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:

Rosezena Pierce and Rosa Parker
Complainant,
v.

New Jerusalem Christian Development Corp.
Respondent.

Case No.: 07-H-12 and 07-H-13

Date of Ruling: May 16, 2012
Date Mailed: May 24, 2012

TO COMPLAINANT:

Paul C. Collier, Megan M. New
Kirkland and Ellis LLP
300 N. LaSalle St.
Chicago, IL 60654

Rachel Marks
Chicago Lawyers Committee for Civil Rights
Under Law, Inc.
100 N. LaSalle St., Suite 600
Chicago, IL 60602

TO RESPONDENT:

New Jerusalem Christian Development
Corporation and Margin G. Hunter
1533 S. Pulaski Road
Chicago, IL 60623

New Jerusalem Christian Development
Corporation and Marvin G. Hunter
1529 S. Pulaski Road
Chicago, IL 60623

FINAL ORDER ON ATTORNEY FEES AND COSTS

YOU ARE HEREBY NOTIFIED that on May 16, 2012, the Chicago Commission on Human Relations issued a Final Ruling on Attorney Fees and Costs in favor of Complainants in the above-captioned matter. The Commission orders Respondent to pay attorney fees in the total amount of $56,484.50 and costs in the total amount of $366.60, for a total award of $56,851.10. The findings and specific terms of the ruling are enclosed. Respondents are ordered to pay the total amount in two allocated payments as follows:

1. To Chicago Lawyers Committee for Civil Rights Under Law, Inc.: $27,681
2. To Kirkland and Ellis LLP: $29,170.10

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 August 18, 2010, shall occur no later than 28 days from the date of mailing of this order.[1] Reg. 250.210.

CHICAGO COMMISSION ON HUMAN RELATIONS

[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 Complainants' attorneys of record at noted above.

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IN THE MATTER OF: Rosezena Pierce and Rosa Parker **Complainant,** **v.** New Jerusalem Christian Development Corp. **Respondent.**	**Case No.:** 07-H-12 and 07-H-13 **Date of Ruling:** May 16, 2012

FINAL RULING ON ATTORNEY FEES AND COSTS

I. INTRODUCTION

On February 16, 2011, the Commission on Human Relations issued a Final Order on Liability and Relief ("Final Order") in favor of Complainants Rosezena Pierce and Rosa Parker, finding liability against Respondent New Jerusalem Christian Development Corporation ("New Jerusalem") on Complainants' claims of source of income discrimination. The Final Order dismissed Respondent Marvin Complainants' claims against Hunter in his individual capacity, awarded damages to each Complainant, and fined New Jerusalem for its ordinance and procedural violations.

The Final Order also awarded Complainants' their reasonable attorney's fees and costs to be determined in accordance with Commission Regulation 240.630.

Complainants filed and properly served a timely Petition for Attorney's Fees and Costs ("Fee Petition") seeking $205,920.35 in fees for their attorneys from Kirkland & Ellis LLP, $44,790 in fees for their attorney Rachel Marks of the Chicago Lawyers Committee for Civil Rights Under Law, Inc. ("Lawyers' Committee"), and $366.60 for costs for a total of $251,076.95.

Complainants' attorneys further filed a Motion for Protective Order and to File Under Seal, asking that their Fee Petition be accepted under seal and withheld from public disclosure. confidential. Additionally, on December 21, 2011, Complainants' attorney Aaron B. Goodman of Kirkland & Ellis filed a Motion to Withdraw as Counsel. An appearance on behalf of Complainants by Attorney Megan M. New of Kirkland & Ellis was filed at the Commission on January 20, 2012.

Respondent failed to file any response or objection to the Fee Petition or to any of the above-described motions.

II. PRELIMINARY MATTERS

A. Complainants' Motion for Protective Order and to File Under Seal

Complainants' Motion for Protective Order and to File Under Seal cites Commission Regulations 240.307(c) and 240.520 as authority. Reg. 240.307(c) states: "The hearing officer

may, either *sua sponte* or on motion of any party or witness, issue such protective orders as justice and fairness may require to prevent unreasonable annoyance, expense, embarrassment, disadvantage or oppression. Among other things, a protective order may deny, limit, condition or regulate discovery." Similarly, the hearing officer or the Commission may seal all or part of the official record of an administrative hearing to avoid unreasonable annoyance, expense, embarrassment, disadvantage, or oppression under Reg. 240.520.

