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:

Stanley Rankin
Complainant,
v.
6954 N. Sheridan, Inc., DLG Management, and Marni Feig
Respondents.

Case No.: 08-H-49

Date of Ruling: May 18, 2011
Date Mailed: June 8, 2011

TO:

Jon A. Duncan
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FINAL ORDER ON ATTORNEY FEES AND COSTS

YOU ARE HEREBY NOTIFIED that on May 18, 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 in the total amount of $53,100 and costs in the total amount of $124.30, for a total award of $53.224.30. 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 Attorney Jon Duncan: $31.426.30
2. To Attorney Daniel Starr: $21,798.00

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 September 10, 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
Entered: May 18, 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/s of record.

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IN THE MATTER OF:	
Stanley Rankin **Complainant,** **v.** 6954 N. Sheridan, Inc., DLG Management, and Marni Feig **Respondents.**	**Case No.:** 08-H-49 **Date of Ruling:** May 18, 2011

FINAL RULING ON ATTORNEY FEES AND COSTS

I. INTRODUCTION

On September 10, 2010, the Commission on Human Relations issued a ruling finding that Respondents 6954 N. Sheridan, Inc., DLG Management, and Marni Feig violated the Chicago Fair Housing Ordinance, Chicago Muni. Code Ch. 5-8, by refusing to rent a housing unit to Complainant Stanley Rankin because of one of his sources of income, a "Section 8" rental housing voucher. Complainant was awarded $850 in out-of-pocket damages, $1,500 in emotional distress damages, and $3,000 in punitive damages. Complainant was also awarded his reasonable attorney fees and costs subject to the procedures in CCHR Reg. 240.630.

Complainant filed a timely petition seeking $37,628 in fees and $341.57 in costs for attorney Jon Duncan based on 115 hours of compensable time, and seeking $25,595 in fees for attorney Daniel Starr based on 77.8 hours of compensable attorney time and 20.5 hours of compensable paralegal time. Respondents filed a timely response which challenged the hourly rates sought for each attorney, the justification for certain amounts of time, and the claimed costs. Respondents also challenged the overall amount of fees sought as excessive in light of the legal work actually needed in a case of this scope. After considering Complainant's petition and Respondents' response, the hearing officer recommended that Complainant be awarded fees of $25,500 for Duncan and $17,000 for Starr, plus costs of $130.18.

Both Complainant and Respondents filed objections to the recommended ruling, which the Commission has considered. For the reasons stated below, the Commission awards fees of $31,302 to Duncan and $21,798 for Starr, plus costs of $124.30 to Duncan.

II. APPLICABLE LEGAL STANDARDS

The legal principles involved in determining an award of attorney fees for a complainant who has successfully litigated a claim before the Commission are well-established. They were recently summarized in *Flores v. A Taste of Heaven et al*, CCHR No. 06-E-032 (Jan. 19, 2011) at 1-2 in the following manner:

> 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

> 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 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).

In *Lockwood, supra*, the Commission further explained the standards it utilizes, incorporating what are known as 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.

III. REASONABLE HOURLY RATE

The Commission bases its awarded rates on a number of factors, including the attorney's experience, expertise in the subject matter at issue, and the reasonable market rates typically charged. See, e.g., *Ordon v. Al-Rahman Animal Hospital*, 92-E-139 (Nov. 17, 1993), and *Barnes*

v. Page, 92-E-1 (Jan. 24, 1994). In determining an attorney's appropriate hourly rate for fee award purposes, the Commission has been guided by decisions of the U.S. Court of Appeals for the Seventh Circuit regarding a fee applicant's burden and the evidentiary requirements to prove the appropriate hourly rate. For example, *Sellers v. Outland*, CCHR No. 02-H-73 (Mar. 17, 2004 and Apr. 15, 2009), followed the reasoning of the Seventh Circuit as set forth in *Small v. Richard Wolf Medical Instruments Corp.*, 264 F.3d 702, 707 (7 Cir 2001):

> The fee applicant bears the burden of proving the market rate. The attorney's actual billing rate for comparable work is considered to be the presumptive market rate. If, however, the court cannot determine the attorney's true billing rate—such as when the attorney maintains a contingent fee or public interest practice—the applicant can meet his or her burden by submitting affidavits from similarly experienced attorneys attesting to the rates they charge paying clients for similar work, or by submitting evidence of fee awards that the applicant has received in similar cases. Once the fee applicant has met his or her burden, the burden shifts to the defendants to demonstrate why a lower rate should be awarded.

Complainant asserts that the hourly rate for Duncan should be $340 and for Starr $300. Duncan's affidavit attached to the fee petition states that he was admitted to the Illinois bar in 1980, that his customary billing rate for legal services was $340 per hour in 2009-2010, that he has extensive experience in handling cases under the Chicago Residential Landlord and Tenant Ordinance including reported appellate opinions, and that he has represented clients in housing discrimination cases before this Commission, the Illinois Human Rights Commission, the U.S. Department of Housing and Urban Development (HUD), and the U.S. District Court. Complainant Motion for Attorneys Fees ("Cmplt. Motion"), Exhibit ("Ex.") 1 at ¶9-20. Starr states in his affidavit that he was admitted to the Illinois bar in 1978, that his reasonable and customary billing rate was $300 for 2009-2010, that he has extensive experience in litigating cases under the Chicago Residential Landlord and Tenant Ordinance, and that he has represented clients in housing discrimination cases before this Commission, the Illinois Human Rights Commission, HUD, and the U.S. District Court. Cmplt. Motion, Ex. 2 at ¶4-12.

