respondent’s answer is sent to the complainant. The complainant can review and provide, in writing, any information which would tend to show that the reasons given by the respondent for its actions are not accurate, or do not respond to the allegations of discrimination.

http://www.state.me.us/mhrc/guidance/after_complaint_filed.htm.

⁹⁸ The respondent may file an answer to the complaint. The answer must be signed and affirmed by the respondent. The affirmation must state: “I declare under the penalty of perjury that the foregoing is true and correct.” Code of Maryland Regulations 14.03.01.04(C) Answer to Complaint.

⁹⁹ “The answer must be signed and affirmed by the Respondent. . . . 3. In addition, pursuant to 804 CMR 1.09(5)(d), the position statement shall also be signed by counsel retained by the Respondent.” Massachusetts Commission Against Discrimination 804 CMR 1:10(8)(e). Respondent must serve the answer/position statement upon the Commission and the complainant. Massachusetts Commission Against Discrimination 804 CMR 1:10(8)(c). Complainant has an opportunity to submit a written rebuttal. <https://www.mass.gov/service-details/guide-to-the-mcad-complaint-process>.

Pennsylvania,¹⁰⁰ and Connecticut¹⁰¹ all require the respondent's answer or position statements to be verified.¹⁰²

Finding III: There may be a connection between the lack of funding allocated to the Iowa Civil Rights Commission and its capacity to increase the timely and effective resolution of claims of employment discrimination.

The ICRC has been short staffed and under resourced for many years.¹⁰³ In its reporting to Additional funding would allow the ICRC to hire additional staff, and retain experienced staff, invest in better technology, and increase its capacity to offer mediation for the early resolution of complaints.¹⁰⁴

As it stands, the ICRC is authorized for a staff of 27 individuals¹⁰⁵ and is short at least two staff persons.¹⁰⁶ Funding for the ICRC is largely a combination of state general funds and federal funds pursuant to work-sharing agreements with federal agencies that have concurrent jurisdiction of discrimination and harassment complaints through equivalent federal laws.¹⁰⁷

In FY 2021, the ICRC budget was \$2,447,125.¹⁰⁸ The State of Iowa contributed \$1,252,899 through general funding.¹⁰⁹ The EEOC and HUD contributed \$1,194, 226 collectively.¹¹⁰ The ICRC received credit for 860 complaints with its work-sharing agreement with the Equal Employment Opportunity Commission (EEOC) equating to \$663,000.¹¹¹ Through its work-

¹⁰⁰ A respondent shall file with the Commission and serve the complainant a written, verified answer to the complaint within thirty days of service of the complaint. Pennsylvania Human Relations Act Section 9(b)(3); Pennsylvania Administrative Code Section 42.31(c).

¹⁰¹ The Connecticut Commission on Human Rights and Opportunities requires a respondent to file an answer to the complaint under oath. Connecticut Commission on Human Rights and Opportunities, Sec. 46a-54-43a. Duty to answer; time to answer; form of answer. Respondent must serve a copy of the answer upon the complainant. Sec. 46a-54-44a.

¹⁰² Walker Testimony, 6/6/22 Web Hearing, p. 5.

¹⁰³ Walker Testimony, 5/13/22 Web Hearing, p. 8.

¹⁰⁴ Iowa Civil Rights Commission, Presentation before Justice Systems Appropriations Sub-Committee, January 26, 2007, <https://www.legis.iowa.gov/docs/publications/SD/439.pdf> (last accessed August 27, 2022).

¹⁰⁵ Thompson Testimony, 5/13/22 Web Hearing, p. 24.

¹⁰⁶ Sam Kooiker, Commissioner, Iowa Civil Rights Commission, Written Statement for the Iowa Advisory Committee Briefing before the U.S. Commission on Civil Rights, July 5, 2022, (hereinafter Kooiker Statement).

¹⁰⁷ IA Civ. Rts. Comm'n, FY 2021 Annual Report, at <https://icrc.iowa.gov/document/2021-annual-report>

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

sharing agreement with the U.S. Department of Housing and Urban Development (HUD), the ICRC received credit for 125 complaints resulting in \$531,226.¹¹²

The ICRC budget has not significantly increased within the last 15 years.

“[I]n 2007 the total budget was \$2,394,784, and for FY2021 it was \$2,447,125, about \$50,000 more—all of that attributable to an increase of more than \$300,000 from the EEOC and HUD. In 2022 the State of Iowa’s contribution to the Commission was \$1,252,899—about \$250,000 less than what it was in 2007. Actually, the State’s contribution has been more than \$200,000 less than it was in 2007 for the last ten years”.¹¹³

Because of the decrease in Iowa state funding, Sam Kooiker, Commissioner at the ICRC, stated that “there is a high level of dependency on the EEOC and HUD cases to keep the ICRC operational.”¹¹⁴ When inflation is factored into the equation, it would require a 56 percent increase in State funding, or \$699,283, to be the equivalent of the State’s support for the ICRC in FY 2009.¹¹⁵ As far back as 2018, individual commissioners discussed going public to discuss the underfunding of the ICRC. For example, it was stated that

All commissioners agreed the ICRC needs to reach out to the Executive and Legislative branches to request that efforts be made to keep adequate funding to the ICRC. . . Further, discussion was held regarding the possibility of drafting a letter to send to editorial boards of newspapers.¹¹⁶

High staff turnover has been a serious problem in recent years. The high turnover results in a considerable loss of experience and expertise. Turnover impacts the number of cases that ICRC can process in a given time period due to the time it takes to find a replacement civil rights specialist and train that person. The staff turnover has been due in significant part to very low

¹¹² Iowa Civil Rights Commission Annual Report Fiscal Year 2021.

