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:

Heidi Karr Sleper
Complainant,
v.

Maduff & Maduff LLC
Respondents.

Case No.: 06-E-90

Date of Ruling: May 16, 2012
Date Mailed: June 20, 2012

TO:

Lisa M. Stauff, Catherine A. Caporusso
Law Offices
53 W. Jackson Blvd., Suite 505
Chicago, IL 60604

Joseph Tighe
Alan J. Mandel, Ltd.
7520 N. Skokie Blvd.
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FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on May 16, 2012, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter, finding that Respondent violated the Chicago Human Rights Ordinance. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, the Commission orders Respondent:

1. To pay to Complainant compensatory damages in the amount of $11,946.45, plus interest on that amount from June 7, 2006, in accordance with Commission Regulation 240.700.

2. To pay a fine to the City of Chicago in the amount of $500.[1]

3. To pay Complainant's reasonable attorney fees and associated costs as determined pursuant to the procedure described below.

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

[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. See Reg. 250.210. Enforcement procedures for failure to comply are stated in Reg. 250.220.

Payments of damages and interest are to be made directly to Complainant. **Payments of fines** are to be made by check or money order payable to City of Chicago, delivered to the Commission at the above address, to the attention of the Deputy Commissioner for Adjudication and including a reference to this case name and number.

Interest on damages is calculated pursuant to Reg. 240.700, at the bank prime loan rate, as published by the Board of Governors of the Federal Reserve System in its publication entitled "Federal Reserve Statistical Release H.15 (519) Selected Interest Rates." The interest rate used shall be adjusted quarterly from the date of violation based on the rates in the Federal Reserve Statistical Release. Interest shall be calculated on a daily basis starting from the date of the violation and shall be compounded annually.

Cook County according to applicable law. However, because attorney fee proceedings are now pending, such a petition cannot be filed until after issuance of the Final Order concerning those fees.

Attorney Fee Procedure

Pursuant to Reg. 240.630, Complainant may now file with the Commission and serve on all other parties and the hearing officer a petition for attorney fees and/or costs as specified in Reg. 240.630(a). Any petition must be served and filed on or before **July 18, 2012**. Any response to such petition must be filed and served on or before **August 1, 2012**. Replies will be permitted only on leave of the hearing officer. A party may move for an extension of time to file and serve any of the above items pursuant to the provisions of Reg. 210.320. The Commission will rule according to the procedure in Reg. 240.630 (b) and (c).

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FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

Complainant Heidi K. Sleper filed this Complaint on December 1, 2006, alleging discrimination based on sex when she was fired from her employment as an attorney on June 7, 2006, prior to her scheduled return to work following a pregnancy leave of absence. Respondent, Maduff & Maduff LLC, maintains that Sleper was discharged because of poor attitude and low billable hours.

After an investigation, the Commission on Human Relations entered an Order Finding Substantial Evidence on June 27, 2008. Thereafter, a public administrative hearing was held on October 5-6, 2010, and February 17-18, 2011.[1] Following the hearing the parties filed post-hearing briefs.[2] Respondent's post-hearing brief included a motion seeking sanctions, which was followed by Complainant's Motion to Strike and Response to Motion for Sanctions. Respondent then filed a Response to Motion to Strike and Reply in Support of Motion for Sanctions.

On March 6, 2012, the hearing officer issued her Recommended Decision on Liability as well as a separate Order denying Complainant's Motion for Sanctions and Motion to Strike and Respondent's Motion for Sanctions. Both Complainant and Respondent filed objections to the hearing officer's recommended ruling.[3] Neither party has requested review of any interlocutory

1 The transcripts are referred to as follows: Tr. I is October 5, 2010, Tr. II is October 6, 2010, Tr. III is February 17, 2011, and Tr. IV is February 18, 2011.

2 Complainant attached both the Complaint and the Investigation Summary. Pursuant to Regulation 240.510, in making a final ruling the Commission may only consider the official hearing record, which specifically excludes Investigation Summaries unless introduced and admitted into evidence at the hearing. Thus the hearing officer correctly disregarded the Investigation Summary (which is hearsay) and the Commission has not considered it in reaching this decision. Respondent, in turn, moved to sanction Complainant for the production of the time record created by one of Complainant's co-workers--Compl. Exh. 4. However, the exhibit was admitted during the hearing without objection; Respondent's motion is thus untimely and was correctly denied.

3 Complainant filed corrected objections on May 2, 2012, accompanied by a motion seeking leave to do so, to ensure that all pages were received. Leave is granted; both sets of objections are made part of the hearing record.

decision.

III. FINDINGS OF FACT

1. Respondent hired complainant, Heidi Sleper, on August 8, 2005, as a law clerk, with the understanding that she would become an associate when she passed the bar. Tr. I, at 43. The background to Sleper's hiring does not appear to be in dispute. Parties' Stipulations of Fact and Law ("Jt. Stip."), at A 4, 5.

2. Sleper was a law student at the University of Nebraska Law School and found the law firm of Maduff, Medina & Maduff[4] in Chicago through an Internet search. Tr. I, at 33. Sleper sent a cover letter and resume with an inquiry about any open positions. Tr. I, at 33. Jt. Ex. 1; Jt. Stip., at A 2, 3. Maduff & Maduff is an Illinois law firm, which focuses on plaintiffs'-side employment law. Jt. Stip., at A 1.

3. According to Michael Maduff ("Michael") and his son, Aaron Maduff ("Aaron"), the law firm was not hiring. Tr. III, at 345; Tr. IV, at 512. At the time, the firm was comprised of two associates, Janice Pintar, a third year associate, and Karen Doran, a first year associate; the two equity partners, Aaron Maduff and his father Michael Maduff; and Deanne Medina, an income partner. Tr. III, at 334, 345-348. The firm retained Darryl Sulkin as its Chief Financial Officer. Tr. IV, at 89.

4. Aaron Maduff was enticed by Sleper's letter and resume and arranged to have Sleper come to Chicago for an interview. Tr. III, at 346. Sleper met with Medina, Doran, and Aaron for the interview. Sleper also may have met with Sulkin. Tr. I, at 39. According to Medina, she felt that the firm did not need another associate. Medina was concerned about having enough clients to justify hiring a new attorney. Tr. III, at 345. Sulkin also was against hiring Sleper: he believed Sleper was not a good fit, "had a chip on her shoulder." Also, because the primary reason for considering Sleper was "the fact that Deanne, an experienced lawyer, was going out on maternity leave," Sulkin believed it was a mistake to hire someone straight out of law school. Tr. IV, at 92.

5. In spite of Medina's and Sulkin's reservations, Sleper was hired. According to Sleper, she started working for Respondent on August 8, 2005, after she moved to Chicago and took the Illinois bar exam. Tr. I, at 40; Jt. Stip., at A 4. On August 8, 2005, Sleper signed an acknowledgement of receipt of the Maduff, Medina & Maduff Employee Manual. Jt. Ex. 4.

6. Sleper worked as a law clerk until she was sworn in as an attorney in November. At that point, Sleper stated, she was to receive a $1,500 to $2,000 raise, and her salary was to increase to $45,000 per year when she started as an associate. Tr. I, at 103.

7. Early in September, Sleper found out she was pregnant. Tr. I, at 64. Sleper first talked with the two associates, Doran and Pintar, and then Medina. Tr. I, at 64.

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4 Respondent was Maduff, Medina & Maduff throughout the time period of events in the Complaint. Medina left the firm in the fall of 2006 to start her own firm, and Respondent became Maduff & Maduff.

8. Medina had her second child on August 2, 2005, and was on maternity leave when Sleper started. However, Medina stated that she while she still was on maternity leave she would go into the office at least twice a month to do the billing. Tr. III, at 367, 387. Medina related that on one of her billing visits in early September, Sleper came to her office. Sleper looked "upset," and "nervous," and said to Medina, "I need to talk to you." Tr. III, at 394.

9. Sleper told Medina that she had just found out she was pregnant, and that she was afraid to tell Aaron. Tr. III, at 394. Sleper claimed that Medina told her "a cautionary tale of when Deanne had her first daughter and Aaron's comment was how could you do this to me. So Deanne warned [Sleper] that [Aaron] could see [the pregnancy] as something [that] affected him." Tr. I, at 66, 151.

10. Sleper asked Medina to come with her to tell Aaron the news and Medina agreed. Tr. I, at 64. Sleper stated she was concerned that she didn't want [the pregnancy] "to be a reflection on [her] commitment to [her] job," and also, she believed that appearances mattered to Aaron. Tr. I, at 65.

11. Sleper and Medina went to Aaron's office and Sleper told him she was pregnant. Sleper stated that it was unexpected, because prior attempts to get pregnant had failed, so she and her husband had "kind of given up." Tr. I, at 66. Sleper did not recall what Aaron said exactly, but "I believe he said this is a family firm." *Id.* Sleper was relieved that Aaron seemed to take it fine. Tr. I, 152.

12. Sleper asked Aaron at one point not to mention her pregnancy too much. "Like I said, I told him early on. I wanted to make sure that I was up front with them, that there were no questions to if I was ill or anything, what was going on. But it was early on. There was still a risk that something could happen. Aaron had mentioned it to a consulting attorney that we were working with on a case. And he had mentioned it to opposing Counsel on a case that we were working on when we were on a phone conference with them. And I asked him not to do that because, one, it wasn't his news to share. Two, it wasn't relevant to what we were working on, and it was early on. I wanted to kind of keep the circle of people that knew about it to those who knew me." Tr. I, at 67.

