This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 03/20/06

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
AMY C. KESSINGER,	)	
	)	
Complainant,	)	
	)	
and	)	CHARGE NO: 2004SN1852
	)	EEOC NO:
JOHN LAROSE HARSHMAN,	)	ALS NO: 04-449
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). On November 12, 2004, the Commission entered an Order, which set this matter for a hearing on the issue of damages after Respondent had previously been held to be in default. A public hearing was held before me on the issue of damages on January 27, 2005 in Springfield, Illinois. Complainant represented herself at the public hearing while Respondent did not appear, although he had been given notice of the public hearing.

Contentions of the Parties

In the underlying Charge of Discrimination, Complainant asserted that she was the victim of sexual harassment when Respondent, an attorney in an office where Complainant worked as a secretary, subjected her to a series of sexually offensive comments and innuendoes. At the public hearing, Complainant also accused Respondent of touching her and another female employee in the office in a sexual manner on a number of occasions. Moreover, Complainant contended that she lost time at work, incurred certain medical expenses and suffered certain emotional damages arising out of the harassment that she endured in the workplace.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. In February of 1999 Complainant, a female, was hired by attorney Elizabeth Miller to work as a secretary in her law office.

2. In November of 1999, Miller began practicing law with Respondent, John Harshman, in an arrangement that included the sharing of office space and support staff, but not clients. Both Respondent and Miller agreed to a salary for Complainant, and, beginning in 2002, Respondent and Miller traded weeks in signing Complainant's paychecks.

3. At all times pertinent to the instant case, Complainant delivered telephone messages to Respondent on a daily basis.

4. In November of 1999, Respondent began making sexually suggestive comments to Complainant approximately twice a month. Typically, Respondent would ask Complainant if she would like to go back into his office to "have some fun". On these occasions, Complainant declined Respondent's requests, but did not take them seriously at that time because she perceived that there was no pressure to accept them.

5. Starting in January of 2003, Respondent began making daily sexual comments and innuendos to Complainant. Respondent also began touching Complainant by putting his arms around Complainant, touching her behind or rubbing her back. On each occasion Complainant grabbed his hand and pushed it off while telling Respondent to stop.

6. At some point in the beginning of 2003, Respondent told Complainant before giving Complainant her paycheck that she would receive her paycheck if she "would give it up" to Respondent.

7. In June of 2003, Respondent told clients in front of Complainant that she and he were having an affair.

8. By June of 2003, Complainant had witnessed another female co-worker receive the same type of conduct that she had received from Respondent in terms of sexual comments and touchings.

9. In June of 2003, Complainant and the other female co-worker referred to in Finding of Fact No. 8 jointly went to Miller and told her about Respondent's claim that Complainant and he were having an affair, as well as about the sexual advances and comments by Respondent that they had experienced. During the conversation, both Complainant and the female co-worker told Miller that they were going to give their two weeks notice to quit if she did not ask Respondent to leave the office.

10. Miller thereafter told Respondent to move out of the office. Throughout June of 2003, Respondent gradually stopped coming into the office. Eventually, Miller arranged to have Respondent's files packed up and had the locks changed to the office.

11. Beginning in November of 2002, Complainant began seeing a doctor about the emotional distress she was experiencing at the office arising out the strain of coping with Respondent's conduct. Respondent's conduct also caused a strain on Complainant's marriage in that Complainant's husband wanted Complainant to quit her job rather than be subjected to Respondent's conduct, while Complainant wanted to keep her job because she enjoyed other aspects of her job that did not involve Respondent.

12. From November of 2002 to June of 2004, Complainant saw her doctor seven times relating to her emotional distress described in Finding of Fact No. 11. Complainant incurred $78.00 in expenses for each doctor visit.

13. From November of 2002 to June of 2004, Complainant took depression medication prescribed to treat her emotional distress generated by Respondent's conduct. Complainant was required to pay $21.00 per month over a 20-month period for said medication.

14. Throughout her tenure working with Respondent, Complainant used ten vacation days at a rate of $70.20 per day in an attempt to avoid Respondent's unwanted conduct in the workplace.

15. As a result of Respondent's conduct towards her, Complainant experienced emotional distress in the amount of $25,000 arising out of Respondent's sexual harassment in the workplace.

Conclusions of Law

1. A default judgment admits every well-pleaded allegation of the Charge of Discrimination. It does not admit to any conclusions of law and does not admit that the facts stated in the Charge of Discrimination constitute a legal cause of action.

2. Complainant's allegations contained in her Charge of Discrimination, as well as her testimony at the public hearing, established a viable cause of action for sexual harassment.