Consideration of the rates customarily charged by the petitioning attorneys is in most cases necessary to a determination of the attorney fee award. Such rates are generally proved by providing affidavits and other evidence regarding the rates actually charged by the attorney as well as other proof of the market rate charged by similarly experienced attorneys for comparable work. Complainants assert Attorney Goodman's affidavit in support of the Fee Petition contains "highly sensitive and proprietary information including information on attorney rates, that is maintained by Kirkland & Ellis as confidential, and if such information is disclosed to the public, it would result in competitive harm to Kirkland & Ellis." Complainants offer no other argument or evidence that failure to issue a protective order or seal the record regarding its customary hourly rates would result in unreasonable annoyance, expense, embarrassment, disadvantage or oppression under either regulation. There is no evidence or explanation as to how Kirkland & Ellis is exposed to potential competitive harm any different than that experienced by any lawyer or law firm which discloses a customary hourly rate in support of an attorney fee petition. Complainants failed to offer, nor does the hearing officer find, any case law in support of their position that disclosure of these rates in an attorney fee petition constitute a competitive harm which would warrant the issuance of a protective order or an order to seal the official record regarding said rates.

Accordingly, the hearing officer recommended that Complainants' Motion for Protective Order or to File under Seal be denied because there is no evidence of an unreasonable annoyance, expense, embarrassment, disadvantage or oppression warranting such an order. The Commission treats the hearing officer's recommendation as a denial of the motion. Complainants did not request review or otherwise object to the hearing officer's determination, as permitted under CCHR Reg. 240.630(b)(2). The Commission affirms and adopts this denial.

B. Attorney Aaron B. Goodman's Motion to Withdraw

On December 21, 2011, Attorney Aaron B. Goodman filed his Motion to Withdraw as an attorney for Complainants, stating that he would no longer be affiliated with Kirkland & Ellis after December 31, 2011. There was no objection made by Respondent or Complainants. As noted, Attorney Megan New of Kirkland & Ellis filed her appearance shortly after Goodman's motion. Given the late stage of these proceedings, the hearing officer found that the withdrawal will not materially impede the administrative process. See CCHR Reg. 270.340 and *Efstathiou v. Café Kallisto*, CCHR No. 95-PA-1 (June 17, 1996). Therefore, the hearing officer in her recommended ruling granted the withdrawal effective as of December 31, 2011. No request for review of her decision has been received; thus the withdrawal and substitution are affirmed.

III. LEGAL STANDARDS FOR FEE AWARDS

Section 2-120-510(l) of the Chicago Municipal Code authorizes the Commission on Human Relations to order as relief after a discrimination finding "reasonable attorney fees, expert witness fees, witness fees and duplicating costs, incurred in pursuing the complaint before the commission or at any stage of judicial review." Commission regulations describe the process

for determining the amount attorney fees and costs but do not set forth standards for determining reasonableness. Those standards are found in case law.

CCHR Reg. 240.630(a)(2) requires that a fee petition include a "statement of the hourly 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 fees or which charges fees at less than market rates, documentation of the rates prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise."

In general, the Commission has followed the "lodestar" method of determining reasonable attorney fees as it has developed under federal case law. That is, the Commission determines the number of hours reasonably expended by counsel on the case and multiplies that number by the customary hourly rate for attorneys with the level of experience of the complainant's attorney. *Barnes v. Page,* CCHR No. 92-E-1 (Jan. 20, 1994); *Nash and Demby v. Sallas Realty et al.*, CCHR No. 92-H-128 (Dec. 7, 2000). The party seeking recovery of attorney fees has the burden of presenting evidence from which the Commission can determine whether the fee requested is reasonable. *Brooks v. Hyde Park Realty Company, Inc.*, CCHR No. 02-E-116 (June 16, 2004).

As explained in *Richardson v. Chicago Area Council of Boy Scouts*, CCHR No. 92-E-80 (Nov. 20, 1996), reversed on other grounds 322 Ill.App.3d 17 (1st Dist. 2001), dismissed on remand CCHR No. 92-E-80 (Feb. 20, 2002), "Once an attorney provides evidence of his/her billing rate, the burden is on the respondent to present evidence establishing a good reason why a lower rate is essential. A respondent's failure to do so is essentially a concession that the attorney's billing rate is reasonable and should be awarded."

In *Lockwood v. Professional Neurological Services, Ltd.*, CCHR No. 06-E-89 (Jan. 20, 2010), the Commission reaffirmed the use of the lodestar method and explained how the fee amount determined through that method may be adjusted where warranted pursuant to the further federal court guidance of the "*Hensley* factors":

> As under federal law, the Commission follows the "lodestar" method of multiplying reasonable hourly rates by hours reasonably expended as a starting point and treats an attorney's actual billing rate as presumptively appropriate for use as the market rate. If unable to determine an attorney's actual billing rate, then the Commission turns to the next best evidence, the rate charged by lawyers in the community of reasonably comparable skill, experience, and reputation. Once the amount of fees is determined using the lodestar method, then the fee award may be adjusted by the "*Hensley* factors"...although, as the court noted in [*People Who Care v. Rockford Board of Education*, 90 F.3d 1307, 1310-11 (7 Cir. 1996)], "most of those factors are usually subsumed within the initial lodestar calculation."