13. According to Sleper, things became tense shortly after she told Aaron she was pregnant. Tr. I, at 69.

14. Early in September, after Sleper announced her pregnancy, Sleper went to a court hearing with Aaron. Sleper believed there was a three way conversation with opposing counsel after court and she introduced herself and "maybe said something about the case, but that was the extent of my interaction." Tr. I, at 70. Aaron took Sleper to breakfast "and said that while he could see promise in me that I was going to be a good attorney and that I was going to be very aggressive with opposing counsel. I needed to watch myself and make sure I wasn't aggressive with him. And I honestly had no idea what he was referring to." *Id.*

15. Aaron described Sleper as disrespectful. Tr. III, at 523. Aaron testified that Sleper continued to be critical of him in front of others, particularly at staff meetings. Sometimes Sleper would challenge him directly, at other times with silent eye rolling when Aaron would say something. Tr. III, at 523; Tr. IV, 23-24.

16. Aaron testified that relatively quickly "I began to see an attitude, something that is probably what Darryl was referring to as a chip on her shoulder. ... She was not good at taking direction. I looked at what she did, at work she did, and I would say you need to do this, or this is where you can improve it, and she would argue with me. I would tell her that we need to file a certain kind of motion. For example, I think I wanted to do a summary judgment motion on a declaratory judgment action on a noncompete. She said you can't do that. I was getting pushed back from it, and I was getting some rolling of the eyes." Tr. III, at 522-23.

17. Respondent held weekly staff meetings, which were "brainstorming sessions," in which associates and partners "expressed [their]opinions pretty openly" about potential and current cases and litigation strategy. Tr. I, at 71, 76; Tr. II, at 430. Sleper believed that if she expressed "an opposing view of where I thought a case should go, then I was told [by Aaron] that I wasn't a team player or that I was too aggressive." Tr. I, at 71.

18. According to Madeline Engel, called by Complainant as a rebuttal witness, who worked as a law clerk at Maduff at the relevant time, it was "a fairly common occurrence" for associates to challenge Aaron's opinions. Tr. IV, at 118. Attorneys disagreed with each other. Tr. III, at 379.

19. Karen Doran, a young associate, testified that "our firm had a --- the vibe in the firm, it wasn't a formal atmosphere. We would yell at each other. It wasn't like screaming, it wasn't mean." Tr. III, at 430. Doran testified that when it would happen with Aaron, he usually just let it go, he didn't react too much. Tr. III, at 431. There was other testimony that all of the associates – including Pintar,[5] Doran, and Sleper, regularly rolled their eyes at Aaron, or got "mouthy" with him or Michael. Tr. I, at 77-78; Tr. II, at 267-68; Tr. III, at 430, Tr. IV, at 29, 117-18, 120-21.

20. Sleper testified that at one point, although the time frame was not clear, she challenged Aaron on a point of criminal law. Tr. I, at 73. Later, Aaron told her privately that she had to back off and not challenge him in front of others. Tr. I, at 74.

21. In November 2005, Sleper passed the bar and was sworn in as a licensed attorney. At that point, Sleper was made an associate of the firm. Tr. I, at 103.

22. In November, shortly after passing the bar, Aaron and Medina met with Sleper. The parties dispute whether this was a formal counseling (Respondent's version), or whether the meeting was about Sleper and "whether [she] was happy there" (Complainant's version). Tr. I, at 138. Michael believed that Medina was in favor of giving Sleper a written Personal Improvement Plan at that point. Tr. IV, at 101. Medina testified that this counseling session was about Sleper's attitude towards a support staff member and that Sleper was upset and crying. Tr. III, at 440-41.

23. Sleper's testimony that "I really didn't get the indication from the meeting that they weren't happy. I didn't think that it was performance based or anything like that" was not credible. Sleper admits that Aaron said that he felt "[she] had a bad attitude." Sleper also testified that she went to Medina immediately after this meeting and complained that she was having a hard time

5 Pintar also was the only other associate who had taken a health-related leave. In 2005, Pintar went out on a six-week medical leave for a sinus condition. Tr. III, at 383.

because Aaron was making her life miserable. Tr. I, at 132.

24. Following the November meeting, Aaron believed he saw positive changes in Sleper's conduct until late in 2005. Aaron directed Sleper not to raise a discussion of RICO issues during a meeting with other attorneys. "Heidi was starting to give comments and advice about RICO which, frankly, was wrong. And I asked her not do that because I wanted to leave that to Mr. R. B. who knew RICO and he could speak to it generally. She told me that she knew this just fine, that I was wrong and that she was a licensed attorney, and she could speak to this stuff." Tr. IV, at 11-12. Complainant denied that she tried to give advice about RICO issues during this meeting. Tr. IV, at 125-126.

25. Aaron acknowledged that he was not good at discipline. "There was some discussion afterwards [after the RICO meeting]. She was upset with me with the way I treated her. I was uncomfortable. I found the situation awkward. I was not the disciplinarian, I was the lawyer. And honestly I probably should have been stronger or did it more directly, but I did what I could at the time, and she was angry with me." Tr. IV, 12-13.

26. Aaron also testified that there was an important meeting on a case, in January 2006. Sleper failed to tell Aaron that Medina had intended to participate in the meeting. Aaron testified that Medina was pretty upset and that he tried to pour oil on the waters. Tr. IV, at 14. Medina admitted that she was upset by the incident. Tr. III, at 466; Resp. Ex. 1.

27. Medina also criticized Sleper for failing to bill clients for work that was done. However, Medina testified that in her experience it was not unusual for new attorneys to "no charge" for work done. Tr. III, at 466.

28. Darryl Sulkin also counseled Sleper about her billing. Tr. IV, at 94. Sleper responded to Sulkin's comments that "the clients can't really afford to pay us. So I really don't want to bill them." Tr. IV, at 94. Sulkin was upset with Sleper's response and told her that if she did not bill the hours, the clients were "definitely not going to pay us, and we can't pay you if we're not getting paid." Tr. IV, at 94.

29. Also in January 2006, Sleper testified that Aaron told her, while discussing an upcoming court appearance in Waukegan, that "I didn't need to know what I was doing, I just needed to walk in to court with my big, bulging belly, and the judge would be sympathetic to me." Tr. I, at 79. In its Response, Respondent denied having a problem with Sleper looking pregnant in court, and stated, "If Respondent had any concern about how Complainant looked in court while she was pregnant (which is simply not true; in some cases a judge or jury may actually be more sympathetic to a pregnant attorney) she would have been terminated during her pregnancy. But she was not terminated until after the birth of her child when she was no longer pregnant and would not look pregnant in court." Jt. Exh. 3, at 2.

30. Michael admitted that in his opinion pregnant woman could look sympathetic to a judge or jury, and told the "Joan Hall" story. Tr. II, at 232-233. Michael testified that in 1968 he was a defendant in a case, and was represented by Tom Sullivan and Joan Hall, an associate at the firm. At the time Joan Hall was very, very pregnant. "[E]very time – there was a panel of I think 12 were hearing the case, every time that we had something that had to be handed out to the panel, Tom had Joan go up and hand this stuff out to the panel, and it seemed – it appeared to me to be a

pretty effective ploy on his part, because it did appear to gain sympathy from the panel...." Michael testified that he had told this story to Aaron, and has told it to many people. Tr. II, at 233.

31. In February 2006, Michael was preparing to testify as an expert witness in a commodity futures case (the "Baghdadi" case). Tr. IV, at 71-72. Michael asked Sleper to help with a spreadsheet. Sleper told Michael that "what I was doing was wrong, and I responded to her that you are not going to talk to me that way. I'm old enough to be your father. At that point, I just pushed her aside and did the work myself."

32. Prior to this incident, Michael testified that he did not have an opinion about Sleper's remaining employed at the firm. Michael stated, "That was a watershed event. After that moment, she was history. She was absolutely history" with the firm, and that if it was his concern, then that's the way it was going to be. Tr. IV, at 74.

33. Aaron stated that Michael blew up at him over Sleper's performance and her statement that she was not hired to do this stuff. Michael was insistent: "I'm the boss, I write the paychecks, tell her what to do." Tr. IV, at 32.

34. Aaron believed Michael was at the point where he wanted to let Sleper go. Aaron was not comfortable with that decision, Sleper was pregnant and he wanted her to have insurance. Tr. IV, at 33, 34. Aaron believed Medina also was leaning towards letting her go.

35. At the end of March 2006, Aaron had observed a criminal trial in a potential police misconduct case in Peoria. Tr. IV, at 24-25. The following day, Aaron was describing what happened to other attorneys when Sleper walked by, interrupted Aaron, and said, "When you're done telling stories I need to see you." Aaron was speechless. Tr. IV, at 26.

36. Medina did not recall the exact Peoria police incident, but did recall after the hallway incident "[t]hat was – it was a couple of times things like that, and it was – there were other attorneys it would happen with too, but I had said you need to not let employees, or Heidi, or whoever, talk to you in that way because when they show you disrespect and you don't do anything about it, then you give permission to everyone else to treat you that way, and you are not seen as a leader." Tr. III, at 469-470.

37. Aaron testified that although the decision [to terminate Sleper] was probably a *fait accompli* by April 25, 2006, Aaron recalled there were other conversations between Sulkin and Michael on the telephone, Medina, or some permutation of the group. Tr. IV, at 43.

38. However, Aaron admitted that he did not write Sleper up after the November meeting with Medina, or after the Techtronic incident, or after the Peoria Police meeting. Tr. IV, at 58-59.

39. On April 25, 2006, Sleper had her baby. Tr. I, at 86. Sleper began her maternity leave thereafter. Jt. Stip., at A 10.

40. Shortly after Sleper started her maternity leave, Aaron received a complaint from a potential client ("Consultation A") who had been interviewed by Sleper. After the phone call with the potential client, who complained that Sleper had been rude, he went into Medina's office and told her he would give the potential client a free consultation. Medina told him he needed to

document this, and so he sent the e-mail to Darryl and Deanne. R. Ex. 2. Aaron testified that it was this conversation that probably led him to the emotional acceptance that they were going to terminate Sleper. Tr. IV, at 40-41, 42.

