

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
STEVENSON JONES,)	
)	
)	
Complainant,)	CHARGE NO(S): 2006CF1456
)	EEOC NO(S): 21BA60582
and)	ALS NO(S): 07-010
)	
CITY OF ELGIN POLICE DEPARTMENT,)	
)	
)	
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 17 th day of March 2009

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

STEVENSON JONES,
Complainant,

and

CITY OF ELGIN POLICE DEPARTMENT,
Respondent.

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) Charge No: 2006CF1456
) EEOC No: 21BA60582
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RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's motion to dismiss this case and motion for attorney's fees. The record shows that the motion has been served on 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 contends this matter should be dismissed for Complainant's failure to appear to litigate this case. Respondent further argues that it should be awarded its attorneys' fees incurred as a result of Complainant's conduct in ignoring orders of this Commission.

FINDINGS OF FACT

The following findings of fact were made from the record:

1. Complainant filed a Charge of Discrimination with the Illinois Department of Human Rights (Department) on December 15, 2005, amended on April 6, 2006. Complainant, on his own behalf, filed a Complaint with the Illinois Human Rights Commission (Commission) on January 5, 2007, alleging that Respondent subjected him to discrimination based on race and physical handicap and retaliated against him in violation of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* Respondent filed a verified answer to the Complaint on February 9, 2007.

2. On April 10, 2007, a discovery order was entered. The parties were ordered to serve initial discovery no later than May 11, 2007, and to appear for a discovery status on July 10, 2007. At that time, Complainant was not represented by counsel.
3. Respondent served interrogatories, requests for document production and requests for admission on Complainant on May 10, 2007. On July 2, 2007, Respondent filed a motion to deem requests admitted. The parties appeared on July 10, 2007. An order was entered continuing Respondent's motion to deem requests admitted and granting Complainant time to retain counsel.
4. On August 29, 2007, Eugene Hollander entered an appearance on behalf of Complainant. Complainant was granted additional time until September 28, 2007, to propound discovery and to answer Respondent's discovery requests. A status was set for November 13, 2008. On November 13, 2008, both parties appeared. Complainant was granted a further extension of time until November 27, 2007, to answer Respondent's discovery requests. A status was set for January 23, 2008.
5. On January 18, 2008, Respondent filed a motion to dismiss, or alternatively, to compel discovery responses. On January 23, 2008, both parties appeared. An order was entered compelling discovery answers. The order indicated that the motion to dismiss was entered and continued and would be considered if Complainant failed to comply with the order compelling discovery.
6. Complainant filed a good cause motion to propound discovery on February 29, 2008.
7. On March 14, 2008, Respondent filed a renewed motion to dismiss for Complainant's failure to comply with discovery orders and further requested an award of its attorneys' fees incurred for being forced to file its January 18, 2008 and March 14, 2008 motions for Complainant's failure to comply with discovery orders.
8. Both parties appeared on March 19, 2008. Complainant's motion to propound discovery was granted over Respondent's objections. Complainant was ordered to supplement his discovery answers no later than April 30, 2008, and to respond to Respondent's request for

attorneys' fees by May 16, 2008. Respondent's renewed motion to dismiss was entered and continued for further consideration in the event Complainant failed to comply with the order.

9. On May 23, 2008, Complainant's attorney, Eugene K. Hollander, filed a motion to withdraw. On June 25, 2008, both parties appeared through respective counsel. An order was entered granting Mr. Hollander's motion to withdraw. Complainant was granted 30 days to seek substitute counsel. A status was set for July 8, 2008. Complainant was ordered to personally appear for the July 8, 2008, hearing.
10. On June 26, 2008, Mr. Hollander filed a certificate of service certifying that the June 25, 2008 order was served upon Complainant, personally.
11. On July 8, 2008, Respondent appeared through counsel; Complainant did not appear. An order was entered allowing Complainant an extension to time until July 31, 2008, to respond to Respondent's request for attorneys' fees. The parties were ordered to appear for hearing on August 6, 2008, on Respondent's attorneys' fee request and its renewed motion to dismiss. On July 8, 2008, Respondent filed a proof of service certifying that it served the July 8, 2008 order on Complainant.
12. On August 4, 2008, Respondent filed yet another motion to dismiss for Complainant's failure to appear at the July 8, 2008, scheduled hearing.
13. On August 6, 2008, Respondent appeared through counsel; Complainant did not appear. The record showed that Complainant had not filed a response to Respondent's request for attorneys' fees.