Respondents in their response state that this Commission's decisions hold that "it is the 'best practice for counsel to submit affidavits of other counsel, attesting to the reasonableness of counsel's hourly rate.'" Respondents' Response ("Resp. R.") at p. 3, quoting *Alexander v. 1212 Restaurant Group*, CCHR No. 00-E-110 (Apr. 15, 2009). Respondents also reference Commission case law considering evidence of fee awards in other proceedings and cited cases in which lower hourly rates have been found for different attorneys. *Id.* Respondents then state that "[o]bviously, these lower rates awarded by the Commission in cases involving the same type of allegations as those in the case at bar demonstrate that the [hourly rates requested by Mr. Duncan and Mr. Starr] is unreasonable", citing no authority for that proposition. *Id.* As an example, they refer to an affidavit of Damian Ortiz, a clinical professor of law at the John Marshall Law School Fair Housing Clinic, who had been practicing fair housing law for over 12 years and sought an hourly rate of $275. *Id.* at 4. They conclude by arguing (without citation) that the higher hourly rates awarded by the Commission were in employment discrimination cases, which they assert are "inherently more complex." *Id.*

Respondents have ignored the Commission's case law in several instances. First they ignore the holding in *Flores*, supra, that "[t]he attorney's actual billing rate for comparable work is considered to be the presumptive market rate," *Flores v. A Taste of Heaven et al*, CCHR No.

06-E-032 and "[o]nce an attorney provides evidence of his/her billing rate, the burden is on the respondent to present evidence establishing a good reason why a lower rate is essential. A respondent's failure to do so is essentially a concession that the attorney's billing rate is reasonable and should be awarded." See also *Lockwood, supra.*.

Here, both attorneys testified in their affidavits that their customary hourly rates were $340 and $300 respectively. Duncan's affidavit was supported by citations to published opinions in cases which he litigated. Respondents have offered no evidence to refute this presumptive evidence of the attorneys' customary hourly rates.

As explained above, Reg. 240.630 and Commission case law do not require a prevailing party to prove the credentials of counsel or the hourly rates of comparable attorneys in the Chicago market, but only to establish the hourly rate customarily charged by each individual for whom compensation is sought. Only if that customary billing rate cannot be established, as for a public or not-for-profit law office which does not charge fees or which charges fees at less than market rates, does it become necessary to provide documentation of the rates prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise. Reg. 240.630(a)(2); see also *Nuspl v. Marchetti*, CCHR No. 98-E-207 (Mar. 19, 2003) and *Lockwood, supra.* Regardless of whether it might be a "best practice" to provide additional evidence (as is often done), it is not required of attorneys in private practice such as Duncan and Starr who can attest to their actual hourly rates. Complainant's attorneys have met their burden to establish their customary hourly rates.

Although Respondents claim that such high hourly rates are only justified in complex cases like employment discrimination, they offer no legal authority to support that assertion and the Commission has never held that employment discrimination cases are inherently more complex than housing discrimination cases. In fact, this Commission's decision in the housing discrimination case of *Sellers v. Outland*, 02-H-37 (Mar. 17, 2004) approved the rate of $350 per hour in 2004 for attorneys with 25 years of experience. Respondents rely on an affidavit of Damien Ortiz seeking an hourly rate of $275 for an attorney with 12 years of experience, but this is considerably less than the experience of over 25 years of experience for both of Complainant's attorneys. Respondents also fail to take into account the decision in *Flores, supra,* in which this Commission approved hourly rates of $380 for attorneys with 9-24 years of experience. It is not unusual or unreasonable in Chicago for experienced attorneys to charge over $300 an hour.

The Commission has also reviewed the stated paralegal rates of $120 per hour for Duncan (who billed some of his work at this "law clerk" rate) and $110 per hour for Starr. These rates also are reasonable in light of the Commission's understanding of such rates in Chicago. For example, in *Radinski v. Apex Digital, LLC*, No. 07 CV 571 (N.D. Ill. Dec. 5, 2008), a federal district court approved an attorney fee settlement in which the billing rate for law clerks in a Chicago firm was stated at $195 per hour; see *Lockwood, supra.*

Accordingly, the Commission adopts the recommendation of the hearing officer and approves the attorney hourly rates of $340 for Duncan and $300 for Starr as they have established, as well as the paralegal or law clerk rates of $120 and $110 per hour respectively.

IV. REASONABLE EXPENDITURES OF TIME

In *Warren et al v. Lofton & Lofton Management d/b/a McDonald's et al.*, CCHR No. 07-P-062 (May 19, 2010) the Commission explained that a prevailing complainant's counsel shall

be compensated for all time reasonably expended on the case, and that in determining what time expenditure is reasonable, the Commission will consider the specific facts of the case. In addition, "the hearing officer may use his or her own experience, knowledge, and expertise to determine the amount of time reasonably required for such work." *Id.*, citing *Nuspl, supra.*

The Commission has regularly awarded lower attorney fees where requested hours are found excessive for the work performed. See, e.g., *Edwards v. Larkin*, CCHR No. 01-H-35 (Nov. 16, 2005), a housing discrimination case; *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), reducing the requested fee by 25%; *Soria v. Kern*, CCHR No. 95-H-13 (Nov. 20, 1996); and *White v. Ison*, CCHR No. 91-FHO-126-5711 (July 22, 1993). In this case, Respondents have raised a number of challenges to specific entries of time in the time records submitted for each of Complainant's attorneys. These challenges can be broadly categorized—in some combination—as (a) entry is too vague; (b) time spent was excessive; (c) administrative function of work rather than billable time; and (4) overall time still excessive. Certain entries for each of Complainant's attorneys have been objected to as block billing (multiple tasks billed together).[1]

A. Vagueness of Entries

Respondents correctly note the principles that "[a]n attorney is not required to record in great detail how each minute of his or her time was expended, especially so as not to divulge privileged information or work product" and "time entries must identify the amount of time spent on an activity with sufficient specificity so that the reader can understand what was done and determine whether the time spent was reasonable." *Richardson, supra; Nash and Demby v. Sallas Realty et al.*, CCHR No. 92-H-128 (Nov. 16, 1995).

