

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)
)
LAURA DEANDA,)
)
Complainant,)
)
and)
)
VILLAGE OF BENSENVILLE POLICE)
DEPARTMENT,)
)
Respondent.)

Charge No.: 2000CF2866
EEOC No.: 21BA02333
ALS No.: 11605

ORDER

This matter coming before the Commission pursuant to a Recommended Order and Decision, and the Respondent's Exceptions filed thereto.

The Illinois Department of Human Rights is an additional statutory party that has conducted state action in this matter. They are named herein as an additional party of record. The Illinois Department of Human Rights did not participate in the Commission's consideration of this matter.

IT IS HEREBY ORDERED:

1. Pursuant to 775 ILCS 5/8A-103(E)(1) & (3), the Commission has **DECLINED** further review in the above-captioned matter. The parties are hereby notified that the Administrative Law Judge's Recommended Order and Decision, entered on **October 21, 2010** has become the Order of the Commission.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 27th day of October 2011

Commissioner David Chang

Commissioner Marylee Freeman

Commissioner Robert A. Cantone

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF :)		
)		
LAURA DEANDA,)		
Complainant)		
)		
and	)	CHARGE NO.:	2000CF2866
	)	EEOC NO.:	21BA 02333
	)	ALS NO.:	11605
VILLAGE OF BENSENVILLE)		
POLICE DEPARTMENT,)		
Respondent)		

RECOMMENDED LIABILITY DECISION

This matter comes before the Commission following a public hearing that was conducted on January 21 and 22, 2004 at which both parties appeared and participated. Both parties filed post-hearing briefs, but only Respondent filed a reply brief. This matter is now ready for decision.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

Statement of the Case

Complainant, Laura DeAnda, filed her Charge No. 2000CF2866 against Respondent, Village of Bensenville Police Department, on June 19, 2000. The charge alleges that Complainant was harassed due to her national origin/ancestry, Mexico/Hispanic, and constructively discharged from her employment with Respondent due to her national origin/ancestry, Mexico/Hispanic.

On August 31, 2001, the Department of Human Rights filed a complaint with the Commission on behalf of Complainant in which it alleged in Count I that Respondent harassed Complainant because of her national origin and ancestry and in Count II that Respondent constructively discharged Complainant by unlawfully harassing her, both in violation of the Illinois Human Rights Act. On October 25, 2001, Respondent filed its verified answer. The

discovery process continued until May 15, 2003 when the schedule for the joint pre-hearing memorandum was entered. The joint pre-hearing memorandum was filed with the Commission on October 16, 2003. The public hearing was initially scheduled to begin on January 19, 2004, but in fact did not begin until January 21, 2004. After the conclusion of the public hearing, the parties both filed an initial brief, but only Respondent filed a reply brief. As noted above, this matter is now ready for decision.

Findings of Fact

1. Complainant, Laura DeAnda, filed her Charge No. 2000CF2866 with the Illinois Department of Human Rights on June 19, 2000, alleging that Respondent, Village of Bensenville Police Department, harassed her due to her national origin (Mexico) and ancestry (Hispanic) during the period January, 2000 through April 17, 2000 and constructively discharged her on April 17, 2000 due to the harassment she suffered.
2. Complainant began her employment with Respondent in August, 1992. She was assigned as a records clerk with the police department during her entire tenure.
3. During the period January, 2000 through April 17, 2000, Complainant's supervisors were Sergeant Mark Selvic (January and February, 2000) and Co-Deputy Chief Frank Kosman (February through April, 2000).
4. During this period, the other co-deputy chief of Respondent was Tom Herion.
5. During the period of January, 2000 through April 17, 2000, and in Complainant's presence, Tom Herion frequently made statements (set forth in more detail below) disparaging Complainant's national origin and ancestry.
6. At the time of the public hearing, Tom Herion was no longer employed by Respondent, but he was employed at O'Hare International Airport and reportedly continued to be a resident of the State of Illinois. As such, he was subject to subpoena authority of the Commission. However, no subpoena was issued to

Tom Herion requiring his appearance as a witness at the public hearing in this matter.