CONCLUSION OF LAW

Complainant's conduct in failing to appear for scheduled hearings and failing to comply with orders of this Commission has resulted in unreasonable delay of this matter, warranting sanctions.

DETERMINATION

Dismissal of this Complaint is warranted due to Complainant's conduct, which has unreasonably delayed these proceedings. Moreover, Respondent is entitled to its attorneys' fees in the amount of \$7,345.00 as a sanction for Complainant's unreasonable conduct.

DISCUSSION

Complainant filed a Charge of Discrimination with the Illinois Department of Human Rights (Department) on December 15, 2005, amended on April 6, 2006. Complainant, on his own behalf, filed a Complaint with the Illinois Human Rights Commission (Commission) on January 5, 2007, alleging that Respondent subjected him to race and physical handicap discrimination and retaliation in violation of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* Respondent filed a verified answer to the Complaint on February 9, 2007.

On April 10, 2007, a discovery order was entered. The parties were ordered to serve initial discovery no later than May 11, 2007, and to appear for a discovery status on July 10, 2007. At that time, Complainant was not represented by counsel.

Respondent served interrogatories, production requests and requests to admit on Complainant on May 10, 2007. On July 2, 2007, Respondent filed a motion to deem requests admitted. On July 10, 2007, the parties appeared. An order was entered continuing Respondent's motion to deem requests admitted and allowing Complainant time to retain counsel.

On August 29, 2007, Eugene Hollander entered an appearance on behalf of Complainant. Complainant was granted additional time, until September 28, 2007, to propound discovery and to serve answers to Respondent's discovery requests. A status was set for November 13, 2008. On November 13, 2008, both parties appeared through respective counsel. Complainant was granted a further extension of time, until November 27, 2007 to serve answers to Respondent's discovery requests. A status was set for January 23, 2008.

On January 18, 2008, Respondent filed a motion to dismiss, or alternatively, to compel discovery responses. The parties appeared through respective counsel on January 23, 2008,

and offered oral argument on Respondent's motion to compel. An order was entered compelling discovery. Respondent's motion to dismiss was entered and continued and the order stated that the motion to dismiss would be considered if Complainant failed to comply with the order compelling discovery.

Complainant filed a good cause motion to propound discovery on February 29, 2008. On March 14, 2008, Respondent filed a renewed motion to dismiss for Complainant's failure to comply with discovery orders and also filed a response in opposition to Complainant's motion to propound discovery. Respondent requested an award of its attorneys' fees for being forced to file motions related to Complainant's failure to serve discovery responses.

Both parties appeared on March 19, 2008. Complainant's motion to propound discovery was granted over Respondent's objections. Complainant was ordered to supplement his discovery answers no later than April 30, 2008, and was further ordered to respond to Respondent's request for attorneys' fees associated with the filing of its motions related to discovery no later than May 16, 2008. Respondent's renewed motion to dismiss was entered and continued for further consideration in the event Complainant failed to comply with the order.

On May 23, 2008, Complainant's attorney, Eugene K. Hollander, filed a motion to withdraw. On June 25, 2008, both parties appeared through respective counsel. An order was entered granting Mr. Hollander's motion to withdraw. Complainant was granted 30 days to seek substitute counsel. A status was set for July 8, 2008. Complainant was ordered to personally appear for the July 8, 2008 hearing. On June 26, 2008, Mr. Hollander filed a certificate of service certifying that the June 25, 2008 order was served upon Complainant, personally.

