

Michigan Civil Rights Commission

**Significant
Michigan
Civil Rights
Case Decisions**

through 2003





A Tribute to Janet C. Cooper

The Michigan Civil Rights Commission respectfully acknowledges the adversities and achievements of Janet C. Cooper as a pioneer in the struggle for justice and equality. Cooper began with the Michigan Department of Civil Rights in the early 1960s and during her thirty year span served in several important capacities including Legal Director and Deputy Director. Cooper's commitment to preserving the rights of minorities, women, and the disabled was a tremendous influence on the Department beginning in its formative years when she was one of its first employees. Cooper's dedication continued to inspire generations of future civil rights protectors, both as a Department administrator and later as a community activist.

In addition to her long and storied career with Michigan Civil Rights, Cooper was also very active with the American Civil Liberties Union and the League of Women Voters, all in addition to teaching employment law at two Detroit area law schools. Although she will be missed, Cooper's life continues to provide an example of personal achievement matched with concern for the social justice due all human beings. We lost our friend and colleague on December 8, 2002.

MICHIGAN CIVIL RIGHTS COMMISSION

1963–2003

Forty Years of Furthering the Cause of Civil Rights
in the Development of Civil Rights Law

INTRODUCTION

This booklet was created in order to highlight several significant Michigan Court decisions which have contributed to the development of civil rights law in Michigan, as part of the observance of the 40th anniversary of the Michigan Civil Rights Commission. The booklet provides a brief historical summary and perspective, and is not meant to be an exhaustive list of Michigan civil rights law.

The Supreme Court of Michigan traced the development of this State's public policy of promoting equality and eliminating discrimination in the case of Beech Grove Investment Company v Civil Rights Commission of the State of Michigan, 380 Mich 405; 157 NW2d 213 (1968).

Michigan never did tolerate slavery. Even before statehood, the Northwest Ordinance forbade slavery and it has been forbidden in every Michigan Constitution. It was never necessary, in Michigan, to adopt provisions such as the Thirteenth and Fourteenth Amendments to the United States Constitution or the Civil Rights Acts of 1866 and

1870 to confer equality upon the Negro in the ownership of property. Such a disability to own property never existed in Michigan.

The Court in *Beech Grove* went on to outline additional civil rights developments in Michigan quoting from Roger C. Cramton, The Powers of the Michigan Civil Rights Commission, 68 Mich. L. Rev. 5 (1964).

Other civil rights relating to racial, religious, and ethnic discrimination have been created by the legislature over the past hundred years. The first civil rights legislation was enacted in 1867; it prohibited racial segregation in public education. In 1869, a statute prohibited life insurance companies that were doing business within the state from making any distinction or discrimination between white and colored persons. The ban against miscegenation was removed in 1883. In 1885, criminal sanctions were provided for denial of equal treatment in public places of accommodation, amusement, and recreation; racial discrimination in the selection and qualification of jurors was prohibited in the same year. The Michigan Supreme Court rejected the separate but equal doctrine in 1890, and held that a civil action for damages could be brought for discriminatory treatment in a public accommodation. The public accommodations statute was strengthened in 1937, 1952, and 1956; the 1952 amendment extended coverage to 'government housing.' Finally, in 1955, the Fair Employment Practices Act created 'a civil right' in 'the opportunity to obtain employment without discrimination because of race, color, religion, national origin or ancestry' and established remedies for the enforcement of this right.

The Michigan Civil Rights Commission was created by Article V Section 29 of the 1963 Michigan Constitution which states in part:

It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of civil rights guaranteed by law and by this constitution, and to secure the equal protection of such rights without such discrimination.

In 1977, the Elliott-Larsen Civil Rights Act and the Michigan Handicappers' Civil Rights Act, now known as the Persons With Disabilities Civil Rights Act, became effective and added sex, age, marital status, height, weight, arrest record and disability to the original four protected categories in the constitution.

Over the years new civil rights challenges have continued to present themselves, ranging from helping to ensure that non-discriminatory treatment and due process were given to all persons during the 1967 Detroit riots to addressing racial profiling issues growing out of the tragic events of September 11, 2001. The involvement of the Michigan Civil Rights Commission has kept pace in addressing these issues. The Michigan Civil Rights Commission will continue to address such challenges in a leadership role.

**Significant Civil Rights Court Decisions
Prior to the Formation of the
Michigan Civil Rights Commission
on January 1, 1964**

Workman v Detroit Board of Education, 18 Mich 400 (1869). Admission into public schools based on race violated the state's general school laws. It was therefore unlawful for the City of Detroit to continue this practice.