Discussion

On November 12, 2004, the Commission entered an Order which granted the Department's petition for hearing to determine damages and found Respondent to be in default due to Respondent's failure to either file a verified response to the Charge of Discrimination or attend the fact-finding conference, as well as his failure to file a Request for Review of the Department's Notice of Default. The allegations in the Charge of Discrimination, as well as Complainant's testimony, indicated that she was subjected to at least a six-month pattern of unwelcome conduct that included sexual comments and innuendos, as well as requests for sexual favors and unwanted sexual touchings. Moreover, Respondent's conduct eventually forced Complainant to place her job at risk when she threatened to quit her position unless another supervisor terminate the supervisor's working relationship with Respondent. Additionally, Complainant sought medical assistance for the treatment of her emotional distress that arose out of Respondent's conduct towards her. These incidents establish the

existence of a hostile work environment and support Complainant's claim that she was sexually harassed as that term is contemplated under section 2-102(D) of the Human Rights Act.

As to Complainant's claim for damages, Complainant testified that Respondent's conduct cause her to become depressed, and that it caused her relationship with her husband to deteriorate since her husband could not understand why she wanted to keep her job even though Respondent was sexually harassing her at the workplace. Complainant further testified that she incurred a total of $546.00 in doctor bills devoted to her treatment for depression caused by Respondent's conduct, as well as $420.00 spent on medication used to treat her depression. Accordingly, Complainant should receive compensation for these expenses as they are related to the sexual harassment committed by Respondent. Moreover, the record shows that Complainant lost ten vacations days (at $70.20 per day for a total of $702.00) in an effort to separate herself from Respondent's conduct. While Complainant presumably received compensation for these days, Complainant lost the ability to take ten vacation days in the future without having to either use additional time or to forfeit her pay for having to take time away from the workplace. Thus, I find that Complainant is entitled to be compensated for this loss since it too is related to Respondent's conduct towards her in the workplace.

As to Complainant claim that she endured emotional distress in the workplace due to Respondent's sexual harassment, I note that Complainant testified that beginning in 2003 she endured a daily barrage of sexual comments from Respondent that included, at times, requests for her to go back into his office to "have some fun" or to "give it up", as well as physical touchings on her arms, back or behind. Moreover, Complainant had to endure the embarrassment of Respondent claiming that she and he were having an affair, as well as having to suffer through bouts of depression in her attempt to cope with his behavior. In **Herrin and Bethalto Depot**, ___ Ill. HRC Rep. ___ (2000SF0561, April 29, 2002), the

Commission awarded a complainant $20,000 under circumstances somewhat akin to those in the instant case where the complainant testified that she endured a four-month campaign of sexually offensive remarks, sexual advances and sexual innuendoes from an owner of a restaurant where the complainant worked that resulted in her becoming depressed and physically ill. Accordingly, I find that Complainant is entitled to $25,000 in damages representing the emotional distress that she endured in the workplace. Since Complainant represented herself at the public hearing, there will be no award for attorneys' fees, and Complainant has not asserted that she expended money on any other types of costs associated with this action.

One more matter, and then we are done. Under the Illinois Rules of Professional Conduct, Respondent, as an attorney, may not "violate a Federal, State or local statute or ordinance that prohibits discrimination based on race, sex, religion or national origin by conduct that reflects adversely on the lawyer's fitness as a lawyer." (See, RPC Rule 8.4(a)(9)(A).) Since sexual harassment under the Human Rights Act has been construed to be but one form of sex discrimination (see, for example, **Old Ben Coal Co. v. Illinois Human Rights Act**, 150 Ill.App.3d 304, 501 N.E.2d 920, 103 Ill.Dec. 603 (5th Dist. (1986)), I also recommend, in conjunction with the instant award of damages, that this matter be referred to the Attorney Registration and Disciplinary Commission.

Recommendation

For all of the above reasons, I recommend that the Commission enter an Order which:

1. Directs Respondent to pay Complainant the sum of $966.00, which represents the medical expenses arising out of the sexual harassment committed by Respondent.

2. Directs Respondent to pay Complainant $702.00, which represents lost vacation time expended by Complainant related to Respondent's sexual harassment towards her.

3. Directs Respondent to pay Complainant $25,000 in damages representing emotional distress that Complainant suffered as a result of Respondent's sexual harassment of her.

4. Directs Respondent to cease and desist from committing sexual harassment in the workplace.

5. Refers this matter to the Attorney Registration and Disciplinary Commission.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 23RD DAY OF JANUARY, 2006