

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

In The Matter Of: )  
 )  
 DONNA FELECCIA, )  
 )  
 Complainant, )  
 )  
 and )  
 )  
 SANGAMON COUNTY SHERIFF'S )  
 DEPARTMENT )  
 )  
 Respondent. )

Charge No 1999SF0713  
 EEOC No. 21B992240  
 ALS No. S-11330

**ORDER**

For Complainant: Mary Lee Leahy  
 Leahy Law Offices

For Respondent: D. Bradley Blodgett  
 Hinshaw & Culbertson LLP

Additional Parties of Record: The Illinois Department of Human Rights  
 Chief Legal Counsel

This matter comes before the Commission en banc pursuant to the Respondent's Petition for Rehearing Before The Full Commission.

The Respondent's petition does not clearly raise legal issues of significant impact or demonstrate that panels of the Commission have reached conflicting decisions on a matter of law.

IT IS HEREBY ORDERED THAT:

The Complainant's Petition for Rehearing is DENIED.

STATE OF ILLINOIS )  
 HUMAN RIGHTS COMMISSION )

Entered this 26<sup>th</sup> day of April 2006.

J.B. Pritzker  
 Chairman

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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	)	ALS No.	S-11330
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SANGAMON COUNTY SHERIFF'S	)		
DEPARTMENT	)		
	)		
Respondent.	)		

ORDER AND DECISION

January 3, 2006

The Commission by a panel of three:  
Commissioners David Chang, Marylee V. Freeman and Yonnie Stroger.

For Complainant: Mary Lee Leahy, Leahy Law Office

For Respondent: D. Bradley Blodgett, Hinshaw & Culbertson.

Illinois Human Rights Commission: James E. Snyder, General Counsel,  
Matthew Z. Hammoudeh, Asst. General Counsel.

Additional Parties of Record: Illinois Department of Human Rights, Raymundo Luna

This matter comes before the Commission pursuant to a Supplemental Recommended Order and Decision issued by Administrative Law Judge Michael R. Robinson and the exceptions and responses filed thereto. The Commission had reviewed an earlier Recommended Order and Decision from Judge Robinson and remanded the matter for further proceedings.

On review of Judge Robinson's recommendations, the public hearing record and the exceptions and responses filed by the parties and for the reasons set forth herein, the findings and recommendations of the Supplemental Recommended Order and Decision are adopted.

This order of a three-member panel is a final order of the Commission. The parties may seek review of this order by the Illinois Human Rights Commission *en banc*, or in an

administrative review proceeding with the Illinois Appellate Court in accordance with procedures indicated in statute and regulation.

This order may restate language from our interim orders or the Administrative Law Judge's orders. This order includes our entire findings, to the exclusion of any interim order.

I. Nature of the Case.

Complainant Donna Feleccia (Feleccia) worked for Respondent Sangamon County Sheriff's Department (Sheriff's Department). The Sheriff's Department is a unit of county government of Sangamon County, Illinois, headquartered in Springfield. Neil Williamson is the Sheriff of Sangamon County, Illinois. Sheriff Williamson is the presiding law enforcement and management officer of the Sheriff's Department. References to the "Sheriff's Department" the Respondent, and references to "Sheriff Williamson" the presiding officer of that Respondent are distinct in this order.

Feleccia filed a charge of Civil Rights Violation with the Illinois Department of Human Rights (IDHR). She charged two counts of violation of the Illinois Human Rights Act (Illinois HRA) based on the claimed conduct of a supervisory employee, Sergeant Ron Yanor (Yanor).

Feleccia charged that the Sheriff's Department was liable for sexual harassment by the conduct of Yanor: She claimed that she was forced to kiss him because he held her by the arm, he delivered a coffee cup with candy to her home, asked her if she wanted to join him at a hotel, presumptively to have sex, and sent her a fictitious health department notice indicating that she may have been exposed to a communicable or sexually transmitted disease.

Feleccia also charged that the Sheriff's Department was liable for unlawful retaliation, by Yanor's sending of the fictitious health department notice, claiming that the letter was issued in response to her opposition to his sexual harassment.

II. Findings of Fact.

Following a public hearing Administrative Law Judge Michael Robinson issued a Recommended Order and Decision making findings of fact and recommendations of law. We adopted most of these findings, but found that one was contrary to the manifest weight of the evidence. We remanded the matter for additional findings and recommendations.