The *Hensley* factors are (1) the time and labor required, (2) the novelty and difficulty of the questions, (3) the skill requisite to perform the legal service properly, (4) the preclusion of employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. S. Rep. No. 1011, 94th Cong.2d Sess. 6 (1976), as cited in *People Who Care* at n. 1; *Hensley v. Eckerhart*, 461 U.S. 424 at 434 n. 9, 103 S.Ct. 1933 at 1940 n. 9.

A fee award may be reduced to adjust for any unsuccessful claims. As the Commission explained in *Huezo v. St. James Properties*, CCHR No. 90-E-44 (Oct. 9, 1991), "[a] Complainant is entitled to attorneys' fees for both the claims on which she prevailed, and those that share a common core of fact." However, when a party pursues separate claims for relief, each must be assessed separately." *Id.*; see also *Alexander v. 1212 Restaurant Group LLC et al.*, CCHR No. 00-E-110 (Oct. 16, 2008), aff'd Cir.Ct. Cook Co. No. 09 CH 16335 (Feb. 19, 2010), aff'd Ill.App (1st), No. 1-10-0797 (Sept. 29, 2011), PLA denied Ill.S.Ct. No. 113274 (Jan. 25, 2012).

Lockwood also reaffirmed that a fee award need not be proportional to the amount of damages or other relief awarded to remedy the violation: "The proper question is what fees were reasonably incurred in pursuing the successful claim(s);....The answer to this question often has as much to do with how the respondent litigates the case as how the complaining party approaches it, and therefore it is impossible to say that only a certain ratio of fees to damages is 'reasonable.'"

IV. The Fee Petition

The application of these principles to the instant Fee Petition poses certain challenges. Complainants' counsel have requested compensation for a total of 533.55 hours of legal work at hourly rates that bring the total request to $250.343.75 in attorney fees.[1] This appears to be the largest fee request this Commission has been asked to approve for pursuing a case at the administrative level. The largest previous fee award at the administrative level appears to have been for 328.38 compensable hours in *Lockwood v. Professional Neurological Services, Ltd.*, CCHR No. 06-E-89 (Jan. 20, 2010), at rates bringing total approved fees to $87,655.62.

Counsel argue in their Fee Petition that the requested fees are reasonable "given the nature of the case" and that some of the time expenditures are "a direct result of Respondent behavior throughout these proceedings" including ignoring Commission rules and orders. In addition, counsel state that they have "cut their time spent on the case significantly in an effort to ensure the reasonableness of the amount requested."

The hearing officer stated that she thoroughly examined the submitted time records and she recommended that all of the requested hours be approved. She explained that counsel have been careful to avoid unreasonable or disallowed billing practices and have made clear efforts to mitigate their calculation of hours, such as by excluding hours expended in an effort to mediate the case. She noted the complexity of the case and the number of parties involved as relevant factors, and also pointed out the "long and convoluted" procedural history of the case. The hearing officer recommended awarding compensation for the 533.55 attorney hours requested, which were as follows:

a) 149.30 hours for work of Rachel Marks, Lawyers' Committee
b) 307.75 hours for work of Aaron B. Goodman, Kirkland and Ellis associate
c) 76.50 hours for work of Paul D. Collier, Kirkland and Ellis partner

The Fee Petition explains that Complainants were represented from the time of filing of their Complainants by the Lawyers' Committee. After the Commission's investigation resulted in a finding of substantial evidence as to each Complainant, the Lawyers' Committee arranged

[1] Only one cost item was submitted: $366.60 for a copy of the hearing transcript. This item is not included in the fee analysis.

for attorneys from the law firm of Kirkland and Ellis to become involved in the case pursuant to the firm's *pro bono* program and consistent with the Lawyers' Committee's approach to its legal work in civil rights cases.

The hearing officer's recommendation further explained the procedural history of this case and the work of Complainants' counsel. Complainants were represented by counsel from the time they filed their Complaints, unlike many Commission cases where counsel appear only at the conclusion of the investigation process if the case is proceeds to a hearing. The case consisted of two separately filed complaints which were investigated and unsuccessfully mediated. They were officially consolidated with the commencement of the administrative hearing process on September 3, 2009. A pre-hearing conference was held on October 19, 2009, after which Complainants' counsel filed Motions to Compel Discovery and for Sanctions on November 2, 2009, which were granted by the hearing officer. Following Respondents' continued failure to comply with discovery, counsel filed a Motion for Additional Sanctions on December 22, 2009. Respondents then filed untimely Motions to Vacate and Modify Sanctions, and Respondents' attorney filed a Request to Withdraw as Counsel. Complainants' counsel responded to these motions. A second pre-hearing conference was ordered for February 25, 2010. Complainants' counsel prepared for and attended this pre-hearing conference. Respondents did not and were defaulted. Complainants' counsel then submitted their Pre-Hearing Memorandum with exhibits on March 11, 2010, successfully sought a continuance of the hearing after an Order of Default was entered against Respondents, then presented Complainants' *prima facie* case and evidence in support of requested relief at the administrative hearing held on June 24, 2010. At the administrative hearing they examined Complainants and a supporting witness. As Respondents did not appear at the administrative hearing, Complainants' evidence was uncontested. Counsel obtained leave and filed a Post-Hearing Memorandum on Complainants' behalf on August 9, 2010.