¹¹³ David Walker, Co-Chair, Legal Redress Committee, Iowa-Nebraska NAACP, Written Statement for the Iowa Advisory Committee Briefing before the U.S. Commission on Civil Rights, May 13, 2022, pp. 14-5 (hereinafter Walker Statement).

¹¹⁴ Kooiker Testimony, 6/6/22 *Web Hearing*, p. 14.

¹¹⁵ See Appendix for ICRC Funding Breakdown Submitted by the Iowa-Nebraska NAACP. It is noted that the number of complaints filed with the ICRC has declined since FY 2009, from 2,012 to 1,640 in FY 2021. The Iowa-Nebraska NAACP contends that the decline in complaints reflects the loss of confidence of the community in the ICRC due to the persistence of its exceptionally high Administrative Closure rates, lack of outreach, and few mediated settlements, rather than a decline in the extent of discrimination in Iowa.

¹¹⁶ Iowa Civil Rights Commission, *Approved Minutes – March 23, 2018 Meeting of the Iowa Civil Rights Commission*, <https://icrc.iowa.gov/sites/default/files/documents/3.23.18%20Minutes%20approved.pdf> (last accessed August 27, 2022).

salaries for ICRC attorneys, with many leaving for higher-paying positions in other State agencies.¹¹⁷ The ICRC salary structure needs readjustment so that it confirms civil rights are valued by the State, and so its attorneys can advance, rather than leave for better paying jobs in other areas of State government.¹¹⁸

Additional funding would allow the ICRC to retain experienced staff, invest in better technology, and increase its capacity to offer mediation for the early resolution of complaints.

Finding IV: The failure to provide the claimant with the respondent's alleged non-discriminatory reason denies the claimant a credible opportunity to rebut the respondent's asserted reason for the adverse employment action and opportunity for due process.

The standard for evaluating employment-related cases is set out in *McDonnell Douglas v. Greene*.¹¹⁹ Under *McDonnell Douglas*, the complainant must first establish a prima facie case of discrimination. The respondent then has the opportunity to articulate a legitimate, nondiscriminatory reason for the decision. Finally, in order to succeed, the claimant must demonstrate that respondent's reason is pretext for discrimination.¹²⁰

Mr. Walker questioned how the complainant is able to establish that the respondent's asserted reason is pretext when the claimant may not even be told of the asserted reason, he, she, or they must refute.¹²¹ Mr. Lovell added that pursuant to *McDonnell Douglas* and *Burdine*

the claimant is entitled to have the employer's responses to be able to indicate if they think [the responses] are factually inaccurate, or if they are only partially true. . . And even if the allegations are factually true, if they're not fairly and non-discriminatorily applied, that is still a violation of [the employment discrimination laws].¹²²

¹¹⁷ Walker Statement, at p. 14.

¹¹⁸ Ibid.

¹¹⁹ 411 U.S. 792 (1973).

¹²⁰ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); Gina Battani, Former Commissioner, Iowa Civil Rights Commission, Written Statement for the Iowa Advisory Committee Briefing before the U.S. Commission on Civil Rights, April 20, 2022, p. 39 (hereinafter Battani Statement).

¹²¹ Walker Statement, at p. 7.

¹²² Lovell Testimony, *5/13/22 Web Hearing*, pp. 24-5, citing *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 255 (1981).

This situation is most troubling in the context of termination of employment. Iowa is an at-will employment state, meaning an employer can fire an employee "for any lawful reason or for no reason at all."¹²³ Essentially, the employer is not required to divulge the reason for an employee's termination.

Gina Battani, a former ICRC commissioner with experience in filing her own discrimination charge, testified that she agreed with the Iowa-Nebraska NAACP and noted that the complainant should have the right to see the verified responses from the respondent.¹²⁴ Additionally, Mr. Hudson explained that claimants should know the respondent's articulated reason for its action.¹²⁵ He pointed out that respondents do not necessarily obtain an advantage because respondents also do not always know the full extent of the claimant's allegations since the claimant's questionnaires are not shared either.¹²⁶ In addition, he noted that if information is allowed to be shared then there should be a procedure which allows confidential and/or embarrassing information to be protected.¹²⁷

Speakers insisted there are many times the employee, often the claimant, does not know the reason for the adverse employment action (i.e., does not know the reason she was fired).¹²⁸ For instance, Mr. Duff stated:

The ICRC's Screening Process regularly violates the due process rights of complainants. In writing their screening decisions, the ICRC uses the McDonnell-Douglas burden-shifting framework. As part of this framework, the complainant is required to rebut and refute the respondent's alleged non-discriminatory reason for their actions. However, the ICRC never informs the Complainant of the Respondent's response to the complaint. This creates the untenable scenario where a complainant is required to rebut or refute a non-discriminatory reason of which they have no knowledge.

