This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 11/04/05

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
NATHAN PEOPLES,	)	
	)	
Complainant,	)	
	)	**Charge No.: 1992CF1123**
and	)	**EEOC No.: N/A**
	)	**ALS No.: S6728, 4646**
STATE OF ILLINOIS,	)	
DEPARTMENT OF TRANSPORTATION,	)	
	)	
Respondent.	)	

SUPPPLEMENTAL RECOMMENDED ORDER AND DECISION

On August 22, 2000, the Illinois Human Rights Commission entered an order in favor of Complainant, Nathan Peoples. That order ordered Respondent, State of Illinois, Department of Transportation, to provide certain relief to Complainant. That order terminated the proceedings then pending before the Commission.

The August, 2000 Commission order was appealed to the Illinois Appellate Court. The Court affirmed the Commission's decision.

Complainant subsequently filed his current Petition for Attorney's Fees. Complainant seeks compensation for the attorney's fees incurred by his defense of Respondent's appeal. Respondent has filed a written response to Complainant's petition. A Commission panel referred the matter to the Administrative Law Section for a recommendation on Complainant's petition. The matter is ready for decision.

FINDINGS OF FACT

The following facts were derived from the record file in this matter.

1. Complainant is seeking compensation for the work of attorneys Emmett Marshall, Tina Garrett, and Sandy Little at the rate of $390.00 per hour for 400.75 hours.

2. Complainant is seeking reimbursement for $591.10 for the cost of photocopying documents.

3. The requested hourly rate is unreasonably high. The rate should be reduced to $175.00 per hour.

4. The requested number of hours is unreasonably high. The number of hours should be reduced to 156.75.

5. The requested costs are not compensable.

CONCLUSIONS OF LAW

1. The requested hourly rate for the work of Complainant's attorneys should be reduced because of the failure to provide adequate support for those rates and because the attorneys agreed to work on this case for a lower hourly rate.

2. The requested costs are not compensable because of the failure to provide adequate support for those costs.

DISCUSSION

Complainant, Nathan Peoples, has requested an award of $156,292.50 in attorney's fees. He also has requested reimbursement for $591.10 in copying costs. Respondent, State of Illinois, Department of Transportation, has a number of objections to Complainant's requests. Respondent argues that the requested hourly rate is too high. In addition, Respondent claims that the number of compensated hours should be reduced significantly. Finally, Respondent asks that Complainant's request for reimbursement of copying costs be denied in its entirety.

It should be noted that Complainant's petition requests a hearing on the issue of attorney's fees. That request is denied because there is no explanation of the need for an evidentiary hearing. It is common practice in this forum to determine fee awards from motions and written responses. Complainant has offered nothing to demonstrate that it is necessary to deviate from the common practice. *See* ***Raintree Health Care Center v. Illinois Human***

Rights Commission, 173 Ill. 2d 469, 672 N.E.2d 1136 (1996).

The proper approach to a motion for attorney's fees is set forth in ***Clark and Champaign National Bank***, 4 Ill. HRC Rep. 193 (1982). Under the ***Clark*** approach, the first thing to do is to determine the appropriate hourly rate for the attorney's work. The next step is the determination of the number of hours reasonably expended on the case. Finally, it is necessary to decide if any adjustments should be made to the award.

According to his petition, Complainant was represented by three attorneys from the Law Offices of Emmett J. Marshall III and Associates. Those three attorneys were Emmett Marshall, Tina Garrett, and Sandy Little. Complainant seeks compensation for all three attorneys at the rate of $390.00 per hour.

That hourly rate request is indefensible. To date, the Human Rights Commission has never awarded any attorney that high a rate. Moreover, there is no evidence that any of Complainant's attorneys has ever been paid that rate (or even billed that rate) for any work at any time. There is no evidence of the attorneys' usual billing rates or of the professional qualifications that justify those rates. In short, there is absolutely no support in the record for the requested rate.

