



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:

Toni Gray
Complainant,
v.
Lawrence Scott
Respondent.

Case No.: 06-H-10

Date of Ruling: November 16, 2011

Date Mailed: November 18, 2011

TO:

Kelly J. Keating, Supervising Attorney
John Marshall Law School
Fair Housing Legal Clinic
55 East Jackson Blvd. - Suite 1020
Chicago, Illinois 60604

Dana K. O'Banion, Attorney
Power and Dixon, P. C.
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FINAL ORDER ON ATTORNEY FEES AND COSTS

YOU ARE HEREBY NOTIFIED that on November 16, 2011, the Chicago Commission on Human Relations issued a Final Ruling on Attorney Fees and Costs in favor of Complainant in the above-captioned matter. The Commission orders Respondent to pay attorney fees of \$13,368 and costs of \$414.05, for a total award of \$13,782.05. The findings and specific terms of the ruling are enclosed. Respondent is ordered to pay the total amount to the John Marshall Law School Fair Housing Legal Clinic at the address stated above.

Pursuant to Commission Regulations 100(15) and 250.150, a party may obtain review of this order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law at this time. Compliance with this Final Order and the Final Order on Liability and Relief entered on April 20, 2011, shall occur no later than 28 days from the date of mailing of this order.¹ Reg. 250.210.

CHICAGO COMMISSION ON HUMAN RELATIONS
Entered: November 16, 2011

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

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

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FINAL RULING ON ATTORNEY FEES AND COSTS

I. BACKGROUND

On April 20, 2011, the Commission on Human Relations issued its Final Order on Liability and Relief in this matter, finding in favor of Complainant Toni Gray and ordering Respondent to pay to Complainant \$5,000 in compensatory damages, to pay to the City of Chicago a fine of \$500, and to pay Complainant's reasonable attorney fees and associated costs. The Final Order also provided that pursuant to Reg. 240.630, Complainant may file with the Commission a petition for attorney fees and costs by on or before May 27, 2011. Respondent was provided the opportunity to file and serve a Response to the petition by on or before June 10, 2011.

On May 27, 2011, Complainant filed and served Complainant's Petition for Attorney Fees and Costs ("Fee Petition"). Respondent did not file a Response. On September 27, 2011, the hearing officer mailed to the parties her Recommended Ruling on Award of Attorneys' Fees and Costs, giving the parties 28 day from the mailing date to file and serve any objections. No objections have been received from either party.

Complainant appeared *pro se* throughout these proceedings until shortly before the commencement of the hearing. On October 19, 2009, Complainant filed an appearance of counsel naming Kelly Keating, Allison Bethel, Jason Rieger, and Leia Roditis, all of the John Marshall Law School Fair Housing Legal Clinic. Thereafter, Complainant's counsel filed a motion to subpoena witnesses for hearing as well as an amended pre-hearing memorandum, then represented Complainant at the administrative hearing and filed a post-hearing brief.

II. COMPLAINANT'S FEE PETITION

It is well established that a prevailing complainant is entitled to receive reasonable attorneys fees. *Huezo v. St. James Properties*, CCHR No. 90-E-44 (July 11, 1991). The legal principles involved in determining an award of attorney fees for a successful party were recently set forth in *Flores v. Taste of Heaven et al.*, CCHR No. 06-E-032 (Jan. 19, 2011), at pp. 1-2:

Commission Regulation 240.630(a) requires that an attorney fee petition establish the number of hours for which compensation is sought in segments of no more than one-

quarter hour itemized according to the date performed, work performed, and individual who performed the work. It also must establish the rate customarily charged by each individual for whom compensation is sought, or in the case of a public or not-for-profit law office which does not charge market rate fees, documentation of the rates prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise.

The Commission has long utilized a lodestar method of calculating attorney fees. See, e.g., *Leadership Council for Metropolitan Open Communities v. Souchet*, CCHR No. 98-H-107 (May 17, 2001). That is, the Commission determines whether the hours spent on a matter were reasonable, then multiplies the number of hours by the hourly rate customarily charged by attorneys with the level of experience of the complainant's attorney. See *Nash and Demby v. Sallas Realty et al.*, CCHR No. 92-H-128 (Dec. 7, 2000). The Commission is not required to award attorney fees in an amount proportional to the amount of damages awarded. *Id.*; see also *Wright v. Mims*, CCHR No. 93-H-12 (Sept. 17, 1997), and *Lockwood v. Professional Neurological Services, Ltd.*, CCHR No. 06-E-89 (Jan. 20, 2010). The party seeking attorney fees has the burden of presenting evidence from which the Commission can determine whether the fees requested are reasonable. *Brooks v. Hyde Park Realty Co.*, CCHR No. 02-E-116 (June 16, 2004).