In addition to these activities, Complainants' counsel filed objections to the hearing officer's recommended ruling as to liability and relief. Counsel moved for a clarification and an extension of time to file objections, in response to which the hearing officer provided clarification but denied any extension of time. Counsel's objections successfully argued for higher punitive damages for both Complainants, unsuccessfully argued that the evidence supported requested damages for out-of-pocket losses, and unsuccessfully argued that individual Respondent Marvin G. Hunter should be found personally liable for the alleged discrimination. Thus Complainants were partially successful on this motion and objections.

Counsel then filed the Fee Petition now under consideration, along with the unsuccessful Motion for Protective Order and to File under Seal. They then submitted the withdrawal of Goodman's appearance due to his impending departure from Kirkland and Ellis, and they submitted a letter regarding the status of the decision on the fee petition.

This review focuses on counsel's substantive, case-specific activity, not routine and generally compensable litigation management activities such as communicating with clients and opposing counsel, attorney appearances, and uncontested extensions or continuances.

The billed time of Marks in this case commenced on March 30, 2007, with research and drafting of the Complaints filed on April 2, 2007. She represented Complainants through the investigation process. She then arranged for the participation of the Kirkland and Ellis pro bono attorneys and transitioned the hearing stage representation of Complainants to them. From that point she reviewed and edited work of the Kirkland and Ellis attorneys and performed some legal research. She attended a pre-hearing conference, participated in witness preparation, and

attended the default hearing. She did not herself present evidence or argument at the hearing. She then gathered information to support this Fee Petition.

The billed time of the Kirkland and Ellis attorneys commenced in August 2009, when the law firm became involved in the case after the Commission issued its Order Finding Substantial Evidence on March 12, 2009, and efforts at pre-hearing settlement proved unsuccessful. They performed the bulk of the legal work on the case from that point forward, as described above.

Even though the attorneys from Kirkland and Ellis consider themselves to have worked *pro bono*, the Commission has held that counsel who work on a *pro bono* basis are entitled to reasonable attorney fees, if they prevail, based upon market rates. See, e.g., *Hussian v. Decker*, CCHR No. 93-H-13 (May 15, 1996).

V. Reasonableness of Hourly Rates

Complainants have sought fees at the rate of $300 per hour for Attorney Rachel Marks. She is a staff attorney for the Fair Housing Project of the Lawyers' Committee. She states in her affidavit that she received her joint J.D. and M.S.E.L. (Master of Studies in Environmental Law) from Vermont Law School in 2001. She was licensed to practice law in Massachusetts in 2002, in the District of Columbia in 2004, and in Illinois in 2005. Her practice of law has focused in the area of civil rights litigation. She has been employed by the Lawyers' Committee since May 2006 after working as an attorney since 2002.

The hearing officer recommended approval of the requested $300 hourly rate for Marks. The Commission agrees and adopts this recommendation. Given her experience and expertise in civil rights litigation, the rate is consistent with the range of hourly rates the Commission has recently held reasonable for such lawyers working in not-for-profit settings including the Lawyers' Committee. *Flores v. A Taste of Heaven et al.*, CCHR No. 06-E-32 (Jan. 19, 2011); *Gray v. Scott*, CCHR No. 06-H-10 (Nov. 16, 2011); and *Montelongo v. Azarpira*, CCHR No. 09-H-23 (Feb. 16, 2012).

Complainants presented substantially higher standard billing rates for Attorneys Aaron Goodman and Paul Collier of Kirkland and Ellis. Goodman states in his affidavit that he received his J.D. from DePaul University College of Law and his license to practice law in 2006 and that his practice of law at Kirkland and Ellis is "focused primarily in the area of Intellectual Property Litigation." Collier states in his affidavit that he is a partner in the Intellectual Property Department of Kirkland and Ellis, whose practice has focused throughout his career in the area of intellectual property. The fee petition states that he obtained his J.D. from the University of Illinois College of Law and became licensed to practice law in 1999, and since that time has represented clients in various federal district courts throughout the nation.