Ferguson v Gies, 82 Mich 358 (1890). In a case of first impression, the Michigan Supreme Court rejected the separate but equal doctrine and held that a civil action for damages could be brought for discriminatory treatment in a public accommodation.

Bolden v Grand Rapids Operating Corp., 239 Mich 318 (1927). Michigan's Civil Rights Statute was found to be a constitutional exercise of the state's police powers.

General Motors Corp. v Read, 294 Mich 558 (1940). Michigan's Equal Pay Act which generally prohibits discrimination in wage rates between men and women is constitutional.

Phillips v Naff, 332 Mich 389 (1952). Restrictive covenants based on race violated equal protection and judicial enforcement of such covenants constituted state action.

City of Highland Park v Fair Employment Practices Commission, 364 Mich 508 (1961). The Michigan Supreme Court found the Fair Employment Practices Act (FEPA) to be constitutional. The FEPA did not invade the rights of self government granted to cities under the Constitution, nor was it so vague as to violate due process.

**Significant Civil Rights Court Decisions
Subsequent to the Formation of the
Michigan Civil Rights Commission
on January 1, 1964**

★ = originated with Commission ruling

★★ = Commission filed amicus brief

Beech Grove Investment Company v MCRC, 380 Mich 405 (1968). The authority of the Michigan Civil Rights Commission to enforce and define civil rights under the Michigan constitutional amendment creating the Civil Rights Commission was upheld. ★

Pompey v General Motors, 385 Mich 537 (1971). The Michigan Civil Rights Commission did not have exclusive jurisdiction over an employee's claim of racial discrimination, and the employee can independently pursue judicial remedy of civil rights violations.

Michigan Civil Rights Commission v Clark, 390 Mich 717 (1973). A provision in the Fair Housing Act of 1968 that authorized the removal of Michigan Civil Rights Commission proceedings to the Circuit Court was unconstitutional and an unreasonable regulation of Commission procedures. ★

White v Motor Wheel, 64 Mich App 225 (1975). An unsworn letter sent by the plaintiff to the Michigan Civil Rights Commission within ninety days after the alleged discriminatory act constituted the filing of a charge under the Fair Employment Practices Act and his later verification satisfied the verification requirement of the statute. ★

Holmes v Houghton Elevator Co., 404 Mich 36 (1978). The Court held that an individual has direct access to court and is not required to exhaust administrative remedies before going to court for a civil rights violation.

Dixon v Ford Motor Co., 492 Mich 315 (1978). An appeal to the state courts from a final order of the Civil Rights Commission receives de novo review at the circuit court level and is subject to the “clearly erroneous” standard at the Court of Appeals level of review. ★

Michigan Dept. of Civil Rights ex rel Jones v Michigan Dept. of Civil Service, 101 Mich App 295 (1980). The Michigan Civil Rights Commission has jurisdiction over employment discrimination claims brought by state employees against the state. Denying disability benefits for disabilities because they are pregnancy related violates the prohibition against sex discrimination in the Fair Employment Practices Act and the Elliott-Larsen Civil Rights Act. ★★

Slayton v Michigan Host, 122 Mich App (1983). The exclusive remedy provision of the Worker’s Compensation Act does not prevent an employee from pursuing a civil rights claim under the Elliott-Larsen Civil Rights Act.

Seals v Henry Ford Hospital, 123 Mich App 329 (1983). A lower court's ruling that the Elliott-Larsen Civil Rights Act was void—in part or *in toto*—for embracing more than one object was reversed and the Act was held to be constitutional.

Michigan Dept. of Civil Rights ex rel Caskey v Horizon Tube Fabricating, Inc., 148 Mich App 633 (1986). The court held that the Michigan Civil Rights Commission is authorized under Elliott-Larsen to award back-pay, attorney fees and interest. ★

Carr v General Motors Corp., 425 Mich 313 (1986). Only disabilities that are unrelated without accommodation to an employee's ability to perform a job are protected by the Handicappers' Civil Rights Act.

Rancour v. Detroit Edison, 150 Mich App 276 (1986). An employer is not required to place a disabled employee in a new and different job in order to meet the duty to accommodate under the Handicappers' Civil Rights Act.