41. Sleper related that she began calling Aaron in late May or early June regarding her return to work. Tr. I, at 87.

42. On June 7, 2006, Sleper received a telephone call from Aaron and Darryl Sulkin telling her that she was fired. Tr. I, at 88, Jt. Stip., at A 11.

43. Sleper testified that she was "in complete shock." Tr. I, at 88.

44. Aaron recalled that he called Sulkin first, because he was not comfortable making the telephone call. Aaron had previously had the responsibility of firing one of Michael's secretaries and was unable to get the words out. Darryl told Aaron that you have to rip the band-aid off, she's not going to be returning. Aaron believed it may have been Sulkin who gave him the words "not a good fit." Tr. IV, at 49-50.

45. Aaron stated that after he had Sleper on the line, he told her the firm decided she wouldn't be coming back, because "she was not a good fit." Aaron stated that Sleper challenged him, and he felt uncomfortable; and that Sulkin may have intervened. Neither Aaron nor Sleper testified that lack of billable hours was raised as a reason for the termination during Aaron's telephone conversation with Sleper.

46. Aaron testified that neither Complainant's gender nor her pregnancy was a factor in the decision to discharge her. Tr. IV, at 56-57. Michael also denied that sex was a factor in the discharge decision. Tr. IV, at 78-80.

47. Medina testified that she did not want to fire Complainant because she believed there were some issues that could possibly have been resolved. Medina stated that she did not want to be the one who told Sleper she was fired. Tr. III, at 353; Tr. IV, at 77. Medina believed that if there were interpersonal problems, they could correct them with a Performance Improvement Plan ("PIP") when Sleper returned from maternity leave. Tr. III, at 484. However, Medina admitted that one of reasons underlying the firm's decision to discharge Complainant probably was episodes of disrespect. Tr. III, at 471.

48. At some point during February 2006, Medina advised the firm that she was expecting her third child. Tr. III, at 390. Medina said she did not take maternity leave after the birth of this child[6] because she left the practice (to start her own firm with Karen Doran). Tr. III, at 488.

49. The Employee Manual had a provision for Progressive Discipline, which provided for "the establishment of a [PIP] clearly outlining expected improvements to be made." Jt. Ex. 4, at 12.

50. Also pursuant to the Employee Manual, Respondent required "1500 billable hours

6 Medina did take maternity leave after the birth of her first child (Tr. III, at 487) and after her second child and was compensated for half of the leave for the second child at her request. (Tr. III, at 488).

per year, an average of 125 hours per month, per associate attorney." Jt. Ex. 4, at 18.

51. The parties offered three different billing reports for Sleper indicating for the period July 14, 2005[7] to April 21, 2006: 443.16 billable, 61.21 non-billable, total 504.37 hours (Jt. Ex. 3); 653.44 billable, 181.02 non-billable, total 834.46 (Jt. Ex. 5); and 567.68 billable, 174.10 non-billable, total 741.78 (C. Ex. 4).[8] For the same period, Doran billed: 663.42 billable, 357.90 non-billable, total 1021.32 (Jt. Ex. 6).

52. Michael explained that the discrepancy between Jt. Ex. 3 and Jt. Ex. 5 may have been due to having an expert do the calculations from the firm's Time Slips program. The result of the discrepancy shows that Complainant appeared to have billed significantly more hours on the official time record than Respondent presented to the Commission, in its Response.

53. While Sleper was on maternity leave, Pintar moved to Pittsburgh with her husband. Tr. III, at 407. Apparently, Pintar continued to work for Respondent for some time after she moved.

54. The firm began a search for Pintar's replacement. According to Aaron, initially they weren't going to replace her, but began a search when she announced she was leaving. Tr. IV, at 54. There were four finalists, including a woman from Marquette that was Aaron's choice; Deanna and Karen were fond of a fellow from George Mason. Aaron testified that they extended an offer to K.H., the woman from Marquette; however she wanted more money than they could offer. They went to the next candidate, Jason Johnson. Tr. IV, at 54-55. Aaron and Sulkin took Jason to lunch and made the decision to hire him. This was in April while Sleper still was on maternity leave. Tr. IV, at 57.

55. Jason Johnson began work in June or July 2006. Johnson was the first male associate hired by the firm. Thereafter, the firm hired Travis Goslin. Tr. III, at 410.

56. Medina testified that, around the time that Pintar and Sleper left, Aaron told Medina that the firm was through hiring women because "they get pregnant and go off on maternity leave." Tr. III, at 413. Medina told Aaron this was an outrage, but he said it was Sulkin's idea. Tr. III, at 413. Madeline Engel also testified that Aaron told her that Darryl had pointed out to him that "there were certain kinds of people that are not disposed to become pregnant" around the time that Travis

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7 Neither party offered an explanation why Complainant's time records started on July 14, 2005, although her actual hire date was not until August 8, 2005. In any case, the time entries include only a notation for July 14, 2005, with no time billed, so that the there does not appear to be any error in the calculation of Complainant's actual hours. However, because Doran was employed during the period from July 14 to August 8, there is a slight disparity in comparing Doran's hours to Complainant's hours.

8 Both sides accuse the other of less than reputable dealings. Complainant contends that Respondent failed to timely produce the time records through discovery, which show Complainant billing significantly more than the hours Respondent reflected in Jt. Ex. 3. In turn, Respondent contends that Complainant should not have asked her co-worker, Doran, to remove confidential billing records as reflected in Compl. Ex. 4, citing *Jackson v. Microsoft*, 211 F.R.D. 423, 425 (W.D.Wash., February 11, 2002); *Herrera v. The Clipper Group*, No. 90-0560 1998 WL 229499 at * 2 (S.D.N.Y. May 6, 1998); and *Weaver v. Zenimax Media*, No. 238840, 2004 WL 5235477 * 15 (Md. Cir. Ct. Sept. 23, 2004). Thus, neither side comes to the dispute regarding which record to use as accurate with totally clean hands. However, to extent that Respondent has moved to sanction Complainant for the production of Compl. Exhibit 4, such motion was not raised during the hearing and was denied by the hearing officer.

Goslin was hired. Tr. IV, at 122-23.

57. Michael denied making any statement about men not getting pregnant. Tr. IV, at 88; Sulkin also denied making such statements, Tr. IV, at 107, 108, 111.

58. In July 2006, Aaron was questioning potential jurors for a trial, and one young woman disclosed that she was newly pregnant. Tr. III, at 401. Medina testified that Aaron asked the young woman something like "do you think you can really do this, is it really fair to your fellow jurors?" Tr. III, at 401. Medina testified that she confronted Aaron in the hallway during recess about the comment and, "Everybody [at the firm] was shocked about [the voir dire]." Tr. III, at 403.

59. Sleper testified that she began looking for work immediately after her termination, and that after working some legal temporary work, found an associate position with a new firm in November 2007. Tr. I, at 106-07.

60. On August 17, 2006, during a heated exchange between Michael and Doran, Doran gave notice of her intent to leave the firm at some point in the future. Medina testified that Michael told Doran she could leave that day. Tr. III, at 455. Medina intervened to calm the situation down. One of the issues raised was the Filanovich trial. Medina was unclear whether Michael was saying to Doran that "you're fired," or that "you can leave today." However, Doran was not sent home that day.

61. Doran testified that she left the firm in September. Tr. II, at 298-299. She testified that Michael took her out to lunch and told her there was a problem with the insurance, which was due to expire on September 24th, and the firm did not want to carry her for another year, since she was leaving at the end of the month.

62. The hearing officer found the Sleper, Doran, Medina, and Engel's testimony generally to be credible as far as their statements regarding the general demeanor and interaction of the attorneys informally and at staff meetings.

63. The hearing officer found the testimony regarding whether billable hours was a factor in the discharge decision to be less than credible. In their Response, Respondent identified lack of billable hours as one of the reasons it terminated Complainant. Jt. Exh. 3. However, Michael testified credibly that as far as he was concerned, Complainant was "history" after the February 2006 incident. At that time, no mention was made of Complainant's billable hours. In addition, there was a discrepancy in what hours Complainant actually billed, and the expert report showed that Complainant's hours was not much less than Doran's hours.

64. The hearing officer found Sleper and Doran[9] testified credibly that they both were disrespectful to Aaron and Michael. Sleper admitted to rolling her eyes , as did Doran, during staff meetings.

65. The hearing officer found that Medina's and Engel's testimony regarding whom the firm would not hire was credible. Medina testified that Aaron made the statement to her after they

9 Doran's testimony was found generally credible, although it was clear that she was angry with Respondent, and had filed a complaint against Respondent in another forum.

had left a lunch engagement, and that it stuck in her mind because she also was pregnant at the time.

66. However, the hearing officer found that Sleper's testimony that Aaron said she did not look as disgusting as his sister did [while she was pregnant] was not as credible, because Aaron testified credibly that he had been concerned about his sister because of her health challenges, and whatever statement was made was most likely an expression of empathy and not an insult.

67. The hearing officer found that Deanne Medina was credible in her testimony, based on her tone and demeanor, that she did not recommend that Complainant be discharged at the end of her maternity leave. Moreover, her explanation for why she wanted Aaron to document the incident with Consultation A, that it could be addressed when Complainant returned to work, was credible.

IV. CONCLUSIONS OF LAW

This case arises under Section 2-160-030 of the Chicago Human Rights Ordinance ("CHRO"), which provides: "No person shall directly or indirectly discriminate against any individual in hiring...discharge...or any other term or condition of employment because of the individual's ...sex."

Commission Regulations interpreting the CHRO include specific provisions relating to pregnancy and childbirth. CCHR Reg. 335.100 states:

> A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy, childbirth or related medical conditions is a *prima facie* violation of the [CHRO]. It shall also be a *prima facie* violation of the [CHRO] for an employer to discharge an employee because she becomes pregnant.

CCHR Reg. 335.110 explains the treatment of temporary disabilities caused by pregnancy or childbirth under the CHRO:

> Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy, childbirth or related medical conditions on the same terms and conditions as they are applied to other disabilities.

CCHR Reg. 335.120 further explains the need for equal treatment of leave for pregnancy-related temporary disabilities:

> Temporary disabilities resulting from pregnancy, miscarriage, abortion, childbirth and recovery therefrom must be considered by an employer offering leaves for other temporary disabilities to be a justification for a leave of absence for a female employee. The terms and conditions of pregnancy related disability leaves of absence may not be more restrictive, and need not be more generous, than those applied to disability leaves for other purposes.

This is a disparate treatment case. Complainant must show by a preponderance of evidence that she was terminated intentionally, because of her pregnancy or pregnancy-related leave. See, e.g.,

Poole v. Perry and Associates, CCHR No. 02-E-161 (Feb. 15, 2006), citing *Barnes v. Page*, CCHR No. 92-E-1 (Sep. 23, 1993).

Complainant may prove her case through direct evidence of discrimination because of pregnancy, or through circumstantial evidence including the familiar indirect, burden-shifting method articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-03 (1973). Under the *McDonnell Douglas* standard, a complainant must prove as a *prima facie* case that (1) she was pregnant; (2) her job performance was satisfactory; (3) she was terminated; and (4) she was replaced by a non-pregnant person. *Poole, supra*; citing *McDonnell Douglas, supra*; *Hackett v. Gunderson*, 2004 U.S. Dist. Lexis 21919, at 4 (N.D. Ill. 2004). Assuming the complainant establishes the *prima facie* case, a respondent must articulate a legitimate business reason for the adverse action. Then, if the respondent meets its burden of production, the complainant must present competent evidence to support an inference that the proffered nondiscriminatory explanation was pretextual for intentional discrimination. *Poole, supra*; *Walton v. Chicago Department of Streets and Sanitation*, CCHR No. 95-E-271 (May 17, 2000).

In weighing the evidence, the hearing officer must determine the credibility of witnesses and may disregard, in whole or in part, testimony of any witness found not credible. *Poole, supra*; *Claudio v. Chicago Baking Co.*, CCHR No. 99-E-76 (July 17, 2002). In making credibility determinations, the hearing officer may consider, among other things, the witnesses' bias and demeanor. *Poole, supra.* Whether a statement indicates a discriminatory motive is left with the trier of fact. *McGavock v. Burchett*, 95-H-22 (July 17, 1996).

The Commission reviews a hearing officer's proposed findings of fact pursuant to Section 2-120-510(l) of the Chicago Municipal Code, which provides in pertinent part: "The commission shall adopt the findings of fact recommended by a hearing officer...if the recommended findings are not contrary to the evidence presented at the hearing." This standard of review takes into account that the hearing officer has had the opportunity to observe the testimony and demeanor of witnesses. *Poole, supra*; see also *McGee v. Cichon*, CCHR No. 96-H-26 (Dec. 30, 1997). The Commission will not re-weigh a hearing officer's recommended findings of fact unless they are against the manifest weight of the evidence. *Stovall v. Metroplex et al.*, CCHR No. 94-H-87 (Oct. 16, 1996); *Wiles v. The Woodlawn Organization et al.*, CCHR No. 96-H-1 (Mar. 17, 1999).

A. Direct Evidence

Complainant contends that she has adduced both direct and indirect evidence of intentional pregnancy-related sex discrimination. The hearing officer found, and the Commission agrees, that Complainant has not proved her case by direct evidence.

Direct evidence is evidence that is an acknowledgement of discriminatory intent by the employer or its agents. *Johnson v. Anthony Gowder Designs, Inc.*, CCHR No. 05-E-17 (June 16, 2010); *Chimpoulis and Richardson v. Cove Lounge*, CCHR No. 97-E-123/127 (Sept. 20, 2000); see also *Mojica v. Gannett Co.*, 7 F.3d 552,561 (7th Cir. 1991)(*en banc*). To prove discrimination by direct evidence in a disparate treatment case, a complainant may rely on statements by decision-makers which show that the adverse employment decision was taken because of complainant's protected status. *Chimpoulis and Richardson, supra*, at 8. Where there is direct evidence of discrimination, there is no need to resort to inferences. *Id.*

In order for Sleper to prove a violation of the Human Rights Ordinance by direct evidence, she would need to show that the decision-makers at Maduff and Maduff made explicit statements that it was discharging her because of her pregnancy and subsequent maternity leave. Complainant points to two examples of what she contends is direct evidence. Compl. Post Hrg. Memo, at 15. First, she points to the following statement Respondent made in support of its denial that it had a problem with Sleper looking pregnant in court:

> "If Respondent had any concern about how Complainant looked in court while she was pregnant (which is simply not true; in some cases a judge or jury may actually be more sympathetic to a pregnant attorney) she would have been terminated during her pregnancy. But she was not terminated until after the birth of her child when she was no longer pregnant and would not look pregnant in court." Response of Maduff and Maduff, LLC, Jt. Ex. 3, at 2.

Although this statement (and the Joan Hall story) may be evidence of stereotypical thinking regarding the appearance of pregnant women, the statements do not rise to the level of a *direct* admission of discriminatory intent. [10]

Second, Complainant points to Medina's testimony that Aaron told her the firm would no longer hire women because they get pregnant and go on leave. Tr. III, at 413. Although this statement provides evidence of discriminatory animus supporting a finding based on circumstantial evidence, it is not direct evidence that Respondent *discharged Sleper* because of her pregnancy or subsequent maternity leave. As the Commission said in *Johnson*, "[w]hile stereotypical comments may be evidence of [sex] discrimination, unless the remarks upon which [the Complainant] relies were related to the employment decision in question, they cannot be evidence of a discriminatory adverse employment decision." *Johnson v. Anthony Gowder Designs, Inc., supra* at 14 (citations omitted).

Thus Complainant has not established discriminatory intent by means of direct evidence. It becomes necessary to consider whether the circumstantial evidence in this case establishes the requisite discriminatory intent.

B. "Direct" Circumstantial Evidence—Convincing Mosaic

Complainant points to statements which, she argues, rise to the level of "direct" circumstantial evidence. She cites a line of federal cases that support the proposition that a party may point to a "convincing mosaic" of circumstantial evidence from which the fact-finder can infer the intent to discriminate. *Greenwell v. Zimmer, Inc.*, 2010 U.S. Dist. LEXIS 29457, * 12 (N.D. Ind.

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10 The parties dispute the role Medina played as one of the decision-makers. Medina testified as one of Complainant's witnesses, stating that she was not in favor of discharging her until after the firm gave her the chance to correct her attitude through a PIP. Tr. III, at 351-359. Aaron testified that he believed Medina was in favor of letting Sleper go and said his concern "was to keep Deanna happy, he needed her as a managing partner." Aaron concluded that what would make Deanne happy was to let Heidi go." Tr. IV, at 36-37. It may be that Medina was primarily concerned that the firm follow the progressive discipline policy set out in the Employee Handbook, but Medina's testimony that she did not recommend Sleper be discharged while on maternity leave was found credible by the hearing officer. Neither Aaron nor Michael offered any reason why they did not follow the Handbook's guidelines. Evidence of an employer's failure to follow its own policies may lead to an inference of discrimination, but is not considered direct evidence of discriminatory intent.

2010), citing *Phelan v. Cook County*, 463 F. 3d 773, 770 (7th Cir. 2006). Because the circumstantial evidence Complainant points to as a "convincing mosaic" is also the circumstantial evidence she cites pursuant to the *McDonnell Douglas* indirect evidence method, the evidence may be examined under both approaches.

The court in *Greenwell* explained that three types of circumstantial evidence can be utilized to show a "convincing mosaic" sufficient to support an inference of intentional discrimination. *Petts v. Rockledge Furniture, LLC*, 534 F.3d 715, 720 (7th Cir. 2008); *Troupe v. May Dep't Stores Co.*, 20 F.3d 734, 735 (7th Cir. 1994). First, a plaintiff may present evidence of suspicious timing, ambiguous oral or written statements, behavior toward or comments directed at other employees in the protected group, and other "bits and pieces" from which an inference of discriminatory intent might be drawn. *Petts* at 721; *Troupe* at 736. Second, a plaintiff may have evidence (whether or not rigorously statistical) demonstrating that similarly situated employees outside the plaintiff's protected class received systematically better treatment. *Petts* at 721; *Troupe* at 736. Third, a plaintiff might show that she was qualified for the job but was passed over for or replaced by a similarly situated person not in the protected class, and that the employer's stated reason for the difference in treatment is unworthy of belief, a mere pretext for discrimination. *Petts* at 721; *Troupe* at 736. Regardless of the category of circumstantial evidence brought forward by a plaintiff, the evidence must point directly to a discriminatory reason for the employer's action. *Petts*, 534 F.3d at 720." *Greenwell* at 12.

Complainant did not cite any decisions of this Commission applying a "direct" circumstantial evidence or "convincing mosaic" standard in an employment context. In general, this Commission has looked to the *McDonnell Douglas* approach when evaluating circumstantial evidence. However, in the public accommodations area the Commission has cited with approval *Furnco Construction Co. v. Waters*, 438 U.S. 567 at 577, 98 S.Ct. 2943 at 2949, 56 L.Ed.1d 947 (1978) as explaining that the *McDonnell Douglas* method was "never intended to be rigid, mechanized, or ritualistic. Rather it is merely a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination." *Jenkins v. Artists' Restaurant*, CCHR No. 90-PA-14 (Aug. 14, 1991); *Blakemore v. Dominick's Finer Foods*, CCHR No. 01-P-51 (Oct. 18, 2006). In both *Jenkins* and *Blakemore*, the Commission found discriminatory intent based on the totality of circumstances of each case: in *Jenkins*, an African-American complainant was asked to leave a restaurant for the purported reason that he was "suspicious." In *Blakemore*, an African-American complainant was closely followed by security personnel in a store, contrary to store security policies and with no evidence that could support a non-discriminatory basis for the guard's conduct. In appropriate cases, then, the Commission can find discrimination based on an analysis of circumstantial evidence which does not strictly follow the *McDonnell Douglas* formula, including the approach used in *Greenwell, Petts,* and *Troupe*.

Complainant contends that she has adduced circumstantial evidence that points directly to discriminatory intent. She cites several statements by Aaron as the first type of direct circumstantial evidence: his reversal of opinion about the merits of her "aggressiveness" after learning she was pregnant, statements that the firm would no longer hire women of childbearing age, the statement that Complainant would not need to know what she was doing once the court saw her big belly, and a statement in a staff meeting that everyone hated Complainant for taking maternity leave. Complainant's Post-Hearing Memorandum, at 18-29.

Complainant also cites the second type of evidence: that similarly situated employees were

treated more favorably. Specifically, Respondent retained as employees Janice Pintar and Karen Doran, two female associates who had not been pregnant. Although Doran had engaged in similar argumentative conduct but was not terminated[11] and Pintar took a six-week leave for a sinus infection but was not terminated.[12]

Finally, Complainant cites the third type of evidence: that she was replaced by a male. The hearing officer found that Respondent did not credibly dispute this contention, although Respondent continues to argue that Complainant was not replaced by a male. This issue is further discussed below.

- **Evidence of Discriminatory Intent**

The hearing officer found that the hiring of male associates in combination with Aaron's statements about not hiring more women of childbearing age supported an inference of discriminatory intent using the method set forth in *Greenwell.* The Commission adopts this finding as consistent with the manifest weight of the evidence and the hearing officer's assessments of the credibility of that evidence. At least the following credible evidence supports the finding:

- Aaron hired Complainant over reservations expressed by Deanne Medina (who did not believe the firm had enough clients) and Darryl Sulkin (who believed Complainant had a chip on her shoulder and it was a mistake to hire someone straight out of law school). She was hired as Medina was about to take her second maternity leave. FoF 4 and 8. Aaron also liked that complainant had "fire." Tr. III, at 513, 522.

- In early September 2005, less than a month after Complainant began working at the firm and before even being admitted to the bar, Complainant told Aaron she was unexpectedly pregnant. FoF 11. Before telling Aaron, Complainant told Medina, who responded that when she had her first child, Aaron commented how could you do this to me. Medina warned Complainant that Aaron could see the pregnancy as something that affected him. FoF 9.

- Although Complainant initially thought Aaron took the news well, she felt things became tense between them shortly thereafter. FoF 11 and 13. Complainant's pregnancy did appear to be on Aaron's mind. Although Complainant asked that the pregnancy, which was in an early stage and not noticeable, not be mentioned too much, Aaron nevertheless told a consulting attorney and mentioned it to an opposing counsel. FoF 12.[13]

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11 As discussed more fully below, Respondent disputes that Doran left voluntarily. But the record does not support a finding that Michael fired her. Instead Respondent argues is that it would have discharged her, but Medina convinced them to keep her on until September 2005.

12 Complainant also argued that Respondent fired a receptionist for taking FMLA leave in excess of her available paid leave. Compl. Post Hrg. Memo, at 25. However, the hearing officer found that there was insufficient credible evidence to suggest that was the reason for this termination. In fact, Complainant seems to concede that, because of the size of the firm, FMLA did not apply. As such, this evidence falls far short of circumstantial evidence of intent to discriminate and was not credited by the hearing officer in her analysis. Nor has the Commission given this evidence any weight.

13 The hearing officer discounted the testimony about Complainant not looking as "disgusting" as his sister when pregnant, as more likely an awkward expression of empathy than an expression of animus. However, additional testimony does point to animus, including Aaron's comment in a staff meeting that everyone was going to hate her

- In February 2006, Medina informed the firm that she was expecting her third child. FoF 48.

- Complainant began maternity leave after the birth of her child on April 25, 2006. FoF 39. After Complainant began calling Aaron in late May or early June about returning to work, she received a telephone call on June 7, 2006, from Aaron and Sulkin, telling her she was fired. FoF 41-42. Aaron told her the firm decided she would not be coming back because "she was not a good fit." Although Aaron stated at that time that Complainant challenged him and he felt uncomfortable, there was no mention of lack of billable hours a basis for the discharge. FoF 45.

- Medina testified that, around the time Janice Pinter and Complainant left the firm (June 2006), Aaron told her the firm was through hiring women because "they get pregnant and go off on maternity leave." When Medina (who was pregnant herself) responded that this was an outrage, Aaron said it was Sulkin's idea. Former law clerk Madeline Engel also testified that Aaron told her Sulkin had stated, around the time Travis Goslin was hired, that "there were certain kinds of people that are not disposed to become pregnant." FoF 56. Goslin was the first associate hired after Complainant was fired. Tr. III, at 410, 411.

- In July 2006, Aaron asked a potential juror on *voir dire* who had disclosed that she was newly pregnant something like "do you think you can really do this, is it really fair to your fellow jurors?" Medina confronted Aaron about this remark during a recess, telling him that everybody at the firm was shocked about the *voir dire*. FoF 58.[14]

Of particular weight is the close time proximity between Complainant's discharge, Goslin's hire, and Aaron's statements about not hiring more women and about the fairness of pregnancy to other jurors. These and other direct expressions of pregnancy-related animus strongly point to the real motivation behind Complainant's discharge and replacement by Goslin.

Also pertinent is the inconsistency between Respondent's assertions that Complainant's disrespectful conduct was the real reason for discharge and Respondent's actual response to this conduct when it was occurring. This evidence is discussed in more detail below.

- **Complainant's Replacement by a Male**

Respondent's denial that Travis Goslin replaced Complainant (Tr. II, at 231) was not only found not credible by the hearing officer, but in addition that position seemed to be repudiated by Respondent in its Post Hearing Brief, in which Respondent asserted that it initially extended an offer to a woman, who turned them down, and then hired the first male associate (Johnson), then hired the second (Goslin) after firing Sleper. Respondent reiterates its opposition to the hearing officer's finding in its objections.

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because of the increased workload. Tr. I, at 84.

14 Medina did not return to the firm after the birth of her third child. She started her own firm with Karen Doran. FoF 48.

It was uncontroverted that an offer was extended to a female candidate who rejected it, then to a male candidate, Jason Johnson, who accepted. This hiring round, however, was for replacement of another associate, Janice Pintar, who had moved to Pittsburgh during Complainant's maternity leave. FoF 53. Aaron testified that initially the firm was not going to replace Pintar, yet it began a search when she announced she was leaving, identifying four finalists and extending an offer to a woman who declined it, then extending an offer to Johnson in April 2006. FoF 54. It was not until June 7, 2006, that Respondent fired Complainant, after she began calling Aaron in late May or early June regarding her return to work. FoF 41-42.

The firm then hired another male, Travis Goslin. The evidence points to a finding that it was he who replaced Complainant. Tr. III, at 410. Goslin took Complainant's old office because it was the only one available. Tr. III, at 410. Goslin had interviewed for the Pintar vacancy but was not selected. He had also been interviewed by the firm previously, in 2004. Tr. III, at 410-411. There is no evidence that a woman was offered Sleper's vacant position before it was offered to Goslin.

Respondent argues in its objections that it hired multiple female attorneys after discharging Complainant. Cited in support of this argument was Aaron's testimony in response to questioning about whether there had been other complaints about an attorney's conduct in client consultations. Tr. IV: 66-67. Aaron responded that there was an instance in the summer of 2010—over four years after Complainant's discharge—involving an attorney named Christina Latzidakis. Aaron affirmed that Christina still worked for the firm as of the date of his testimony on February 11, 2011. This vague and incomplete evidence does not reveal when Christina was hired, and there is nothing cited by Respondent to support a finding that her hiring occurred between the announcement of Complainant's pregnancy and the hiring of Goslin. Respondent asserts in its objections, without citation to evidence in the hearing record, that it has hired Ann Kim and Emily Arthur, women of childbearing age, since Complainant's termination. But no evidence is cited to show that the hiring of any of these three women took place prior to the filing of this sex discrimination Complaint or at any time proximate to the relevant events in this case.

- **Low Billings as a Factor**

There is ample evidentiary support for the hearing officer's finding that Complainant's failure to meet minimum billing requirements was not a factor in her discharge. If insufficient billing had been a real reason, why would it have been difficult for Sulkin, the firm's financial officer who participated in the discharge conversation, to say so in the telephone conversation discharging Complainant? The acknowledged failure of Aaron and Sulkin to tell Complainant she was being fired for low billings, Respondent's inability even to provide consistent evidence of her billings, and the evidence that her billings, as a brand-new associate, were not that much lower than Doran's all support an inference that billings played no part in the discharge decision and that Respondent's witnesses were not credible in advancing this rationale. FoF 63.