Clearly, the requested rate cannot be accepted. It is appropriate to reduce rates for which weak support is provided. ***Christians and Cole Hospital, Inc.***, 49 Ill. HRC Rep. 27 (1989). Fortunately, there is evidence of an appropriate rate. An award by the Commission can be powerful evidence of an appropriate hourly rate. ***Horton and Hsu***, 33 Ill. HRC Rep. 340 (1987). Before this case went to the Appellate Court, the Commission approved rates of $175.00 per hour for out of court work and $225.00 per hour for in court work. Those were the rates that were included in the written fee agreement between Complainant and his attorney. On the basis of the existing record, there is no compelling reason to disturb that agreement. Of course, since there was no oral argument in the Appellate Court in this matter, only the out of

court rate needs to be used.

Respondent has suggested compensating the attorneys at reduced rates for certain tasks. However, there is no indication that the fee agreement makes any such adjustments, and that agreement is a large part of the justification for the recommended rate. Therefore, it is recommended that Complainant's attorneys be compensated for all appropriate time at the rate of $175.00 per hour.

The focus then shifts to the number of hours reasonably expended on this matter. Complainant seeks compensation for 400.75 hours of his attorneys' time. Respondent strongly opposes that request and offers several suggestions as to areas in which reductions in time should be made.

For starters, Respondent notes that the number of hours requested by Complainant does not match the number of hours claimed on the submitted time records. The petition requests compensation for 400.75 hours, but the hours claimed on the time records add up to only 352.0. It is possible that some of Complainant's time records are missing, but the Commission can only act on the documentation it receives. Thus, the starting point for discussion is the total of 352 hours, not 400.75.

Next, Respondent objects to the inclusion of time spent on the case prior to the last order issued by the Commission. Respondent argues that Complainant waived any right to compensation for time not claimed in a timely manner. Respondent's objection is well taken. The Commission entered what was then a final order on this case on August 22, 2000. Complainant could have asked for all his fees to that point, but he failed to do so. Complainant's current petition includes time spent prior to the Administrative Law Judge's Supplemental Recommended Order and Decision, which was issued on June 2, 2000. In fact, it includes time spent on the fee petition considered by the ALJ at that time. The ALJ entered an order on June 1, 1999. That order required Complainant to file a petition for his attorney's

fees. The order also noted that failure to file a petition would "be deemed evidence that Complainant has waived the issue of attorney's fees and costs." Clearly, Complainant cannot claim he was not warned. Moreover, as Respondent notes, Complainant had the opportunity to supplement his fee petition before the Commission entered its final order in this matter. When he failed to request certain fees in a timely manner, he waived his right to collect those fees.

Complainant had an obligation to make a timely request for fees. There is no reason to give him a second bite of the apple at this point. Therefore, Complainant should not be compensated at this point for time spent on the case prior to the issuance of the Commission's August, 2000 order. As a result, 84.5 hours of the claimed time should be deducted.

Respondent objects to the time claimed for talking to its counsel. The department maintains that the conversations were not as long as the time claimed. However, there were no sworn records of any kind to support Respondent's position on that point, so that objection is rejected.

Respondent also objects to miscellaneous amounts of time claimed for relatively simple activities. Several of those objections are well taken. For example, Respondent notes that Complainant's petition claims 2.5 hours for time spent reviewing the department's petition to review. The petition to review itself was only a single paragraph in length. It is inconceivable that review of a single page document could have taken two and a half hours. That entry should be reduced to one quarter of an hour.

Similarly, Complainant's petition seeks compensation for 2 hours allegedly spent on 11/3/00 for activity described as "Received and reviewed notice of filing, etc." Reviewing a notice of filing cannot possibly take two hours. In addition, the entry for 11/9/00 states that it took one hour for activity described as "Received and reviewed motion for extension of time." Those two entries should be reduced to .5 and .25 hours, respectively.

Four different entries, 12/10/00, 1/8/01, 2/9/01, and 3/25/02, make reference to work

done by a “committee.” None of those entries indicates who was on the committee or why a committee was needed to do the work. The total number of hours devoted to the work of the committee was 10.25 hours. In light of the lack of information about the committee’s makeup, is recommended that the requested time be reduced to a total of 4.0 hours.

The 12/18/00 entry lists 15 hours for “research law library.” There is no indication of what issues were researched or how that research advanced Complainant’s claim. Without such information, it is difficult to recommend compensation for the full requested time. Thus, it is recommended that compensation for Complainant’s claimed research time be reduced to one-third of the requested time, or 5 hours.

Respondent objects to a claim of 5 hours for the 12/22/00 review of the report of the proceedings before the Commission. That appears to be a reference to reading the transcript of the oral argument in this matter. The transcript is only 43 pages long, including the title page, the list of attendees, and the court reporter’s certification page. 5 hours is far too long for reviewing a 40-page transcript. That entry should be reduced to 2 hours.

The entries dated 1/22/01 and 6/8/01 both state “Research order reviewed option.” Those entries total 4.25 hours. They give no indication as to what orders were reviewed or what options were considered. Thus, it is recommended that the total compensation for those two entries be reduced to 2 hours.

Respondent objects to compensation for time spent preparing a motion for extension of time. The department asserts that the Commission has denied such compensation in the past, but it cites no case law to support that assertion. Since extensions of time are sometimes necessary and there is no indication that the extension was sought in bad faith, Respondent’s objection to the claimed time is overruled.

Respondent’s objection the entry of 4/22/00, “Reviewed Figures with State Revenue and Pension,” is overruled. Clearly, pension figures could be highly relevant on damages.

On the other hand, the 4/28/02 entry "Reviewed documents from the state" and the 9/6/02 entry "Reviewed figures" are too vague to qualify for compensation. There is no indication what documents and figures were reviewed. Without at least rudimentary information on those matters, it is impossible to conclude that the time spent was compensable. The recommended reduction in time is 4.75 hours.

Respondent strongly objects to the 14 hours claimed for preparation of the petition for fees itself. As Respondent notes, the petition consists of a four-page motion, a four-page affidavit whose allegations track the claims in the motion, a notice of motion, and a printout of hours that should already have been available. There is nothing in the petition that should have taken 14 hours. Therefore, it is recommended that the time for preparation of the fee petition be reduced to 5 hours.

That brings the discussion to the last major fee issue, the amount of time spent by Complainant's attorneys in the preparation of his appellate brief. The claimed time adds up to 153.5 hours, but that amount is grossly inflated.

The most obvious evidence of inflation is from the entries of 10/18/01. 46 hours were billed for that day, an astonishing 40 of those hours allegedly due to the efforts of attorney Tina Garrett. That claim is outrageous. The ***Clark*** decision makes it clear that grossly inflated claims cannot be tolerated. In light of that admonition, Complainant is fortunate that his entire fee petition was not rejected out of hand. Certainly, the 46 hours billed for 10/18/01 should be disallowed.

Complainant's petition also includes claims for 55 more hours of time involving brief preparation, including a claim for 16 hours on "Brief Preparation and research" on 10/15/01. That time is in addition to another 52.5 hours spent on review of Respondent's brief, research, and reviewing the hearing transcript. Given the relative lack of complexity in the issues briefed, that is simply too much time. It is recommended that the research and briefing time be reduced

another 25 hours. That should bring the amount of compensated time into a more reasonable range.

The time deductions discussed above total 195.25 hours. Subtracting that amount from the total time documented in Complainant's petition leaves 156.75 hours. That is the total number of hours for which Complainant should be compensated.

Multiplying the recommended hourly rate by the recommended number of hours results in a total fee of $27,431.25. There does not appear to be any reason to make any further adjustments, so that amount is the recommended attorney's fee award.

Finally, there is the issue of costs. Complainant seeks reimbursement for $591.10 in copying costs. Such expenses generally are considered part of a law firm's overhead. ***Kaiser v. MEPC American Properties, Inc.***, 164 Ill. App. 3d 978, 518 N.E.2d 424 (1st Dist. 1987). Since there is no evidence that Complainant's attorneys routinely bill such things to their clients, those costs are not compensable here.

RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief:

A. That Respondent be ordered to pay to Complainant the sum of $27,431.25 for attorney's fees reasonably incurred in the prosecution of this matter.

HUMAN RIGHTS COMMISSION

BY:_____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: September 20, 2005