Mr. Duff goes on to note that the ICRC screens out many cases that have merit¹²⁹ and offers the case of *Hager v. Menards* as an illustration. Hager, a Menards employee, alleged he was

¹²³ *Lloyd v. Drake University*, 686 N.W.2d 225, 228 (Iowa 2004).

¹²⁴ Battani Testimony, 6/6/22 *Web Hearing*, p. 11.

¹²⁵ Hudson Testimony, 5/13/22 *Web Hearing*, p. 17.

¹²⁶ *Ibid.*, p. 16.

¹²⁷ *Ibid.*, p. 18.

¹²⁸ Walker Statement, at p. 9; Jim Duff, Attorney, Member, Iowa-Nebraska NAACP, Written Statement for the Iowa Advisory Committee Briefing before the U.S. Commission on Civil Rights, June 3, 2022, p. 1 (hereinafter Duff Statement).

¹²⁹ Duff Statement, at pp. 2-3.

discriminated against because of his disability, race and in retaliation for asserting his rights under the Iowa Civil Rights Act when Menards reduced his hours, suspended him, and ultimately terminated his employment.¹³⁰ Menards informed Hager he was suspended for using the large restroom at the front of the store, and that his hours were reduced for “economic reasons.”¹³¹ Hager went on to file a complaint with the ICRC. In his complaint, he explained that he had personally observed white, non-disabled employees use the restroom at the front of the store without adverse consequences. He explained that notwithstanding the asserted economic reasons, white employees did not have their hours reduced.¹³²

Menards responded to Hager’s complaint; however, unbeknownst to Hager, Menards asserted an entirely different reasons for its actions. Menards asserted that Hager had “publicly berated a manager.”¹³³ Menards, also asserted for the first time that Hager voluntarily resigned.¹³⁴ Hager was not advised of Menards’ newly asserted reasons for its actions until the ICRC issued its screening decision and closed his case. The ICRC closed Hager’s Discipline and Reduced Hours claim on the basis that he failed to rebut Menard’s non-discriminatory reasons for its actions.¹³⁵

With this example, Mr. Duff argued that “[t]he ICRC [should not] require a complainant to rebut a respondent’s alleged non-discriminatory reason for taking actions when the complainant is never informed of those alleged discriminatory reasons.”¹³⁶ He argued that evidence of Menards’ “shifting reasons” should have weighed in favor of Hager’s claim.¹³⁷ Instead, Menards’ newly asserted reasons were used to dismiss Hager’s claim.

¹³⁰ Hager v. Iowa Civil Rights Commission, No. CVCV056404, Dismissed (5th Judicial District, Aug. 21, 2018).

¹³¹ Letter from Jim Duff, Attorney, to Iowa Civil Rights Commission, Reduction in Hours Complaint Questions, Case No.10-17-71133, at 1.

¹³² *Id.*

¹³³ Iowa Civil Rights Commission, Preliminary Case Review, Case No. 10-17-71133, at 3.

¹³⁴ *Id.* at 4.

¹³⁵ *Id.* at 11.

¹³⁶ Duff Statement, at 2.

¹³⁷ *Ibid.*, at pp. 2-3. Noting that “[S]hifting reasons support a finding of illegal motivation.” *Hall v. Nat’l Labor Relations Bd.*, 941 F.2d 684, 688 (8th Cir.1991) . . . An employer is prohibited from inventing a “post hoc rationalization for its actions at the rebuttal stage of the case.” *E.E.O.C. v. Wal-Mart Stores, Inc.*, 477 F.3d 561, 570 (8th Cir. 2007), citing *EEOC v. Alton Packaging Corp.*, 901 F.2d 920, 925 (11th Cir. 1990) .

A representative from the ICRC counter that claimants are generally aware of the asserted reason for a respondent's adverse employment action.¹³⁸ The record does not contain strong evidence of this general awareness. The Iowa-Nebraska NAACP suggested that a claimant may be generally aware that she was terminated for poor performance, however, without understanding more specifically the particular allegations of poor performance her ability to show pretext is severely hampered.¹³⁹ The Iowa-Nebraska NAACP argues that every claimant is entitled to precisely know the employer's "verified" reasons that underlie termination for "poor performance" and supporting evidence, so every claimant is afforded a fair opportunity to rebut that explanation as pretextual.¹⁴⁰