7. Complainant is entitled to an award of back pay in the amount of \$107,442.59 and an award for emotional distress in the amount of \$25,000.00.

Conclusions of Law

1. Complainant is an "aggrieved party," and Respondent is an "employer" as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 775 ILCS 5/2-101(B)(c).
2. The Commission has jurisdiction over the parties and the subject matter of this action.
3. Respondent was Complainant's employer from 1992 through April 17, 2000. She is not seeking reinstatement as an employee of Respondent.
4. Complainant established by a preponderance of the evidence that she was harassed and constructively discharged by Respondent due to her national origin (Mexico) and ancestry (Hispanic).
5. Tom Herion was the individual who harassed Complainant during the period January, 2000 through April, 2000. While he was no longer an employee of Respondent at the time of the public hearing, he was apparently still residing and working within the State of Illinois. Although he was available and subject to the subpoena of the Commission, Respondent did not seek to compel his appearance and he did not testify during the public hearing. Therefore, a negative inference regarding the nature of his potential testimony is to be drawn. Szkoda v. Illinois Human Rights Comm'n, 302 Ill.App.3d 532, 544, 706 N.E.2d 962, 236 Ill.Dec. 88 (1st Dist. 1998).
6. Complainant is entitled to an award including back pay, emotional distress and attorney's fees and costs in order to be made whole. The details of the awards

for back pay and emotional distress are described in the body of this recommended liability decision, and are incorporated in this finding. The award for attorney's fees and costs will be determined in a recommended order and decision issued after Complainant's attorney submits a petition for those expenses.

7. Complainant is not entitled to reinstatement or front pay in that she is not seeking reinstatement and she permanently moved to Texas prior to the public hearing in this matter.

Discussion

National Origin and Ancestry Harassment

Complainant was first employed by Respondent in 1992 and continued in that employment until she resigned on April 17, 2000. During the time relevant to this complaint, she was a clerk in the records division of Respondent. The complaint alleges that during the period January, 2000 through April 17, 2000, Complainant was repeatedly harassed by Co-Deputy Chief Tom Herion due to her national origin (Mexico) and ancestry (Hispanic).

At the end of 1999, the Bensenville Police Department underwent an upheaval in the command ranks. The permanent chief of police resigned and leadership of the department was vested in two co-deputy chiefs pending the appointment of a new permanent chief. The two co-deputy chiefs, Tom Herion and Frank Kosman, both considered themselves to be candidates for appointment as chief.

CDC Herion, in particular, expressed himself to Complainant concerning his views on having people of Mexican heritage on the staff of Respondent if he became the person in charge. Prior to the change in command, Complainant was supervised by an administrative sergeant, Mark Selvic. In February, 2000, supervision of the records division was given to new Co-Deputy Chief (CDC) Kosman. CDC Kosman was primarily in charge of the administrative aspects of the police department, while CDC Herion was primarily responsible for the

operational activities of the department. In early 2000, Complainant was the only person of Hispanic ancestry working in the records division. Although her direct supervisor was CDC Kosman, the office of CDC Herion was physically close to the work area assigned to Complainant.

Beginning in January, 2000, CDC Herion began making remarks in the presence of Complainant that reflected his dislike for persons of Mexican origin. When making these remarks, Complainant's co-workers were always away from the records room on break. CDC Herion spoke about making a lot of changes when he became the permanent chief, including that he did not want any Mexicans (or, as he termed it, "spicks") working in the police department. At other times, if he observed Mexican or Hispanic people standing outside the police department, he would comment that when they came in to the police department, they should not "spick the Spanish" but instead should "learn how to spick the English." Such comments were made frequently during the relevant time period. On another occasion in March, 2000, Complainant was engaged in her duties when she walked past the open door of CDC Herion's office. He was speaking with another officer, but when he saw Complainant, he said to the other officer that he (Herion) "did not want her Mexican ass working here," an apparent reference to Complainant. Tr. 58-73. CDC Herion continued to make discriminatory remarks in Complainant's presence on a regular basis up until her resignation on April 17, 2000.

