City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

**IN THE MATTER OF:**

Dena Lockwood
**Complainant,**
**v.**

Professional Neurological Services, Ltd.
**Respondent.**

**Case No.:** 06-E-89

**Date of Ruling:** January 20, 2010
**Date Mailed:** January 25, 2010

**TO:**

Ruth I. Major
Attorney at Law
55 W. Monroe, Suite 3550
Chicago, IL 60603

Richard E. Steck
Richard E. Steck & Associates
19 S. LaSalle St., Suite 602
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# FINAL ORDER ON ATTORNEY FEES AND COSTS

YOU ARE HEREBY NOTIFIED that on January 20, 2010, the Chicago Commission on Human Relations issued a Final Ruling on Attorney Fees and Costs in favor of Complainant in the above-captioned matter. The Commission orders Respondent to pay attorney fees and costs in the total amount of $87,655.61, apportioned as follows

To the law firm of Ruth I. Major a total of $30,366.01,
consisting of $30,156.42 in attorney fees and $209.59 in costs.

To the law firm of Penny Nathan Kahan a total of $58,951.93,
consisting of $58,951.93 in attorney fees and $1,452.73 in costs.

The findings and specific terms of the ruling are enclosed.

Pursuant to Commission Regulations 100(15) and 250.150, a party may obtain review of this order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law at this time. Compliance with this Final Order and the Final Order on Liability and Relief entered on June 17, 2009, shall occur no later than 28 days from the date of mailing of this order.[1] Reg. 250.210.

CHICAGO COMMISSION ON HUMAN RELATIONS
Dana V. Starks, Chair and Commissioner

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[1] **COMPLIANCE INFORMATION:** Parties must comply with a final order after administrative hearing no later than 28 days from the date of mailing of the later of a Board of Commissioners' final order on liability or any final order on attorney fees and costs, unless another date is specified. CCHR Reg. 250.210. Enforcement procedures for failure to comply are stated in Reg. 250.220.

**Payments of attorney fees and costs** are to be made to Complainant's attorney/s of record.

City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60610
(312) 744-4111 [Voice], (312) 744-1081 [Facsimile], (312) 744-1088 [TTY]

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# FINAL RULING ON ATTORNEY FEES AND COSTS

## I. INTRODUCTION

On June 17, 2009, the Chicago Commission on Human Relations issued a Final Order on Liability and Relief in favor of Complainant, Dena Lockwood, finding liability on her parental status discrimination claim and ordering damages totaling $213,601.25 plus interest as well as fines totaling $1,500. The Final Order also granted Complainant reasonable attorney fees and costs and set a schedule for the fee petition process.

On July 28, 2009, Complainant filed and served a timely Petition for Attorney's Fees and Costs ("Fee Petition") seeking $88,130.61 in fees plus $1,662.32 in costs for work on this case. On August 26, 2009, Respondent filed and served a timely Objection to Petition raising essentially two points: that the hourly rates were inadequately supported, and that certain work should be excluded from any fee award. On September 3, 2009, Complainant sought leave to file a reply. On September 8, 2009, the hearing officer granted Complainant leave to reply and requested further briefing from the parties. On September 11, 2009, Complainant filed her Supplemental Response ("Response"). Respondent did not respond or supplement its Objection to Petition further.

The hearing officer issued her Recommended Ruling on the Fee Petition on November 23, 2009. Respondent filed Objections on December 22, 2009, which the Board of Commissioners has considered in making this Final Ruling. These Objections make essentially the same arguments as the Objection to Petition.

## II. APPLICABLE LEGAL STANDARDS

Section 2-120-510(l) of the Commission on Human Relations Enabling Ordinance provides that a successful complainant may be awarded "reasonable attorney fees...incurred in pursuing the complaint before the commission...." There is no question that Complainant was successful. She prevailed on her parental status discrimination claim and was awarded substantial relief. Even though the Commission rejected the hearing officer's recommended ruling in favor of Complainant's retaliation claim, all the relief attributable to that claim—specifically her post-termination commissions—was included in the Commission's award of damages on the discrimination claim. There is no challenge to Complainant's status as the

prevailing party here.

Commission Regulation 240.630(a)(1) requires that a fee petition be supported by affidavit and argument, and that it reflect the number of hours for which compensation is sought, in quarter-hour increments or less, itemized by date and including a description of the work performed and the individual who performed it. Reg. 240.630(a)(2) allows fees at the rates "customarily charged" by a complainant's attorneys. Respondent disputes whether these requirements are satisfied, as further discussed below.

## III. COMPLAINANT'S FEE PETITION

The Fee Petition, as supplemented by Complainant's Response of September 11, 2009, satisfies each of the Commission's requirements. First, it states in great detail the hours spent (in 1/100-hour increments), how they were spent, and the hourly rate for each attorney and legal assistant who performed the work. In the Fee Petition, the Kahan law firm seeks $57,974.20 in fees based on a total of 234.16 billable hours charged in 1/100-hour increments, plus $1,452.73 in costs; and the Major firm seeks $30,156.42 in fees based on 95.22 billable hours, plus $209.59 in costs. The requested fees are based on the following hourly rates:

- Ms. Kahan at $475 per hour in 2009, $400 in prior years.
- Ms. Major at $375 in 2009, $325 in 2006 and 2007.
- Senior Associate Carrie Herschman at $350 per hour.
- Associates including Geoffrey Haas, Stephen Brandenburg, Laura Potter, and Daniel Zemans at $150 to $250 per hour.
- Law clerks and other legal assistants from $70 to $110 per hour.

Second, the hourly rates are substantiated by affidavits of the billing attorneys and citation to fee awards where these and similar rates were sought and either approved by a court or paid by hourly-fee-paying clients. The materials that Complainant has submitted establish that the requested rates are customarily charged for work by these billing attorneys and legal assistants. For example, Exhibits A, B, and C to the Response show comparable rates which were sought by the attorneys and approved by the federal district court in *Radinski, v. Apex Digital*, CCL, No. 07 C 0571 (N.D. Ill.), specifically $500 per hour for Ms. Kahan, $375 for Ms. Major, $250 for Ms. Potter and Mr. Zemans, and $150 to $195 for law clerks and legal assistants in 2008. Exhibits D and E to the Response establish that hourly rates of $400 for Ms. Kahan, $325 for Ms. Major, and $200 for Mr. Zemans were sought by the attorneys and approved by the district court in another case in 2007.

The affidavit of Ms. Major, attached to the Response as Exhibit H, further establishes that she regularly charges her clients $375 per hour for her own time, $275 for Mr. Haas, and $190 for Mr. Brandenburg. Exhibit I—namely the affidavits of Ms. Kahan, Carrie Herschman, and Laura Potter—establishes that Ms. Kahan regularly charges $475 per hour, Ms. Herschman $350 per hour, and Ms. Potter $150 per hour.

## IV. RESPONDENT'S OBJECTIONS

Respondent's objections to the Fee Petition are, first, that the rates are too high, and second, that certain aspects of the work performed were "unsuccessful" and should not be compensated.

### 1. Reasonableness of Rates

As this Commission held in *Richardson v. Chicago Area Council of Boy Scouts*, CCHR No. 92-E-80 (Nov. 20, 1996), rev'd on other grounds 322 Ill.App.3d 17 (2nd Dist. 2001), dismissed on remand CCHR No. 92-E-80 (Feb. 20, 2002), "Once an attorney provides evidence of his/her billing rate, the burden is on the respondent to present evidence establishing a good reason why a lower rate is essential. A respondent's failure to do so is essentially a concession that the attorney's billing rate is reasonable and should be awarded." See also *Sellers v. Outland*, CCHR No. 02-H-37 (Mar. 17, 2004 and Apr. 15, 2009). As noted in these decisions and further discussed below, the Commission has been guided by decisions of the U.S. Court of Appeals for the Seventh Circuit regarding a fee applicant's burden and the evidentiary requirements to prove the appropriate hourly rate.

#### a. Lack of Fee Contract

Respondent argues that there is no evidence of any fee contract between Complainant and her attorneys, nor any evidence that Complainant was billed or that the bill was actually paid. Respondent states that this is one of the factors courts look at "because a fee contract or evidence of paid fees would tend to demonstrate the accuracy of the claim of the attorneys for Lockwood as to the truth and fairness of the rates claimed." (Objections to Recommended Ruling, p. 3) Respondent then asserts, "The absence of such proof raises questions as to the reasonableness of the claim."

Nothing in Reg. 240.630 or Commission precedents regarding the proof of prevailing counsel's billing rates *requires* evidence of actual billing to the complainant or evidence that the complainant paid the claimed fees to counsel. Although such evidence might be useful in a particular case to resolve an evidentiary dispute about the appropriate billing rate, it is not necessary here, where Respondent has come forward with no evidence whatsoever that calls into question Complainant's evidence of the fees customarily charged by her counsel.

Reg. 240.630 allows the award of fees "customarily charged" regardless of whether the fees were contracted for or actually paid. As the hearing officer pointed out, characteristic of discrimination cases is that the injured parties often are unable to pay their lawyers in advance or as the work is being performed. Lawyers such as Complainant's counsel frequently enter into contingent-fee arrangements, under which they are paid for their work only if and when their client prevails. It makes no difference whether Complainant entered into a fee agreement with her attorney to pay the fees, whether she was billed, or whether the bill was paid.[1] Fees are awarded either to pay the attorney for work that has not been paid or to reimburse the successful complainant for fees already paid. This objection is therefore without merit.

#### b. Rates "Customarily Charged"

Respondent's second objection to the requested fee rates is that the Complainant's initial submission failed to provide sufficient proof that the rates her attorneys sought were "customarily charged" to clients or approved by courts or other adjudicatory bodies. Again, the hearing officer has correctly analyzed the evidence and applicable law. Although Complainant's original Fee Petition was thin, her Supplemental Response cured any problem. As noted above,

[1] Complainant's Response, at Exhibit H, indicates that Complainant was, in fact, advised of her lawyers' hourly rates.

Complainant's Response establishes that each of her attorneys has sought and received the same or comparable rates in cases litigated in the courts, and that they have charged and been paid comparable rates from hourly-fee-paying clients. The evidence presented by Complainant is sufficient to support a finding that the claimed hourly rates were customarily charged by counsel. Respondent has come forward with no evidence to call that finding into question. Thus there is no factual issue regarding the rates customarily charged by counsel, but only unsupported assertions by Respondent that the rates are too high and arguments that the evidence submitted by counsel is insufficient. Therefore this objection, too, is overruled.

**c. Proportionality**

Respondent's final argument regarding the fee rates seems to suggest that because Complainant's counsel was awarded $70,000 in *Bristow v. Drake St., Inc.*, 41 F.3d 345 (7th Cir. 2000),[2] where her client received a $500,000 recovery, and because $70,000 is only 14% of $500,000, the lawyers should receive only 14% of the client's award here, or only $30,000 in fees. The hearing officer correctly pointed out that this argument has no legal basis whatsoever. There is no requirement that a fee award must mirror the fee-to-damages ratio of some other case, or for that matter, that there be any proportionality between the fees and the recovery at all.

In making this argument, Respondent failed to take into account considerable well-settled Commission precedent which makes it clear that a fee award need not be proportional to a damage award. See, e.g., *Huezo v. St. James* Properties, CCHR No. 90-E-44 (Oct. 9, 1991); *Castro v. Georgeopoulos*, CCHR No. 91-FHO-6-5590 (Mar. 25, 1992); *Akangbe v. 1428 W. Fargo Condominiums*, CCHR No. 91-FHO-7-5595 (July 29, 1992); *Fulgern v. Pence*, CCHR No. 91-FHO-65 (Apr. 21, 1993); *McDuffy v. Jarrett*, CCHR No. 92-FHO-28-4778 (Sept. 23, 1993); *Barnes v. Page*, CCHR No. 92-E-1 (Jan. 21, 1994 and Sept. 15, 1999); *Rushing v. Jasniowski et al.*, CCHR No. 92-H-127 (Jan. 18, 1995); *McCall v. Cook County Sheriff's Office et al.*, CCHR No. 92-E-122 (Apr. 19, 1995); *Hall v. Becovic*, CCHR No. 94-H-39 (Jan. 10, 1996); *Ross v. Chicago Park District*, CCHR No. 93-PA-31 (Mar. 20, 1996); *Craig v. New Crystal Restaurant*, CCHR No. 92-PA-40 (May 15, 1996); *Richardson, supra*; *Matias v. Zachariah*, CCHR No. 95-H-110 (Feb. 19, 1997); *Wright v. Mims*, CCHR No. 92-H-012 (Sept. 17, 1997); *Efstathiou v. Café Kallisto*, CCHR No. 95-PA-1 (Nov. 19, 1997); *McCutchen v. Robinson*, CCHR No. 95-H-84 (Oct. 21, 1998); *Blacher v. Eugene Washington Youth & Family Svcs.*, CCHR No. 95-E-261 (Feb. 24, 1999).

Indeed, other judicial tribunals that have considered the proportionality issue have widely held that there need not be any particular relationship between the fees and damages. See, e.g., *McKenzie v. Cooper, Levins & Pastko, Inc.*, 990 F.2d 1182, 1185 (11th Cir. 1993), affirming $100,000 in fees where damages were only $9,000; and *Ustrak v. Fairman*, 851 F.2d 983, 989 (7th Cir. 1988), affirming fees 21 times the damages award. Even the U.S. Supreme Court has held that legal fees may exceed the damages award. *City of Riverside v. Rivera*, 477 U.S. 561 (1986). The proper question is what fees were reasonably incurred in pursuing the successful claim(s); see, e.g., *Sellers v. Outland, supra.* The answer to this question often has as much to do with how the respondent litigates the case as how the complaining party approaches it, and therefore it is impossible to say that only a certain ratio of fees to damages is "reasonable." Respondent's proportionality objection, too, is without merit.

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[2]It should be noted that Complainant's counsel did not cite or rely on this case. *See* Objections, ¶ 4.

### d. Finding of Reasonable Rates

When the supporting materials of Complainant's billing attorneys are considered, it is clear that the requested rates are not only customarily charged but also reasonable. The hearing officer noted that Penny Nathan Kahan is a 1978 law school graduate with abundant experience in employment work, and that Ruth Major is a 1990 law graduate who has likewise practiced extensively in employment law. The hearing officer also found reasonable the rates requested for the associates and legal assistants who assisted them. In finding the requested hourly rates fair, reasonable, and customary for Complainant's attorneys and legal assistants in this case, the hearing officer also relied on other fee petitions that have come before the Commission,[3] as well as the hearing officer's own knowledge of the practice in employment law in the City of Chicago.

Respondent disputes the hearing officer's findings by arguing there was insufficient evidence of the credentials of Complainant's counsel including no examples of trials and no roster of cases handled but only a statement of the dates of their law degrees. Respondent further argues in the Objections to the Recommended Ruling that three examples of approved fee awards to these counsel in other case "do not show that any court approved the rates sought." (Objections to Recommended Ruling, p. 1)

Respondent has not correctly stated the applicable legal principles. Reg. 240.630 does not *require* a prevailing party to prove the credentials of counsel but only to establish the "hourly rate customarily charged by each individual for whom compensation is sought." Only if that customary billing rate cannot be established, as "in the case of a public or not-for-profit law office which does not charge fees or which charges fees at less than market rates" does it become necessary to provide "documentation of the rates prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise." Reg. 240.630(a)(2); see also *Nuspl v. Marchetti*, CCHR No. 98-E-207 (Mar. 19, 2003), holding that a fee petition supported the requested hourly rate where the attorney stated his regular hourly rate and promptly responded to a request for additional information, as documentation of the attorney's experience and rates charged by other practitioners is required only for public law offices that do not charge market-based fees. That is not the situation here; the Kahan and Major firms are engaged in the private practice of law and, as explained above, have presented evidence sufficient to establish that the claimed hourly rates are customarily charged by them. That evidence alone is sufficient to support a fee award at those rates, even without consideration of fee awards sought and approved in recent court cases, credentials of the billing attorneys, and evidence of rates charged by similarly-qualified attorneys. However, the years of experience of Ms. Kahan and Ms. Major in the employment and discrimination law field, along with the other evidence they presented, do reinforce that their billing rates are reasonable and correctly stated.[4]

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[3]For example, in *Sellers v. Outland*, CCHR No. 02-H-37 (Apr. 15, 2009), the Commission approved hourly rates ranging from $265-$415 per hour to attorneys who had graduated from law school in 2000, based on the rates their law firm billed for their services. In *Alexander v. 1212 Restaurant Group et al.*, CCHR No. 00-E-110 (Apr. 15, 2009), the Commission approved hourly rates for $335 for work performed in 2007 and $350 for work performed in 2008 by an attorney who had practiced law in Illinois since 1987. In both of these recent cases counsel had, as here, submitted affidavits attesting to their customary billing rates and the respondents had argued that the rates were too high without submitting any evidence to raise a factual issue as to what were the attorneys' actual billing rates. The Commission rejected those arguments.

[4] Out of thoroughness or caution, attorneys often provide additional information in their fee petitions and tribunals often cite such additional facts to support their decisions.

The affidavits of Complainant's counsel provide additional evidence of the appropriateness of their billing rates in light of their credentials—evidence which has not been controverted with any presentation of evidence from Respondent. For example, Exhibit A to the Fee Petition, the Declaration of Ruth I. Major, is a sworn statement of Ms. Major that she was admitted to the practice of law in Illinois in 1990, that she has practiced in all areas of employment law with an emphasis on employment discrimination litigation, and that she is a member of several relevant bar organizations. Exhibit E to the Fee Petition, the declaration of Penny Nathan Kahan, is a similar sworn statement in which Ms. Kahan states that she was practiced law in the City of Chicago since 1979, that she has practiced in all areas of employment law and has extensive experience handling cases involving employment discrimination, and that she has served as an officer of the National Employment Lawyers Association and received several local and national honors for her legal work in the field.

Even though the rates in the three cases discussed by Respondent in its Objections to the Recommended Ruling were not explicitly approved in the decisions, they were nevertheless accepted by those courts in their oversight role. In *Radinski v. Apex Digital, LLC*, No. 07 CV 571 (N.D. Ill. Dec. 5, 2008), the court approved a compromised amount of $650,000 in attorney fees and $50,000 in associated costs where counsel had presented a petition documenting $917,285.60 in fees and $64,114.53 in costs. In that petition, Ms. Kahan billed her time at $500 per hour, the time of Ms. Major at $375 per hour, the time of Ms. Potter at $250 per hour, the time of Mr. Zemans at $250 per hour, the time of law clerks at $195 per hour, and the time of paralegals at $150 per hour—rates comparable to those sought in the instant case. Another attorney in *Radinski*, admitted to practice in 1990 and practicing in the relevant area of law since at least 2001, presented his billing rate at $500 per hour. At minimum, this evidence reinforces that the rates sought by counsel in the instant case are not only charged by them but are consistent with rates charged by at least one other Chicago practitioner with similar experience.

Complainant's counsel's submissions regarding *Puckett v. Tandem Staffing Solutions, Inc.*, No. 06 C 3926 (N.D. Ill., Oct. 3, 2007), also reinforce that these earlier requested rates were customarily charged by counsel in the instant case—Ms. Kahan at $400, Ms. Major at $375, Ms. Potter and Mr. Zemans at $250, all in 2007. As Respondent notes, the billing rates were unopposed and the only issues explicitly ruled upon involved certain aspects of time billed. Nevertheless, the court awarded fees and in its oversight role did not find the billed rates to be excessive. This is further evidence that they are reasonable market rates. Complainant's counsel further documented that in *Muldron v. Brown & Brown*, No. 03 CV 08708 (N.D. Ill., Mar. 17, 2005), the court approved an hourly rate for Ms. Kahan of $375. Together these cases reflect a predictable progress in rates charged in light of Ms. Kahan's increasing experience.

Even though they did not involve explicit approval of the hourly rates, and even though counsel were awarded lower amounts than initially sought due to settlement or to determinations regarding time rather than rates, these cases further document the rates customarily charged by billing counsel in the instant case and illustrate that such rates are accepted without question as reasonable rates for lawyers handling employment litigation in the Chicago market.[5]

In its Objections to the Recommended Ruling, Respondent cited only one case as supporting legal authority, *People Who Care v. Rockford Board of Education*, 90 F.3d 1307,

[5] Respondent's assertion in its Objections to the Fee Petition that these decisions "are most noteworthy as showing [Complainant's counsel] as chronic over chargers and raises questions both as to their experience and ability in employment discrimination" is particularly unsupported and inappropriate.

1310-11 (7 Cir. 1996).[6] This decision applies federal law principles to an attorney fee petition in a federal civil rights case under 42 U.S.C. §1988. The Commission has reviewed *People Who Care* for guidance regarding the Fee Petition in this case. Although not proceeding under federal law but rather under City of Chicago ordinance provisions and its own regulations,[7] the Commission has looked to federal case law for guidance in applying its own attorney fee provisions. The Commission regards this ruling as consistent with the principles set forth in *People Who Care.* As under federal law, the Commission follows the "lodestar" method of multiplying reasonable hourly rates by hours reasonably expended as a starting point and treats an attorney's actual billing rate as presumptively appropriate for use as the market rate. If unable to determine an attorney's actual billing rate, then the Commission turns to the next best evidence, the rate charged by lawyers in the community of reasonably comparable skill, experience, and reputation. Once the amount of fees is determined using the lodestar method, then the fee award may be adjusted by the "*Hensley* factors"[8] to which Respondent alludes although, as the court noted in *People Who Care*, "most of those factors are usually subsumed within the initial lodestar calculation." *Id.* at 1310-1311, citing *Hensley v. Eckerhart*, 461 U.S. 424 at 434 n. 9, 103 S.Ct. 1933 at 1940 n. 9. The Commission finds nothing in *People Who Care* which suggests that the hearing officer's analysis of the Fee Petition in this case is erroneous or that there is insufficient evidence to support the Fee Petition, particularly evidence of counsel's customary billing rates. The Seventh Circuit's opinion emphasized, in reversing the district court, that although a petitioning attorney must present evidence to establish that the requested rate is the attorney's actual billing rate, the amount of evidence need not be extensive to invoke the presumption of appropriateness. *Id.* at 1311.

The Commission finds, based on the evidence presented, that the rates requested in this case are reasonable and appropriate.

### 2. Work Performed

Respondent challenges two categories of work performed in the case as not being reasonably incurred in its pursuit:

#### a. Effort to Amend Complaint

First, Respondent challenges some $12,000 of legal fees relating to Complainant's efforts to amend her Complaint to clarify her demand for post-termination commissions that were earned but never paid because of Respondent's discrimination. Although the Hearing Officer denied Complainant's request for leave to amend her Complaint as unnecessary, the Commission's Final Order, at pages 16-22, held that the issue had been tried by implied consent under Reg. 210.150(c)(2). Thus the requested amendment, to conform the Complaint to the evidence, was effectively allowed. Not only did Complainant ultimately prevail on this issue,

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[6] Respondent cited no legal authority at all in its Objection to the Fee Petition.

[7] See Reg. 270.510 regarding applicable precedent in cases before this Commission.

[8] The *Hensley* factors are (1) the time and labor required, (2) the novelty and difficulty of the questions, (3) the skill requisite to perform the legal service properly, (4) the preclusion of employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. S. Rep. No. 1011, 94th Cong.2d Sess. 6 (1976), as cited in *People Who Care* at n. 1.

but her efforts to address it were reasonable and prudent. Therefore, her legal fees for this work are allowed.

Even unsuccessful efforts spent in pursuant of an ultimately successful claim may be compensated as long as the effort was reasonable. The touchstone is whether the billing attorney would have charged for the work in the private sector; see, e.g., *Markon v. Bd. of Educ.*, 525 F. Supp. 2d 980, 983 (N.D. Ill. 2007). There is no question that standard is satisfied here; the analysis of the hearing officer on this point is correct and the Commission accepts it.

Although the Commission has in some situations denied fees related to distinct unsuccessful claims—see, e.g., *Osswald v. Yvette Wintergarden Restaurant et al.*, CCHR No. 93-E-93 (Jan. 10, 1996)—it does not do so where the work on unsuccessful claims or theories is interrelated with the development of successful claims; rather, the Commission focuses on the overall success of the complainant's case. *Huezo v. St. James Properties*, CCHR No. 90-E-44 (Oct. 9, 1991 and May 26, 1992). Fees are not reduced for specific work done which does not itself succeed when it is part of the overall presentation of a successful claim. *Johnson v. City Realty & Development Co.*, 91-FHO-165-5750 (July 22, 1993). For example, in *McCall, supra*, the complainant won a hostile environment sexual harassment claim but not a *quid pro quo* one; the Commission did not reduce fees, finding that the factual predicate of each claim was the same so that identical evidence would have been presented even without the *quid pro quo* claim. See also *Collins & Ali v. Magdenovski*, CCHR No. 91-FHO-70-5655 (Mar. 19, 1997). Similarly, fees have not been reduced where the factual predicates of two claims of sex discrimination and sexual harassment were identical and the claims just represented two different theories. *Hussain v. Decker,* CCHR No. 93-H-13 (May 15, 1996). Fees are not necessarily reduced for time spent on arguments,[9] as opposed to claims, which did not prevail; a party need not choose among arguments or lose fees where a court rules in the party's favor on less than all arguments or simply chooses one on which to rule, especially where the complainant's ultimate success was not limited due to the losing argument. *Barnes v. Page*, CCHR No. 92-E-1 (Sept. 15, 1999); compare *Byrd v. Hyman*, CCHR No. 97-H-2 (July 17, 2002).

Accordingly, Respondent's objection is overruled.

**b. Pre-Complaint Work**

Respondent's remaining objection involves some $3,500 worth of work performed by Complainant's counsel in July and August 2006. Respondent argues this should not be compensated because it is was performed "prior to the point at which a claim for parental status was being considered." Objection to Petition, ¶ 6.

An examination of the Fee Petition makes clear that for the July through August 2006 period, Complainant's attorneys exercised billing discretion, omitting from the Fee Petition any aspects of their work that did not relate to the CCHR claim. The July 22, 2009, time entry of Ms. Kahan, one hour spent to "Review bill to eliminate or reduce billing" reflects this effort.

The work performed in the July-August 2006 period includes preparation of a demand letter—a logical place to start before filing the Complaint—and related correspondence on the subject with Respondent's counsel. Indeed, this correspondence from Respondent's counsel proved to be an important piece of evidence supporting Complainant's claim. The work in this

[9] This analysis applies at least to arguments having legal merit; see Regs. 210.410 and 210.420.

period also included a request for Complainant's personnel file, unquestionably a helpful tool for her counsel's evaluation of her potential claim and the decision whether to file it.

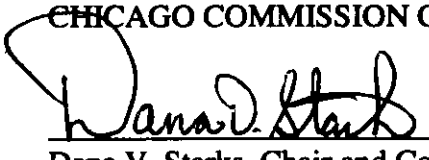
The hearing officer found that all the challenged charges from the July and August 2006 period are appropriate and related to the successful claim. The Commission agrees. The preliminary work which led to this Complaint was the type of work an attorney would reasonably undertake for a client seeking assistance regarding a potential legal claim, such as investigating each possible cause of action and attempting to reach a resolution short of litigation.

Only the one-hour charge on July 22, 2009, for review of the bill, is disallowed; that entry is a mere billing task, not legal work "incurred in pursuing the complaint" and thus not compensable. §2-120-510(l), Chgo. Muni. Code (Enabling Ordinance). The Kagan request is, therefore, reduced by $475. The other work on the Fee Petition is allowed and Respondent's objection is overruled.

## V. CONCLUSION

The Commission has studied the billing records and other materials submitted in support of the Fee Petition, together with Respondent's objections. The hearing officer found that the legal work of Complainant's counsel was performed in a "very efficient and often lean manner." The Commission gives great weight to the hearing officer's assessment given her first-hand involvement in the administrative hearing process. The Commission finds the requested rates appropriate and "customarily charged." Further, except for the one-hour entry by Ms. Kahan on July 22, 2009, the Commission finds that all the time for which compensation is sought is reasonable and appropriate. The Commission therefore GRANTS the Fee Petition in the total amount of $87,655.61, representing $30,156.42 in fees and $209.59 in costs to the Major firm and $57,499.20 in fees and $1,452.73 in costs to the Kahan firm.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Dana V. Starks, Chair and Commissioner
Entered: January 20, 2010