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*Feleccia and Sangamon County Sheriff's Dept.*

Judge Robinson issued a Supplemental Recommended Order and Decision with additional findings. We adopt those additional findings. By this order we issue the Commission's findings, restating those adopted from Judge Robinson's recommendations, and those based on our determinations of manifest weight.

Feleccia worked for the Sheriff's Department in the records department entering warrants and orders of protection in the records system. Feleccia was a civilian employee. Yanor worked for the Sheriff's Department as a patrol division sergeant. Yanor was a sworn officer.

Lieutenant Sandra Hinsey (Hinsey) was Feleccia's supervisor. Hinsey was a merit deputy.

Yanor had management responsibility in the Sheriff's Department. His duties included supervision of some merit officers and the officers of the TACT team. Yanor did not have authority to direct Feleccia's work or effect the terms of her employment.

Tony Sacco (Sacco) was the Chief Deputy, second in command to the Sheriff Williamson. Steven Meyer (Meyer) was a Sergeant.

The Sheriff's Department had a written policy prohibiting sexual harassment. The policy identified Hinsey as one of the management employees to whom a complaint could be made. It was not proved that Feleccia ever received a copy of this policy.

In November of 1998, Yanor called Feleccia and invited her to a local bar. Feleccia believed that Yanor's wife would be coming. She believed that other Sheriff's Department officers, who were with Yanor at the Sheriff's annual cigar party earlier in the evening, would be there too. Feleccia accepted the invitation.

Yanor arrived at Feleccia's home without his wife. Feleccia and Yanor went to the bar. After staying a while in the bar, Feleccia became uncomfortable, realizing that no one else from the Sheriff's Department was at the bar. She asked Yanor for a ride home.

When they arrived at her home, Yanor grabbed her arm and asked for a kiss. Feleccia refused and reminded Yanor that he was married. Yanor again asked for a kiss. Feleccia refused the second request for a kiss on the basis that they were just friends.

Feleccia felt threatened and eventually kissed Yanor. She did this because she believed that Yanor would not let go of her arm and she could not get out of the car until she consented.

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*Feleccia and Sangamon County Sheriff's Dept*

In December of 1998, Yanor arrived at Feleccia's home with a Christmas cup filled with candies. Yanor was on duty with Sheriff's Department at the time Feleccia's children let Yanor into the house. Yanor did not stay long and left when Feleccia's ex-husband arrived at her home.

In December of 1998, Yanor approached Feleccia while on duty at work, at the Sheriff's Department. He asked her if she would go to a motel with him for the night. Feleccia understood this to mean an invitation to have sex. Feleccia refused and reminded Yanor that he was married. She told him that they "would never be more than friends".

On February 5, 1999, Feleccia found an envelope in her office mail and opened it at her desk. Feleccia's desk was one of eight desks located in an open area. The envelope was addressed to Feleccia.

Inside was a letter that appeared to be an official notice from the Illinois Department of Public Health (IDPH). It was on IDPH stationary, bearing the name of the Governor, the director of the state department and its address (the "counterfeit disease notice"). The letter addressed Feleccia by name. It stated, in part:

"This is to inform you that you may have recently been exposed to a communicable or sexually transmitted disease. A confidential source who has tested positive has brought this matter to our attention.

To insure privacy, your file has been assigned a control number #A23759. Please refer to this number in future correspondence.

It is important that you schedule a screening within the next 7 days. Please contact your local public health office for an appointment. This service is provided to you at no cost.

Yours truly,  
Julie A. Chelani, MSW  
Patient Advocate"

Feleccia became very upset and was visibly shaking. Her voice was quivering and she was on the verge of tears. She didn't want anyone in the office to see her cry. She brought the notice to Hinsey, who had a private office. Feleccia couldn't talk and began to cry. Shortly thereafter, Hinsey took her to the IDPH.

IDPH staff advised Hinsey and Feleccia that the notice was a clear fraud, a counterfeit disease notice. IDPH made public health notifications by personal contact, not by a

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written notice. The letterhead was outdated and there was no "Julie A. Chelani, MSW" on the staff.

Hinsey and Feleccia returned to the Sheriff's Department. Feleccia was upset, but maintained an ordinary appearance. Hinsey brought the matter to the attention of Meyer and Sheriff Williamson. Sheriff Williamson directed staff to conduct an investigation as to who could have produced the letter. In turn the matter was referred to the Illinois State Police for outside investigation.