At the hearing, Michael testified that billings were not the precipitating factor in Complainant's discharge. Tr. II, at 184. Also, in response to the discovery dispute over billing records, Respondent asserted that billable hours were not that important to Complainant's discharge. Compl. Ex. 3, at 2. At hearing, the testimony on this subject was disjointed. Michael contended that he made the discharge decision in February, when Sleper refused to work on an assignment, and he admitted that billing was not a precipitating factor. Aaron, however, testified that the discharge decision was a consensus. But neither Aaron nor Michael testified regarding how much of a factor

he believed Complainant's allegedly low hours were in the termination decision.

The parties made much of the differing billing records that were produced and Respondent's seeming inability to reconcile the differences between them. In its Post-Hearing Brief, at 10-11, Respondent contends that it makes no difference which version is true; Complainant still failed to meet the expectation of 125 billable hours per month. Complainant points out that Doran also failed to meet this standard, yet Doran was retained and Sleper was discharged. Although Respondent presented credible evidence that Sleper was counseled by Sulkin about her billable hours, the evidence that low billable hours was one of the reasons for her discharge was not found credible by the hearing officer.

No evidence was produced that the billing records were intentionally tampered with, although the evidence was inconclusive as to why there was such a discrepancy. Sleper's hours were recorded variously as 443.15 (Jt. Exh. 3), 653.44 (Jt. Exh. 5), and 567.68 (Compl. Exh. 4). Records do show that Doran also did not meet the billable hours requirement, yet there was no evidence that she was even counseled about billing. Doran's billing record showed billable hours of 663.42, non-billable hours of 357.90, and a total of 1,021.32, for the same time period. Jt. Exh. 6.

- **Poor Attitude as a Factor**

Respondent's testimony describing Complainant's "attitude" problem was found credible. Yet although it was clear from the testimony that Complainant engaged in conduct many might find unacceptable, it also was clear that this workplace was administered informally, and a high degree of conduct which might even be deemed insubordinate was, while not necessarily approved, at least tolerated. It was not shown that dissatisfaction with Complainant's behavior would have led to her termination but for her pregnancy and maternity leave. In particular, Respondent did not ever impose progressive discipline about it, even though its Employee Manual provided for it. FoF 49. Nor did Respondent provide evidence that she was formally counseled about this issue other than at the November meeting. FoF 22. Aaron acknowledged, in discussing the "RICO meeting" incident, that he was not good at discipline and probably should have been stronger or more direct with Complainant. FoF 25.

The hearing officer did not find it credible that Complainant was unaware of dissatisfaction about her conduct. She acknowledged Aaron had told her she was too aggressive, not a team player, and had a bad attitude. He also told her not to challenge him in front of others. Complainant viewed these statements as singling her out and had complained to Medina that Aaron was making her life miserable. FoF 17, 20, 22, 23.

Thus neither the Commission nor the hearing officer have failed to acknowledge the evidence of Complainant's occasions of disrespectful conduct and the Maduffs' unhappiness with this conduct. But the hearing officer found that this conduct of Complainant was not the real reason for her discharge. One consideration was that Karen Doran, who was never pregnant during her tenure with Respondent, testified credibly that she engaged in similar disrespectful conduct as Complainant; however, she was not disciplined or fired. Although Respondent contends that Doran was as good as fired after an episode with Michael in August 2006 (two months after Complainant's discharge), the record was clear that she was not fired. Doran continued to work at Respondent's firm into September, and Doran testified credibly that she was never terminated but voluntarily left to join the new firm started by Medina.

Respondent's contention that Doran's conduct was not as egregious as Complainant's is not persuasive. The hearing officer credited Doran's testimony that she and other associates engaged in similar types of conduct and it was tolerated. FoF 19, 64. More importantly, there is no evidence that Doran was ever counseled or cautioned in any way about her conduct.

Nor is the Commission persuaded by Respondent's argument that Michael was the sole decision maker in the firm and had really decided to fire Complainant in February after the "Baghdadi" incident. The hearing officer considered Michael's testimony about his views to be credible. But Complainant was not fired in February when this incident occurred. Aaron testified that he believed Michael was at the point of wanting to let Complainant go, but Aaron was not comfortable with the decision because he wanted Complainant to have insurance. Aaron also believed Medina was leaning toward letting Complainant go. FoF 34. Yet the hearing officer credited Medina's testimony that she did not want Complainant discharged but wanted her conduct to be addressed through a Performance Improvement Plan. FoF 47, 67. In reality, neither Michael nor Medina appear to have participated in the actual termination of Complainant, despite Michael's insistence that he was in charge. Michael did not appear to take much of a role in the firm's management of associates, regardless of what may have been his ownership interest. The evidence points to Aaron as the firm's real decision maker in this area.

Under either the *Greenwell* method or the *McDonnell Douglas* method, pretext is a key element of proof. Respondent argues that the evidence of Doran having engaged in similar conduct without repercussion is insufficient to establish pretext. The Commission cannot agree. The issue in determining pretext is not the *truth or falsity* of the facts underlying the proffered reasons for the discharge decision. Rather the issue is whether they were the *real reasons* for the decision. See, e.g., the discussion in *Thomas v. Chicago Dept. of Public Health et al.,* CCHR No. 97-E-221 (July 19, 2001).

Even if Doran's conduct could be considered less egregious than Complainant's, the evidence of Doran's conduct must be analyzed in the context of all of the elements supporting the pretext finding in this case, including the general workplace atmosphere of tolerating argumentative and disrespectful behavior of associates toward principals in the firm along with the fact that Respondent did little to convey to Complainant the claimed seriousness of her behavior when it was occurring.

Whether or not a stated reason for an alleged discriminatory action was pretextual is a question of fact. *Walton, supra,* citing *Zaderaka v. Human Rights Comm'n*, 131 Ill.2d 172, 137 Ill.Dec. 31, 545 N.E. 2d 684 (1989). Thus the hearing officer's finding of pretext is reviewed according to the standard of manifest weight of the evidence. Even though the Commission may have reached different conclusions about comparative levels of conduct in other cases, the Commission does not regard the hearing officer's finding of pretext to be against the manifest weight of the evidence in this case.

There are cases where the basis for finding that a proffered reason was not the real reason is that it had no basis in fact. Nevertheless, the test for pretext is not exclusively whether a stated reason has an underlying basis in fact. Other indicators of pretext may include the timing of events, expressed hostility (animus) toward the protected class at issue, a pattern of disparate treatment, inconsistent explanations of the adverse action or conduct, and inconsistencies between the articulated reason and the actions of the respondent. See *City of Burbank v. Illinois State Labor*

Relations Board, 128 Ill.2d 335 (1989).

For example, in *Wehbe v. Contacts and Specs*, CCHR No. 93-E-232 (Nov. 20, 1996), the Commission found a respondent's articulated reasons for discharging the complainant to be a pretext for discrimination based on race and national origin, citing in addition to the lack of credible evidentiary support for certain reasons the more favorable treatment of a similarly-situated employee of different race and national origin, derogatory comments pointing to animus, and the timing of relevant events. On the discharge issue in *Wehbe,* the Commission noted that even if a complainant was a wrong-doer and the wrongful conduct may be a legitimate reason for discharge, it cannot be a reason for discriminatory treatment.

Just as a stated reason may be untrue but not pretextual, a stated reason may be true but nevertheless pretextual because it was *not the real reason* for the adverse action. That is the hearing officer's finding in this case. The hearing officer found that Complainant did have somewhat lower billing levels than the stated standard and did engage in disrespectful conduct toward the principals of the firm. However, the hearing officer in assessing this evidence found that, even if true, neither of these was the *real reason* for the discharge decision.

Respondent also asks the Commission to consider that Medina had also been pregnant as an associate but was not terminated and was even made a partner, and also that the evidence of statements about the firm no longer wanting to hire women who might become pregnant does not directly prove intent to discharge Complainant because of her pregnancy.

The Commission has taken this evidence into account, but does not find that it changes the result. Medina may have been made an income partner despite her pregnancy, but nevertheless there is evidence to support the finding that Aaron was troubled about her pregnancy-related leaves including the one she was about to take when Complainant was hired. Medina's pregnancies more likely than not contributed to Respondent's animus against women of childbearing age at the time of Complainant's pregnancy. Further, although it has been acknowledged that Aaron's statements are not direct evidence of discriminatory intent, nevertheless, they are evidence of animus related to pregnancy and associated leave-taking, made in close proximity to Complainant's pregnancy and leave. As such, they may be treated as evidence of pretext and discriminatory intent.

In sum, the Commission adopts the hearing officer's finding that Complainant has proved discriminatory intent pursuant to the *Greenwell* method, or alternatively the totality of circumstances method of *Jenkins* and *Blakemore*. Her finding is not contrary to the manifest weight of the evidence and is consistent with her assessments of witness credibility.

C. Indirect evidence

The Commission continues its analysis of the circumstantial evidence using the *McDonnell Douglas* indirect evidence method. Much of the analysis is similar.

- Prima Facie Case

To succeed in proving discrimination through the indirect evidence method, Complainant must first establish as a *prima facie* case: (1) that she is a member of a protected class ; (2) that she was performing her job to her employer's legitimate expectations; (3) that she suffered an adverse

employment action; and (4) that similarly-situated employees did not suffer the same adverse action. *Wehbe, supra; McDonnell Douglas, supra.* It is undisputed that Complainant met the first and third prongs: she was on maternity leave at the time she was subjected to an adverse action, discharge.

Complainant contends that she was meeting the legitimate expectations of the firm. She specifically notes that she was performing the expected duties of an associate and producing real attorney work product as evidenced through her billing records. Compl. Post-Hrg. Memo at 36. Respondent has argued in its post-hearing brief and in its objections to the hearing officer's recommended decision that Complainant has not proved a *prima facie* case, contending first that Complainant has not proved the second prong of her *prima facie* case—that she was meeting the firm's performance expectations.