C. Ex 4.

Also during this period, Complainant's spouse, who was a police officer for Respondent, was charged with a felony criminal charge related to his employment with Respondent (for which he was apparently later exonerated) and he was placed on administrative leave. CDC Herion, who was instrumental in the investigation leading to the charge, then commented to Complainant, "one spick down, one to go." Tr. 62-63.

Complainant also testified that a person she recognized as CDC Herion called her at home at least three to four times after her resignation and through the end of April, 2000. The

caller stated "We won! We won!" and then ended the calls. She also saw CDC Herion drive slowly in a police vehicle past her home in Bensenville "a lot of times" during the remainder of April, 2000. Tr. 98-100.

Complainant stated that she complained about CDC Herion's conduct to both of her supervisors, Sergeant Selvic and CDC Kosman, during the period of January, 2000 through her resignation on April 17, 2000. However, her complaints were never reduced to writing and no investigation was undertaken by Respondent during the relevant period. Further, she alleged that CDC Kosman advised her not to say anything about CDC Herion's conduct. Tr. 76-77. The continual harassment by CDC Herion, coupled with the unwillingness of Respondent to investigate and remedy the situation led to Complainant's decision to resign from her employment on April 17, 2000.

Complainant's testimony establishes that she was continually harassed by CDC Herion about her national origin and ancestry during the relevant period and that her employer did nothing in response to the complaints she registered with her supervisors. The only testimony contradicting Complainant was received from CDC Kosman, who was Respondent's chief of police at the time of the public hearing. Neither Sergeant Selvic nor CDC Herion was called as a witness during this public hearing (more about Herion, in particular, later). In his testimony, CDC Kosman stated that the only time Complainant complained to him about CDC Herion was just before her resignation and he also stated that he never heard CDC Herion make derogatory remarks to Complainant. Tr. 230. However, three other witnesses who were employed by Respondent during the relevant time period did testify that CDC Herion frequently used the disparaging terms for Hispanics cited by Complainant in her testimony. Toomey, Tr. 170-72; Duffy, Tr. 185-86; Spizzirri, Tr. 218-20. In light of the credible testimony of Complainant and the three other employees of Respondent as to the frequency of CDC Herion's use of these terms, I find that CDC Kosman's testimony on this matter not to be credible.

Respondent's general denial of the allegations in the complaint is most seriously undermined by its failure to call former CDC Herion as a witness, or to adequately account for his absence from the public hearing. The issue of an appearance by Herion at the public hearing was discussed on at least two occasions on the record of the hearing, as well as at other times during the pendency of this case. It was determined that Herion was employed at O'Hare International Airport in Chicago and was likely a resident of the state of Illinois. However, Respondent's counsel indicated that there was difficulty in obtaining the voluntary participation of Herion and that it was necessary to contact him through his attorney.

Respondent was advised that an adverse inference could be drawn if it failed to call Herion as a witness, or to at least subpoena him to appear and provide an adequate explanation for his absence. Tr. 203-08. Respondent never issued a subpoena requiring the appearance of Herion at the public hearing, although it was apparent he was subject to service and enforcement of the Commission's subpoena, and was unable to provide any explanation for its failure to do so. "When no adequate explanation is given for the absence of an important witness, especially one who is apparently readily available and subject to the Commission's subpoena power, an adverse inference can be drawn as to the nature of his potential testimony." Olson and Votainer USA, Inc., ALS No. 10103, April 29, 2002, *citing* Szkoda v. Illinois Human Rights Comm'n, 302 Ill.App3d 532, 706 N.E.2d 962, 236 Ill.Dec. 88 (1st Dist. 1998).

In this case, the testimony of Complainant and of the three other employees of Respondent who testified about the continuous stream of demeaning and discriminatory statements from CDC Herion regarding Mexican and Hispanic people will be deemed as uncontradicted due to the failure of Respondent to present Herion as a witness or to even make a reasonable effort to obtain his appearance at the public hearing.