The Committee agrees that a claimant is placed in a precarious position when she has to speculate and rebut with particularity every conceivable basis for her alleged poor performance, not fully knowing whether any one of these conjured reasons has actually been asserted by the employer. Speakers disagreed and argued that the inability of the claimants to supplement their claims or otherwise reply when they have never been given clear written notice of the employer's asserted reason clearly inhibits their ability to show pretext. The failure to provide the complainant with the employer's written response, with ample time to think carefully about what it does not say, or to think about how the non-discriminatory reason given was not applied to others (as in the Hager case),¹⁴¹ is a serious shortcoming.¹⁴² Mr. Walker testified that the Iowa-Nebraska NAACP has also seen cases where new information in the respondent's submissions has not been brought to the claimant's attention until after the administrative closure and well past any opportunity for the claimant to establish pretext.¹⁴³

The ICRC's practice is at odds with EEOC's internal procedural guidance. In January 2016, the EEOC required all of its offices to share information between the claimant and respondent during the investigation of charges of discrimination.¹⁴⁴ The ICRC has not changed its practice. The

¹³⁸ Hill Testimony, *4/01/22 Web Hearing*, pp. 19-20.

¹³⁹ Walker Testimony, *5/13/22 Web Hearing*, p. 6.

¹⁴⁰ *Ibid.*

¹⁴¹ Duff Statement, at p. 2.

¹⁴² *Ibid.*

¹⁴³ Walker Statement, at p. 7.

¹⁴⁴ U.S. Equal Employment Opportunity Commission. "EEOC Implements Nationwide Procedures for Releasing Respondent Position Statements and Obtaining Responses from Charging Parties." February 18, 2016. https://www.eeoc.gov/eeoc/newsroom/release/position_statement_procedures.cfm (accessed January 14, 2022).

ICRC's practice is also inconsistent with Connecticut's procedures which allow the parties to have access to the commission's files but ensures confidentiality by precluding third-party access to complainants' files.¹⁴⁵

Another aspect of ICRC's practice was of concern to some who testified. Ms. Battani testified that screeners and investigators are encouraged to communicate with and ask respondents to supplement their responses to better establish their defenses, but the same courtesy is not extended to claimants to supplement their claims of discrimination. She shared that the ICRC practices what she calls "screening-plus" in this scenario:

[I]f the respondent didn't submit the circumstantial evidence to articulate a legitimate reason the ICRC will give a courtesy call to the respondent and ask to have the evidence submitted, however, if the complainant failed or forgot to submit a piece of evidence to demonstrate that the respondent's reason is pretext for discrimination, the case will be [administratively closed].¹⁴⁶

The ICRC acknowledged that screening plus is an investigatory tool, but argued it is only used in less than two percent of screened cases. Executive Director Thompson stated:

Screening plus is a process that helps the [ICRC] resolve cases earlier that would otherwise go to investigation. This process is utilized when material evidence is referenced in a [r]espondent's position statement, but not provided elsewhere. Respondent's attorney position statements are not admissible evidence, so we cannot accept the statement as evidence. This process is utilized fairly infrequently, a few times a year, because the evidence must be dispositive of the case. When the evidence is claimed to exist, a screener may ask the Respondent to provide it and then completed their analysis.¹⁴⁷

Furthermore, the ICRC stated that the screening-plus practice is appropriate because claimants can always request reconsideration of the screening decision and during reconsideration the claimant can put forth evidence showing that the respondent's reason is pretext.¹⁴⁸

Mr. Duff argued that in the example case, Hager, the claimant did just this: Hager received the screening decision which closed his case. He submitted evidence rebutting the respondent's newly

¹⁴⁵ Walker Testimony, *5/13/22 Web Hearing*, pp. 7, 22; Dumas Testimony, *5/13/22 Web Hearing*, p. 21.

¹⁴⁶ Battani Statement, at p. 4.

¹⁴⁷ Stan Thompson, Executive Director, Iowa Civil Rights Commission, Written Statement for the Iowa Advisory Committee Briefing before the U.S. Commission on Civil Rights, April 24, 2022, p. 1 (hereinafter Thompson Statement).

¹⁴⁸ *Ibid.*

asserted reasons for his termination. He asked that his case be reopened. Nonetheless, the ICRC refused to reopen Hager's case.¹⁴⁹

Ms. Battani provided the following example to illustrate the problems with the screening-plus practice:

If we take the example used at this training, Bob, a Black male is fired for being late to work when his white co-workers do the same and have not been fired. Bob has met the preliminary review standard, but he could not obtain copies of timecards for his white co-workers. His employer submits a position statement in lieu of answering the questionnaire and sends in Bob's timecard alleging a nondiscriminatory reason for firing him – because he didn't follow the policy on timeliness, but Bob's employer doesn't send in copies of white employees to prove there is no disparate treatment towards Black employees.