In the fee petition, Goodman and Collier presented their standard billing rates as substantially higher than those for Marks during the 2009-2011 period when they provided representation in this case—ranging from $430-$585 per hour for Goodman and $630-$705 per hour for Collier. However, they acknowledge their understanding that attorneys who normally practice in the area of fair housing law with similar years of experience have sought and obtained rates between $150 and $350 per hour. They proposed alternative hourly rates of $200 for Goodman and $325 for Collier.

The hearing officer recommended adoption of these alternative hourly rates for purposes of calculating the attorney fee award. The Commission agrees with this recommendation. As

the hearing officer pointed out, in order to determine the appropriate rate it is reasonable to consider the experience and expertise the fee petitioner has in the subject matter of the case in question, which involves source of income discrimination and fair housing law. Goodman and Collier have not shown and do not claim experience or expertise in areas of law such as civil rights, discrimination, or fair housing. Rather, their legal experience is in an unrelated subject area, intellectual property. The hearing officer took into account Collier has practiced law for two to three years longer than Marks. It can be added that Goodman has about four years' less law practice experience than Marks. The Commission also takes note that Collier described extensive litigation experience in federal court and Goodman explained that his intellectual property practice included litigation. This civil litigation experience of the Kirkland and Ellis attorneys is relevant and no doubt contributed to the successful pursuit of this case.

In their intellectual property practice, these Kirkland and Ellis attorneys work in a different market, where standard billing rates are typically higher than those for civil rights litigation. Their proposed adjustments for work on this case are an appropriate exercise of billing discretion and their alternative rates are approved.

Flores, *supra*, was another case in which the complainant was represented through the Lawyers' Committee for Civil Rights Under Law, including a staff attorney from the Lawyers' Committee and four attorneys from a cooperating law firm. There, the fee petition sought and the Commission approved compensation at $380 per hour for the partner-level senior attorneys with 9-24 years of experience and $300 per hour for the associate-level junior attorneys with 4-5 years of experience. The alternative rates for the Kirkland and Ellis attorneys in the instant case are below these previously approved amounts.

VI. Reasonableness of Time Billed

The Board of Commissioners respectfully disagrees with the hearing officer's recommendation as to the reasonableness of time billed and significantly reduces the amount of the fee award from what was requested, as explained below.

A. Time at the Investigation Stage

With minor exceptions, the Commission finds the time expended by Marks when she was the sole attorney of record for Complainants to be reasonable. Her statement includes 65.7 hours of time from March 30, 2007, through March 30, 2009, that is, through the point when she reviewed the Commission's substantial evidence finding and communicated by telephone about it to both Complainants. Although this is a considerable amount of attorney time for client support and advocacy during the investigation process, it is not unreasonable that, over the two year period when the investigation of the two Complaints was pending, Marks would communicate regularly with her clients and the Commission's investigator. Also, the complex nature of the two real estate transactions involved due to their multiple financing sources, along with ultimately unsuccessful efforts to settle the case at the investigation stage, could reasonably consume more attorney time than usual. This was also the foundational work to frame the complaint and assemble the evidence which supported the hearing-stage work which followed. The work of Marks assisted the Commission's investigation. The Commission makes only the following line item reductions for that period:

a) .3 hours on April 17, 2007, for docketing dates. Although necessary, the Commission considers this administrative work to be absorbed into overhead and the hourly rate. *Rankin v.6954 N. Sheridan, Inc., et al., CCHR No. 08-H-59 (May 18, 2011).*

b) .4 hours on April 19, 2007, for looking into possible state claims, as not pertinent to the pursuit of this case at the Commission.

c) .6 hours on June 25, 2007, for making a copy of a worksheet and notes, as another clerical task.

This is a deduction of 1.3 hours, resulting in approval of 64.4 hours during this period. At $300 per hour, this results in fees through the investigation stage of $19,320.

The time billed by Marks beginning on March 30, 2009, when she began arranging for *pro bono* counsel for the hearing stage of the case, is considered below in conjunction with the time billed by the Kirkland and Ellis attorneys.

B. Time at the Hearing Stage

The requested and recommended hours at the hearing stage total 467.85, consisting of 83.6 hours for Marks, 76.5 hours for Collier, and 307.75 hours for Goodman.

The remaining 83.6 hours of time for Marks appears largely administrative, supervisory, and/or duplicative of the work of the Kirkland and Ellis attorneys. This included time to arrange for and orient *pro bono* counsel and considerable time to review their draft correspondence and filings. It included some research time, which was not extensive.