On July 8, 2008, Respondent appeared through counsel; Complainant did not appear. An order was entered allowing Complainant an extension to time until July 31, 2008, to respond to Respondent's request for attorneys' fees. The parties were ordered to appear for a hearing on August 6, 2008, on Respondent's attorneys' fee request and on Respondent's renewed motion to dismiss. On July 8, 2008, Respondent filed a proof of service certifying that it served the July 8, 2008 order on Complainant.

On August 4, 2008, Respondent filed yet another motion to dismiss for Complainant's failure to appear at the July 8, 2008, scheduled hearing and for Complainant's further failure to respond to Respondent's request for attorneys' fees.

On August 6, 2008, Respondent appeared through counsel; Complainant did not appear. The record showed that Complainant did not file a response to Respondent's motion for attorneys' fees.

Dismissal

Respondent contends this matter should be dismissed due to Complainant's failure to appear to litigate this matter. 775 ILCS 5/8A-102(l)(6) of the Act authorizes a recommended order of dismissal, with prejudice, or of default as a sanction for a party's failure to prosecute his case, appear at a hearing, or otherwise comply with this Act, the rules of the Commission, or a previous Order of the Administrative Law Judge.

Complainant's failure to appear for two consecutively scheduled hearings on July 8, 2008, and August 6, 2008, has resulted in unreasonable delay of these proceedings, warranting dismissal of this case.

Sanctions Against Complainant for Unreasonable Conduct

Section 5300.750(e) of the Procedural Rules of the Illinois Human Rights Commission authorizes a recommendation imposing sanctions, including requiring the party or attorney to pay the reasonable expenses and attorney's fees incurred by the opposing party as a result of misconduct by the offending party, including unreasonable refusal to comply with orders and engaging in conduct that unreasonably delays these proceedings.

The record supports that sanctions are warranted for Complainant's failure to comply with discovery orders. Respondent was forced to file motions related to Complainant's failure to serve discovery answers on January 18, 2008, and March 14, 2008. Respondent requested that it be awarded its attorneys' fees incurred in bringing the two motions. Complainant has provided no explanation for his misconduct in failing to comply with orders of the Commission and Complainant has filed no opposition to the request for attorneys' fees.

Complainant's misconduct warrants sanctions. Complainant should be ordered to pay Respondent's attorneys' fees incurred in bringing its January 18, 2008, and March 14, 2008 motions.

Attorney's fees

Respondent filed an attorneys' fee petition, along with affidavits of Respondent's counsels, Thomas J. Piskorski, and Jessica E. Chmiel, and an itemized statement of time spent litigating Respondent's motions related to discovery. The petition is in accordance with the standards set forth in *Clark and Champaign National Bank*, 4 Ill HRC Rep 193 (1982).

In the affidavits, Attorneys Piskorski and Chmiel adequately set out their respective experience as practicing attorneys in the area of labor and employment law.

Mr. Piskorski avers that he is a partner at the law firm of Seyfarth and Shaw LLP and has been litigating labor and employment matters since 1981. As the partner attorney assigned to this case, Mr. Piskorski states that he billed Respondent at the rate of \$395.00 per hour for two hours of work performed related to the relevant discovery matters.

Ms. Chmiel avers that she is an associate attorney at the law firm of Seyfarth Shaw LLP and has been litigating labor and employment matters since 2003. Ms. Chmiel states that, as the associate attorney assigned to this case, she billed Respondent at the rate of \$345.00 per hour for 19 hours of work performed related to the relevant discovery matters.

I have reviewed the affidavits and itemized statements of Mr. Piskorski and Ms. Chmiel and find the requested hourly rates and time expenditures reasonable and adequately supported for the work performed.

Respondent is entitled to \$790.00 for work performed by Mr. Piskorski; and \$6,555.00 for work performed by Ms. Chmiel, for a total amount of \$7,345.00.

RECOMMENDATION

For the foregoing reasons, I recommend:

- A. That this Complaint and the underlying Charge be dismissed with prejudice;

- B. That Complainant, Stevenson Jones, be ordered to pay Respondent \$7,345.00 in attorneys' fees as a sanction for his unreasonable conduct.

HUMAN RIGHTS COMMISSION

ENTERED: October 3, 2008

BY: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section