



**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>RICHARD SCHROEDER,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>and</b>	)	<b>Charge No.: 1992CN2413</b>
	)	<b>EEOC No.: N/A</b>
	)	<b>ALS No.: 9582</b>
<b>UNIVERSITY OF ILLINOIS</b>	)	
<b>AT CHICAGO,</b>	)	
	)	
<b>Respondent.</b>	)	

**RECOMMENDED ORDER AND DECISION**

On August 5, 2004, a Recommended Liability Determination (RLD) was entered in this matter. Pursuant to the RLD, Complainant, Richard Schroeder, filed a written motion for attorney's fees. Respondent, University of Illinois at Chicago, filed a written response to that motion. In addition, Complainant filed a written reply to Respondent's response. The matter is ready for decision.

**FINDINGS OF FACT**

1. Complainant is seeking compensation for the work of attorney Arthur R. Ehrlich at the rate of \$300.00 per hour for 181.91 hours.
2. Complainant is seeking reimbursement for \$271.50 for the costs of photocopying exhibits and other documents.
3. The requested hourly rate is reasonable and should be accepted.
4. The requested number of hours for the work of Mr. Ehrlich is unreasonably high. The number of hours should be reduced to 127.995.
5. The requested costs are reasonable and compensable.

## CONCLUSIONS OF LAW

1. Complainant cannot be compensated for time his attorney spent on depositions in connection with his federal claim.
2. Complainant's attorney's fees should be reduced because of the gross disparity between the relief he requested and the relief he should receive.

## DISCUSSION

Complainant, Richard Schroeder, has requested an award of \$54,573.40 in attorney's fees. He also has requested an award of \$271.59 as reimbursement for costs incurred while pursuing this matter. Respondent, University of Illinois at Chicago, opposes Complainant's requests and argues that any award of fees must be reduced significantly.

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.

Complainant was represented in this matter by attorney Arthur R. Ehrlich. He seeks \$300.00 per hour for Mr. Ehrlich's services. According to the submitted documentation, that rate is Mr. Ehrlich's current billing rate. Respondent objects to an award based upon current rates and argues that the award should be based upon the rates in effect when the particular services were provided.

Commission precedent allows for calculation of a fee award at current rates to compensate for a prolonged delay in payment. ***Wilson and Glenbrook Fire Dist.***, 51 Ill. HRC Rep. 270 (1989). Since the initial charge in this case was filed over a decade ago, this is definitely a case with a prolonged delay in payment. However, there is a wrinkle in this case that complicates matters.

In his fee petition, Complainant states that Mr. Ehrlich has already received partial payments for his services. Complainant's estimate is that "at least one hundred forty hours" of time remains unpaid. Since the fee petition requests payment for a little over 180 hours, Complainant's position suggests that he has paid for about forty hours of his attorney's work.

In other words, the prolonged delay in payment discussed in *Wilson* does not apply to all the attorney's fees in this case. Instead, some of the fees were paid more or less contemporaneously with the performance of the services. That difference in the timing of payment may well justify a difference in treatment.

Since the fee payments made by Complainant were part of his cost of bringing this action, they are compensable out-of-pocket expenses. Therefore, it can be argued that they should be paid at the hourly rate Complainant was charged at the time of the payments.

That approach, however, does not work to Respondent's advantage in this case. The hours for which Complainant made payments were incurred as long ago as July of 1995. Since Complainant has had to wait this long for reimbursement of his out-of-pocket expenses, prejudgment interest on those expenses is necessary to make him whole.

Under the Commission's procedural rules, interest is to be calculated monthly, based on a rate equal to 1/12 of the annual statutory rate of interest for judgments. 56 Ill. Adm. Code, Section 5300.1145(b). That statutory interest rate is 9%. 735 ILCS 5/2-1303.

The services for which Complainant has already made payments were performed as early as July of 1995, over nine years ago. At the statutory rate of interest, treating those payments as ordinary out-of-pocket expenses would cost Respondent far more than the \$300.00 per hour Complainant currently is seeking. Therefore, despite the fact that Complainant made payments on some of the claimed hours, it is recommended that all of those hours be paid at the rate of \$300.00 per hour.

With the appropriate hourly rate determined, the focus shifts to the appropriate number

of hours. Complainant is seeking compensation for 181.91 hours of work. Raising several different arguments, Respondent maintains that the actual number of compensable hours is significantly lower than the requested number.