Although it is appropriate for Marks, with her stronger experience in civil rights and fair housing, to provide support to *pro bono* counsel who do not regularly practice in these subject areas, the result should be to streamline the time needed to litigate a case, not to duplicate or increase it. That did not seem to be the result here. In addition to the 307.75 hours of work billed by Goodman after the case advanced to the hearing stage, the fee petition requests compensation for another 83.6 hours of time for Marks and 76.5 hours for Collier, a total of 160.1 hours of what appears to be primarily oversight or support of Goodman's work. This represents a 52% increase over Goodman's own extensive time on the case.

The Commission has approved fees for representation by more than one attorney of record in many cases, overruling objections that such billings are inherently excessive. See, e.g., *Rankin, supra; Gray v. Scott*, CCHR No. 06-H-10 (Nov. 15, 2011); *Tarpein v. Polk Street Co. et al.*, CCHR No. 09-E-23 (Apr. 18, 2012); and *Lockwood v. Professional Neurological Services*, CCHR No. 06-E-89 (Jan. 20, 2010).

In *Sellers v. Outland*, CCHR No. 02-H-37 (Apr. 24, 2009), the Commission explained that there is no rule precluding two attorneys from working on the same matter but the appropriate question is whether time spent on a particular task was reasonable:

> Where two lawyers are performing separate tasks they deserve to be compensated. Where the time records reveal they are collaborating together on what would customarily be considered in the legal community to be a two-person task, then both attorneys' time is reasonable. However, where documentation of the tasks performed by each attorney is scant or where reasonable billing practices would dictate that only one attorney should be billed for a task, the second attorney's time will be disallowed.

In *Sullivan-Lackey v. Godinez*, CCHR No. 99-H-89 (Sept. 21, 2005), the Commission reduced a requested fee award to a law school clinic based on inadequate documentation and specificity as well as a determination that the billed time of multiple law students and supervising attorneys was excessive and duplicative, including prohibited overhead and clerical costs as well as time expended primarily for educational purposes. As precise reductions could not be determined from the time records submitted, percentage reductions were utilized in addition line-item reductions or disallowances for specific tasks.

In *Rankin, supra*, the Commission made substantial line-item deductions for time found excessive or administrative in a contested housing discrimination case, also based on source of income, which was handled by two attorneys. The Commission rejected the hearing officer's recommendation of a further across-the-board percentage reduction in *Rankin* while reaffirming the use of a combination of line-item and across-the-board reductions in an appropriate case. In *Rankin*, both the hearing officer and the Commission looked to other recent fee awards for guidance as to whether the total time expended on the case was reasonable in light of what work was required to provide successful representation, after noting that the amount of fees awarded in similar cases is one of the *Hensley* factors which may be considered. The Commission in *Rankin* looked especially to *Flores, supra*, reasoning that the compensable hours in Rankin after the line-item cuts remained well below those approved in *Flores* despite the larger range of issues which needed to be addressed in *Rankin*, and also noting that the participation of two attorneys for the complainant helped expedite the hearing process and produced a favorable result for the complainant.

Here, this case ultimately involved a default hearing of one day. Respondents participated, with attorney representation, in the earlier stages of the case until their failure to comply with discovery requirements resulted in withdrawal of their attorney and the Order of Default. The two complainants were represented over a period of 59 months, from the filing of the complaint, although the Kirkland and Ellis attorneys appeared only on commencement of the hearing process. The primary activities of the Kirkland and Ellis attorneys included issuance of a set of document requests, a motion to compel response to the document requests, a motion for additional sanctions, a response to the withdrawal of Respondents' attorney and the attorney's effort to vacate the sanctions arising from the motion to compel, submission of a pre-hearing memorandum and exhibits, a default hearing involving examination of three witnesses and no appearance of Respondents, a post-hearing memorandum, objections regarding the recommended relief, and this fee petition to which no response has been received.

This is a civil rights case of moderate complexity at best. The violations found were not ultimately difficult to prove, even though the real estate transactions were somewhat unusual and required additional time to explain. New Jerusalem Christian Development Corporation clearly refused to sign riders allowing an additional inspection of the housing units Complainants planned to purchase, thereby preventing them from accessing one of the sources of income they needed to finance their purchases. New Jerusalem acknowledged in its initial responses to the Complaints that it refused to sign the riders. New Jerusalem never articulated on the record any substantive reason for this refusal which Complainants needed to counter, asserting only that the purchase contracts were already signed and that signing the additional riders was not in the best interests of the organization. And of course, in the end Respondents did not put on any defense or even appear at the administrative hearing or any point thereafter. The administrative hearing and subsequent proceedings amounted to a prove-up.

Nor were the pre-hearing discovery issues difficult, as Respondents simply failed to submit anything in response to the initial document requests and the order compelling discovery.

No extensive or novel legal work was necessary to point out these clear procedural failings. Counsel did need to attend two pre-hearing conferences rather than one, but it is not unusual for additional pre-hearing conferences to be held if procedural issues arise. Counsel did provide a well-written Pre-Hearing Memorandum and a well-organized presentation of the case at the default administrative hearing, including examination of Complainants and a supporting witness along with admission of 14 exhibits, followed by a 21-age post-hearing memorandum summarizing and explaining the evidence. Counsel were also successful in increasing the damages to Complainants through their objections to the recommended ruling on liability and relief. They then submitted an unsuccessful motion to place certain information under seal, plus this Fee Petition.

This work reflects a substantial investment of time and effort with generally successful results. The legal work product presented by counsel was of high quality. Nevertheless, the Commission does not believe the level of difficulty and time reasonably required to handle this representation in a high quality manner warrants the recommended compensation for 533.55 hours of attorney time (totaling $131,202.50 based on the hourly rates approved below), especially when compared to the number of approved hours in *Alexander* (269.4), *Lockwood* (328.38), and *Flores* (206.05), all cases in which complainants were represented throughout the investigation and hearing process and in which unusual issues or time-consuming challenges were presented.

In determining how the recommended fee award should be reduced, the Commission first compares this case to other recent Commission cases with attorney fee awards.

C. Recent Commission Fee Awards

The Commission here reviews its decisions since 2009 in which attorney fees were awarded:

Alexander v. 1212 Restaurant Group LLC et al., 00-E-100 (Apr. 15, 2009), involved a contested hearing of six days and overall adjudication process in excess of 100 months. Complainant was represented by one attorney from the investigation process forward. After the attorney's initial appearance, he submitted eight substantive filings on behalf of the complainant. Counsel sought compensation for 317 hours for this highly-contested case with multiple respondents having different roles in the business, extensive evidence, and the somewhat unusual issue of employment discrimination based on perceived (rather than actual) sexual orientation. The Commission awarded compensation for the equivalent of 269.4 hours after a 15% reduction for an unsuccessful employment termination claim.

Lockwood v. Professional Neurological Services, Ltd., 06-E-89 (Jan. 20, 2010), involved a contested hearing of two days and an adjudication process of 50 months. Again the complainant was represented from the filing of the complaint, submitting fourteen substantive filings after the initial appearance. Two primary attorneys sought compensation for themselves as well as law clerk and legal assistant work totaling 329.38 hours, of which 328.38 hours were approved. This was another highly-contested case resulting in the Commission's first parental status discrimination finding in the employment area, with extensive evidence and a number of disputed legal issues argued.

Flores v. A Taste of Heaven et al., 06-E-32 (Jan. 19, 2011), was an employment discrimination case with several parallels to the instant case. The complainant was represented through the Lawyers' Committee from the filing of the complaint, over a period of 57 months,

with five billing attorneys including one Lawyers' Committee staff attorney and *pro bono* counsel from a law firm representing complainant in the hearing process. As in the instant case, issues arose concerning sanctionable conduct of opposing counsel. National origin, age, and sex discrimination were found after a one-day default hearing. Unlike the instant case, the respondents in *Flores* continued to be represented by counsel who actively advocated throughout the hearing process despite the default, raising a number of contested legal issues to be resolved. After the initial complaint and attorney appearance, counsel for the complainant submitted 15 substantive filings. Yet counsel sought compensation for only 206.05 hours of work on this case, which was approved.

Rankin v. 6954 N. Sheridan Inc. et al., 08-H-49 (May 18, 2011), was another source of income discrimination case, involving refusal to rent to a Section 8 housing voucher recipient. There was a contested hearing of two days. The complainant was represented by counsel during the hearing process only, over a period of 22 months with eight substantive filings submitted after the initial attorney appearance. In additional to contested credibility issues which needed to be resolved by hearing, there were contested issues concerning the level of responsibility of two business respondents and two individual respondents for the discrimination which occurred. Compensation totaling 213.3 hours was sought for time of two attorneys and a paralegal, and approved at 186.1 hours after line-item deductions for duplicative or administrative tasks. This case is currently under review by the Circuit Court, including a challenge to the fee award as excessive given the nature of the case despite the Commission's fee reductions.

Gray v. Scott, 06-H-10 (Nov. 16, 2011), was another housing discrimination case, alleging sexual harassment and race discrimination. Complainant was again represented during the hearing process only, over a period of 25 months, by a law school's fair housing clinical program. Counsel submitted six substantive filings on the complainant's behalf after the initial appearance, and there was a two-day contested hearing. Although not presenting unusual legal issues for a case of this nature, counsel did prepare for and conduct a contested administrative hearing on relatively short notice, having entered the case in the midst of the pre-hearing process. Compensation was sought for two clinical attorneys and two law students, with 115.44 total hours approved.