1. Starr's Entries

With respect to Starr, Respondents have objected to approximately 76 specific entries in 2009 and 2010 as being vague or lacking in sufficient detail. Resp. R. at 6-8. These objections amount to a total of 38.1 hours or $11,430. All but six of these challenged entries are for amounts of time that are .4 hours or less. Indeed, objections for the six entries that are more than .4 hours total 19 hours or almost half of the time spent by Starr that is being challenged by Respondents. *Id.* Considering the entries for the larger blocks of time, Starr listed four hours for research and drafting of a letter to opposing counsel on July 23, 2009, three hours on March 11, 2010, for "research on DLG Management" by a paralegal; 2.5 hours on March 12, 2010, for the same research by the paralegal; four hours on March 14, 2010, for "reviewed file and prepared examination questions"; and five hours on March 15, 2010, for "Further reviewed file and made notes; Furthered prepared lines of questioning for adverse witnesses." All but one of these entries involve time spent just before the beginning of the two-day public hearing in this case on March 16, 2010. They show two things: first, that Starr was having a paralegal conduct research on one of the Respondents and second, that he was preparing for the hearing. DLG Management's other properties, along with the rent levels and whether those properties were occupied by Section 8 voucher recipients were issues at the hearing. See the Commission's liability ruling at pp. 2-3, 10. Therefore, some research by a paralegal is appropriate. However,

[1] It has sometimes been difficult to separate the grounds for reduction neatly into one of these categories. To prevent any further confusion, the Commission has followed the hearing officer's framework in his recommended ruling as much as possible for this discussion of specific reductions.

the hearing officer also noted that Starr's paralegal conducted research on DLG Management on March 15, 2010, for 3.5 hours. Given the lack of specificity in the billing entries of Starr on this issue and the factual evidence presented at the hearing, the hearing officer believed that nine hours was too much time for such research and therefore recommended that the 2.5 hour entry for paralegal research ($275) on March 12 be uncompensated and that one hour ($300) of Starr's 3.5 hours on March 15, 2010, for this task be uncompensated (for a total of $575 deducted). The entries of Starr on March 14-15, 2010, regarding his preparation for the hearing could be more specific. There is a deduction for those entries, as further noted below.

That leaves the other the four-hour entry of July 23, 2009, for research and drafting of a letter to opposing counsel and the 70 or so of Starr's entries of .1 to .4 hours that Respondents' challenge for vagueness. Some of them involve communications on specific dates with opposing counsel: July 23, 2009 for four hours; August 17, 2009, .2 hour for courtroom conference with opposing counsel; September 23, 2009, .3 hour for drafting a letter to opposing counsel; November 24, 2009, .3 hour for receiving and reviewing a letter from opposing counsel; December 8, 2009, .3 hour for a telephone conference with opposing counsel; December 8, 2009, .3 hour for receiving and reviewing a letter from opposing counsel; February 9, 2010, .3 hour for receiving and reviewing a letter from opposing counsel; February 15, 2010, .5 hour for the same; February 23, 2010, .2 hour for the same; March 1, 2010, .2 hour for the same; March 24, 2010, .4 hour for drafting a letter to opposing counsel; April 8, 2010, .2 hour for conference with opposing counsel; and April 19, 2010, .4 hour for drafting a letter to opposing counsel. The hearing officer was at a loss to imagine how such entries could be too vague, and the Commission agrees with the hearing officer that they are sufficient. If Respondents wanted to challenge them for being too time-consuming, they should have attached the letter at issue or summarized the telephone conversation so their challenge could be evaluated. They did not do so. All of the objections to these entries were correctly denied by the hearing officer.

The remainder of the "vagueness" objections are also denied. The entries for telephone calls with co-counsel and Complainant need not be more specific, given the importance of preserving the attorney-client and work product privileges and the short amount of time listed for each such entry. Resp. R. at 6-8.

There are several remaining entries that were not vague but will not be compensated for because they were clearly administrative work: on October 29, 2009, .1 for faxing copies of notice to co-counsel; March 4, 2009, .2 for faxing documents to co-counsel; June 13, 2010, .1 for telefax to opposing counsel. These entries total .4 hours for which Starr will not be compensated, for a deduction of $120 from his request. The cases cited by Respondents to support other objections are based on quite different facts and are unavailing. See Resp. R. at 9.

However, certain of Starr's entries regarding communications with Duncan occurred before he began representing Complainant. These entries do not indicate that Duncan was being contacted for the purpose of securing the opinion of another attorney. They are not listed in Duncan's entries. For that reason the Commission denies compensation for these entries: August 10, 2009, .1; August 11, 2009, .2; September 23, 2009, .3; October 1, 2009, .3. This is a total deduction of .9 hours or $306.

2. Duncan's Entries

There are four entries of Duncan to which Respondents object as vague. Respondents claim the entry on October 16, 2009, states, "Correspondence to Daniel Starr, 1." Actually that entry states in full, "Correspondence from Daniel Starr and review attorney fee agreement (.2);

correspondence to Daniel Staff transmitting attorney fee agreement (.1)." There is nothing vague about this entry. The objection is therefore denied.

The second objection concerns an entry of February 15, 2009, for "[p]reparing for meeting with Respondent's counsel, .4" as part of a series of entries regarding a meeting that Complainant's attorneys had with Respondents' attorney. Because this entry was for preparation for a meeting with Respondents' attorneys, they are in a position to know if .4 hours of preparation was too much time given what was discussed. Contending that it is vague in light of the other entries that day and that the subject matter was preparation for a meeting with Respondents' attorneys is not a well-founded objection. It is therefore denied.

The other challenged entries, for February 15 and March 14, 2010, indicate that they are for preparation for the final prehearing conference, for .5 hour, and continuing to prepare for the hearing, 2.9 hours. Those entries are somewhat vague in that they inform about what Duncan was doing generally whereas although other entries by Duncan regarding hearing preparation were more detailed. However, there is a legitimate concern that too much information can implicate the attorney-client and work product privileges. For this reason the Commission finds the entries sufficient; it is not unreasonable that such amounts of time would be spent at these points to prepare for scheduled proceedings in the case.

Respondents contend that "[v]ague entries are especially a concern when two attorneys are requesting compensation for work on a case." Resp. R. at 8. They cite *Sellers v. Outland*, 02-H-037 (April 24, 2009). In that decision the Commission explained the applicable standards as follows:

> Respondent objects that two attorneys, Andrew Shapiro and Michael P. Mayer, often billed for working on the same matter at or about the same time. As Complainant rightly points out, there is no rule that precludes two attorneys from working on the same matter. *Huezo v. St. James Properties*, CCHR No. 90-E-44 (Oct. 9, 1991) 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), the Commission awarded fees for three attorneys and one paralegal, while reducing fees where billing was unreasonable. The appropriate question, therefore, is whether the 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 that 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.

Respondents assert that Starr's significant number of entries (not listed by Respondents) describe telephone calls between Starr and Duncan but do not state the issue being discussed and thus are not specific enough to support compensation. Certainly it would have been more prudent for Starr's entries to be more specific, although attorney-client privilege and work product privilege restrictions make clear that the entries need not be so specific as to implicate those privileges. Some of these entries when reviewed along with Duncan's entries are specific, however (e.g. entries for February 5 and 15, 2010). Other entries from Starr (e.g. January 21,

2010, for .2 hours and February 19, 2010, for .3 hours) do not show a corresponding entry for Duncan. These latter entries, totaling .5 hours or $150, are disallowed.

B. Excessive, Duplicative, or Administrative Time

Respondents claim that certain entries in the fee petition are duplicative. Resp. R at 9-16. Unfortunately, Respondents have chosen to be duplicative themselves; they make challenges to the same entry for almost the same reasons but listed pages apart.

Respondents first claim that time spent by Starr in communications with Duncan before Duncan became involved in the case should be disallowed. The Commission has disallowed those entries. Similarly, Respondents claim that Duncan should not be compensated for time spent docketing certain deadlines (entries of October 16 and 30, 2009, June 3, 2010, and September 16, 2010) for a total of .6 hours or $204. Compensation for these entries was disallowed by the hearing officer. Complainant objects that the hearing officer did not explain the basis for disallowing these entries and argues that they are compensable. The Commission overrules these objections. The docketing of deadlines is clerical or administrative in nature. That is the basis on which Respondents opposed these charges; there is no lack of clarity about the reason for disallowance. Complainant's arguments for compensation for this work are unavailing. This was not scheduling work that might be compensable. It was specifically described as docket entries. All of the dates described were set by the Commission in notices issued to the parties—the date of a prehearing conference, additional dates set after discussion with the parties at a prehearing conference, the deadline for objections to the recommended ruling on liability and relief as stated in the recommended ruling, and the deadlines for the attorney fee petition and response as stated in the final order on liability and relief. Although the Commission agrees that an essential aspect of operating a law practice is a system for accurately calendaring dates and deadlines, it is nevertheless administrative work which is not ordinarily billed to paying clients but instead absorbed by an attorney as part of overhead.

Respondents' objections to Starr's entry for July 1, 2009, for opening a time sheet and his entry for July 2, 2009, for drafting a retainer agreement are overruled. These charges are not duplicative, excessive, or administrative but consistent with an attorney representing a client in a case. Those objections are overruled and the charges are allowed.

Starr's compensable time is reduced from .2 hours for drafting his appearance to the Commission (saving $60). The travel time spent for his paralegal to file the appearance is appropriate and that objection is overruled. With respect to the objections regarding the preparation and filing of Duncan's appearance, the compensable time of Starr's paralegal is reduced from .8 hours to .4 hours (a reduction of $44). Starr's and Duncan's time for the preparation and communication regarding Duncan's time was not duplicative or excessive as it is less than .5 hours.

Respondents also object to the 4.2 hours spent by Starr in preparing requests to produce to all three Respondents, claiming they were almost identical. Resp. R. at 11. Having reviewed the requests to produce, the hearing officer found that the time spent in preparation of these discovery requests is reasonable. Therefore the objection is overruled. The .5 hours ($55) charged by Starr's paralegal for filing the discovery and .3 hours ($90) by Starr for preparing a certificate of service for the discovery requests on October 16, 2009, was excessive and also clerical in nature, and the fee awards are reduced by those amounts.

Respondents also object to the time spent by Starr on discovery letters on December 4, 2009 (.8 hours) and December 9, 2009 (.8 hours). Resp. R. at 11. Having reviewed those letters (Exhibits B & C to Respondents' Response), the hearing officer found that the time spent on the first letter was appropriate but the time spent on the second letter should be reduced by .3 hour ($90). Respondents also object to the 4 hours charged by Starr for the preparation of a five-page motion to compel. Having reviewed the motion to compel, the hearing officer found that this was a pro-forma motion reciting facts and the applicable regulation. Even considering time to review what had not been responded to, the hearing officer determined that it should have taken no more than three hours. Therefore, Starr will be compensated for this work for three hours, that is, $300 less than sought. Respondents further object to two entries for Starr regarding receipt and reviewing Respondent's motion to compel. Those entries are two weeks apart (.4 hours on January 13, 2010 and .3 hours on January 27, 2010). The hearing officer found it not surprising that an attorney would review a document like his opponents' motion to compel on more than one occasion. The objections to these two reviews by Starr are overruled.