Respondent clearly is correct on one of its claims. Complainant is seeking compensation for 11.25 hours of time spent on depositions, and preparation for those depositions, in the parties' federal court litigation. Complainant argues that the information from those depositions was useful in this case. That, however, is irrelevant. Under the Human Rights Act, a prevailing complainant can receive fees only for proceedings before the IDHR and the Commission or for judicial review of Commission proceedings. ***Johnson v. Human Rights Commission***, 173 Ill. App. 3d 564, 527 N.E.2d 883 (1st Dist. 1988). Thus, a deduction of 11.25 hours of time is necessary.

Respondent's next two arguments overlap somewhat. The university argues that Complainant should not be compensated for his attempts to broaden the scope of the hearing in this matter. It also argues that Complainant's fees should be reduced because he received so little of the relief he requested. Complainant disagrees with Respondent's positions, but he seems to misunderstand Respondent's arguments and the case law he cites is inapposite to this situation.

Complainant's claim in this forum involved only his demotion from Driver to Campus Transportation Operator. In effect, in making some of his damages arguments, he was trying to relitigate his failure to accommodate claims that were rejected by the federal court. There is no sound reason to make Respondent pay for that effort. In a similar vein, Respondent notes that it is recommended that Complainant receive less than 5% of the monetary damages to which he claimed entitlement. A large part of Complainant's claimed damages were rooted in his belief that Respondent failed to accommodate his handicap, a belief which was not supported by the record.

Complainant's litigation strategy was based largely upon his damages theories. Because Complainant believed that proper accommodation would have prolonged his ability to perform as a driver, his damages calculations did not cut off at the time he applied for total disability benefits. Therefore, time was spent trying to establish accommodation arguments that had no particular relevance to the demotion decision at issue in this case. Thus, it is clear that Complainant's position on damages unnecessarily lengthened the proceedings in this matter.

Complainant's response to the university's arguments misses the point of those arguments. Respondent is not arguing that Complainant's fee request is disproportionate to the recommended damages. Instead, the university is arguing that Complainant's fee award should be reduced because the damages he should receive are so disproportionate to the damages he requested. There are Commission cases which hold that lack of success on damages can justify a cut in attorney's fees. See *Hudson and Rothschild Liquors*, \_\_\_ Ill. HRC Rep. \_\_\_, (1985CF2266, April 5, 1994); *Johnson and Stoller & Maurer Construction Co.*, 25 Ill. HRC Rep. 268 (1986). On the facts of this case, such a reduction is appropriate.

Respondent has suggested reducing Complainant's fee request by as much as 95%. Clearly, that is far too draconian a cut. There is no doubt that the lion's share of the litigation time was spent establishing that complainant's demotion was improper and that Respondent's explanation of that demotion was a pretext for unlawful discrimination. As a result, the lion's share of the claimed time is compensable.

When considering attorney's fee awards, doubts are to be resolved in favor of the respondent. *Lieber and Southern Illinois Univ. Bd. Of Trustees*, 34 Ill. HRC Rep. 206 (1987). Keeping that admonition in mind and considering the litigation as a whole, it is recommended that the remaining hours be cut by 25%. That cut should protect Respondent's interests while still providing a reasonable and fully compensatory fee for Complainant.

Finally, Respondent maintains that some of Complainant's hours should be deducted because the description of the time spent is insufficient. Specifically, Respondent objects to compensation for hours spent on "preparation for trial." Respondent's position on that point should be rejected. As Complainant argues in his reply memorandum, all attorneys do pretty much the same tasks as they get ready for a trial. It should not be necessary to those specific tasks in detail. No deduction should be made for the hours listed as trial preparation.

With those issues resolved, it is possible to calculate an appropriate number of compensable hours. Complainant requested compensation for 181.91 hours. As discussed above, 11.25 of those hours must be deducted because they were for work done in connection with the parties' federal litigation. That deduction leaves 170.66 hours. A 25% reduction in that number leaves 127.995 hours. That is the recommended number of compensable hours.

No other changes in the fee award are recommended. Multiplying the recommended hourly rate by the recommended number of hours results in a figure of \$38,398.50. That is the recommended attorney's fee award.

Complainant is seeking reimbursement for \$271.50 for the costs of photocopying exhibits and other documents. Since the fee petition made clear that such costs are routinely billed to Mr. Ehrlich's clients, the requested costs are reasonable and compensable.

#### RECOMMENDATION

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

A. That Respondent be ordered to pay to Complainant the sum of \$38,398.50 for attorney's fees reasonably incurred in the prosecution of this matter;

B. That Respondent be ordered to pay to Complainant the sum of \$271.50 for costs reasonably incurred in the prosecution of this matter;

C. That Complainant receive all other relief recommended in the Recommended Liability Determination entered in this matter on August 5, 2004.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL J. EVANS  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: November 29, 2004