In this example, as [the ICRC] now states, and per the training, the case wouldn't be screened in for further investigation, like obtaining information from Bob's employer on how many white employees have been fired for the same conduct as Bob. Respectfully, investigating further is a purpose served by further efforts. In this example, the ICRC takes this approach instead; Bob didn't provide statistical evidence to support disparate impact, and even though we don't determine credibility at this stage or shouldn't determine credibility, we will close the case anyway because no purpose would be served by further efforts and we will justify our complacency to not screen this case in for further investigation by saying, it's better for the ICRC to A[administratively] C[lose] the case because it's better for the complainant, so they can have us consider the evidence we didn't by asking in writing to have their case reopened and the reason why we should re-open the case, to consider evidence we didn't because no purpose would be served by our further efforts to investigate this in the first place, [and] when Bob submits his written request to dispute his employer's position statement and their lack of statistical evidence, Bob's employer will get a copy of his request to reopen the case and Bob's employer will have another opportunity to come up with a position statement to dispute Bob's request to reopen the request. This is unfair practice.¹⁵⁰

ICRC does not agree that Ms. Battani's example accurately represents screening-plus as utilized by ICRC because a case with those facts would have been screened-in.¹⁵¹ Instead, ICRC provides a classic example of screening plus which occurs when a complainant claims their pay was reduced, while in respondent's position statement argues the complainant's pay was the same or actually increased. The respondent will also say it has payment records to prove this but fails to provide the documents. Since this evidence can directly show whether a reduction in pay occurred, it could be dispositive."¹⁵²

¹⁴⁹ Duff Statement, at p. 2; *Hager v. Menards*, Summary Order and Notice Denying Reopening (May 1, 2018).

¹⁵⁰ Battani Statement, at p. 9.

¹⁵¹ Thompson Statement, at p.1.

¹⁵² *Ibid.*

Mr. Duff offered another example of a case with merit that was screened out by ICRC in *Vetter v. State*.¹⁵³ He noted that the ICRC screened this case out, finding that there was not a substantial likelihood of a probable cause decision. Despite this finding, the complainant successfully pursued his remedies in district court and obtained a jury verdict in his favor. The total judgement was for \$1,053,913. He argued that the system is “seriously flawed” if the ICRC screens out a million dollar case.”¹⁵⁴

ICRC disputed that characterization and notes the most recent full year of judicial statistics for such claims establishes that 70 percent of cases that ICRC screened-out which were later filed in district court were dismissed by a district court (14/20) and the remainder were settled.¹⁵⁵ Relatedly, 65 percent of the employment discrimination cases ICRC screened in which were later filed in district court, were dismissed by a district court (34/52) and the remainder were settled.¹⁵⁶

The Iowa-Nebraska NAACP emphasized that the same data establishes that 30 percent of the cases the ICRC screened-out as not having a “reasonable possibility of a probable cause determination” and which were later filed in court resulted in a favorable outcome for the claimant.¹⁵⁷

Finding V: Questionnaires issued to complainants and respondents, especially if unrepresented, are challenging to complete and comprehend.

As previously noted, once the ICRC receives a verified complaint, it sends questionnaires to the complainant and the respondent. Each party has 30 days to respond to the questionnaires, which can be up to more than 50 questions long.¹⁵⁸ Responding to a lengthy form questionnaire may be a daunting task for an unrepresented claimant with no real advocacy experience. It is likely that

¹⁵³ 901 N.W. 2d 839 (2017).; Duff Statement, at p. 2.

¹⁵⁴ Ibid.

¹⁵⁵ Stan Thompson, Executive Director, Iowa Civil Rights Commission, Written Statement for the Iowa Advisory Committee Briefing before the U.S. Commission on Civil Rights, June 15, 2022, p. 1 (hereinafter Thompson Statement on 6/15/22).

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ IA Civ. Rts. Comm’n, Outline of Complaint Process, <https://icrc.iowa.gov/file-complaint/outline-complaint-process> ; Duff Statement, at pp. 11-22.

the vast majority of ICRC claimants are not represented by attorneys; in contrast, 85 percent of employers are represented by counsel.¹⁵⁹

Ms. Battani, Mr. Hudson, and Mr. Walker agreed that the questionnaires are overly complicated and need to be made more user-friendly.¹⁶⁰ Ms. Battani stated that a complainant, who is often unrepresented, finds that completing a questionnaire is “extremely difficult and overwhelming.”¹⁶¹ At this time, the complainant faces the burden of anticipating what the employer (respondent) might say to discredit the complaint and determine what type of evidence to submit to shift the burden back to the respondent.¹⁶² Such a process forces the complainant to spend considerable time collecting and submitting evidence that may or may not be useful.¹⁶³ Ms. Battani also noted that this process can increase stress or “possible exacerbation of [a complainant’s] disability because the screening process is a financial and emotional burden.”¹⁶⁴ The Iowa-Nebraska NAACP stated that the process would be less burdensome on the complainant and provide information much more helpful to resolution of the complaint if the ICRC would tailor the complainant’s questionnaire (after the ICRC has reviewed the respondent’s answer and answers to its questionnaire) and provide the complainant with the right to view the verified responses from the respondent.¹⁶⁵ This will narrow the factual issues to “just the fighting issues,” precisely as *McDonnell Douglas* intends.¹⁶⁶

David Walker testified that:

[T]he NAACP has reviewed the stock [questionnaires] the [ICRC] sends out. They have numerous parts, and for an unassisted, unrepresented complainant we can imagine the reaction. They are sent to complainant at a time when complainant does not have the respondent’s answer and will not necessarily know what the respondent, or employer, will rely upon in defending the complaint.¹⁶⁷

Similarly, Mr. Hudson, Iowa SHRM Member, testified that employers, who are often the respondent, do not have “the full entire picture” because they are given the complaint, but not

¹⁵⁹ Thompson Testimony, 4/01/22 *Web Hearing*, p. 17.