Respondents object to Duncan's entries for preparing responses to discovery requests on November 30 and December 1, 2010, totaling 7.5 hours (not including conferences or telephone calls with Rankin). The hearing officer agreed that this time was excessive and some of it was administrative: specifically, 1.7 out of 2.7 hours for the December 1 entry of 2.7 hours was an excessive amount of time to respond to Respondents' document requests. In addition, telephoning and faxing documents to the Commission is administrative, so another .5 hours for Duncan's December 1 entries are not compensable. This reduction totals 2.2 hours ($748) as excessive or administrative.

Respondents object as excessive to Duncan's entries of January 26 and 27, 2010, and February 7, 2010, totaling 11.6 hours, for initially preparing the Pre-Hearing Memorandum and then considering Respondents' objections and entries, as well as reviewing all parties proposed documents and deciding which ones to include. The Pre-Hearing Memorandum listed five witnesses for Complainant (two of whom were Respondents or their representatives and three of whom were witnesses for Respondents not identified by Complainant), 45 documents as Complainant's exhibits totaling 56 pages, and 24 documents totaling 51 pages as Respondents' Exhibits. Respondents have not indicated how much time their attorneys spent in preparing Respondents' portions of the Pre-Hearing Memorandum or reviewing Complainant's portions. Nor have they suggested how much time was excessive. The hearing officer reviewed the Pre-Hearing Memorandum and found that Duncan's entries for time spent on this work were not excessive. However, Duncan's charging even paralegal time for filing the Pre-Hearing Memorandum is improper; that is a clerical function that is part of an attorney's overhead and taken into account in setting an overall hourly rate. Therefore, 2.8 hours of time spent by Duncan for filing the Pre-Hearing Memorandum on February 9, 2010, is disallowed, for a deduction of $336.

Respondents next assert that time spent for preparation for the administrative hearing in this case was excessive. Specifically they point to Starr's two billings of March 14 and 15, 2010, totaling nine hours for reviewing the file and preparing examination questions, as examples of block billing. They are not block billing but they also are not as specific as Duncan's entries indicating the witnesses for which he was preparing examinations (entries of March 8-15, 2010). Together the time preparing for the hearing totaled 45.8 hours. Eight witnesses were scheduled to testify.

At the hearing, which lasted two days (approximately 11 hours) with a 500-page transcript, five witnesses testified and a number of documents were introduced, some of which were objected to. Given the number of documents to review and the potential witnesses that were being called, that preparation time is somewhat excessive. But the notion that one attorney should not be compensated for time spent in preparing to cross-examine a witness that co-counsel will cross-examine makes no sense. Time spent preparing for the testimony of Rankin's daughter (who did not testify) is compensable unless at the time of preparation, the attorney knew she was not going to testify.

Additionally, four hours of Starr's time, for $1,200, is deducted because of insufficient detail regarding his preparation. Ten hours ($3,400) of Duncan's time is deducted as excessive based on the hearing officer's knowledge of what transpired at the hearing, what witnesses were and could have been called to testify, exhibits introduced, and the hearing officer's experience as a trial lawyer for over 30 years. This includes 2.9 hours on March 9, 2010, for performance of clerical and paralegal tasks for trial preparation, 1.7 hours for continued preparation of a trial notebook on March 12, 2010, .8 on March 13, 2010, for preparation of Ebony Rankin as a witness when it was known she was unavailable, 2.9 hours on March 14, 2010, for the entry "continue trial preparation," and one hour for continued preparation for examinations of Respondent witnesses Feig and Gassman as part of 6.7 hours billed that day. Respondents repeat their challenge to the time spent researching DLG Management, although based on slightly different reasoning. Resp. R. at 13. That has already been addressed.

Respondents complain that both attorneys billed 17 and 17.7 hours for the hearing and associated work (including travel time). They complain that the instant case is not one that required the presence of two very experienced attorneys at the Pre-Hearing Conference or at the public hearing. The hearing officer disagreed for several reasons. First, Respondents had two attorneys (one of whom was less experienced) present at the administrative hearing although the second attorney did not examine any witnesses or make any substantive arguments. Second, the hearing officer found that the presence of both Duncan and Starr aided in the administrative hearing being completed in a timely manner. Also, as noted above, it is not unusual or improper for more than one attorney for a complainant to participate in a Commission hearing. However, the hearing officer found that the 3.8 hours of joint time spent in the preparation of the objections by Complainant's attorneys, which were not substantive, was excessive. Therefore, 1 hour for each attorney is disallowed, for a total of $640.

Respondents contend that the time for preparation of the attorney fee petition—8.5 hours by Duncan, .2 hours for Starr, and 6.7 hours for Starr's paralegal—was excessive. Resp. R. at 15. The Commission has held that keeping track of time is a clerical function that will not be compensated. *Cotten v. CCI Industries, Inc.*, CCHR No. 07-P-109 (May 19, 2010). The one hour spent on three separate occasions by Starr's paralegal regarding updating the file and time-keeping are disallowed on that basis, for a total deduction of $330. Duncan's entries of September 20, 27, and 28, 2010, are reduced by .6 hours for clerical and duplicative work and two additional hours as excessive, for a total deduction of $824. However, here there was a well-written petition of 13 pages, along with a detailed affidavit from Duncan. That supports the remainder of the 5.9 hours he billed for preparation of the fee petition.