The Illinois State Police conducted an investigation, including lifting fingerprints from the counterfeit disease notice, employee fingerprint records and an examination of a typewriter ribbon. After the police investigation, Yanor was confronted. He admitted that he created and sent the counterfeit disease notice.

Yanor was suspended from work for four-days and received a letter of reprimand from Sheriff Williamson.

Feleccia asked Hinsey and others about what discipline Yanor would receive. She was advised that only Sheriff Williamson could speak to that issue.

Shortly thereafter, Feleccia and Hinsey spoke to Sheriff Williamson who indicated that Yanor had received a four-day suspension, which was the maximum discipline allowed without informing the Merit Board about the incident. Sheriff Williamson told Feleccia that she should not talk about the incident with the media or press any sexual harassment charges, and that she should not go near Yanor or talk to him.

Sheriff Williamson also told Feleccia that the IDPH would not be pressing any criminal charges.

Feleccia then went to Chief Deputy Sacco who told her that the punishment was complete and nothing more could be done.

The record includes a letter from the Deanna S. Mool, IDPH Chief Counsel to the State's Attorney of Sangamon County "referring this matter for prosecution". Mool stated that in her opinion, Illinois criminal law prohibits the malicious dissemination of information concerning the existence of AIDS or its causative virus, malicious dissemination of false information concerning the existence of a sexually transmitted disease, and the false impersonation of a public employee.

No criminal charges were filed.

### III. Conclusions of Law

#### A. Retaliation Charge.

Judge Robinson recommended no finding of liability against the Sheriff's Department for retaliation.

The Illinois HRA prohibits an employer from retaliating against an employee because "she has opposed that which he or she reasonably and in good faith believes to be unlawful discrimination, sexual harassment in employment or sexual harassment in higher education", 775 ILCS 5/6-101(A).

We find that Feleccia has not presented prima facie evidence of unlawful retaliation. Feleccia has not presented evidence of adverse employment actions in retaliation for opposing sexual harassment.

Yanor's counterfeit disease notice was not retaliation for complaining about sexual harassment; it was directly part of the harassment itself.

There was disagreement in the wake of Yanor's conduct. Sheriff Williamson asked Feleccia not to file charges or talk to media about the matter. Feleccia believed that Sheriff Williamson's four-day suspension of Yanor was too slight. But there is no evidence that the Sheriff's Department punished Feleccia for complaining about Yanor. Judge Robinson's recommendation that this charge be dismissed is adopted.

#### B. Sexual Harassment Charge.

In his initial Recommended Order and Decision Judge Robinson recommended no finding of liability for sexual harassment. We did not adopt that recommendation and remanded the matter for further proceedings.

The Illinois HRA defines sexual harassment as "any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when ... such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment", 775 ILCS 5/2-101.

##### 1. Timeliness

A party may file a charge "(w)ithin 180 days after the date that a civil rights violation allegedly has been committed", 775 ILCS 5/7A-102 (A)(1). Failure to file a charge within the prescribed time deprives the Commission of authority to proceed, *Trembczynski v. Human Rights Comm'n*, 252 Ill.App.3d 966, 625 N.E.2d 215 (1 Dist 1993).

Sexual harassment based on a hostile work environment is a single prohibited employment practice. That environment is usually demonstrated by a series of events, rather than a single event.

Feleccia proved that Yanor committed a variety of sexually harassing acts that cumulatively constitute a hostile work environment. Only one of these acts occurred within the 180 days of the charge, the counterfeit disease notice. The other events took place more than 180 days prior to the filing of her charge: The incident where Feleccia felt forced to kiss Yanor because he held her by the arm, the incident where Yanor delivered a coffee cup with candy to her home, and the incident where Yanor asked Feleccia if she wanted to join him at a hotel.

The Sheriff's Department argues that the Commission errs in considering as "compensable acts", events that occurred more than 180 days prior to the filing of Feleccia's charge. The Sheriff's Department may be responding to Judge Robinson's comment that these events "are arguably outside the 180-jurisdictional period for consideration as compensable acts".

The Illinois HRA grants the Commission administrative authority to hear complaints that are initiated by timely charges. The Illinois HRA does not establish a structure of compensable and non-compensable acts. It prohibits a sexually harassing work environment. The issue is whether the charge is timely or not timely. If the charge is timely, the Act does not impose a unique bar to the consideration of the events as evidence of the working environment.