¹⁶⁰ Battani Testimony, 6/6/22 *Web Hearing*, p. 9; Hudson Testimony, 5/13/22 *Web Hearing*, pp. 17-8; Walker Statement, at p. 8.

¹⁶¹ Battani Testimony, 6/6/22 *Web Hearing*, p. 9.

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

¹⁶⁵ Walker Statement, pp. 7-8.

¹⁶⁶ *Ibid.*, at p. 8.

¹⁶⁷ *Ibid.*, pp. 7-8.

given the responses or the questionnaire issued to the complainant.¹⁶⁸ He also testified that the questionnaires can be onerous particularly for employers with small Human Resource Departments as “they are very extensive.”¹⁶⁹

Finding VI: While the ICRC outlines options for alternatives noted in administrative closure letters, complainants, who are without legal representation, often find them difficult to interpret and unsure whether to pursue cases going forward.

The ICRC outlined possible outcomes based on a preliminary case review of a complaint. Executive Director Thompson noted that previously ICRC decisions issued in administrative closure letters were vague, only noting that a case was filed and that it had not met the standard, but now the ICRC issues lengthy responses that read like a “judicial decision.”¹⁷⁰ Also outlined in the administrative closure letter are facts and information received, and an explanation of each element of the claim noting if whether the element was met, unmet, or undetermined.¹⁷¹ Essentially, the letter offers a roadmap that explains the next possible step which is to request a right-to-sue Letter if the complainant chooses to pursue the complaint in district court.¹⁷² Mr. Thompson stated that when a complainant’s case is administratively closed, it means that it failed to meet one of the legal elements, which can be used if the complainant does not agree with the decision.¹⁷³

While the ICRC offers an explanation in the administrative closures letter regarding recourse, these letters may still be unclear to many. Based on their experience working with complainants, Betty Andrews and Jim Duff find that administrative closure letters are worded like legal documents and are difficult to comprehend for those with non-legal backgrounds.¹⁷⁴ The percentage of complainants who sought a right-to-sue letter after their complaint was administratively closed at the screening stage has been miniscule.¹⁷⁵ Ms. Andrews also testified that it gives a false

¹⁶⁸ Hudson Testimony, 5/13/22 Web Hearing, p. 17.

¹⁶⁹ Ibid., p. 16.

¹⁷⁰ Thompson Testimony, 4/01/22 Web Hearing, p. 11.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Duff Written Testimony, at p. 2.

¹⁷⁵ Russell Lovell and David Walker, Legal Redress Committee, Iowa-Nebraska NAACP, Written Statement for the Iowa Advisory Committee Briefing before the U.S. Commission on Civil Rights, September 20, 2022, p. 4 (hereinafter Lovell and Walker Statement on 9/20/22). “Our review of the ICRC Annual Reports indicated there

impression to unrepresented complainants that the ICRC fully investigated their claims and found them to be without merit.¹⁷⁶ As a result, pro se complainants, those who file on their own behalf, are intimidated by the administrative closure letter, often think that the ICRC conducted a full investigation, and that a case is definitively closed.¹⁷⁷ A notable example was provided by Mr. Duff, who had represented a complainant who nearly gave up her case before seeking legal representation; Duff was able to obtain over six figures in settlement on his client's behalf.¹⁷⁸

Ms. Andrews explained that for an individual interacting with the ICRC, the dynamic is “kind of a David and Goliath experience,” and that a complainant feels at a disadvantage because when the complainant is unable to afford an attorney if going against human resource professionals and company attorneys.¹⁷⁹ The Iowa-Nebraska NAACP requested that the ICRC provide the number of unrepresented complainants whose cases have been administratively closed and went on to request a right-to-sue letter and sought legal representation to pursue a case and those who actually pursued the case in district court. The ICRC provided a response to the Committee.¹⁸⁰

Finding VII: The exchange of information between the parties during the Iowa Civil Rights Commission's processing is not barred by Iowa Code §216.15(5)

The ICRC has asserted in the past that the Iowa Code prevents it from sharing information received during the screening-in process with the parties. The ICRC has relied upon Iowa Code §216.15(5):

“5. The members of the [ICRC] and its staff shall not disclose the filing of a complaint, the information gathered during the investigation, or the endeavors to eliminate such discriminatory or unfair practice by mediation, conference, conciliation, and persuasion, unless such disclosure is made in connection with the conduct of such investigation.”