Complainant seeks a total award of \$15,239.55, including \$14,825.50 for attorney fees¹ and \$414.05 for costs. Complainant attached to her petition the affidavits and billing reports for two supervising attorneys from the John Marshall Law School Fair Housing Legal Clinic, Allison Bethel and Kelly Keating; two Supreme Court Rule 7-11 certified law students, Jason Rieger and Leia Roditis; and Adjunct Professor Attorney Ed Voci. Complainant is seeking fees as follows:

Attorney	Hours	Hourly Rate	Total
Allison Bethel	10.50	\$250	\$2,625.00
Kelly Keating	41.00	\$150	\$6,150.00
Jason Rieger	42.35	\$ 75	\$3,176.25
Leia Roditis	24.99	\$ 75	\$1,874.25
Ed Voci	2.50	\$400	\$1,000.00
Totals	121.34		\$14,825.50

In addition, Complainant seeks \$414.05 for Complainant's share of the cost for the hearing transcript.

A. REASONABLE HOURLY RATES

First, regarding the hourly rates sought: Attorneys Keating and Bethel have attached to their affidavits records indicating the date, number of hours worked, and narrative description of services provided. During the relevant time period, Keating was a Clinical Professor at the John

¹ This corrects an editorial error in the Recommended Ruling and clarifies the amount of Complainant's request.

Marshall Law School Fair Housing Legal Clinic and Bethel was the Clinical Director at the Clinic. Complainant also attached the affidavits of Ed Voci, attesting to his knowledge of the experience of Attorneys Keating and Bethel and of the prevailing rates for attorneys of comparable experience.

The billing rates for attorneys from a public law office are determined by the rates prevalent for attorneys in the same locale with comparable experience and expertise. *Flores, supra* at 2; *Sullivan-Lackey v. Godinez*, CCHR No. 99-H-89 (Sept. 21, 2005); *Reed v. Strange*, CCHR No. 92-H-139 (Aug. 19, 1998); *Hussain v. Decker*, CCHR No. 93-H-13 (May 15, 1996). Complainant's counsel provided scant information in their respective affidavits regarding their legal experience. However, the supporting affidavits from Ed Voci provide more details, and it is clear that Bethel is a well-established attorney who graduated in 1985 and practices in the area of fair housing (Fee Petition, Exh. 7, Voci Affidavit, ¶¶ 5,6), and Keating apparently has been practicing for at least two years. (Fee Petition, Exh. 6, Voci Affidavit, ¶ 5) The rates sought by Attorneys Keating (\$150) and Bethel (\$250) are supported by the record and are well within the range of prevailing rates for attorneys in the Chicago area with comparable experience and expertise. For example, in *Sellers v. Outland*, CCHR No. 02-H-73 (Mar. 17, 2004 and Apr. 20, 2005), the Commission approved hourly rates for attorneys employed by a legal assistance organization of \$350 for an attorney who had practiced law for 25 years and \$275 for an attorney who had practiced for 12 years. In *Cotten v. Top Notch Beefburger Shop*, CCHR No. 09-P-31 (June 15, 2011), the Commission found reasonable an hourly rate of \$150 charged by an attorney in private practice who had practiced law for approximately two years.

Next, Complainant is seeking an hourly rate of \$75 for the two law students. It should be noted that the two Supreme Court Rule 711 law students bore a significant responsibility in presenting the case in that they were permitted to deliver both opening and closing statements and adduce evidence by direct and cross-examination of witnesses. The Commission may permit payment of paralegals and law students, where as here, such payment is the local practice. See, e.g., *Sullivan-Lackey, supra* at 4, approving an hourly rate of \$75 for all of the "Rule 711" law students involved in the representation of the complainant; see also *Diaz v. Prairie Builders et al.*, CCHR No. 91-E-204, at 2 (Jan. 27, 2003), also approving \$75 per hour for a second year law student. Complainant did not offer any affidavits to support the rate of \$75 for law students. However, Commission case law supports a determination that \$75 per hour is reasonable.

B. REASONABLENESS OF HOURS SOUGHT

Complainant has the burden to show that the hours sought to be compensated are reasonable. A fee petition must be sufficiently detailed to allow determination whether the amount of time spent on tasks was reasonable or excessive. *Shontz v. Milosavljevic*, CCHR No. 94-H-1 (May 20, 1998); see also *Starrett v. Duda and Sorice*, CCHR No. 94-H-6 (May 15, 1998). Proof of attorney fees may be shown by affidavit, even where actual time sheets are not provided. *Akangbe v. 1428 W. Fargo Condominiums*, CCHR No. 91-FHO-7-5595 (July 29, 1992).