The Illinois Appellate Court is clear that a charge of sexual harassment based on a hostile work environment is timely as long as any of the acts that contributed to the environment occurred within 180 days of the charge. The charge is timely unless (1) the acts within the jurisdictional period had no relation to those outside the period; or (2) for some other reason, the later act was no longer part of the same hostile environment claim. *Gusciara v. Lustig, et al.*, 346 Ill.App.3d 1012, 806 N.E.2d 746 (2 Dist 2004).

The Sheriff's Department argues, "there is no finding of fact that any of (the earlier incidents) created a continuing violation that would justify invoking the provisions of *Gusciara*".

We disagree. *Gusciara* indicates that "(t)he charge is timely unless" excluding conditions are present. There is no evidence suggesting the events are unrelated and no other reason is presented to show that they are not part of the same hostile environment claim.

As well, we find affirmatively, the counterfeit disease notice and all the other events are related and part of as a single chain: One supervisor, Yanor, sexualizing the work environment of the same employee.

## 2 The Counterfeit Disease Notice

The Illinois HRA prohibits “...*any conduct* of a sexual nature when ...such conduct has the *purpose or effect* of substantially interfering with an individual’s work performance or creating a hostile or offensive working environment”, 775 ILCS 5/101(E), emphasis added.

Yanor prepared the counterfeit disease notice and put it in Feleccia’s office mail. The Sheriff’s Department does not contest that this conduct occurred, but argues that it is not proof of sexual harassment.

In his original Recommended Order and Decision Judge Robinson found that the counterfeit disease notice was not evidence of sexual harassment because “Yanor’s submission of the letter was not ‘conduct of a sexual nature’ as defined by the Commission in” *Michael E. Jenkins and R. G. Neal Assoc. d/b/a Arby’s, II*. Human Rights Comm’n., (April 28, 1995), 1994SF0818. We reversed that finding as against the manifest weight of the evidence. The Sheriff’s Department argues that Judge Robinson’s interpretation is correct.

In *Jenkins* the Commission found that a co-worker calling a complainant a “child molester” was coarse and offensive, but not sexual. “In order for comments to constitute conduct of a sexual nature... the comments must promote or create a sexual atmosphere.”, we found. Judge Robinson also considered, *Ford v. Caterpillar, Inc., II* Human Rights Comm’n., 1993SF0242, (October 28, 1996). Mr. Ford had been subject to sexual remarks about his wife from a co-worker. The Commission held that “although the teasing was about sexual matters, it was not ‘conduct of a sexual nature’ vis-à-vis Ford”.

We believe that our finding here is consistent with those cases. Yanor’s conduct promoted a sexual atmosphere at the Sheriff’s Department generally and in Feleccia’s work life particularly.

The counterfeit disease notice was prepared at the Sheriff’s Department on its equipment. It was prepared by a supervisor and delivered to Feleccia via the office mail. She opened it and reacted to it while at that office. She and another employee, a sworn officer, had to stop working to deal with her feeling upset and to go to the IDPH.

Sheriff Williamson had to direct resources toward an investigation and involve an independent police authority. Employee fingerprint records were checked. Office

equipment was examined. Sheriff Williamson issued a letter of discipline to an employee, Yanor. Feleccia felt that Sheriff Williamson's response was inadequate. All of this is evidence that Yanor dramatically and disruptively affected the atmosphere of the Sheriff's Department by introducing sexual matters

A supervisor asked Feleccia, who she might suspect Her ex-husband? Who was she dating or having sex with? As a counterfeit, the notice did not communicate a true public health matter. It communicated a humiliating and false allegation: Specifically about Feleccia, and specifically about her sexual life

As we indicated in our earlier order, federal cases under Title VII hold that harassment is not limited to acts of sexual desire. It is a broad term, which encompasses all forms of conduct that unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive, working environment. *Hildebrandt v. Il. Dept. of Natural Resources*, 347 F.3d 1014 at 1033 (7th Cir 2003), citing *Haugerud v Amery School Dist*, 259 F.3d 678 at 692 (7th Cir 2001). When applicable, federal cases under Title VII are important advisory authority. *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill.2d 172, 545 N.E.2d 684 (1989).

More important than consistency with our own earlier Commission cases or federal analogues, our finding also follows the superior authority for interpretation of the Illinois Human Rights Act, the Illinois courts of review.