Therefore, it is recommended that a finding of liability be entered against Respondent for discriminatory harassment against Complainant based on her national origin, Mexico, and her

ancestry, Hispanic. The repetitive onslaught of derogatory references by CDC Herion further created an intolerable, hostile environment in the workplace that led to the resignation of Complainant on April 17, 2000. The work environment was so hostile that a reasonable person would be compelled to resign to end the harassment. Brewington v. Department of Corrections, 161 Ill.App.3d 54, 513 N.E.2d 1056 (1st Dist. 1987).

Therefore, it is recommended that a finding be entered in this matter that Respondent harassed Complainant due to her national origin (Mexico) and ancestry (Hispanic) and that she was constructively discharged from her employment due to the excessively hostile work environment created by the harassment.

Damages

Back Pay -- The calculation of back pay is always somewhat speculative, but it is the Commission's general principle that any ambiguity in this process be resolved in favor of a prevailing complainant due to the finding of liability against the respondent. Clark v. Human Rights Commission, 141 Ill.App.3d 178, 183, 490 N.E.2d 29, 95 Ill.Dec. 556 (1st Dist. 1986). In this case, because Complainant was constructively discharged from her employment, she is entitled to an award of back pay beginning on the date of her resignation and ending with the public hearing. An award of front pay will not be made in that Complainant is now a resident of Texas and she has not requested, nor is available for, reinstatement to her former position with Respondent. Front pay is only rarely awarded by the Commission and will not be awarded under the circumstances presented by this case.

From the date of her resignation and through the dates of the public hearing in this matter, Complainant did not obtain any employment and therefore was never compensated at a rate of pay equal to or in excess of the salary she was paid by Respondent. Thus, she is entitled to back pay for this entire period defined above. The evidence presented at the public hearing indicates that Complainant earned \$28,521.13 during 1999. C.Ex. 11. For that year, her daily compensation is \$78.14. Thus, her back pay for the year 2000 is \$20,160.12 (258

days times \$78.14 per day). For each of the years 2001 through 2003, her back pay is \$28,521.13 and for the first 22 days of 2004 (the public hearing ended on January 22, 2004), her back pay is \$1,719.08. The total back pay for the period April 17, 2000 through January 22, 2004 is **\$107,442.59**. These calculations were provided by Complainant in her post-hearing brief (Complainant's Post-Hearing Brief at 15) and, although Respondent argued that Complainant was not entitled to any monetary award, it did not dispute the specific calculations made by Complainant. I find that these calculations accurately reflect the back pay to which Complainant is entitled.

Emotional Distress -- Complainant has requested \$250,000.00 as compensation for the emotional distress she suffered due to the discriminatory treatment she received from Respondent. The emotional impact of the harassment and constructive discharge Complainant experienced is best summarized by a statement she made while testifying in the damages phase of the public hearing: "Q: How do you feel today? A. I feel just that I lost everything that I had accomplished. I don't have nothing. I ... I lost my pension that I was ... that I started saving. We lost our house. I sold my car. We didn't have money. I just lost everything." Tr. 303. She further testified that she underwent psychiatric treatment for a year after her constructive discharge, although she did not present any testimony or documents from her psychiatrist. She needed such treatment because of "depression." Tr. 299-303.

In this case, the relentless harassment of CDC Herion resulted in the constructive discharge of Complainant. This alone indicates the high degree of distress experienced by Complainant and that it exceeded the level of distress that the harassment alone would be expected to generate. However, Complainant did not provide additional details of her emotional state that would justify a more significant award from the Commission. It is recommended that Complainant be awarded \$25,000.00 for emotional distress.

Attorney's Fees and Costs -- In that Complainant has prevailed on the issue of liability with regard to both counts of her complaint, she is entitled to an award in the amount of her

reasonable attorney's fees and costs. This award will be made in a Recommended Order and Decision to be submitted to the Commission after Complainant submits a petition in accord with the schedule found below.