Mr. Walker stated that the ICRC's reliance on Iowa Code § 216.15(5) is misplaced:

were 521 Administrative Closures in FY20 and 410 Administrative Closures in FY21. There is no online Annual Report for FY22 yet, and there is no reason to believe the number of Administrative Closures will be significantly different. The number of Administrative Closures for FY20 and FY21 total 931. Based on the available data, it is evident that, as the NAACP feared, the number and percentage of complainants who sought a Right-to-Sue Letter after their complaint was Administratively Closed at the screening stage has been miniscule: $5/931 = 0.005$; $3/931 = 0.003$. The actual percentage will be much lower, as we don't have the numbers of the Administrative Closures for FY2022.”

¹⁷⁶ Andrews testimony, p. 3.

¹⁷⁷ Andrews Testimony, 6/6/22 Web Hearing, p. 4.; Duff Statement, at p. 3.

¹⁷⁸ Duff Statement, at p. 3

¹⁷⁹ Andrews Testimony, 6/6/22 Web Hearing, p. 4.

¹⁸⁰ See Appendix Iowa Civil Rights Commission Right-To-Sue Letter Data (email on 9/9/2022)

[N]othing in that section required or approved the [ICRC]’s practice or procedure vis-à-vis requiring service upon complainant or providing for exchange of information. That remains a poor reading of the Iowa Code provision, clearly out of step with EEOC and multiple State’s practices.¹⁸¹

The Iowa Supreme Court in *Foods, Inc. v. Iowa Civil Rights Commission*, has construed the §216.15(5) confidentiality provision¹⁸² where an employer alleged an ICRC staff member had breached it by having a conversation about a pending case with a disability rights advocate during the conciliation phase of the case. In a unanimous Opinion, the Court found that it was questionable whether the staff member had breached confidentiality, but that it need not decide that question because the §216.15(5) confidentiality provision is “incidental and subsidiary to the larger, remedial purpose of the Iowa Civil Rights Act”:

The purpose of section 601A.15(4)—to keep confidential, matters surrounding the allegations of a complaint that have not been proved in an adversary hearing—is subsidiary and incidental to the larger, remedial purpose of the Iowa Civil Rights Act. The duty of confidentiality is not essential to the main objective of the statute. And in the absence of prejudice it would be fundamentally unfair to deny Harkin the protection of the Act.¹⁸³

Relying upon the *Foods, Inc.* precedent, the Iowa-Nebraska NAACP contends that the Iowa Civil Rights Act’s “incidental” confidentiality provision must be construed in light of the “larger, remedial purpose” of the Iowa Civil Rights Act in its entirety, including the ICRC’s obligation under *McDonnell Douglas* to provide the complainant with the respondent’s answer and/or other position document and the factual basis which it claims supports its justification.¹⁸⁴ As the EEOC’s own published procedures as well as the administrative rules of numerous states illustrate, that exchange of documents would facilitate “investigation” of the complaint, enhance community confidence that those who turn to the ICRC are being heard, and almost certainly reduce the number of complaints “screened out” prior to mediation.¹⁸⁵ The Iowa-Nebraska NAACP argued that the “larger, remedial purpose of the Iowa Civil Rights Act” takes precedence over the Act’s non-essential confidentiality provision.¹⁸⁶

The Iowa Attorney General, relying on the statutory text, reached the same conclusion:

¹⁸¹ Walker Written Testimony, pp. 10-1.

¹⁸² The text of §601A.15(4) in 1982 was identical to current §216.15(5). See *Foods, Inc v. Iowa Civil Rights Commission*, 318 N.W.2d 162.

¹⁸³ *Foods, Inc*, 318 N.W.2d at 170

¹⁸⁴ NAACP Written Testimony, 9/20/22, at 1.

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.* at p. 2.

“As disclosure in connection with an investigation is expressly excluded from section 216.15(5), I do not believe the exchange of information between the parties during the [ICRC]’s investigation is barred by section 216.15(5) Finally, I am aware of no common law bar to the sharing of information in connection with the furtherance of an ICRC investigation.”¹⁸⁷

All parties agree that the Iowa Code imposes no barrier to the Iowa Administrative Code’s Recommended Reforms of the ICRC’s investigatory and administrative closure procedures, and, thus, the proposed reforms can be accomplished by the ICRC without new legislation.

The ICRC contends that Administrative Rule, Iowa Administrative Code 161-3.2(216), “Access to file information,” prevents it from sharing the respondent’s answer and factual basis.¹⁸⁸ It provides:

“The disclosure of information, whether a charge has been filed or not, or revealing the contents of any file is prohibited except in the following circumstances . . . (4) If the [ICRC] has issued a right-to-sue letter per subrule 3.9(3), a party or party’s attorney may have access to the [ICRC]’s file on that complaint.”¹⁸⁹

The Committee believes the Iowa Administrative Code 161-3.2(216) is problematic and needs to be amended because a literal reading of the rule would prohibit the ICRC from even sharing the complainant’s complaint with the respondent.

¹⁸⁷ Katie Fiala, Assistant Attorney General, Office of the Attorney General, Written Statement for the Iowa Advisory Committee Briefing before the U.S. Commission on Civil Rights, September 23, 2022, pp. 2-3.