Tarpein v. Polk Street Co. et al., 09-E-23 (Apr. 18, 2012) was an employment discrimination case of pregnancy-related sex discrimination. Again the complainant was represented during the hearing process only, over an 18-month period. There were a number of disputed legal issues, eleven substantive filings submitted on the complainant's behalf after the attorney appearance, and a contested hearing of 1.5 days. Two primary attorneys and legal support staff sought compensation, with 136.3 hours approved.

Two other recent attorney fee awards involved considerably less attorney time over a period of about two years during the hearing process only. In *Warren et al. v. Lofton & Lofton Mgmt. et al.*, 07-P-62/63/92 (May 19, 2010), there was a contested hearing of one day with six substantive filings on behalf of the three complainants after an initial appearance. Two attorneys sought and received compensation for 65 hours of time expended. In *Montelongo v. Azarpira*, 09-H-23 (Feb. 16, 2012), there was a default hearing of one-half day with three filings submitted after the appearance of one attorney, who sought and received compensation for 31.8 hours of time.

D. Determination of Reasonable Fees for Hearing Stage

For representation from the hearing stage forward, the Commission has determined that a reasonable fee award is reached by reducing the "lodestar" calculation by two-thirds, utilizing the lower alternative hourly rates proposed and recommended for the Kirkland and Ellis attorneys. The resulting calculations are as follows:

a) The hours for Marks are reduced from 83.6 to 27.87. At $300 per hour, this results in additional fees for her work of $8,361.

b) The hours for Collier are reduced from 76.5 to 25.5. At $325 per hour, this results in fees for his work of $8,287.50.

c) The hours for Goodman are reduced from 307.75 to 102.58. At $200 per hour, this results in fees for his work of $20,516.

Thus the total hours for the hearing stage are reduced from 467.85 to 155.95. At the varying hourly rates approved above, this results in fees for work at the hearing stage of $37,164.50.

In combination with the fees approved for the investigation stage, the resulting fees awarded to Rachel Marks of the Lawyers' Committee are $27,681 ($19,320 for the investigation stage plus $8,361 for the hearing stage). The resulting fees awarded to the Kirkland and Ellis attorneys are $28,803.50 ($8,287.50 for Paul Collier and $20,516 for Goodman). The total fees awarded are $56,484.50, representing compensation for 220.35 total hours.

This award is consistent with the range of awards in similar cases, as discussed above, being closest to the 206.5 hours compensated in *Flores* but lower than the 269.4 hours compensated in *Alexander*. The 155.95 compensated hours for the hearing stage places the award somewhat lower than the compensated hearing-stage work in *Rankin* (186.1 hours), but higher than the awards in *Tarpein* (136.3 hours) and *Gray* (115.44 hours).

In adjusting the lodestar calculation by a percentage reduction for work at the hearing stage, the Board of Commissioners has given major emphasis to the *Hensley* factor of awards in similar cases and the related factor of time and labor required to prosecute this case successfully. Although there were unsuccessful results for some claims and arguments including the claim against individual Respondent Marvin G. Hunter, the results for Complainants were successful overall and this was only a secondary factor in the percentage reduction.

The Board of Commissioners makes this adjustment primarily due to the excessive and duplicative hours claimed for work by three attorneys after the case advanced to the hearing stage, in relation to the level of difficulty of the work needed. Although the Kirkland and Ellis attorneys brought general civil litigation and legal experience to the case, they did not bring experience in civil rights litigation or in practice before this Commission. This circumstance appears to have extended the time needed to complete tasks due to a larger learning curve and perceived need for review and collaboration similar to that noted for a law school clinical setting in *Salwierak, supra.* As it is not possible for the Commission to make line-item reductions identifying which specific work of which attorney should be disallowed or reduced, percentage reduction for hours billed at the hearing stage is an appropriate approach to bringing the final award to a reasonable level consistent with the range of awards in similar cases. The resulting approved hours and fees, as calculated above, still place this among the highest fee awards entered to date by the Commission on Human Relations.

VII. COSTS

The Fee Petition seeks $366.60 to compensate Kirkland and Ellis for the cost of purchasing the hearing transcript. The hearing officer recommended that this cost be approved as reasonably expended in prosecuting the case. The Commission has approved transcript costs as customarily incurred and billed to clients; see, e.g., *Flores* and *Gray*, *supra*. The hearing officer's recommendation is adopted and $366.60 is awarded in costs.

VIII. CONCLUSION

For the reasons stated above, the Commission on Human Relations orders Respondent to pay attorney fees and costs in the total amount to $56,851.10, to be apportioned as follows:

a) To Chicago Lawyers Committee for Civil Rights Under Law, Inc. (Rachel Marks)—attorney fees of $27,681.

b) To Kirkland and Ellis LLP (Paul Collier and Aaron Goodman)—attorney fees and costs of $29,170.10.

CHICAGO COMMISSION ON HUMAN RELATIONS

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