In *IDOC v. Savage*, the Illinois Appellate Court reviewed a Commission matter. The Commission found that the complainant had been directly subject to or witnessed a series of incidents involving her supervisor. *State of Illinois, Department of Corrections v. Illinois Human Rights Comm'n and Lynda Savage*, 178 Ill.App.3d 1033, 534 N.E. 2d 161 (4 Dist 1989). Judge Robinson is correct that sexual harassment cases depend very much on the specific facts and their context.

In *IDOC v. Savage*, the supervisor's remarks included things that were clearly about sexual activity. Other remarks were crude names for women and female body parts and bodily functions of women. But they did not mention or request sex. Still others were sexual terms used as general expletives. Some of the remarks were directed to the complainant in particular, others were not.

In examining whether the supervisor had engaged in conduct of a sexual nature, the court determined that the crude terms that were not about sex, if standing alone, would not amount to sexual conduct<sup>1</sup>. However, "(t)his conduct coupled with (the other incidents) constituted 'conduct of a sexual nature'", *IDOC v. Savage* at 1048

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<sup>1</sup> "cunt", "bitch" "twat" and "'raggin' it", the court mentioned.

The counterfeit disease notice was about sexually transmitted disease and the possible sexual partners of Feleccia. True, it was not about requesting sexual activity with Feleccia. But that is a distinction that has no meaning when viewed in the context of Yanor's more direct conduct of a sexual nature.

We do not know much about Yanor's purpose, other than to distress or humiliate Feleccia. The record indicates that he told the Sheriff's Department he intended it as a joke, but no one seemed to put any stock in that. The effect of his conduct is clear.

On this record, we find that the counterfeit disease notice was conduct of a sexual nature that contributed substantially to creating a hostile and offensive working environment for Feleccia. Along with the other conduct proved by Feleccia, a hostile environment is established.

### 3. Supervisor Liability.

It is a violation of the Illinois HRA for "any employer, employee, agent of any employer, employment agency or labor organization to engage in sexual harassment". An employer is liable for the sexual harassing conduct committed by "nonmanagerial or nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures ", 775 ILCS 5/101(E).

An employer is liable for sexual harassment by managerial or supervisory employees, even if the employer did not have knowledge of the conduct, or takes corrective action upon learning by vicarious liability.

Although Yanor was management, he was not Feleccia's manager. He was supervisory, but not her supervisor. He did not have authority to effect the terms or conditions of Feleccia's work. (In this sense "conditions" means supervisory conditions like time-off, work assignments, etc.)

The Sheriff's Department argues that federal courts have established that an employer is not liable under federal Title VII, unless the supervisor who commits sexual harassment is the victim's immediate or successively higher supervisor and has the power to directly affect the terms and conditions of the victim's employment, *Hall v. Bodine Elec. Co.*, 276 F.3d 345, 355 (7<sup>th</sup> Cir. 2002). The Sheriff's Department argues that they are not liable for Yanor's conduct, because he did not have such authority over Feleccia.

The federal prohibition against sexual harassment in employment is a result of uniform holding by federal courts that sexual harassment is an aspect of Title VII's prohibition against discrimination on the basis of gender. Title VII does not include direct text

prohibiting “sexual harassment”. The Illinois HRA prohibits discrimination on the basis of gender, but also includes a direct statutory prohibition against sexual harassment.

The Illinois General Assembly added Section 101(E) to the Illinois HRA in 1985. Prior to that amendment, sexual harassment was viewed as within gender discrimination, but was not directly mentioned in the Illinois HRA. Prior to that amendment, the approach in Illinois was similar to the Title VII approach. The amendment clarified and defined an existing prohibition.

In *Green Hills*, the Illinois Appellate Court compared the Illinois statutory language and the Title VII case law that served as a backdrop. *Board of Directors of Green Hills Country Club v. Human Rights Comm'n* 162 Ill.App.3d 216, 514 N.E.2d 1227 (5 Dist 1987). The court reiterated the well-known instruction that, while federal Title VII decisions are not controlling, they provide relevant and helpful precedent in interpreting the Illinois HRA. *Id.* See also, *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill 2d 172, 545 N.E.2d 684 (1989). It also indicated the distinction between Illinois statute and a federal case law in one aspect of strict liability, the employer’s knowledge of a supervisor’s conduct.

Unlike Title VII,

(T)he Illinois legislature has, however, adopted a definitive rule on employer liability for sexual harassment. . . . This statute clearly indicates that employers are liable for sexual harassment of their employees by supervisory personnel regardless of whether it is *quid pro quo* or ‘hostile environment’ type harassment and regardless of whether the employer known of such conduct.”, *Green Hills* at 220.