¹⁸⁸ Iowa Admin. Code 161-3.2 (2021), Hill Testimony, *4/1/22 Web Hearing*, p. 19.

¹⁸⁹ *Ibid.*

Recommendations

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) upon matters of mutual concern in the preparation of reports of the U.S. Commission on Civil Rights to the President and the Congress.¹⁹⁰ In keeping with these responsibilities, and given the testimony heard on this topic, the Committee submits the following recommendations to the U.S. Commission on Civil Rights:

1. The U.S. Commission on Civil Rights should consider studying civil rights concerns of practices deployed by state Fair Employment Practices Agencies.
2. The U.S. Commission on Civil Rights should send this report and issue the following recommendations to the Equal Employment Opportunity Commission:
 - a. Provide technical assistance to state Fair Employment Practices Agencies, especially the ICRC on how to develop a virtual mediation program.
 - b. Study whether its contracts with state fair employment agencies, such as the ICRC, should be amended in such a way that the EEOC payment structure does not appear to create incentives for inadequate investigation.
3. The U.S. Commission on Civil Rights should send this report and issue the following recommendations to the Iowa Civil Rights Commission so that it increases the consistency and transparency of the screening process:
 - a. Require verification of parties or otherwise certify submissions in support of their claims and/or defenses much like other states like Florida, Illinois, Maine, Maryland, Massachusetts, Pennsylvania, and Connecticut.

¹⁹⁰ 45 C.F.R. § 703.2 (2018).

- b. Share the respondent's asserted non-discriminatory reasons for the adverse employment action complained of and any supporting documents with the claimant prior to consideration of administratively closing the claimant's case.
 - c. Simplify the questionnaires, tailor them to the facts of the specific case, and change the timing of the questionnaires so that the respondent's answers thereto can be provided to the complainant and the complainant given the opportunity to reply before the screening decision is made.
 - d. Expand its opportunities for mediation of employment discrimination complaints, especially done virtually, so mediation is made available to every claimant who requests mediation.
 - e. Engage in consistent public promotion, outreach and education efforts sharing and explaining the ICRC's purpose in code, processes, and accessibility, encouraging prospective complainants to come forward and file charges.
 - f. Implement changes or additions to regulations needed to address the recommendations above, as provided by its jurisdiction.
4. The U.S. Commission on Civil Rights should issue the following report and recommendations to the Iowa Legislature:
- a. Provide adequate funding to the ICRC so that they have enough resources to achieve their mandate.¹⁹¹
 - b. ICRC salaries should be commensurate with other State agencies and compensation should be structured so that experienced and skilled attorneys can advance and remain contributors within the ICRC.
 - c. A new and significant budget line should be created so that the ICRC can hire and/or retain sufficient numbers of mediators so that every claimant whose case is screened in can be mediated, if requested. Mediated settlements are not only in the interest of complainants and employers, but also in the public interest.

¹⁹¹ Iowa Civil Rights Commission, General Information about the Commission and Civil Rights, <https://icrc.iowa.gov/about-us/general-information-about-commission-and-civil-rights>.

Appendix

To access all cited materials, visit <https://tinyurl.com/IowaSAC>

A. Hearing materials

- a. Transcript
 - i. April 1, 2022
 - ii. May 13, 2022
 - iii. June 6, 2022
- b. Agenda & Presentations
 - i. April 1, 2022
 - ii. May 13, 2022
 - iii. June 6, 2022

B. Written Statements

- a. Gina Battani, Former Commissioner, Iowa Civil Rights Commission, April 20, 2022
- b. Stan Thompson, Executive Director, Iowa Civil Rights Commission, April 24, 2022
- c. David Walker, Co-Chair, Legal Redress Committee, Iowa-Nebraska NAACP, May 13, 2022
- d. Stan Thompson, Executive Director, Iowa Civil Rights Commission, June 15, 2022
- e. Jim Duff, Member, Iowa-Nebraska NAACP, June 15, 2022
- f. Sam Kooiker, Commissioner, Iowa Civil Rights Commission, July 5, 2022
- g. Russell Lovell, Co-Chair, Legal Redress Committee, Iowa-Nebraska NAACP, July 6, 2022
- h. Russell Lovell and David Walker, Co-Chairs, Legal Redress Committee, Iowa-Nebraska NAACP, September 20, 2022
- i. Katie Fiala, Assistant Attorney General, Office of the Attorney General, September 23, 2022

A. Additional Resources & Supporting Documents

- a. Iowa Civil Rights Commission Right-To-Sue Letter Data (email on 9/9/2022)
- b. Iowa Civil Rights Commission Funding Breakdown Submitted by the Iowa-Nebraska NAACP
- c. Iowa Civil Rights Commission Satisfaction Survey Results 2017-2021

B. Committee Member Statements

- a. Concurrences
- b. Dissents

**Iowa Advisory Committee to the
United States Commission on Civil Rights**



U. S. Commission on Civil Rights Contact

USCCR Contact Regional Programs Unit
U.S. Commission on Civil Rights
230 S. Dearborn, Suite 2120
Chicago IL, 60604
(312) 353-8311

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