Keating seeks compensation for 41 hours.² In reviewing Keating's hours, the hearing

² It should be noted that all counsel have indicated time worked for which no charge is sought. To the extent that they have already deducted time for work that may be ministerial, duplicative, or excessive, they simplified the hearing officer's review. The Commission appreciates counsel's exercise of billing discretion consistent with their operations as a student clinical program.

officer finds the following entries either excessive, unclear, or duplicative and for that reason denied two line item requests, the first for 2.00 hours on October 20, 2009, based on the hearing officer's finding that this entry is vague. It presumably represents time when counsel went to the Commission to review the case file, but the record does not indicate what work counsel performed. Second, for October 27, 2009, Keating billed 1.70 hours to prepare a subpoena for Mr. Scott and hand-deliver it to counsel. To the extent that such delivery may be made by a paralegal or other less expensive means, the hearing officer determined that this time should be reduced to 1.00 hour.

The hearing officer found the remaining hours requested to be reasonable, and the hourly rate of \$150 well supported by the record, and accordingly recommended 38.30 hours at the hourly rate of \$150, for a total of \$5,745 for Keating's services.

Bethel has sought compensation for 10.50 hours, including .50 hours for travel time, at an hourly rate of \$250. It should be noted that reasonable travel time may be awarded, and in this case, substantially all of Bethel's time was for her attendance at the hearing, and is reasonable. Accordingly, the hearing officer found Bethel's request for 10.50 hours at the well-supported hourly rate of \$250 to be reasonable and recommended \$2,625 for her services.

Complainant seeks fees and hours for the two Supreme Court Rule 7-11 law students who represented her, as follows: Leia Roditis, 24.99 hours; and Jason Rieger, 42.35 hours.

Regarding Roditis, it appears that her time was calculated based on actual minutes and hours expended, rather than in the one-tenth hour increments used by other counsel here. In spite of that peculiarity, the request for 24.99 hours appears reasonable based on the narrative descriptions provided. As noted above, the hourly rate of \$75 for Rule 7-11 law students is reasonable. Accordingly, the hearing officer found an award of \$1,874.25 to be reasonable.

For Rieger, Complainant is seeking 42.35 hours. A review of the time exhibit attached to his affidavit shows that the time worked was reasonable with the following exception: Rieger billed 0.70 hours for preparing a position statement on October 8, 2009. It is unclear from the record, as well as from the remaining entries, why this work was necessary. In fact, Complainant submitted an Amended Pre-Hearing Memorandum but time for that work has been allowed elsewhere. Rieger's time is well supported by the remaining time entries. Accordingly, the hearing officer recommended that an award of 41.65 hours at the rate of \$75 per hour, or \$3,123.75, is reasonable.

Regarding the fees sought for Attorney Voci, Complainant's counsel may be entitled to recover for work spent on preparing his or her fee petition. *Huezo v. St. James Properties*, CCHR No. 90-E-44 (Oct. 9, 1991). However, in the experience of the hearing officer and the Commission, that principle does not extend to permit an award of attorneys fees for submission of an affidavit in support of establishing a reasonable hourly rate. In this case, counsel have submitted the Voci affidavits to establish the reasonableness of the hourly rates sought by Attorneys Allison Bethel and Kelly Keating. There is no attorney appearance on file for Voci nor any evidence that Voci represented Complainant in the prosecution of her case. For that reason, the request for 2.5 hours at the hourly rate of \$400 for Voci's services is denied.

Neither Complainant nor Respondent submitted objections to these findings and

recommendations of the hearing officer. Nevertheless, the Commission reviewed the Fee Petition as well as the hearing record to assess the reductions recommended by the hearing officer. The Commission finds the hearing officer's determinations reasonable and the resulting fee award appropriate to this case.

C. COSTS

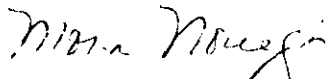
Finally, Complainant has requested \$414.05³ in costs, which represents half of the cost of the hearing transcript. Complainant's request is reasonable. It should be noted that the parties agreed to share the cost of ordering the hearing transcript, which is a reasonable way to minimize litigation costs and the parties are commended for their efforts in this regard.

III. CONCLUSION

The Commission on Human Relations adopts the recommendations of the hearing officer and awards attorney fees and costs to Complainant Toni Gray in the following amounts:

Attorney	Amount Sought	Amount Disallowed:	Awarded:
Allison Bethel	\$ 2,625.00	None	\$ 2,625.00
Kelly Keating	\$ 6,150.00	\$ 405.00	\$ 5,745.00
Leia Roditis	\$ 1,874.25	None	\$ 1,874.25
Jason Rieger	\$ 3,176.25	\$ 52.50	\$ 3,123.75
Ed Voci	\$ 1,000.00	\$1,000.00	\$ 00.00
Total fees:	\$14,825.50	\$1,457.50	\$13,368.00
Costs:	\$ 414.05	None	\$ 414.05
Total fees and costs awarded:			\$13,782.50

CHICAGO COMMISSION ON HUMAN RELATIONS

By: 

Mona Noriega, Chair (and) Commissioner
Entered: November 16, 2011

³ A typographical error in the hearing officer's recommendation is corrected. The Fee Petition makes clear that Complainant requested and documented a cost of \$414.05, not \$414.20.