Walker v Wolverine Fabricating & Mfg. Co., 425 Mich 586 (1986). The Michigan Supreme Court held that a party who was denied relief by the Civil Rights Commission is entitled to pursue a claim in circuit court. However, the party is not entitled to an entirely new evidentiary proceeding. Rather, the circuit court is to review the record de novo produced by the Civil Rights Commission. ★

Ruppel v Dept. of Treasury, 163 Mich App 219 (1987). Failure to obtain approval of an affirmative action plan from the Michigan Civil Rights Commission didn't render the plan void per se; court was required to consider Department of Treasury's explanation or justification for presumptively discriminatory promotion of female employee over better qualified male employee. ★★

Sumner v Goodyear Tire & Rubber Company, 427 Mich 505 (1987). An alleged act of discrimination which occurs within the period of limitations will allow consideration of damages for connected conduct falling outside the period of limitations which otherwise would be barred but for the continuing violation. ★

Department of Civil Rights ex rel Johnson v Silver Dollar Café, 441 Mich 110 (1992). In a decision that further refined the holding in Walker v Wolverine Fabricating & Mfg. Co., 425 Mich 586 (1986), the Michigan Supreme Court held that while the circuit court must review the agency's decision de novo, it may substitute its findings, conclusions and decision for those of the Civil Rights Commission. The circuit court cannot receive new evidence on appeal. ★

Radtke v Everett, 442 Mich 368 (1993). The court adopted the reasonable person standard as opposed to the reasonable woman standard in order to determine whether a hostile environment exists in cases alleging sexual harassment under the Elliott-Larsen Civil Rights Act. A person alleging a hostile work environment must prove that the circumstances as a whole would cause a reasonable person in the plaintiff's position to have perceived a hostile work environment. ★★

Champion v Nationwide Security, 450 Mich 702 (1996). The Michigan Supreme Court held that the plaintiff's former employer was liable for quid pro quo sexual harassment when her supervisor raped her, thus causing her constructive discharge. ★★

Heurtebise v Reliable Business Computers, 452 Mich 405 (1996). Arbitration agreements contained in employee handbooks are unenforceable where the same handbook disclaims any intent to form a binding contract between employer and employee.

Chmielewski v Xermac, 457 Mich 593 (1998). In a case of first impression, the court held that mitigating measures must be considered along with a person's condition in order to determine if the condition substantially limits a major life activity and therefore constitutes a disability.

Rembert v Ryan's Steakhouse, 235 Mich App 118 (1999) cert. denied 461 Mich. 927. An agreement binding the employer and employee to arbitrate disputes, including civil rights disputes, will be upheld provided the employee does not waive any rights or remedies protected by statutory authority when signing the agreement.

Zanni v Medaphis, 240 Mich App 472 (2000). The Elliott-Larsen Civil Rights Act includes protection against age discrimination for individuals of all ages, and younger workers are protected from discrimination based upon their age just as older workers are protected from discrimination based upon their age.

Chambers v Trettco, 463 Mich 297 (2000).

In sexual harassment cases, where it is alleged that the supervisor/ manager created hostile environment harassment, the employer is not liable unless he has notice.

Sharp v City of Lansing, 464 Mich 792 (2001). The Michigan Supreme Court held that an affirmative action plan approved by the Michigan Civil Rights Commission protects employers from claims under the Elliott-Larsen Civil Rights Act, but not from constitutional challenges.

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Michalski v Bar-Levav, 463 Mich 723 (2001).

“A plaintiff must be regarded as presently having a characteristic that currently creates a substantial limitation of a major life activity” in order to be regarded as disabled under the Persons With Disabilities Civil Rights Act.

Burns v City of Detroit 658 N. W. 2d 468 (Mich., 2003). In response to a question posed by the Michigan Supreme Court, the Court of Appeals held on remand that epithets directed toward particular individuals are not protected speech and can constitutionally form the basis of sexual harassment claims.

After receiving the decision of the Court of Appeals, the Supreme Court granted a new trial on all issues. The Court reasoned that the evidence on the employment discrimination question was “nearly evenly balanced” and that a new trial limited to damages would require the introduction of virtually all the evidence relevant to the liability issues. Therefore, there is no judicial economy in limiting the jury’s consideration to just the damages issues.

The case has now been remanded back to Circuit Court for a new trial on all matters.

Jager v Nationwide Truck Brokers, Inc. 252 Mich App 464 (2002). The Court of Appeals overturned Jenkins v Southeastern Michigan Chapter, American Red Cross, 141 Mich App 785 (1985), and held that the Elliott-Larsen Civil Rights Act provides solely for employer liability, and a supervisor engaging in activity prohibited by Elliott-Larsen may not be held individually liable for violating a plaintiff's civil rights.

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