Regarding this element of a *prima facie* case, the Commission has explained, "This is not a high preliminary threshold for a complainant to meet." *Tarpein v. Polk Street Company, d/b/a Polk Street Pub et al.*, CCHR No. 09-E-23 (Oct. 19, 2011). The hearing officer correctly explained that an employee's performance need not be ideal to establish the satisfactory-performance prong of a *prima facie* case. As in *Tarpein,* the hearing officer properly looked to the standards of Respondent's workplace as actually practiced and applied. Here, the findings of fact and underlying evidence support the conclusion that associates whose billings were at levels not much above Complainant's or who were argumentative with the Maduffs were not being terminated or even counseled for those reasons. Such imperfections, while they may legitimately be considered undesirable and were considered undesirable by the Maduffs as well as by Medina and Sulkin, were tolerated in this workplace.

Even Sleper, whose conduct Respondent asserts was more disrespectful and insubordinate than Doran's, was never disciplined after incidents cited as problems but at most was spoken to. FoF 38. The firm's leaders appeared unable to move from discussion of their concerns about Complainant's conduct among themselves and ambiguous conversation with Complainant to a decision to take any clear action regarding these asserted performance problems. FoF 37. Even though apparently favored by Medina, Respondent never utilized the available tool of a Performance Improvement Plan. FoF 22, 49. Even though Michael declared that after the Baghdadi case incident in February 2006 Complainant was "history" and that he was in charge and could tell Complainant what to do, he acceded to Aaron's reluctance to take any real action. FoF 31-34. Thus the evidence is sufficient for purposes of a *prima facie* case to show that Complainant was meeting Respondent's expectations of her as a new associate. None of the hearing officer's factual findings contradict this conclusion, as argued by Respondent. Her findings acknowledge the evidence presented by both sides concerning Complainant's conduct, note what was disputed, and assess credibility.

Second, regarding the fourth prong of a *prima facie* case, Respondent argues that it was error for the hearing officer to find that Complainant was replaced by a male. The Commission finds no error, as discussed in detail above. The finding that Goslin replaced Complainant is consistent with the manifest weight of the evidence.

Even if this evidence were not sufficient to support the fourth or "disparity" prong of Complainant's *prima facie* case, there is additional evidence to establish disparity of treatment, namely that the two female associates Janice Pintar and Karen Doran were treated more favorably than Complainant under similar circumstances, as discussed above. They were similarly situated to Complainant in that they were associates at the firm who had, in Pintar's case, taken a non-

pregnancy-related leave and, in Doran's case, engaged in argumentative conduct with the Maduffs, in both cases without adverse results. Neither had become pregnant or taken maternity leave while employed at the firm, so they were outside Complainant's protected category. The hearing officer did not focus on this analysis because of her reliance on the replacement of Complainant by a male attorney. However, the record supports this alternative basis for proof of the fourth prong of Complainant's *prima facie* case.

Accordingly, the Commission finds that Complainant has established a *prima facie* case of pregnancy related sex discrimination under the *McDonnell Douglas* method.

- **Legitimate Non-Discriminatory Reasons**

As the Commission has noted, "In response to a *prima facie* case, a respondent may proffer as a legitimate nondiscriminatory reason for its action that the complainant could not satisfactorily perform the requirements of the job, to which the complainant must then respond with proof that the proffered reason was a pretext masking actual discriminatory intent." *Tarpein, supra*, at 9. See also, *Texas Dept of Community Affairs v. Burdine*, 450 U. S. 248, 253 (1981). Complainant must then prove by a preponderance of evidence that the Respondent's reasons are more likely not its true reason but pretext for discrimination. *St. Mary's Honor Center v. Hicks*, 509 U. S. 502, 510-11 (1993). Here, Respondent contends that it demonstrated legitimate business reasons for Sleper's termination: poor attitude and low billable hours.

Respondent clearly articulated these two legitimate business reasons for discharging Complainant. The hearing officer noted that there was a significant amount of evidence, much of which was not disputed by Complainant, to support that Complainant indeed had problems with her attitude and had less than the required billable hours. As articulated, a law firm might reasonably fire an associate for either of these reasons. The question is whether that is what actually happened.

To recapitulate, Respondent offered numerous instances that it believes support its decision to terminate Sleper for attitude problems and/or low billable hours, including among others: (1) that after a court call in September, Complainant was "overly aggressive" toward Aaron; (2) that Complainant undercut Aaron in staff meetings; (3) that Complainant refused a work assignment on a summary judgment motion; (4) that Complainant challenged Aaron on a point of criminal law (Sleper testified that "I was kind of proud of experience I had."); (5) that in November 2005, Complainant was given a formal counseling session; (6) that Complainant offered legal advice on RICO when Aaron asked her not to do so; (7) that Complainant cut Medina out of a meeting on January 16, 2006, and that although Medina made light of it, the e-mail exchange (R. Ex. 1) strongly supported the fact that Medina was upset by the incident; (8) that Complainant was criticized for inadequate billing by Medina and Sulkin; (9) that Complainant frequently rolled her eyes at Aaron; (10) that Complainant swore at Michael and refused a work assignment; and (11) that after Complainant went out on maternity leave, a potential client complained to Aaron about Complainant's attitude.

- **Pretext**

Having articulated legitimate reasons for terminating Complainant, in order to prevail under the *McDonnell Douglas* method, Complainant must prove by a preponderance of evidence that the articulated reasons are pretextual and that the real reason was pregnancy-related sex discrimination

discrimination. *Wehbe, supra.* To show pretext, Complainant first addresses the reasons Respondent provided for her discharge: poor attitude and low billable hours. Next, Complainant points to several statements evidencing animus against pregnant women, which she contends further demonstrates that Respondent's stated reasons reasons were pretextual.

Although the hearing officer discounted the intent of Aaron's statements about Sleper when pregnant not looking as "disgusting" as his sister, the testimony regarding Aaron's statements that the firm no longer wanted to hire people who could become pregnant was found to be credible and supportive of an inference of discriminatory animus. These statements were made shortly after Sleper was terminated and close to the timeframe when Sleper was replaced by a male associate.

There was conflicting testimony over who participated in the decision to discharge Complainant. In its Response, Respondent took the position that Aaron, Michael, Sulkin, and Medina all concurred in the decision. However, as noted above, Medina testified credibly that she was not in favor of terminating Complainant at the end of her maternity leave, but rather was in favor of placing Complainant on a PIP and giving her the chance to correct her attitude. Such an action would have been in line with Respondent's own policy. Although Michael and Aaron testified credibly regarding their concerns about Complainant's attitude, there was scant evidence, aside from the counseling session in November 2005, that Complainant was disciplined even informally or that the claimed seriousness of her conduct was made clear to her.

Lastly, there is the timing of Complainant's discharge, just at the end of her maternity leave.[15] Although timing alone may not be enough to establish pretext, in light of the minimal efforts Respondent made at counseling or disciplining Complainant during her tenure, the close time frame supports an inference that Respondent's motives were discriminatory.

When taken together, the hearing officer found that Complainant proffered credible evidence to support the conclusion that Respondent's articulated reasons for terminating her were more likely pretext for impermissible pregnancy-related sex discrimination, and for that reason Complainant proved pretext by a preponderance of the evidence.

Given the deference which must be accorded to factual findings of a hearing officer, and based on review of the evidentiary record, the Commission adopts the finding of pretext as not contrary to the evidence presented. Accordingly, the Commission finds that Complainant has proved discriminatory intent and has proved by a preponderance of the evidence that her discharge was pregnancy-related sex discrimination in violation of the Chicago Human Rights Ordinance.

V. REMEDIES

Upon determining that a violation of the Chicago Human Rights Ordinance has occurred, the Commission may order remedies as set forth in Section 2-120-510(1) of the Chicago Municipal

15 Respondent has argued that the fact that Medina was retained despite her pregnancies and subsequent maternity leaves supports a determination that Complainant's discharge was not due to pregnancy. However, Medina and Complainant were not comparables. Medina was a name partner (although denominated an income partner), clearly valued as an employee, and took on duties outside of practicing law, including billing and personnel matters. Complainant, to the contrary, was just a new associate at the time of her discharge. In addition, Medina's first pregnancy did not occur close in time to Complainant's. Medina's pregnancies more likely than not contributed to Respondent's animus against women of childbearing age at the time of Complainant's pregnancy.

Code:

> [T]o order such relief as may be appropriate under the circumstances determined in the hearing. Relief may include but is not limited to an order: to cease the illegal conduct complained of, to pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant; to hire, reinstate or upgrade the complainant with or without back pay or provide such fringe benefits as the complainant may have been denied; ... to pay to the complainant all or a portion of the costs, including reasonable attorney fees, expert witness fees, witness fees and duplicating costs, incurred in pursuing the complaint before the Commission or at any stage of the judicial review; to take such action as may be necessary to make the individual complainant whole, including but not limited to, awards of interest on the complainant's actual damages and backpay from the date of the civil rights violation. These remedies shall be cumulative, and in addition to any fines imposed for violation of provisions of Chapter 2-160....

It is a complainant's burden to prove by a preponderance of the evidence that he or she is entitled to the damages claimed. See, e.g., *Carter v. CV Snack Shop*, CCHR No. 98-PA-3, at 5 (Nov. 18, 1998). In the Joint Pre-Hearing Memorandum, Complainant sought emotional distress damages of $50,000; punitive damages of $300,000; and back pay of $9,446.45. We address each element of damages separately.

