▶	This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 12/11/06

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
JIMMY WILLIAMS, on behalf of the estate of LISA WILLIAMS,	)	**Charge No.: 2002CF3365**
	)	**EEOC No.: N/A**
Complainant,	)	**ALS No.: 05-455**
	)	
and	)	
	)	
SBC AMERITECH,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter comes before the Commission on Respondent's Motion to Dismiss or in the Alternative to Compel Discovery filed on September 1, 2006 (the "Motion to Dismiss"). Since the filing of Respondent's Motion to Dismiss, Complainant's attorney filed a Motion to Withdraw as Attorney of Record. The Motion to Withdraw states that despite repeated efforts to contact Complainant, Complainant's attorney has not heard from her client. After his attorney's withdrawal, Complainant was served with Respondent's Motion to Dismiss. Complainant has failed to file a response to the Motion to Dismiss, and failed to appear for the October 18, 2006 status hearing set subsequent to the order granting his attorney's Motion to Withdraw. Accordingly, this matter is now ready for disposition.

The Illinois Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

FINDINGS OF FACT

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

1. Complainant, through his attorney, filed a Complaint with the Commission on October 18, 2005 alleging Lisa Williams was discriminated against based on a physical disability.
2. On November 18, 2005, the Commission served the Complaint on the Respondent and set this matter for a status hearing on December 18, 2005.
3. On December 18, 2005, Respondent appeared, through its attorney. Neither Complainant nor his attorney appeared. By Commission Order dated December 18, 2006, a status hearing was set for January 18, 2006.
4. On January 5, 2006, Respondent filed a Verified Answer and Affirmative Defenses.
5. On January 18, 2006, both Complainant and Respondent appeared, through their attorneys, for the status hearing. A Commission Order was entered closing discovery on April 10, 2006 and setting a status hearing for March 22, 2006.
6. On March 20, 2006, Respondent served its First Set of Interrogatories and First Request for Production of Documents on Complainant.
7. On March 22, 2006, both parties appeared, through their respective attorneys, for a status hearing. The March 22, 2006 Order extended the close of discovery to June 9, 2006 and set another status hearing for June 21, 2006.
8. On or about May 22, 2006, Respondent's attorney spoke to Complainant's attorney by telephone and asked why Complainant had not served responses to Respondent's outstanding discovery requests. Complainant's attorney denied receiving the discovery requests.

9. On or about May 22, 2006, Respondent's attorney forwarded an additional copy of the discovery request to Complainant's attorney via e-mail.

10. On June 9, 2006, the same date that discovery was set to close, Complainant served his First Set of Discovery Requests on Respondent.

11. On June 13, 2006, Complainant, through his attorney, filed a Motion for Extension of Time to Complete Discovery.

12. The Motion to Extend the Time to Complete Discovery stated that Complainant had served his first set of Discovery on June 9, 2006 and had not responded to Respondent's discovery. In support of its Motion, Complainant stated: (a) Complainant's attorney had severe family issues; (b) Complainant was ill with strep throat three times in the last six weeks; and (c) Complainant had general difficulties in obtaining documents from a computer that was in storage for several years. The Motion requested that discovery be closed on September 1, 2006.

13. An Agreed Order to strike the June 21, 2006 status hearing and reschedule it for July 6, 2006 was entered on June 14, 2006.

14. At the July 6, 2006 status hearing, the Motion to Extend the Time to Complete Discovery was granted. The Commission ordered that all discovery was to be completed by September 7, 2006.

15. On July 25, 2006, Respondent's attorney left a voicemail for Complainant's attorney inquiring as to the status of Complainant's discovery responses.

16. Complainant's attorney telephoned Respondent's attorney and indicated that Complainant would respond to Respondent's discovery requests on or before August 8, 2006. Respondent's attorney memorialized that conversation in a letter dated July 26, 2006.