Training -- The evidence in this case indicates that Respondent would benefit from training to prevent a recurrence of the conduct directed at Complainant and others of the same national origin and ancestry. Therefore, it is recommended that the employees of Respondent be required to undergo training as prescribed by the Illinois Department of Human Rights to prevent a recurrence of the unlawful activity found in this case.

* * *

Other elements of the award, as permitted by the cited sections of the Act and the Commission's procedural rules, or otherwise not requiring additional analysis, are specified in the recommendation summary below

Recommendation

Complainant has established by a preponderance of the evidence that she was subjected to harassment and constructive discharge due to the discrimination based on her national origin (Mexico) and ancestry (Hispanic) as specified in her complaint. Therefore, it is recommended that both counts of the complaint be sustained. Further, it is recommended that Respondent be found liable for an award under the Illinois Human Rights Act. Accordingly, it is recommended that Complainant be awarded the following relief:

- A. That Respondent is to pay Complainant back pay in the amount of \$107,442.59 for the period April 17, 2000 through January 22, 2004;
- B. That Respondent is to pay Complainant prejudgment interest on the back pay awarded above as contemplated by Section 8A-104(J) of the Human Rights Act (735 ILCS 5/8A-104(J)) and calculated as provided in Section 5300.1145 of the

Commission's Procedural Rules, to accrue until payment in full is made by Respondent;

- C. That Respondent cease and desist from any discriminatory actions with regard to any of its employees and that Respondent, its managers, supervisors and employees be referred to the Illinois Department of Human Rights Training Institute (or any similar program specified by the Department) to receive such training as is necessary to prevent future civil rights violations, with all expenses for such training to be borne by Respondent;
- D. That Complainant's personnel file or any other file kept by Respondent concerning Complainant be purged of any reference to this discrimination charge and this litigation;
- E. That Respondent pay to Complainant the reasonable attorney's fees and costs incurred as a result of the civil rights violations that are recommended to be sustained in this Recommended Liability Determination, that amount to be determined after review of a properly submitted petition with attached affidavits and other supporting documentation meeting the standards set forth in Clark and Champaign National Bank, 4 Ill. H.R.C. Rep. 193 (1982), to be filed by no later than Friday, December 11, 2009 or 21 days after service of this Recommended Liability Determination, whichever is later. If such petition is not timely filed, it will be taken as a waiver of attorney's fees and costs. If a petition is filed, Respondent shall respond by no later than Friday, January 8, 2010 and Complainant may file a reply by no later than Friday, January 22, 2010.

HUMAN RIGHTS COMMISSION

ENTERED:

November 5, 2009

BY: _____

DAVID J. BRENT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF :)		
)		
LAURA DEANDA,)		
Complainant)		
)		
and	)	CHARGE NO.:	2000CF2866
	)	EEOC NO.:	21BA 02333
	)	ALS NO.:	11605
VILLAGE OF BENSENVILLE)		
POLICE DEPARTMENT,)		
Respondent)		

RECOMMENDED ORDER AND DECISION

This matter comes before the Commission on Complainant's Petition for Attorney's Fees and Costs, filed on December 11, 2009, which was submitted after the entry of a Recommended Liability Determination (RLD) on November 5, 2009. Respondent filed its response to the Petition on January 6, 2010 and a reply was submitted on January 22, 2010. In the RLD, it is recommended that Complainant be given back pay in the amount of \$107,442.59 (plus interest), emotional distress damages in the amount of \$25,000.00 (this award was discussed in the body of the RLD but was inadvertently left out of the summary of recommendations at the end of the RLD; this element of the award is included in this final recommended order); and, other elements of the award found in the RLD. The recommended award also includes the payment by Respondent of reasonable attorney's fees and costs incurred by Complainant in this case. This Recommended Order and Decision incorporates the RLD in its entirety as the recommendation on the merits of the case and will add the recommendation for the amount of attorney's fees and costs to be awarded to Complainant.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

Findings of Fact

1. Complainant is entitled to attorney's fees and costs in accord with the RLD entered in this case on November 5, 2009. Her Petition for Attorney's Fees and Costs was filed on December 11, 2009.
2. Complainant was represented by the firm of Sarles & Ouimet LLP of Chicago, Illinois. Lead counsel at the public hearing was Patrick M. Ouimet. This matter was referred to Sarles & Ouimet by attorney Daniel J. Kaiser, who retained and shared professional responsibility for the case throughout its pendency.
3. The hourly rate requested for both Mr. Ouimet and Mr. Kaiser is \$250.00. This rate is fair and reasonable and is well within the current Commission standard for attorney's fees.
4. Mr. Ouimet reasonably expended 265.3 hours representing Complainant before the Commission in this matter and Mr. Kaiser reasonably expended 13.9 hours while representing Complainant and pursuing his professional responsibility in this matter.
5. Based on the hourly rate approved for each attorney, Mr. Ouimet is entitled to fees in the amount of \$66,325.00 and Mr. Kaiser is entitled to fees in the amount of \$3,475.00. Further, Mr. Ouimet reasonably expended the amount of \$661.25 on costs associated with this matter.

Conclusions of Law

1. The petition for attorney's fees and costs is granted as amended by counsel and modified as indicated in the text below.
2. No hearing is necessary to determine a reasonable attorney's fee award in this case.

3. The fees and costs noted above are fair and reasonable in accord with the standards found in Clark and Champaign National Bank, IHRC, ALS No. 354(J), July 2, 1982.
4. The RLD previously issued in this case is adopted in its entirety, including all elements of the recommended award (and including the recommended award of \$25,000.00 as damages for the emotional distress suffered by Complainant as a result of the unlawful actions of Respondent).

Discussion

In considering petitions for the award of attorney's fees and costs, the Commission requires that any award be fair and reasonable. The most common measure of fees remains the charging of a set rate per hour for work performed in consideration of the client's matter at hand, and multiplying that figure by the number of hours expended. This is particularly useful when a fee award such as that for this case is being considered because it gives the Commission an opportunity to be informed of the actual work devoted by the attorney to the case. The standard for determining the proper fee award by the Commission is found in Clark and Champaign National Bank, IHRC, ALS No. 354(J), July 2, 1982.

The Petition sought an attorney fee in the amount of \$71,500.00 for Mr. Ouimet. Respondent raised several objections to the Petition in its response. First, it states that the amount of the hourly rate requested in the Petition is not properly established under the elements set forth in the Clark case, *supra*. While the Commission has never wavered from its reliance on the general principles found in Clark, *i.e.*, that an approved attorney's fee must be "fair and reasonable," the two step formula for determining whether a requested hourly rate is reasonable is not always necessary. The Clark case was decided in 1982, only two years after the establishment of the Commission. At that time, there was little precedent for the Commission to follow in identifying reasonable hourly rates. In the intervening 28 years, the Commission has reviewed ample requests for fees to comfortably determine a reasonable

hourly rate within the state and the Chicago community at any given time. It is only when a petition requests a fee level that is significantly outside of the currently accepted hourly rate that the attorney must establish with more specificity that a new, higher level of an acceptable hourly rate is now justified. That is not the situation presented by this Petition. The hourly rate of \$250.00 per hour is well within the range of rates currently being approved by the Commission and, further, is supported by the declarations of professional standing set forth by Complainant's counsel. I find that this rate is reasonable under the circumstances presented by this case and will use \$250.00 per hour as the rate to be applied in arriving at the attorney's fees to be recommended in this matter.

