STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
CATHERINE COLLIER,	)		
	)		
	)		
Complainant,	)	CHARGE NO(S):	2007CF2835
	)	EEOC NO(S):	21BA71499
and	)	ALS NO(S):	08-193
	)		
STATE OF ILLINOIS DEPARTMENT OF	)		
CHILDREN AND FAMILY SERVICES,	)		
	)		
	)		
Respondent.	)		

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION) Entered this 17th day of March 2009

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

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CATHERINE COLLIER,	)
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STATE OF ILLINOIS DEPARTMENT OF	) **ALS NO: 08-193**
CHILDREN AND FAMILY SERVICES,	)
Respondent	)

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's motion to dismiss the Complaint for lack of jurisdiction, filed May 28, 2008. Complainant filed a response in opposition to the motion on August 13, 2008. Respondent filed a reply on August 21, 2008. The Illinois Department of Human Rights filed a response in support of the motion on August 28, 2008.

The record indicates that the motion has been served upon all Parties and the Illinois Department of Human Rights. The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. It is, therefore, named herein as an additional party of record.

CONTENTIONS OF THE PARTIES

Respondent maintains that this case must be dismissed because it was not filed with the Illinois Human Rights Commission (Commission) within the statutory time period pursuant to the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.* Thus, Respondent contends the Commission lacks jurisdiction over this Complaint.

Complainant contends that she filed this Complaint at this time based on information she received from the Illinois Department of Human Rights (Department) and acted to preserve her rights to pursue this action.

The Department concurs with Respondent, contending that it maintains jurisdiction over the underlying charge of discrimination until January 20, 2009, while it completes its investigation.

FINDINGS OF FACT

The following findings were made from the record:

1. On April 25, 2008, Complainant, on her own behalf, filed this Complaint with the Commission. The Department Charge number on the Complaint is 2007CF2835. The Department *Charge of Discrimination* was not attached to the Complaint.
2. Respondent filed a motion to dismiss the Complaint on May 28, 2008. On June 3, 2008, an order was entered ordering the Department to file a response to Respondent's motion by July 25, 2008. Complainant was ordered to file a response by August 8, 2008 and Respondent was ordered to file a reply by August 22, 2008. Complainant filed a response in opposition to the motion on August 13, 2008. Respondent filed a reply on August 21, 2008. The Department filed a response in support of the motion on August 28, 2008.
3. In its motion, Respondent attaches the following documents: Exhibit A, a copy of the underlying *Charge of Discrimination*, Charge number 2007CF2835, purporting to have been signed by Complainant on March 8, 2007; Exhibit B, a Department extension form purportedly signed by Complainant on January 15, 2008 agreeing to extend the 365-day investigation period by 300 days; and Exhibit C, a Department extension form signed by Respondent on January 3, 2008, agreeing to extend the 365-day investigation period by 300 days.
4. In its response, the Department attaches exhibits identical to Respondent's. The Department also attaches other exhibits which were already in the record.

CONCLUSION OF LAW

The Commission lacks jurisdiction over this Complaint because it was not filed in accordance with sections 5/7A-102(G)(1) and 5/7A-102(G)(2) of the Act.

DETERMINATION

Respondent's motion to dismiss this Complaint must be granted, as the Commission lacks jurisdiction over this Complaint.

DISCUSSION

Respondent maintains that this Complaint is not properly before the Commission as it was prematurely filed. Respondent contends that the underlying *Charge of Discrimination* was filed with the Department on March 27, 2008 and that both parties agreed in writing to a 300–day extension of the Department's investigation period. Respondent maintains that when the Complaint was filed on April 25, 2008, it was only one month into the 300-day period of extension agreed to by the parties and that the Department had yet to complete its investigation. In support of its position, Respondent submits its Exhibits A, B and C, which are Department Charge and Charge extension documents in this matter. Respondent maintains that its exhibits support that the Department exercised jurisdiction over the matter at the time the Complaint was filed, thus, the Complaint is not properly before the Commission at this time.

The Department was ordered to file a response to Respondent's motion by July 25, 2008. On August 28, 2008, the Department filed its response, along with a good-cause motion for leave to file the late response. That motion is granted.

The Department's argument is identical to Respondent's and the Department submits exhibits in support of its position that are identical to Respondent's. Specifically, the Department contends that the parties had indeed entered into an agreed upon extension of its investigatory period of 300 days and that, at the time this Complaint was

filed with the Commission, the Department had not yet completed its investigation or issued a report and determination pursuant to the Act.

Complainant's response was filed prior to the time the Department filed its response, therefore, Complainant's argument did not specifically contemplate the Department's position. However, because the Department's argument and exhibits are identical to Respondent's, Complainant is not prejudiced in my consideration of the Department's response.

Complainant concedes that she agreed to a 300–day extension of the Department's investigatory period; however, Complainant argues that she was verbally informed by the Department's investigator that Respondent had *not* agreed to a 300–day extension. Complainant further maintains that she did not receive a copy of Respondent's executed extension from the Department and was not aware of any executed extension by Respondent. Because she had no notification that Respondent had agreed to an extension, Complainant contends that she filed her Complaint within 30 days of the expiration of the original 365–day investigation period as required by Section 5/7A-102(G) (2) of the Act. Complainant maintains that, on these facts, her Complaint is timely filed before the Commission. Complainant does not refute the authenticity of Respondent's exhibits.

Section 5/7A-102(G) (1) of the Act, in relevant part, states:

> When a charge of a civil rights violation has been properly filed, the department, within 365 days thereof or within any extension of that period agreed to in writing by all parties, shall either issue and file a complaint in the manner and form set forth in this Section or shall order that no complaint be issued and dismiss the charge with prejudice without any further right to proceed except in cases in which the order was procured by fraud or duress...

Section 5/7A102 (G) (2) of the Act, in relevant part, states:

> Between 365 and 395 days after the charge is filed, or such longer period agreed to in writing by all parties, the aggrieved party may file a complaint with the Commission, if the Director has not sooner issued

> a report and determination pursuant to paragraphs (D)(1) and (D)(2) of this Section.... The aggrieved party shall notify the Department that a complaint has been filed and shall serve a copy of the complaint on the Department on the same date that the complaint is filed with the Commission.

The undisputed facts in the record show that the Complaint was not filed within the statutory period as contemplated by the parties' agreed upon 300-day extension of the Department's investigative period.

The Commission and appellate courts have consistently held that an aggrieved party's reliance on the instructions of the Department cannot cure the jurisdictional defect of an untimely filed complaint. *Robinson v Human Rights Commission, 201 Ill App 3d 722, 559 NE2d 229 (1st Dist 1990)* and *Heater and Board of Education of Riverdale Community Unit School District No. 100,* IHRC, 7700, December 23, 1994.

Therefore, Complainant's reliance on any verbal comments of the Department in calculating the appropriate filing time, in face of unrefuted evidence to the contrary, is rejected. The record shows this Complaint was not properly filed in accordance with statutory parameters. Thus, there is no basis for jurisdiction before the Commission at this time.

RECOMMENDATION

I recommend that this Complaint be dismissed without prejudice and that the Charge not be dismissed so the Department can continue its ongoing investigation.

HUMAN RIGHTS COMMISSION

By:
SABRINA M. PATCH
Administrative Law Judge
Administrative law Section

ENTERED: September 10, 2008