A. Emotional Distress Damages

It is well established that the compensatory damages which may be awarded by the Commission are not limited to out-of-pocket losses but may also include damages for the embarrassment, humiliation, and emotional distress caused by the discrimination. *Nash & Demby v. Sallas Realty et al.*, CCHR No. 92-H-128, (May 17, 1995), citing *Gould v. Rozdilsky*, CCHR No. 92-FHO-25-5610 (May 4, 1992). Such damages may be inferred from the circumstances of the case as well as proved by testimony. *Id.*; see also *Campbell v. Brown and Dearborn Parkway*, CCHR No. 92-FHO-18-5630 (Dec. 16, 1992); *Hoskins v. Campbell*, CCHR No. 01-H-101 (Apr. 6, 2003); *Marable v. Walker*, 704 F.2d 1219, 1220 (11th Cir. 1983); and *Gore v. Turner*, 563 F.2d 159, 164 (5th Cir. 1977).

In general, the size of an emotional distress damages award is determined by (1) the egregiousness of the respondent's behavior and (2) the complainant's reaction to the discriminatory conduct. The Commission considers factors such as the length of time the complainant has experienced emotional distress, the severity of the mental distress and whether it was accompanied by physical manifestations, and the vulnerability of the complainant. *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21, 1998) at 13-4; *Nash and Demby, supra;* and *Steward v. Campbell's Cleaning Svcs. et al.*, CCHR No. 96-E-170 (June 18, 1997). See also the more recent discussion of the applicable standards in *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (May 20, 2009).

In addition, the Commission does not require 'precise' proof of damages for emotional distress. A complainant's testimony standing alone may be sufficient to establish that he or she suffered compensable distress. *Diaz v. Wykurz et al.*, CCHR No. 07-H-28 (Dec. 16, 2009); *Craig v. New Crystal Restaurant*, CCHR No. 92-PA-40 (Oct. 18, 1995). A complainant need not provide medical evidence to support a claim of emotional distress. *Sellers v. Outland*, CCHR No. 02-H-73

(Oct. 15, 2003), aff'd in part and vacated in part on other grounds, Cir. Ct. Cook Co. No. 04 106429 (Sept. 22, 2004) and Ill.App.Ct. No. 1-04-3599 (Sept. 15, 2008). Medical documentation or testimony may add weight to a claim of emotional distress but is not strictly required to sustain a damages award.

Complainant's testified credibly that she was upset and that it took some time to recover from the sense of betrayal she felt, which she attributed to Respondent's conduct. Tr. I, at 108. However, Complainant offered no evidence that she experienced physical manifestations or required psychiatric or medical treatment. Nor did she offer additional evidence that would suggest that her distress was of any significant duration. Here, an award of $2,500 in emotional distress is consistent with the Commission's similar decisions where emotional distress damages are awarded in employment discrimination cases but the evidence does not support a finding of extensive emotional distress. See, e.g., *Williams v. RCJ Inc. et al.*, CCHR No. 10-E-91 (Oct. 19, 2011); *Shores v. Charles Nelson d/b/a Black Hawk Plumbing*, CCHR No. 07-E-87 (Feb. 17, 2010); *Hawkins v. Ward and Hall*, CCHR No. 03-E-114 (May 21, 2008); *Feinstein v. Premiere Connections et al.*, CCHR no. 02-E-215 (Jan. 17, 2007); *Carroll v. Riley*, 03-E-172 (Nov. 17, 2004); *Martin v. Glen Scott Multi-Media*, 03-E-34 (April 23, 2004).

B. Back Pay

Complainant testified that she began looking for employment after she was terminated, collected unemployment compensation for a few months, did some temporary work, and then in November 2007 was successful in landing another law firm job. Tr. I, at 107-09. Complainant submitted W-2 forms showing she earned $38,053.55 in 2006. Tr. I, at 103-04, C. Ex. 1. However, had she been retained by Respondent, she would have earned $45,000 per year. See Tr. I, at 103. Complainant testified credibly that Respondent paid bonuses upon successful completion of certain (contingency) cases, and she expected to receive bonuses on two cases that were closed after she was terminated. Complainant sought $9,446.45 for back pay for 2006 (which amounted to $6,946.45 in salary and $2,500 in bonus). Jt. Pre-Hearing Memorandum, at 2. Respondent offered no evidence that Complainant failed to mitigate her damages. Nor did Respondent offer evidence to support a finding that bonuses would not have been given to Complainant had she remained employed. Thus, an award of $9,446.45 for back pay is reasonable and supported by the record.

C. Punitive Damages

Punitive damages are appropriate when a respondent's action is shown to be a product of evil motives or intent or when it involves a reckless or callous indifference to the protected rights of others. *Houck v. Inner City Horticultural Foundation, supra.*, quoting *Smith v. Wade*, 461 U.S. 30, 56 (1983), a case under 42 U.S.C. Sec. 1983. See also *Blacher v. Eugene Washington Youth & Family Svcs.*, CCHR No. 95-E-261 (Aug. 19, 1998), stating, "The purpose of an award of punitive damages in these kinds of cases is to punish [the respondent] for his outrageous conduct and to deter him and others like him from similar conduct in the future." See also *Restatement (Second) of Torts* 908(1) (1979).

Here, Complainant here is seeking punitive damages in the amount of $300,000. However, in this case, there was no evidence to suggest that Respondent had a prior history of discrimination or made any attempts to cover up claimed discriminatory conduct. Moreover, Respondent has participated fully in the hearing process and has maintained respect for the Commission's

procedures. While all acts of discrimination are wrong and to be discouraged, the hearing officer concluded that this occurrence does not rise to a level to warrant that Respondent would need to be deterred from such conduct in the future by an award of punitive damages. Nor was Respondent's conduct so outrageous as to justify an award of punitive damages. For those reasons, the hearing officer recommended that the Commission not award any punitive damages.

Complainant objected to the hearing officer's recommendation on this point, pointing out that respondent is an employee-side civil rights firm whose "primary" business is pursuing discrimination claims against employers, and as such should have known better than to discriminate, making the discriminatory conduct especially outrageous. Complainant also points to Respondent's failure to produce billing records, requiring multiple motions to compel.

The Commission is not persuaded that these facts compel an award of punitive damages. That even those who advocate for employee rights may themselves discriminate does not come as a surprise to the Commission. The Commission finds Respondent's conduct discriminatory but not egregiously so. Respondent has been sufficiently punished and deterred through this public discrimination finding and the compensatory relief which has been ordered. This decision itself will serve as a deterrent to discrimination by others in Respondent's position. Complainant has been made whole by the damages awarded to her based on the proof she provided. Over the course of this litigation, both sides have vigorously advanced their positions on procedural as well as substantive issues, prevailing on some points and not others. The Commission cannot discern that Complainant has been prejudiced by the ultimate resolution of the discovery disputes in this case. The hearing officer's recommendation regarding punitive damages is well-reasoned and, in the exercise of its discretion with respect to the appropriateness of punitive damages, a fair balancing of the equities in this case. The hearing officer's recommendation not to award punitive damages is affirmed and adopted.

D. Interest on Damages

Section 2-120-510(1) of the Chicago Municipal Code allows an additional award of interest on damages ordered to remedy violations of the Chicago Human Rights Ordinance. Pursuant to CCHR Reg. 240.700, the Commission routinely awards pre- and post-judgment interest at the prime rate, adjusted quarterly and compounded annually starting at the date of the violation. Accordingly, the hearing officer recommended that the Commission award pre- and post-judgment interest on all damages awarded in this case, starting from June 7, 2006, the date Complainant's employment was terminated. The Commission agrees and adopts the recommendation.

E. Attorneys' Fees and Costs

Section 2-120-510(1) of the Chicago Municipal Code allows the Commission to order a respondent to pay all or part of a prevailing complainant's reasonable attorney fees and associated costs. Indeed, the Commission has routinely found that prevailing complainants are entitled to such an order, and the hearing officer recommends it in this case. *Hall v. Becovic,* CCHR No. 94-H-39 (Jan. 10, 1996), aff'd *Becovic v. City of Chicago et al.*, 296 Ill. App. 3d 236, 694 N.E.2d 1044 (1st Dist. 1998); *Soria v. Kern, supra* at 19. Accordingly, attorney fees and costs are awarded with the amount to be determined by further ruling pursuant to the procedures stated in CCHR Reg. 240.630.

F. Fines

Section 2-160-120 of the Chicago Human Rights Ordinance requires that a fine be assessed against a party found in violation of the Ordinance in an amount not less than $100 and not more than $500 . In light of the nature of Respondent's business and the long-standing prohibition against sex discrimination related to pregnancy, the hearing officer recommended that Respondent be assessed a fine payable to the City of Chicago in the amount of $500 for violating the CHRO. The Commission agrees and adopts the recommendation.

IV. SUMMARY AND CONCLUSION

In conclusion, Complainant has established by a preponderance of evidence that she was terminated from employment because of her sex by Respondent Maduff and Maduff LLC, in violation of the Chicago Human Rights Ordinance and CCHR Reg 335.100.

Pursuant to the recommendations of the hearing officer, the Commission orders Respondent to pay the following relief:

1. Emotional distress damages to Complainant in the amount of $2,500;

2. Back pay to Complainant in the amount of $9,446.45;

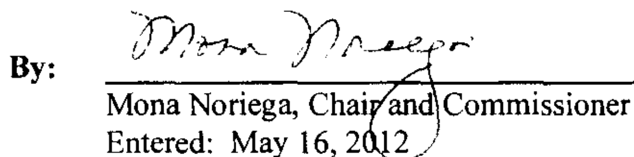
3. Pre- and post-judgment interest to Complainant on the foregoing damages, starting from the date of violation on June 7, 2006;

4. Reasonable attorney fees and costs in an amount to be determined pursuant to CCHR Reg. 240.630; and,

5. A fine payable to the City of Chicago in the amount of $500.

CHICAGO COMMISSION ON HUMAN RELATIONS

By:



Mona Noriega, Chair and Commissioner
Entered: May 16, 2012