17. Complainant failed to provide his responses to Respondent's discovery on August 8, 2006.

18. On August 30, 2006, Respondent's attorney spoke with Complainant's attorney by telephone regarding Complainant's continuing failure to respond to its discovery requests. Complainant's attorney indicated that (a) no response would be forthcoming, (b) Complainant had failed to respond to any of her attempts to communicate with him, and (c) she intended to file a motion to withdraw as Complainant's attorney.

19. Respondent filed a Motion to Dismiss or in the Alternative to Compel Discovery to be heard on September 7, 2006.

20. On September 7, 2006, a status hearing took place and a briefing schedule was set for the Respondent's Motion to Dismiss or in the Alternative to Compel Discovery.

21. On September 20, 2006, Complainant's attorney noticed a Motion to Withdraw as Attorney of Record. The motion indicated that beginning in late May and continuing to that present time, Complainant's attorney had attempted to contact Jimmy Williams (as the representative of the estate of Lisa Williams) using each and every mailing address known for Jimmy Williams, as well as by telephone and via e-mail. Jimmy Williams had failed to respond or contact his attorney.

22. Complainant was served with the Motion to Withdraw, via certified mail, on September 12, 2006.

23. On September 20, 2006, Complainant's attorney's Motion to Withdraw was heard. Complainant failed to appear at the September 20, 2006 status hearing. The Motion to Withdraw was granted and Complainant was given

until October 18, 2006 to retain a new attorney or file an appearance on his own behalf. A status hearing was set for October 18, 2006.

24. On September 20, 2006, Respondent's attorney served a copy of Respondent's Motion to Dismiss or in the Alternative Compel Discovery on Complainant.

25. On September 22, 2006, Complainant's attorney served a copy of the Commission's September 20, 2006 Order on Complainant.

26. On October 18, 2006, Respondent appeared, via its attorney, for a status hearing. Neither Complainant nor anyone on his behalf appeared or contacted the Commission.

27. On October 18, 2006, Respondent served Complainant with a copy of the Commission's October 18, 2006 Order which indicated that a ruling on the Respondent's Motion to Dismiss or in the Alternative Compel Discovery would be taken under advisement.

28. To date, Complainant has failed to file a written response to Respondent's Motion to Dismiss or in the Alternative Compel Discovery.

CONCLUSIONS OF LAW

1. A complaint may be dismissed when a party fails to appear at a scheduled hearing without requesting a continuance reasonably in advance or unreasonably refuses to comply with a Commission Order or otherwise engages in conduct which unreasonably delays or protracts proceedings.

2. Complainant has failed to appear at a scheduled hearing without requesting a continuance reasonably in advance, has failed to comply with the Commission's discovery rules, has refused to communicate with his attorney which unreasonably delayed or protracted these proceedings, and has unreasonably refused to comply with Commission Orders.

3. The appropriate sanction is dismissal of the Complaint, and the underlying charge, with prejudice.

DISCUSSION

Under the Commission's Procedural Rules, an Administrative Law Judge may recommend to the Commission that a complaint be dismissed where a party fails to appear at a scheduled status hearing, unreasonably refuses to comply with a Commission Order or otherwise engages in conduct which unreasonably delays or protracts proceedings. *See* 56 Ill. Admin. Code §5300.750(e).

Complainant's discovery responses are now seven (7) months overdue under the Commission's Procedural Rules. Complainant has failed to complete discovery in accordance with the Commission's Orders. Complainant has failed to respond to each and every of his attorney's attempts to communicate with him, thereby necessitating her to file a Motion to Withdraw as Attorney of Record. Since his attorney's withdrawal, Complainant has also failed to appear before the Commission on his own behalf or retain a new attorney. Based on the foregoing, it appears that Complainant has abandoned his claim. Complainant's conduct constitutes grounds for dismissal of his complainant, as well as the underlying charge, with prejudice. **Aceves and Everlast Concrete, Inc. and Artech Concrete, Inc.**, ___ *Ill. HRC Rep.* ___, *(2003CA0239, May 18, 2005).*

RECOMMENDATION

I recommend the Commission:

(1) dismiss the case, and the underlying charge, with prejudice.

HUMAN RIGHTS COMMISSION

By: _____

REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: October 20, 2006