In addition to objecting to his hourly rate (see above), Respondent also objects to the total amount of the fee requested by the referring attorney, Daniel J. Kaiser. As noted above, I have found that the requested hourly rate of \$250.00 per hour is reasonable. I find that the hours and tasks claimed by Mr. Kaiser are also reasonable. As the referring attorney, Mr. Kaiser is required to continue his professional responsibility to the client until there is a disposition of the matter. It would not be possible for him to do so unless he was aware of the unfolding developments in the case. Therefore, he properly reviewed documents generated from various sources that were relevant to the case and many of which were included in the record of this matter. Only nine of the 45 entries in his invoice show a time expenditure of a half hour or longer and the longest request is for 1.2 hours. I find that the activities listed are commensurate with his professional obligations to this client and his requested fee of \$3,475.00 should be allowed in full.

Respondent also objects to certain of the line items shown in Mr. Ouimet's billing record. First, Respondent indicates that counsel is requesting a total of \$13,250.00 for travel time, all at the full rate of \$250.00 per hour charged for his professional services. This includes travel both for the period of time that Mr. Ouimet's office was at 820 West Jackson Boulevard in Chicago and, later, when his office was relocated to Woodstock, Illinois. Respondent also objects to fees

claimed for status conferences between counsel and his client. Finally, Respondent asserts that the line items related to the taking of the three depositions authorized in this matter are also defective in that the specific items are not separated and cannot be adequately evaluated.

In his reply brief, Mr. Ouimet, "for the Court's (*sic*) sake," agrees to accept a reduction of one half of his hourly rate for travel line items and to eliminate a total of three hours of travel time from his office in Woodstock to the Commission for status conferences and the public hearing, as well as another hour of other travel time. The reductions in travel time from the Woodstock office will be accepted and incorporated in the final recommended fee award. However, Mr. Ouimet's concession regarding travel from his previous office in Chicago does not go far enough. Apparently, all travel time listed prior to December 12, 2002 was from the Jackson Boulevard office in Chicago. This office is not so remote that any travel allowance should be granted. Therefore, all travel requested before December 12, 2002 will be deleted from the fee request, a total of \$750.00 (equivalent to three hours). The billing statement also includes entries that indicate that Mr. Ouimet utilized a "docketing service" to keep track of this case at the Commission (*e.g.*, "9/20/2005; Receipt and review of correspondence from docket service; .10 (hours); ... \$25.00). The total for these entries is \$300.00 and that amount is also conceded by Mr. Ouimet in the reply brief.

All other line items set forth by Mr. Ouimet in his revised billing record are reasonable and should be compensated, including those for conferences between counsel and his client. Respondent's objection to the latter is not well taken; it is imperative to the proper functioning of our adversarial justice system that clients have continual and open communication with their lawyers about the matters the client has entrusted to the lawyer. It is hard to conceive of any activity to appear on a billing statement that is more necessary and proper and here the time devoted to that activity was not excessive.

After taking into account all of the matters discussed in the previous paragraphs, it will be recommended that Complainant be awarded \$3,475.00 as the attorney fee for Daniel J. Kaiser and \$66,325.00 as the fee for Patrick M. Ouimet.

Complainant's Petition also requests as costs the amount of \$752.65 for copying the deposition transcripts (\$91.40) and public hearing transcripts (\$661.25). Respondent objects only to the cost for copying the deposition transcripts, stating that there is no documentary support for the charge and that such copies should be assumed to be included in the routine overhead of maintaining a law practice. I find that this assertion is correct and the cost of copying the deposition transcript shall be disallowed. It is recommended that Complainant be granted costs of \$661.25.

It is therefore recommended that Complainant be awarded a total of \$70,461.25 for her attorney's fees and costs.

Recommendation

It is recommended that in accord with the finding of liability included in the Recommended Liability Determination of November 5, 2009 that Complainant receive all of the relief recommended in the RLD (including the award of \$25,000.00 for emotional distress that was inadvertently not included in the list of recommended awards in the RLD; Complainant is not entitled to interest on this element of the award) and that Respondent pay to Complainant the sum of \$69,800.00 as attorney's fees and \$661.25 as costs sustained in the prosecution of this matter before the Commission, a total of \$70,461.25.

HUMAN RIGHTS COMMISSION

ENTERED:

October 21, 2010

BY: _____

DAVID J. BRENT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION