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HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE

House Bill 394: Human Relations - Commission on Civil Rights - Appeal of Final Orders

Date: February 13, 2024

Position: Support

Disability Rights Maryland (DRM) is the protection and advocacy organization for the state of Maryland; the mission of the organization, part of a national network of similar agencies, is to advocate for the legal rights of people with disabilities throughout the state. Given the Maryland Commission on Civil Rights (MCCR) is tasked with investigating and adjudicating civil rights complaints, including complaints of disability discrimination under Maryland law, DRM is invested in promoting the success of MCCR's mission to guarantee the civil rights of all Marylanders and we appreciate the opportunity to provide testimony on this bill. House Bill 394 provides a necessary fix to restore effective administrative enforcement of Maryland's civil rights laws, by providing civil rights complaints dismissed upon a finding of "no probable cause" and then denied reconsideration by MCCR, are final orders entitled to the full rights of judicial review as provided for in the Administrative Procedure Act (APA).

Under the APA, agency decisions that deprive an individual of a substantive right are entitled to judicial review and subsequent appellate review. Currently, an MCCR decision dismissing a complaint on a finding of no probable cause may be reviewed by a Circuit Court, but is not afforded further appeal to the appellate courts, denying the complainant meaningful access to the full protections of state civil rights laws and depriving many individuals of legal protections that are essential to maintaining a functioning society.¹ It is imperative that MCCR decisions be treated like other state agencies responsible for adjudicating individual rights and that individuals who are deprived of rights by MCCR's no probable cause determinations be granted full rights to judicial review when the agency denies reconsideration.

In a recent Maryland Supreme Court case, *Rowe v. MCCR*, the Court determined that the legislature failed to provide language expressing that "no probable cause" findings are final orders entitled to the full rights of judicial review.² Therefore, the court denied petitioner's

¹ See, e.g., *State ex rel. Washington Univ. v. Richardson*, 396 S.W.3d 387, 392–93 (Mo. Ct. App. 2013) ("The MHRA's prohibition against discrimination serves a remedial purpose: it is designed to be conducive to public welfare and the public good. As such, it must be interpreted "liberally to include those cases which are within the spirit of the law and all reasonable doubts should be construed in favor of applicability to the case." (internal citations omitted)); *Ray v. State Human Rels. Comm'n*, No. : N20A-09-001-VLM, 2021 Del. Super. LEXIS 668, at *6 (Super. Ct. Nov. 22, 2021) ("narrowing [Delaware Civil Rights] protection[s] ignores both the express mandates and comprehensive guidance under DEAL. It takes away the right of a protected class member to be heard.").

² The Md. Supreme Court suggests that the General Assembly could have guaranteed a right to judicial review and subsequent appellate review in State-Government § 20-1005(d)(2), by using language such as "a denial of a request for reconsideration of a finding of no probable cause by the Commission is a final order subject to judicial review equivalent to the review of a final order issued under § 20-1009 of this subtitle." *Rowe v. Maryland Comm'n on Civil Rights*, 483 Md. 329, 354, 292 A.3d 294, 309 (2023).

rights to seek appellate review of a circuit court’s adverse determination. The Court’s decision effectively makes the Circuit Court a dead-end to civil rights enforcement for the majority of complainants.³ Because Circuit Courts commonly defer to MCCR decisions without careful review of the merits and 59 percent of all complaints filed with the MCCR are dismissed upon a finding of “no probable cause,” it is essential that appellate review be available for such complaints.⁴ In fact, in 2023 MCCR found only 1 of 798 closed complaints warranted a “probable cause” finding.⁵ Because of this tendency to dismiss civil rights complaints on no probable cause determinations, the vast majority of states with administrative schemes to enforce state civil rights laws provide rights to seek judicial and appellate review of a Commission’s no probable cause determinations.⁶ Thus, the *Rowe* decision denying the full rights to judicial review of no probable cause determinations that are otherwise afforded to final agency orders deprives Marylanders of meaningful enforcement of civil rights and puts Maryland behind most other states on civil rights enforcement. The legislative fix provided in HB 394 is imperative to remedy this injustice.

Importantly, the *Rowe* decision also contradicts the purpose for creating state civil rights commissions, which were intended to enhance enforcement of civil rights laws beyond the capacity of individual “private Attorneys General” and ease access to justice.⁷ However, in the decades since creating administrative enforcement schemes for civil rights, a lack of funding and agencies’ reluctance to enforce civil rights laws has led to civil rights commissions too often becoming a dead-end for justice, rather than means for obtaining justice. Thus, judicial review of MCCR’s no probable cause determinations is essential to ensure MCCR’s complaint procedures and decisions align with the legislature’s intent for robust civil rights enforcement. Guaranteeing effective administrative enforcement of civil rights is uniquely important because those most likely to be impacted by civil rights violations disproportionately lack the social and financial resources to access the legal counsel necessary to proceed with a civil complaint.⁸ Because of this, most discrimination complaints submitted to MCCR are filed pro se and MCCR enjoys significant deference on appeal in the circuit courts. Thus, it is highly unlikely that MCCR’s “no probable cause” findings will be overturned by the various circuit courts across Maryland if the current bar on appellate review remains. Therefore, the legislature must

³ The inability to obtain appellate review may impact both the circuit court and MCCR’s decisions and thus, affect complainants’ substantive rights in the administrative process. In the case of MCCR, its notable that the number of complaints dismissed on a finding of “no probable cause” has been on the rise in recent years. *Compare* MCCR, *Annual Report*, 18 (2023) *with* MCCR, *Annual Report*, 14 (2020).

⁴ MCCR, *Annual Report*, 18 (2023),

https://mccr.maryland.gov/Documents/publications/MCCR_Annual%20report%202023.pdf

⁵ *Id.* The discrepancy between the two statistics exists because many MCCR complaints are also administratively closed and some settled prior to a arriving at probable cause determination.

⁶ Brief for Am. C.L. Union Md. et al. as Amici Curiae Supporting Appellant, *Rowe v. Maryland Comm’n on Civil Rights*, 483 Md. 329 (2023) (No. 17).

⁷ *Estabrook v. Iowa Civ. Rts. Comm’n*, 283 N.W.2d 306, 312–13 (1979) (Uhlenhopp, J., concurring) (“For a number of reasons a civil action for damages is not an effective substitute for the variety of remedies provided by [State antidiscrimination statutes enforced by public agencies].”).

⁸ Center for American Progress, *Making Justice Equal* (2016), <https://www.americanprogress.org/article/making-justice-equal/>

restore the protections that the right to judicial review of a final order provides under the APA, which includes the right to subsequent appellate review of a no probable cause determination.

Notably, state civil rights commissions may be especially likely to improperly dismiss complaints made by people with disabilities on no probable cause findings due to structural stigma about disability, such as beliefs that people with disabilities lack credibility.⁹ The right to judicial review and subsequent appellate review of no probable cause determinations in other states has demonstrated the importance of proper judicial oversight, as appellate courts frequently reverse erroneous no probable cause findings in disability discrimination complaints.¹⁰ Thus, affording “no probable cause” findings which are denied reconsideration the full rights to judicial review under the APA is essential to fulfill the legislature’s purpose in creating effective and accessible administrative enforcement of civil rights violations to remedy the ongoing disability discrimination that pervades our society.

DRM recommends a favorable report on HB 394, to enhance civil rights protections and help make Maryland more inclusive, just, and equitable for all. Please contact Courtney Bergan, Equal Justice Works Fellow for more information at CourtneyB@DisabilityRightsMd.org or 443-692-2477.

⁹ See Katie Eyer, *Claiming Disability*, 101 B.U.L. REV. 547, 563 (March 2021).

¹⁰ *E.g. Abadi v. Walt Disney World Parks & Resorts*, 338 So. 3d 1101, 1105 (Fla. Dist. Ct. App. 2022) (holding complaint improperly dismissed when complainant alleged that Disney World refused to make reasonable accommodations, which deterred the complainant from visiting the park).