In the following years, federal courts and the Supreme Court of the United States have issued further clarification of the vicariously liability standard and an affirmative defense to liability if established. *Hall*, cited by the Sheriff’s Department, is grounded on two Supreme Court cases, *Burlington Industries v. Ellerth*, 524 U.S. 742, 118 S Ct. 2257 (1998) and *Faragher v. City of Boca Raton*, 524 U.S. 775, 118 S. Ct. 2275 (1998). See *Hall v. Bodine Elec Co.*, 276 F.3d 345 (7<sup>th</sup> Cir.2002).

In *Webb v. Lustig* the Illinois Appellate Court examined the *Burlington Industries* and *Faragher* liability standards in interpretation of the Illinois HRA. *Webb v. Lustig*, 298 Ill.App.3d 695, 700 N.E.2d 220 (4 Dist 1998).

“These case (*Burlington* and *Faragher*) deal with an employer’s vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee

under title VII (citation omitted) These cases discuss when an affirmative defense is available to an employer. Unlike Title VII, under which employers are not always automatically liable for sexual harassment, in Illinois the Act imposes strict liability on the employer regardless of whether the employer knew of the offending conduct, *Webb* 298 Ill.App.3d at 705.

By indicating the inapplicability of the *Burlington* and *Faragher* affirmative defense to cases under the Illinois HRA, *Webb* again reinforced the broader distinction with Title VII. In Illinois liability for the sexual harassing conduct of supervisors, its contours and defenses, are based on statute. *Id.*

The plain language of Section 101(E) creates strict liability. The statutory emphasis is not on the manager's relationship to the victim, but rather on his relationship to the employer. "(T)here is a certain identity of employer and managerial/supervisory personnel", *Pinnacle Limited v. Illinois Human Rights Comm'n.*, 354 Ill.App.3d 819, 820 N.E.2d 1206 (4 Dist 2004), (the court citing to an earlier Human Rights Commission case).

We note that the supervisor in *Pinnacle Limited* was the complainant's direct supervisor. But also that the *Pinnacle Limited* court addressed vicariously liability grounded on direct text of the Illinois HRA and not by reference to Title VII authority like *Hall*.

As well a distinction between Title VII and the Illinois HRA on employer liability has been recognized in the context of common law negligence claims by the Supreme Court of Illinois, *Geise v. Phoenix Company of Chicago*, 159 Ill.2d 507, 639 N.E.2d 1273 (1994).

In *Geise* the court held that an employee could not sue an employer for negligently hiring a sexual harassing supervisor under tort because the employer could be held liable under the Illinois HRA for a civil rights violation. *Id.* Where the Illinois HRA provides a remedy, it is the exclusive remedy, *Baker v. Miller*, 159 Ill.2d 249, 636 N.E.2d 551 (1994).

The Supreme Court of Illinois stated the strict liability distinction between Title VII and Illinois law. Under the Illinois HRA, "(n)egligent or not, (the employer) would be responsible for (the supervisor's) sexual harassment", *Geise* 159 Ill.2d at 518.

The Illinois General Assembly has set a brighter line than Title VII. The interpretation argued by the Sheriff's Department is not found in the language of the Illinois Human Rights Act. It is not found in the Illinois Supreme or Appellate Court rulings on that section of the Act. Their opinions do not suggest that the statute should be interpreted lock-stop with Title VII. The Sheriff's Department's argument is not consistent with our

earlier interpretations of that section. Nor is it consistent with the General Assembly's enactment of state law that is distinct from federal law.

#### IV Damages.

Judge Robinson recommends that Feleccia be awarded:

- A. \$6,500 in emotional distress damages.

Judge Robinson recommends that Feleccia be awarded \$6,500 in emotional distress damages, or rather \$10,000 minus \$3,500 that has already been paid to her by Yanor. Judge Robinson's recommendation is adopted.

We write to clarify one aspect of the Judge Robinson's rationale.

Judge Robinson made reference to the opinion of the Illinois Appellate Court in the matter of *Denny's v. Ill. Department of Human Rights*, (1<sup>st</sup> Dist. 01-03-3158). In *Denny's* the Appellate Court vacated a finding of default issued against Denny's by the IDHR. The court remanded the matter to that agency for further investigation.

The section of the *Denny's* opinion discussed by Judge Robinson was in the draft issued by the Appellate Court on March 7, 2005. The court withdrew its draft opinion and issued its final opinion November 21, 2005. It is likely that Judge Robinson was not yet aware that the opinion had been withdrawn.

In its final opinion, the Appellate Court vacated the IDHR's finding of liability and our subsequent findings on damages. The opinion no longer includes the instructions regarding the assessment of emotional distress damages discussed by Judge Robinson. Since is not part of the court's opinion, we do not consider it.

As well Judge Robinson indicated that *Majca v. Beekil*, 183 Ill.2d 407, 701 N.E. 2d 1084 (1998), suggests that we should discount Feleccia's emotional distress because she did not prove she was exposed to HIV. In *Majca* the Supreme Court of Illinois held that a plaintiff does not need to demonstrate a likelihood of developing acquired immune deficiency syndrome (AIDS) in order to maintain a tort action for negligent infliction of emotional distress based on fear of exposure to human immunodeficiency virus (HIV). However, once in receipt of reliable (HIV)-negative test results, that individual's fear of contracting AIDS would end, as it would no longer be reasonable. *Id.*

*Majca* regards when a person may maintain a tort cause of action for negligent infliction of emotional distress based on fear of exposure. The plaintiffs' received a real notice that they may have been exposed to HIV at a dental clinic. Soon they learned that they did not

contract HIV. Once they learned they did not have HIV, they had no reason to fear having HIV.

Feleccia's cause of action is for sexual harassment, not fear of exposure to HIV. The record is clear that Feleccia demonstrated emotional distress connected to a sexual harassing hostile environment, the counterfeit notice is one part. The range of her distress and its causes and effects is well proved.

It would be difficult if not impossible to apply a quotient discount for that part of the entire environment that connected to her fear of disease. Particularly because Feleccia soon moved from any fear of disease to distress about who made the counterfeit notice and brought it to her workplace. Anyone who was the subject of workplace sexual gossip would feel distress, certainly a newly divorced working mother.

We appreciate Judge Robinson's consideration of *Majca*. But we do not believe the Supreme Court instructs us to apply a unique discount to cases of sexual harassment that mention disease.

The term "actual damages" in the context of the Act contemplates compensation for emotional harm and mental suffering, *Arlington Park Race Track Corp. v. Human Rights Comm'n.*, 199 Ill. App. 3d 698, 557 N.E.2d 517 (1 Dist 1990). An award of damages under such circumstances must be kept within reasonable parameters, *Village of Bellwood Fire & Police Comm'rs v. Human Rights Comm'n.*, 184 Ill.App.3d 339, 541 N.E.2d 1248 (1 Dist 1989).

In determining the reasonable parameters of an award for emotional damages the Commission considers the totality of circumstances. We consider the nature of the violation that caused the injury. The Commission also closely examines the injury itself, *ISS International v. Human Rights Comm'n.*, 272 Ill.App.3d 969, 651 N.E. 2d 592 (1 Dist 1995).

Judge Robinson's recommendation is amply supported by the record and is reasonable. The recommendation is adopted.

#### B. Fees and Costs.

Judge Robinson recommends that Feleccia be awarded \$11,137.50 in attorney fees, \$1,593.75 in paralegal fees, and \$658.03 in litigation costs. The recommendations are adopted.

V. Conclusion.

Sergeant Ron Yanor, a supervisory and management officer at the Sheriff's Department sexually harassed employee Donna Feleccia in violation of the Illinois Human Rights Act. The Sheriff's Department is liable for Yanor's conduct and the damage that Feleccia sustained as a result.

IT IS HEREBY ORDERED THAT:

1. Respondent pay Complainant \$6,500 in damages representing Complainant's emotional distress arising out of the instant sexual harassment;
2. Respondent pay Complainant \$11,137.50 in attorney fees;
3. Respondent pay Complainant \$1,593.75 in paralegal fees;
4. Respondent pay Complainant \$685.03 in costs;
5. Respondent clear from Complainant's personnel records all references to the filing of this action and the disposition thereof;
6. Respondent shall cease and desist from conduct in violation of the Illinois Human Rights Act and shall take reasonable corrective measures to prevent sexual harassment.

STATE OF ILLINOIS                    )  
HUMAN RIGHTS COMMISSION    )

Entered this 3<sup>rd</sup> day of January 2006.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Yonnie Stroger