Finally, Respondents challenge as excessive a .2 hour charge by Starr for writing a post-decision letter. No reason is given for why this letter was written nor were the contents of this letter summarized in the entry. That time is disallowed as insufficiently documented, for a deduction of $60.

B. Additional Administrative Time

Respondents have challenged a number of Duncan's entries as administrative, or in other words, clerical in nature. In some instances the hearing officer had difficulty discerning the basis for Respondents' objections or found the objections repetitive. In any event, it is clear that work of an administrative or clerical nature is not compensable. Rather, it should be taken into account as overhead when setting an attorney or paralegal's hourly rate. As noted in *Sullivan-Lackey, supra,* the prevailing rule under federal fee-shifting statutes is that ministerial or clerical duties that can be performed by clerical staff should not be part of the attorney's fees. *Mattenson v. Baxter Healthcare*, 2005 WL 1204616 (N.D. Ill. 2005); *Connolly v. Nat'l Sch. Bus Serv., Inc.*, 992 F. Supp. 1032, 1038 (N.D. Ill. 1998); *Webb v. James*, 967 F. Supp. 320, 324 (N.D. Ill. 1997).

The hearing officer agreed with Respondents' challenges to Duncan's entries of October 28, 2009, totaling .2 hours or $68, because that was administrative work. The hearing officer also deducted Duncan's entries of .3 hours or $102 for December 21, 2009, on the same basis. However, the hearing officer rejected Respondents' objection to the entries of November 24, 2009, finding that work compensable.

Objections to Duncan's entries on January 27, 2010, for telephone calls to Deborah (.2 hours), faxing a document to Starr (.1 hour), calling the offices of Starr and opposing counsel to state that Complainant's portions of the Pre-Hearing Memorandum had been sent to their offices (.3 hours or $102) are all sustained because these tasks were clerical. The remaining challenges to that day's entries are denied. The challenges for February 5, February 26, and March 12 (totaling .6 hours) are all denied because these charges were not administrative but a proper and limited use of attorney time. The objection to .5 hours on March 15 ($170) for compiling materials to be transported to the Commission for the hearing is sustained because this was time spent on an administrative task. Respondents' objections to Duncan's entries of June 3 and July 29, 2010, totaling 1 hour, as administrative were also the subject of an objection for excessive time. The hearing officer deducted one hour for that work, and no additional time needs to be deducted. Therefore, the total amount of time disallowed for Duncan's entries as administrative, in addition to what was previously deducted, 1.3 hours, or $442.

Respondents have also objected to a number of Starr's entries as administrative or clerical work. The entries from October 1, 2009 (.1 hour), October 16, 2009 (.3 hour), October 29, 2009 (.1 hour), October 4, 2009 (.2 hour), March 4, 2010 (.2 hour), and June 3, 2010 (.1 hour) are all administrative in that they are entries for work such as faxing documents and filing appearances. The other challenged entries are not improper in that they are appropriately legal work, such as drafting an appearance (.2 hour) and drafting a retainer agreement (.5 hour). The total time disallowed for Starr is therefore one hour, or $300.

Most of Respondents' objections to the recommended ruling regarding particular fee entries reiterate those in their response to the fee petition and have been adequately addressed by the hearing officer and/or elsewhere in this final ruling. Respondents further argue in their objections to the recommended ruling that the hearing officer ignored their earlier opposition to compensation for Complainant's objections to the recommended ruling on liability and relief as merely "typographical" and to compensation for the portions of the fee petition that addressed their anticipated objections to it. The Commission has reviewed these arguments and the documents involved. Although unusual, the Commission cannot deem it inherently unreasonable for counsel to identify mechanical errors which should be corrected in the final ruling. Nor does the Commission find it unreasonable to devote some briefing attention to pointing out applicable

law in anticipation of objections where, as noted, the Commission no longer automatically allows replies to objections. Those sections of the petition could also be characterized merely as a review of the legal principles and precedents Complainant urges the Commission to follow. The process of seeking leave to reply is likely to have consumed more attorney and Commission time than the procedure counsel utilized. That some attorneys may make discretionary choices in representing a client that others do not, or may be more thorough than others in their preparation and presentation, does not necessarily mean their work is excessive if it advances the client's cause and reflects an effort to assist the tribunal.

Accordingly, the Commission approves and adopts the recommendations of the hearing officer as to line item reductions of counsel's time entries.

C. Additional Percentage Deductions

On the basis of the determinations discussed and approved above, Duncan's compensable attorney time has been cut by 17.7 hours ($6,018) and his paralegal or law clerk time cut by 2.8 hours ($308). This leaves a total recommended fee award for him of $31,302. Similarly, Starr's compensable attorney time has been cut by 10.2 hours and paralegal time cut by 6.7 hours. This leaves him a total recommended fee award of $21,798. Thus the total approved fee award after line-item deductions is $53,100.[2] This result is $10,123 or 16% below the total fees requested.

The remaining issue is whether this fee award should be further reduced as excessive given the facts and legal issues in this case, the length of the administrative hearing and any substantive legal writings, the amounts awarded in other relevant cases, and any other *Hensley* factors. Respondents devoted little time to this argument in their response to the petition, although they did argue for a distinction between employment and housing cases and generally objected to the size of the total fee amount claimed. Resp. R. at 18.

As brought out by the hearing officer, several recent Commission rulings are instructive. In *Hutchison v. Iftekaruddin*, CCHR No. 08-H-21 (June 16, 2010), the Commission reaffirmed the applicable standards and explained that line-by-line and percentage deductions may be utilized together when appropriate:

> [I]n another housing discrimination case, *Sullivan-Lackey v. Godinez*, CCHR No. 99-H-89 (Sept. 21, 2005), the Commission utilized a combination of line-by-line reductions and percentage reductions ranging from 15% to 50% for excessive and duplicative costs, noting that percentage reductions are appropriate where more precise reductions cannot be determined from the time records submitted. As noted in *Sullivan-Lackey*, when determining the amount of time reasonably spent on a case, the Commission considers the specific facts of the case. *Huezo v. St. James Properties/JANCO Realty*, CCHR No. 90-E-44 at 7 (Oct. 9, 1991). Further, the hearing officer may use his or her own experience, knowledge, and expertise to determine the amount of time reasonably required for particular types of work. See *Bonner v. Coughlin*, 657 F.2d 931, 934 (7th Cir. 1981). While each case is factually different, it can be helpful to look at the range of fee awards in comparable cases.

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[2] These figures correct a $40 error in the resulting total fee for Starr and an $8 error in the total remaining fees as stated by the hearing officer.

In *Flores, supra*, a recently decided employment discrimination case, representation of the prevailing complainant occurred over a four year period. Respondents were defaulted and motion to vacate was ruled upon. A default hearing took one day. Substantive legal issues were briefed, including the preparation of a post-hearing brief by the complainant's attorneys. Damages of over $50,000 were awarded. *Flores v. A Taste of Heaven et al.*, CCHR No. 07-E-32 (Aug. 8, 2010). For this work, the Commission awarded attorney fees of $67,511 and costs of $2,262.27, for a total of $69,773.27. Hours compensated totaled 206.05, as requested, after the complainant's attorneys in their petition documented their adjustments for duplication of work and deleted time spent on clerical functions.

In *Lockwood, supra*, the Commission awarded approximately $86,000 in attorney fees based on approximately 325 compensable hours), plus $1,600 in costs, where the attorneys had higher approved hourly rates than here. The complainant was awarded relief of over $200,000 on her parental status employment discrimination claim. She asserted that the discrimination took a variety of forms including different salaries and commission structures, termination of employment under circumstances where a non-parent would not have been terminated, and post-termination violations. The hearing lasted three days followed by oral closing arguments on a fourth day. A review of the Commission's decision on the merits makes clear that this was a more factually complex case than the instant case and more time was needed to represent the complainant. *Lockwood v. Professional Neurological Services*, CCHR No. 06-E-89 (June 8, 2009).

In *Warren, supra*, the complainants were awarded attorney fees of approximately $9,750 for about 65 hours of work performed by two less-experienced attorneys with approved hourly rates of only $150. Time spent in that case included a significant amount of time successfully advocating for leave to amend the complaint. This is a different set of facts than those before us on this fee petition.

In light of the time spent in the administrative hearing in the instant case, the number of actual and potential witnesses, the lack of a substantive legal memorandum other than that for the fee petition, and a comparison of recent fee awards, the hearing officer concluded that an award of attorney fees over $45,000 would be unwarranted. Complainant has objected to the additional across-the-board reduction the hearing officer recommended.

This Commission has been very clear that attorneys who represent complainants successfully should be adequately compensated for their work at market rates, even if the dollar amount of relief ordered to remedy the ordinance violation is small. At the same time, the fee award must be reasonable in light of what was actually required to provide successful representation. Determination of reasonableness cannot be done to a mathematical certainty; it involves informed judgment and the exercise of sound discretion.

After the hearing officer's line-by-line deductions, Complainant's attorneys are compensated for 164 hours of attorney time and 13 hours of paralegal time. The hearing officer believed this was still an excessive amount given the factual and legal issues in this case compared to other recent cases and his judgment of what was needed to provide quality representation. He recommended a further cut of approximately 20% or $10,500, to $42,500 total, allocating the cut proportionally to the amount he found compensable for each attorney prior to the further deduction.

The Commission does not find a further across-the-board cut to be necessary in this case. The compensable hours remaining are still well below those recently approved in *Flores*, for

example, and not clearly unreasonable in this case—which included a two-day contested hearing, three Respondents with different roles to be sorted out, contested issues of credibility as to which the work of Complainant's counsel produced a successful result, discovery work including resolution of a motion to compel, and issues of appropriate relief. As the hearing officer himself noted, the participation of two attorneys for Complainant helped expedite the hearing process and produced a favorable ruling for Complainant. The hearing officer extensively reviewed counsel's billing statements and made significant line-item deductions which the Commission has approved. The Commission finds the results of these deductions sufficient in this case.

In reaching this determination, the Commission does not reject its prior precedent which allows use of a combination of line-item and across-the-board reductions in an appropriate case. This is not a "new rule" for the Commission as Complainant contends. As noted in *Sullivan-Lackey, supra,* where both types of deductions were utilized, percentage reductions remain appropriate where more precise reductions cannot be determined from the time records submitted. *Hensley* also supports further percentage deductions.

Respondents' reliance on *Hutchison, supra,* to support further reductions is unpersuasive. Although that case also involved refusal to rent to a Section 8 voucher holder, the Commission found that there were no complex issues nor was there extensive evidence to be managed. An inexperienced attorney with a billing rate of $125-$140 per hour had billed for 82 hours of work although he had only entered the case shortly before the hearing after the complainant had represented herself through the investigation and most of the prehearing process. Finding that the attorney had entered excessive time for tasks such as uncomplicated document drafting and basic research to become familiar with the law, the hearing officer recommended a 25% across-the-board reduction (with no line-item reductions), which the Commission approved. *Hutchison* reaffirmed that either line-item or percentage reductions, or both, may be utilized to address excessive charges.

Nor does *Hoskins v. Campbell*, CCHR No. 01-H-101 (Oct. 15, 2003), cited by Respondents, present comparable facts. That was another case of refusal to rent to a Section 8 voucher holder, but it proceeded as a default, including an unopposed petition for fees and costs. Under those circumstances, far fewer hours were required and thus the Commission approved 29.40 hours of attorney work and 9.5 hours of work of an investigator, at requested rates of $180 and $75 per hour respectively. The attorney's hours were reduced only by amounts billed for collection activity that was premature.

Accordingly, the Commission approves a total fee award of $53,100, allocated at $31,302 to Attorney Jon Duncan and $21,798 to Attorney Daniel Starr.

C. Additional Charges for Objections to Recommended Fee Ruling

Complainant in his objections to the hearing officer's recommended fee ruling has requested an additional $10,734 in fees for time expended after preparing the initial fee petition. Specifically, Attorney Duncan submitted an affidavit and billing statement documenting that he devoted 31.8 hours to representing Complainant from September 30, 2010, through April 30, 2011. An additional award for these entries is denied.

The Commission has not found an instance when it has awarded additional fees for work done during the period between submission of a fee petition and the final ruling on it under the current fee determination procedures set forth in CCHR Reg. 240.630. Allowing such charges

means the fee determination process may never end as parties continue to respond to one another's filings and the prevailing complainant seeks additional fees. In the exercise of discretion to interpret and apply its ordinances and regulations, the Commission believes that counsel for prevailing complainants should absorb such legal work as they deem necessary during this period into their overhead and hourly rate structure, especially where as here it is not extensive and does not involve new issues about which a party might claim surprise.

Duncan's billing statement shows 17.4 hours of work addressing the substance of the recommended fee ruling, including 5. hour on March 29, 2011, to review it; .8 hour on April 1 to review it again and communicate with Starr about what to do; .2 hour on April 7 to receive Starr's response; then 15.9 hours between April 13 and 21 to prepare objections to the recommended ruling (excluding any time explicitly devoted to unsuccessfully seeking additional fees for this work). Because these fees are disallowed in their entirety, the Commission does not rule on whether any of this work is excessive. The remaining time involved work such as revising and sending out the initial fee petition, then communicating with Commission staff and others multiple times on the premise that it was necessary to determine whether a recommended ruling had been issued which Complainant's counsel had not received. The revision time should have been incorporated into the initial billing statement. Most of the remaining time appears administrative and in some instances excessive.

V. COSTS

Attorney Duncan also sought an award for costs of $341.57. Adding the itemized charges in Duncan's affidavit (Exhibit 1) attached to the fee petition produces a total of only $335.49, however.[3] Of this corrected amount, the $124.30 for photocopying and postage is approved as recommended by the hearing officer. Respondents' objections to compensation for these costs are overruled.

The Commission has typically approved costs for photocopying, as provided in Section 2-120-510(l) of the Chicago Municipal Code, although it has not always approved local postage costs. Compare *Brooks v. Hyde Park Realty Co., Inc., supra*, and *Edwards v. Larkin*, CCHR No. 01-H-35 (Nov. 16, 2005). Here, counsel exercised billing discretion and requested duplicating and postage costs only for the trial exhibits, a large document set, and not for other mailings and documents in the case. Therefore, these charges are approved as reasonable. Further, these costs are adequately documented by Duncan's testimony in his affidavit stating the purpose of the charges, the number of pages and per-page rate, and the basis and amount of postage. Compare *Richardson, supra*. The Commission has accepted an affidavit as sufficient documentation of copying costs where the amounts appear reasonable and no basis was offered to doubt the complainant's testimony. *Austin v. Harrington*, CCHR No. 94-E-237 (Mar. 18, 1998), citing *Richardson, supra*. In addition, the Commission has accepted the testimony of complainants about their out-of-pocket damages as sufficient documentation where they can testify with certainty, and by analogy the written testimony reflected in counsel's affidavit can be taken as sufficient for this small charge where it appears reasonable. See, e.g., the final ruling on liability in this case, p. 14. None of the stated rates or amounts for these costs appear unreasonable.

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[3] The Commission found the missing $6.08 in Duncan's billing statement dated June 14, 2010, as a delivery charge for "UPS to Dan Starr" on April 2, 2010. The Commission found no time entry for Duncan close to that date to help the Commission understand the purpose of this cost. The Commission did find an entry in Starr's billing statement that he received a "letter" from Duncan on April 2, 2010; but it is unclear whether this was the UPS delivery (or why UPS would be required for a letter). In light of the lack of clarity in supporting this charge, the Commission cannot find the $6.08 cost sufficiently documented and so denies compensation.

The Commission agrees with the hearing officer's deduction of the remaining $211.19 billed for the purchase of three ring binders and sets of divider tabs for the trial exhibits. Contrary to the assertion in Complainant's objections, these binders and tabs are not required by the Commission and are not part of duplicating costs.[4] These costs are excessive and unnecessary; if a presentation using ring binders and tabs is desired by counsel, the cost of the supplies should be absorbed into overhead.

Accordingly, the Commission approves costs payable to Attorney Duncan in the amount of $124.30.

VII. CONCLUSION

The Commission finds that Complainant is entitled to reasonable attorney fees of $53,100 and associated costs of $124.30, such awards to be allocated as follows:

1. $31,426.30 payable to Attorney Jon Duncan
2. $21,798 payable to Attorney Daniel Starr

Respondents are ordered, jointly and severally, to pay these amounts to Complainant's attorneys as provided by Section 2-120-510(l), Chicago Muni. Code, and CCHR Regs. 240.630 and 250.210.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: Kenneth Gunn, First Deputy Commissioner
Entered: May 18, 2011

[4] In fact, the Commission prefers that parties avoid use of ring binders for filed material, as they typically do not fit in the Commission's file drawers and they consume additional space. Also, protruding tabs create inconvenience when material must be copied.