▶	This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 12/15/05

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF	)	
	)	
Helen L. Taylor,	)	**CHARGE NO.: 2000 CF 2973**
Complainant	)	**EEOC NO.: 21BA 02401**
	)	**ALS NO.: 11811**
and	)	
	)	
Dr. William M. Scholl College of	)	
Podiatric Medicine,	)	
Respondent	)	

RECOMMENDED ORDER AND DECISION

This matter is before me following a Recommended Liability Determination (RLD) issued on September 7, 2004, incorporated by reference herein. Pursuant to the RLD, Complainant filed a Petition for attorney's fees on October 12, 2004. Respondent filed written objections to the Petition on October 26, 2004. No reply to the objections was filed. This matter is ready for decision.

CONTENTIONS OF THE PARTIES

Complainant requests $20,400.00 in attorney fees for sixty-eight hours of services and $340.80 in costs. Respondent objects to Complainant's request.

FINDINGS OF FACT

1. Complainant is seeking compensation for the work of attorney Denise Mercherson at the rate of $300.00 per hour for 68 hours.
2. Complainant is seeking reimbursement for $340.80 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 Ms. Mercherson is unreasonably high. The number of hours should be reduced to 42.

5. The requested costs are reasonable and compensable.

The framework for the review of an Attorney's fee petition was set forth by the Commission in **Clark and Champaign National Bank, 4 HRC Rep. 193, (1983)**.

First, **Clark** requires a factual showing to establish the attorney's hourly rate. In this case, counsel has provided a copy of an order showing that she has previously been awarded her requested hourly rate of $300.00 by the Federal Court in December of 2002. She has also produced the affidavit of a highly experienced practitioner in this area, attesting to the reasonableness of this hourly rate. Respondent has not provided argument, affidavit or citation which suggests that the proposed hourly rate is unreasonable, nor do I find it to be. The hourly rate for Complainant's attorney in this case is set at $300.00.

The **Clark** analysis requires a factual showing to establish the number of hours reasonably expended. To make this showing, Counsel has provided an itemized statement of her hours, identifying the services performed on particular dates and the hours expended in the performance thereof, which total sixty-eight. She has also attached her affidavit attesting to the veracity of the statement. Respondent argues that this showing is inadequate because it does not include contemporaneously prepared time slips. Upon review, I find this itemization sufficient to permit scrutiny of the time expended and the work performed. **Schoneberg and Grundy County Special Education Cooperative 9 Ill. HRC Rep. 192 (1981)**

Having determined that the records are sufficient to permit scrutiny, I turn now to the question of adjusting the fee award. To begin with, Respondent challenges four specific entries: An entry for August 28, 2003 for the preparation of a letter, an entry on January 15, 2004 for the preparation of an agreed motion to continue the briefing schedule, and entries December 13 and 14, 2003 for preparing to take the testimony of Dan Hogan. With respect to the August 28, 2003, letter, the affidavit of Complainant's

attorney indicates that the letter involved settlement issues, which are outside the purview of the Administrative Law Judge, it would appear that the letter was substantive in nature, and not a mere transmittal. Respondent has given me no reason to believe that an hour was unreasonable. As to the January 15, 2004, entry, I agree that an hour is more time than such a perfunctory motion should take. At the same time, I note that the reference is to an "agreed" motion, and that no time appears to have been billed for the necessary conversation or conversations to obtain the agreement in question. This entry will be reduced to .5 hours. With respect to the time spent preparing to examine Dan Hogan, the relatively large and undifferentiated hours reported on the days in question do not permit a surgical elimination of the time in question, but leave the matter for the discretion of the Administrative Law Judge. A total of 3.5 hours will be deducted from the total.

Having dealt with the individual items objected to, I now turn to the Respondent's overriding argument that the Petition seeks attorney's fees for all services performed for Complainant relative to this matter, but the Complainant only prevailed on one count of a two-count complaint. Respondent correctly notes that fees should not be awarded for time spent on an unsuccessful claim. Having reviewed the transcripts as well as the various submissions of the parties in this matter, it appears that much of the information elicited by both parties at hearing was in fact germane to both counts of the Petition as it set the stage for an analysis of the elements of each count, and the record does not lend itself easily to a surgical elimination of hours devoted to the unsuccessful count, particularly where the same witnesses testified to matter at issue with respect to both counts. *See* **Hensley v. Eckerhart, 461 U.S. 424 (1983)** Upon review, a reduction of twenty-two hours is recommended.

In urging a further reduction or elimination of fees, Respondent urges that the count upon which Complainant prevailed was smaller than the count upon which she did

not prevail, and suggests that the fee award should be proportional to the damages alleged in the respective counts. The dollar amount of Complainant's recovery, however, is not the only consideration in arriving at a fee award. This is particularly so where, as here, Complainant took almost immediate steps to mitigate her damages, and was largely successful in doing so. Those efforts on her part do not act to diminish the nature of the wrong at issue, although they do diminish the extent of the damages for that wrong.

Finally, Respondent requests an evidentiary hearing on the request for attorney's fees. Upon review of the Respondent's objections to the fee petition, there do not appear to be material issues of fact which may substantially affect the size of the fee award, especially where the specific objections posed by Respondent have already been addressed herein, many of them in Respondent's favor. The question of whether an evidentiary hearing is necessary is within the discretion of the Administrative Law Judge. **Raintree Health Care Center v. Illinois Human Rights Commission, 275 Ill. App. 3d 387 (1996)** An evidentiary hearing on fees, which could presumably include motions, discovery, as well as hearing time, argument, post-hearing briefs and the preparation of an additional opinion would serve only to add to the time and expense of the entire undertaking while exposing Respondent to underwriting the entire proceeding for both sides, which could easily meet or exceed the comparatively modest amount awarded herein.

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 $12,600.00. That is the recommended attorney's fee award.

Complainant is seeking reimbursement for $340.80 for the costs of photocopying exhibits and other documents. The Petition sets forth these expenses in detail, and the

Respondent makes no specific objection to them. I find that 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 $12,600.00 for attorney's fees reasonably incurred in the prosecution of this matter;

B. That Respondent be ordered to pay to Complainant the sum of $340.80 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 September 7, 2004.

HUMAN RIGHTS COMMISSION

Enter: December 14, 2004

BY:_____
MARY KENNEDY
CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION