City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, Suite 400, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Heidi Karr Sleper
Complainant,
v.

Maduff & Maduff, LLC
Respondent.

Case No.: 06-E-90

Date of Ruling: February 20, 2013
Date Mailed: March 22, 2013

TO:
Lisa M. Stauff
Catherine A. Caporusso
Attorneys at Law
53 W. Jackson Blvd., Suite 505
Chicago, IL 60604

Michael Maduff
Maduff & Maduff, LLC
205 N. Michigan Ave., Suite 2050
Chicago, IL 60601

FINAL ORDER ON ATTORNEY FEES AND COSTS

YOU ARE HEREBY NOTIFIED that on February 20, 2013, 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 $87,194.25 and costs in the amount of $1,253.70, for a total award of $88,447.95, plus interest[1] from May 16, 2012. 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 Lisa M. Stauff: $52,954.20 plus interest from May 16, 2012.
2. To Attorney Catherine A. Caporusso: $35,493.75 plus interest from May 16, 2012.

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 May 16, 2013, shall occur no later than 28 days from the date of mailing of this order.[2] Reg. 250.210.

CHICAGO COMMISSION ON HUMAN RELATIONS

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

[2] **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 as noted above.

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Heidi Karr Sleper **Complainant,** v.	**Case No.:** 06-E-90 **Date of Ruling:** February 20, 2013
Maduff & Maduff, LLC, **Respondent.**	

FINAL RULING ON ATTORNEY FEES AND COSTS

I. INTRODUCTION

On May 16, 2012, the Chicago Commission on Human Relations issued a Final Order on Liability and Relief in favor of Complainant Heidi Karr Sleper, finding liability on her Complaint of sex discrimination and ordering damages totaling $11,966.45 plus interest to Complainant as well as a fine of $500 to the City. The Final Order also awarded Complainant reasonable attorney fees and costs and set a schedule for the fee petition process.

On July 23, 2012, Complainant timely filed and served her Petition for Fees and Costs and Interest Calculation ("Fee Petition"), seeking a total of $124,951.35 as follows: (1) attorney fees in the total amount of $119,070 (211.60 hours at $325 per hour totaling $68,770 for Lisa Stauff; 125.75 hours at $400 per hour totaling $50,300 for Catherine Caporusso); (2) costs of $2,036.37; and (3) interest on the award of $3,844.98.

On September 11, 2012, Respondent filed and served its Response to Complainant's Petition for Fees, Costs, and Interest ("Response"). Respondent raised two main objections to the Fee Petition: (1) that Complainant's attorneys' hourly rates were excessive in that they sought their current hourly rates for 2012 rather than their historical rates; and (2) that a substantial amount of the work performed was unreasonable (variously challenged as inadequately described, excessive, duplicative, administrative, rounding, or unnecessary). Respondent proposed that Complainant's attorneys be awarded a total of $45,755.85 (for 151.09 hours) in attorney's fees.[1] Respondent did not oppose either the costs or interest requested.

[1] Respondent asserted that the total hours in the Fee Petition are inaccurate. Response, p. 1, n1. Respondent notes that Ms. Stauff's hours in the time slips are 211.26 (as opposed to the 211.60 she seeks) and Ms. Caporusso's hours in the time slips are 128.50, as opposed to the 125.75 in the brief. Based on the hearing officer's calculations, the correct figures are: Ms. Stauff, 211.26 hours, for $68,659.50 in fees; Ms. Caporusso, 128.50 hours, for $51,400.00 in fees, for a total of 339.76 hours and fees of $120,059.50. The hearing officer also noted several errors in Respondent's calculations, based on Exh. A to Respondent's Response. Respondent incorrectly calculated the total fees sought by Petitioner as $120,062.40 where the correct figure should be $120,059.50, and incorrectly calculated the total hours recommended by Respondent as 151.09 where the correct figure should be 149.33.

The hearing officer issued a Recommended Decision on Attorney Fees and Costs on December 3, 2012, and on January 2, 2013, on Respondent's motion, granted the parties additional time to file objections. Respondent filed objections on January 11, 2013, and Complainant filed objections on January 16, 2013. Respondent filed a response to Complainant's objections on January 22, 2013; however, pursuant to CCHR Reg. 240.630(b)(2), the response has not been considered because no leave was sought or granted to file it.

As detailed below, the Board of Commissioners adopts the recommendations of the hearing officer with the following modifications:

1. Disallowed time is restored for the preparation of objections to the recommended ruling on liability and relief, as the record confirms that the objections were filed and served.

2. A typographical error on page 18 of the recommended decision is corrected to show that the award for line 242 of the Fee Petition was reduced to 1.0 hours, not 2.0. Other calculations were not altered by this correction.

3. The recommended additional 15% across-the-board cut of fees is not adopted. Only the recommended line item deductions as modified are adopted.

4. The recommended dollar amount for interest on the fee award is not adopted. Instead, the award of interest, calculated pursuant to Reg. 240.700, will run from the date of entry of the Final Order on Liability and Relief until fully paid.

The fee awards have been recalculated consistent with these modifications. Other objections to the recommended decision are overruled, including Complainant's argument that all reductions should be restored and Respondent's argument that all billings for telephone conversations with counsel's client should be rejected.

II. APPLICABLE STANDARDS

Section 2-120-510(1) of the Commission on Human Relations Enabling Ordinance provides that a successful complainant may be awarded reasonable attorney fees incurred in pursuing the complaint before the Commission. Commission regulations describe the process for determining the amount of attorney fees and costs including the content of a fee petition, but do not set forth detailed standards for determining reasonableness. Those standards are fleshed out in case law.

Commission Regulation 240.630(a) requires that an attorney fee petition include a statement showing 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 the individual who performed the work. It must also state 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, must document the rates prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise. Documentation of costs for which reimbursement is sought must also be provided.

In general, the Commission has followed the "lodestar" method of determining reasonable attorney fees which has been 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 at 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 award requested is reasonable. *Brooks v. Hyde Park Realty Company, Inc.*, CCHR No. 02-E-116 (June 18, 2004).

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," which were described as follows:

> 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. *Hensley v. Eckerhart*, 461 U. S. 424 at 434 n. 9, 103 S. Ct. 1933 at 1940 n. 9. [other citations omitted]

Lockwood also noted regarding the *Hensley* factors, quoting from *People Who Care v. Rockford Board of Education*, 90 F. 3rd 1307, 1310-11 (7th Cir. 1996)], that "most of those factors are usually subsumed within the initial lodestar calculation."

A. 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*, CCHR 92-E-139 (Nov. 17, 1993), and *Barnes v. Page*, CCHR No. 92-E-1 (Jan. 24, 1994). In determining an attorney's appropriate hourly rate for fee 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. 3rd 702, 707 (7th 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."

As the Commission has further explained in *Richardson v. Chicago Area Council of Boy Scouts*, CCHR No. 92-E-80 (Nov. 20, 1996), *reversed on other grounds*, 332 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 the Fee Petition, Complainant seeks the hourly rate of $325 for Lisa Stauff and $400 for Catherine Caporusso.

Ms. Stauff submits in her affidavit that she graduated from Chicago Kent College of Law in 2001 with a J.D. and a Certificate in Labor and Employment Law, that she went into solo practice focusing exclusively on plaintiff's side employment law and that her practice has been concentrated in representing employees in civil rights and wage matters in federal and state court and before local administrative agencies. She further attests that the standard hourly rate she charged to civil rights and employment law clients in 2010 and 2011 was $300 per hour and that she increased her rate to $325 per hour in 2012. (Fee Petition, Exh. C, Affidavit of Lisa Stauff, ¶¶ 3, 4, 6, 7 and 8).

Ms. Caporusso provided an affidavit attesting that she graduated *summa cum laude* from the University of Illinois at Chicago in 1992 and from Harvard Law School *cum laude* in 1995. She further attests that she has performed work for the National Organization for Women through the firm of Robinson, Curley and Clayton; for the AFL-CIO in Washington D.C.; with H. Candace Gorman (an employment attorney in Chicago) as an associate and later a partner; and since 2006 in her own firm concentrated on representing clients in a variety of employment and civil rights matters in federal court and local agencies, including individual and class action employment discrimination and harassment claims. Ms. Caporusso attests that the standard rate she charged her hourly clients in cases in 2010 and 2011 was $375 per hour and that she increased her rate to $400 per hour in 2012. (Fee Petition, Exh. A, Affidavit of Catherine Caporusso, ¶¶ 2-7, 13).

In addition to their own affidavits and supporting documents, counsel provided documents that support their assertions that these rates are within the range of rates charged by employment attorneys. First, Caporusso attached to her affidavit the fee petition filed by Respondent's law firm (which also practices in the area of employment law) in a federal case, *Chaniga and Wincek v. Midwest Capital Leasing Corp. et al.*, N.D. Ill. No. 06 C 6470, and the Order of Judge Dow granting those fees as requested. These documents show that Aaron Maduff's hourly rate in 2009 was $445. Ms. Caporusso also provided evidence in the form of a draft affidavit Aaron Maduff provided to Ms. Caporusso indicating that his billing rate in 2008 was $400 per hour.

The Fee Petition also includes affidavits from Attorney David L. Lee attesting that in his knowledge and experience he believes the "rate of $325 per hour for Ms. Stauff and $400 per hour for Ms. Caporusso to be below market, as those rates are less than the rates charged by other practitioners of similar experience (but of lesser skill and talent) in the employment field in the Illinois legal community." Fee Petition, Exh. D, Affidavit of David L. Lee, ¶ 16. In her affidavit, Megan O'Malley (admitted to practice in 1997) asserted that her own current billing rate is $375 per

hour, and that in her experience, the rates sought by Ms. Stauff and Ms. Caporusso are "eminently reasonable, fair, and justifiable." Fee Petition, Exh. E, Affidavit of M. Megan O'Malley, ¶ 16. Alejandro Caffarelli attests in his affidavit that he has been practicing in the area of labor and employment law for over 10 years, and in his experience the $400 per hour rate sought by Ms. Caporusso "is well within community norms for an attorney of her experience, expertise and caliber." Fee Petition, Exh. F, Sworn Declaration of Alejandro Caffarelli, ¶ 10.

Respondent apparently concedes that the rates of $325 for Ms. Stauff and $400 for Ms. Caporusso for work performed in 2012, $300 for Ms. Stauff in 2010-11, and $375 for Ms. Caporusso for 2010-11, are appropriate. Response, p. 2. However, Respondent correctly points out that this case began in 2006, and neither Ms. Stauff nor Ms. Caporusso presented evidence of what their respective billing rates were for the period from 2006 through 2009. Respondent's objection is based on the claim that under the Commission's case law, the appropriate billing rate is the historical rate—the rate actual charged during the time that the work was performed—and not the current billing rate. Respondent cites *Lockwood, supra* at 2, where the Commission approved rates of $475 per hour in 2009 and $400 for prior years for Attorney Penny Nathan Kahan and $375 in 2009 and $325 in 2006 and 2007 for Attorney Ruth Major; *Sellers v. Outland*, CCHR No. 02-H-37 (Apr. 15, 2009), where historical rates were used to award attorney fees; and *Alexander v. 1212 Restaurant Group LLC, et al.*, CCHR No. 00-E-100 (Apr. 15, 2009), where fees were awarded based on an attorney affidavit attesting to rates in each applicable year. Response, p. 5.

Respondent argues that the billing rate for Ms. Stauff should be $250 for 2006 and 2007, $275 for 2008 and 2009, $300 for 2010 and 2011, and $325 for 2012; and for Ms. Caporusso should be $350 for 2009–2011 and $400 for 2012. Respondent proposed that the rate be increased in increments of $25 per hour every two years but miscalculated Ms. Caporusso's rates for 2010 and 2011. Respondent arrived at these rates by noting that Complainant's Fee Petition suggests that the attorneys held their rates steady for two years, then raised them by $25 per hour. Respondent then extrapolated backwards and concluded that a reasonable hourly rate for Ms. Stauff was $275 in 2008 and $250 in 2006 and 2007. Although Respondent suggested that the attorneys' rates should be increased in increments of $25 per hour every two years, Respondent argued that Ms. Caporusso's rates for 2010 and 2011 should be $325 per hour for 2009 and $350 per hour for 2010 and 2011. Response, Exhibit A.

However, as the Commission has noted above, an attorney's actual billing rate for comparable work is considered to be the presumptive market rate, and the Commission looks beyond the stated rate only if there is a basis to question it. *Flores v. A Taste of Heaven et al.*, CCHR No. 06-E-032 (Jan. 19, 2011). The Commission explained in *Rankin v. 6954 N. Sheridan, Inc, DLG Management, et al.*, CCHR No. 08-H-49 (May 18, 2011), that "[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." Here, Respondent did not offer any evidence to suggest that Ms. Stauff and Ms. Caporusso should not be awarded their respective billing rates for the period 2010 to 2012 as stated in their Fee Petition.

While Respondent correctly notes that Ms. Stauff and Ms. Caporusso failed to provide evidence of their billing rates from 2006 to 2009, nor is that information provided in any of the

affidavits in support of the Fee Petition, the Commission's precedent suggests that where the billing rate of an attorney is not available (for example in the case of a public interest attorney or where an attorney takes cases on a contingent fee), that rate may be determined by affidavits from similarly experienced attorneys *or* by looking to the Commission's own precedent. In *Lockwood, supra*, a parental status discrimination claim initiated in 2006, the Commission awarded fees to Attorney Penny Nathan Kahan of $400 for 2006-2008 and $475 for 2009, and to Attorney Ruth Major fees based on $325 per hour for 2006 to 2007 and $375 per hour in 2009. In *Alexander v. 1212 Restaurant Group, LLC, supra*, the Commission found these hourly rates charged by Complainant's counsel to be reasonable: $280 per hour in 2003, $290 per hour in 2004, $310 per hour in 2005, $320 per hour in 2006, $335 per hour in 2007, and $350 per hour in 2008.

For all these reasons, based on the Commission's precedent, the customary market rates for attorneys in Chicago, the hearing officer's own experience, and Complainant's affidavits, the hearing officer recommended the following hourly rates:

	Lisa Stauff	Catherine Caporusso
2006	$250.00	N/A
2007	$250.00	N/A
2008	$275.00	N/A
2009	$275.00	$350.00
2010	$300.00	$375.00
2011	$300.00	$375.00
2012	$325.00	$400.00

No objections to these recommended rates were received from either party. Accordingly, and because they appear to be reasonable market rates consistent with prior decisions of the Commission, they are adopted for purposes of calculating fees for Complainant's two attorneys.

B. Reasonableness of Hours Sought

The general rule is 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," with the qualification that "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). Respondent challenged a number of Complainant's time entries as unreasonable based on assertions that they are inadequately described, excessive, duplicative, administrative, rounding, or unnecessary.

In its response to the Fee Petition, Respondent compiled an exhibit detailing line by line the entries made by Ms. Stauff and Ms. Caporusso, in chronological order, identifying for each line the narrative description provided by counsel, the amount of time expended, the hourly rate sought, and the total fee for each line. Respondent then entered its own recommended time and hourly rate for each line. Although Respondent's exhibit had several errors, overall Respondent determined that Complainant's counsel were seeking a total of $120,062.40 in fees for 339.77 hours of work

(although the hearing officer calculated the correct figures as $120,059.50 in fees for 339.76 hours of work).[2] Respondent recommended in the alternative a total amount of $45,755.85 in fees, for 151.09 hours (the hearing officer found the correct total to be 149.33) of work. (Response, Exh. A.) Respondent then separately compiled line item lists by each stated objection, to identify each line objected to as inadequate (Exh. B), excessive (Exh. D), excessive time on trial preparation (Exh. E), duplicative (Exh. F), administrative (Exh. G), rounding (Exh. H), and unnecessary (Exh. I).

In determining the appropriate fee award to recommend, the hearing officer conducted a line-by-line review of each entry and addressed the specific objections to each line raised by Respondent. The hearing officer retained the same format, which is also retained below, so that the line numbers listed below correspond to the line numbers provided on Respondent's Exhibits and the specific time, hourly rate, and description entries correspond to the information provided by Complainant.

Although as Respondent suggests, "it would be impossible to spell out the thousands of variations of what might be acceptable in terms of reasonableness, "there is a significant body of case law that provides guidance." Below, each of Respondent's arguments in response to the Fee Petition is separately addressed based on the hearing officer's recommendations. The Commission adopts the hearing officer's recommendations as to line item challenges and reductions with the exception of the restored hours for preparation of objections to the recommended ruling on liability and relief.

1. Inadequate Description

Respondent challenged 59.41 hours billed by Complainant's attorneys because the descriptions were inadequate. (Response, Exhibit B) Respondent proposed cutting the hours described on Exhibit B from 59.41 hours to 18.50.[3]

Respondent contended that in a number of entries, Complainant's counsel provided only the following descriptions: "call/email client; exchange emails w/ client re case" or comparable limited descriptions. Respondent asserts that in *Rankin, supra*, the Commission was critical of the detail regarding preparing for a hearing or the types of research conducted. Respondent also cites *Kaiser v. MEPC American Properties, Inc.*, 164 Ill.App.3d 978 (1987) at 985-986, as offering other examples of the type of entries which have been found to be inadequately described. (Response, p. 6,

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[2] In Exhibit A, Line 47, Respondent listed 1.75 hours, with zero hourly rate and zero suggested fee. The hearing officer assumed Respondent meant to enter 00.00 for hours, at a suggested rate of $325, for a total suggested fee of $00.00. On Line 117, Respondent listed $82.55 as the fee Complainant is seeking; and in the suggested fee has recommended $76.20. Because Complainant's entry was 0.25 for $325, the hearing officer found the correct fee should be 81.25; because Respondent was recommending $300, the hearing officer found the correct suggested fee should be $75.00. Similarly, on Line 136, Respondent has the fee listed as $101.60 but the hearing officer found the correct fee should be $100, and Respondent listed the suggested fee as $88.90 but the hearing officer found the correct amount to be $87.50.

[3] Although the hearing officer stated that she appreciated Respondent's counsel's efforts to make clear the basis of the objections for each line item challenged, she found that the exhibits include numerous repetitions – providing multiple bases for objections. Accordingly, Respondent's summary of the total hours objected to on the basis of the objections includes substantial overlap. For purposes of this analysis, the hearing officer attempted to respond to each ground for objections, but in determining the total hours to be awarded she relied on a single line item list, in chronological order, indicating whether the objection was sustained in whole or in part and the appropriately hourly rate for the attorney performing the work, as indicated above, Section A.

n. 10)

Although descriptions such as "call/email client" made it difficult for the hearing officer to determine the precise nature of the work being performed, it is apparent that counsel has the duty to keep her client apprised of the progress of her case and also to maintain a level of confidentiality so that the attorney client privilege and work product doctrine are not breached. The descriptions themselves are not too vague—they describe the correspondence, date, and person sufficiently. See, e.g., *Rankin*, *supra*, at 5-6. For that reason, the Hearing Officer believed the time as recorded by Ms. Stauff and Ms. Caporusso on the following lines should be allowed: 2-5, 6, 8, 10, 15, 19, 45, 79, 83, 85-89, 95, 98, 99, 100, 104, 105, 109, 156, 157, 227, 228 (amounting to a total of 8.66 hours). See Response, Exh B, and Complainant's corresponding entries in the Fee Petition.

Respondent objected to this determination by the hearing officer and asked that the Commission disallow at minimum line items 2-5, 8, 15, 45, 79, 83, 85-89, 95, 99, 100, 104, 105 and 157—comprising 6.66 hours—because they describe the communication only as "re case," because it is impossible to determine whether the time claimed is reasonable based on this vague description. The Commission overrules this objection for the reason stated by the hearing officer.

The following entries were disallowed by the hearing officer (although generally on the alternative grounds for the objection, rather than that the description was inadequate)[4]: Line 43 (10/06/08, LS, Correspondence, Exchange emails w/ DLL re mediation dates, exchange emails w/ client, 0.25 hours/$81.25) and Line 94 (09/15/09, CC, emails to/from LS, HS (client) re: hearing continuance, 0.25, $100.00).

However, Respondent also challenged a number of other entries, on the basis that they were inadequately described or alternatively, excessive, duplicative, or administrative, which need to be addressed. Although Complainant's counsel offered more detailed information (for example, on lines 93, 168, 169, 172), the time entered appeared excessive to the hearing officer in light of the nature of the work performed and accordingly the hearing officer recommended reducing those time entries as follows:

Line 93 – (09/14/09, LS, motion to continue, et al) from 1.75 to 1.00

Line 162 - 09/14/10, CC, reviewed docs, emails to Lisa re:) from 2.50 to 1.00

Line 168 – (09/20/10, CC, talked to LS, reviewed docs) from 6.00 to 3.00

Line 169 – (09/21/10, CC, reviewed docs, JT (Maduff attorney) info, talked to LS) from 2.00 to 1.00

Line 172 - (09/22/10, CC, more work with docs, email to JT, emails/texts re: same) from 2.50 to 1.25

Line 175 – (09/27/10, CC, prep for hearing) from 6.00 to 4.00.

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[4] As the Commission observed in *Rankin*, "[i]t has sometimes been difficult to separate grounds for reduction neatly into one of these categories." *Rankin*, *supra*, at 5. The hearing officer attempted to address each entry based on the primary objection raised; however, where several objections are raised to the same entry, the hearing officer considered the entry in the first objection raised, and did not address additional objections, while recognizing that there are often several reasons a reduction or disallowance is appropriate.

Line 179 – (09/28/10, CC, emails with KD (Karen Doran) and LS re: hearing) from 2.75 to 1.75.

Line 184 - (10/01/10, CC, prep for hearing, talked to LS, prepared exams) from 5.00 to 3.00.

Line 188 - (10/03/10, LS, organize evidence, documents) from 6.00 to 4:00.

Line 191 - (10/04/10, LS, Misc., trial prep) from 8.50 to 6.00.

Line 198 – (11/08/10, CC, phone call with HO re: hearing and follow up) from 0.75 to 0.50.

Line 206 - (12/01/10, CC, check in with LS, ME) from 0.50 to 0.25.

Line 212 - (02/01/11, CC, emails re: hearing transcript, reviewed) from 2.50 to 1.00.

The Hearing Officer determined that the following line entries should be allowed, as billed:

Line 59 (03/25/09, LS, Review documents, receive and review discovery requests from Mike, misc. research, 0.75).

Line 91 (09/11/09, LS, Draft motion, organize file, draft motion to continue hearing, prepare exhibits; speak to client re: case; speak to CC re: case; forward documents to CC; strategize, 1.75).

Line 149 (08/11/10, CC, reviewed motion to compel, other emails from JT, to/from LS, met with LS re: same, 1.00).

As the Commission has previously noted, it can be difficult to determine what precise entries are inadequately described, and in reaching the above analysis, the hearing officer attempted to consider both Complainant's narrative description of the work performed and Respondent's objections that certain entries were both inadequately described and excessive. Where the work described appeared to be excessive for the time given, the hearing officer also took into account the description and made an overall reduction in time that for work that appeared to be either inadequate described or excessive or duplicative. In total, the number of hours challenged as inadequately described (or inadequately described and excessive) were reduced by the hearing officer from the 59.41 hours sought to 37.91 hours.

2. Excessive

Respondent challenged 146.25 hours as being excessive. As noted above, many of the entries have already been addressed, as Respondent also objected to these lines as inadequately described (for example lines 6, 8, 10, 59, 91, 93, 108, 162, 168, 169, 172, 175, 179, 184, 188, 191, 212, see above section B 1).

Respondent contended generally that Complainant's counsel billed an excessive amount of time for work that is simple or routine, or excessive in light of the fact that two attorneys performed the same work. Respondent also contends that the amount of fees sought overall is excessive in light of the nature of the case and similar Commission cases. Respondent points to *Pierce and Parker v. New Jerusalem Christian Development Corp.*, CCHR Nos. 07-H-12 & 13 (May 16, 2012), and

Lockwood, supra, to suggest that the overall fees are excessive. Respondent argues that in *Lockwood*, the Commission awarded the two attorneys $87,655.62 for 328.38 hours (for an average hourly rate of just under $267/hour) and that here, Complainant is seeking $119.070 for 337.35 hours (at an average hourly rate of $325.96). Response, p. 10, n. 16. The hearing officer believed that this argument, which addresses the overall reasonableness of the total fees sought, was better addressed under the *Hensley* factors, after the lodestar figure is determined. The Commission discusses the issue of post-lodestar reductions in Section 9 below.

Respondent has also challenged specific line items identified in Exhibit D as excessive amounts of time for work performed. For example, Respondent points to the entry on Line 9 in which Ms. Stauff billed 2.25 hours for "Draft, edit charge of discrimination." Respondent attached as an exhibit the Complaint itself, which Respondent described as a template form consisting of two pages. As noted below, the hearing officer agreed that this time was excessive. Respondent also pointed to the number of hours spent in drafting a motion to continue (see Lines 91, 93, and 133), for which Complainant's attorneys billed 5.83 hours. Respondent cites *Cotten v. CCI Industries, Inc.*, CCHR No. 07-P-109 (May 19, 2010), for the proposition that forms and motions such as a motion to continue are simple and should be completed in a limited amount of time. Respondent proposed reducing the hours for these lines to 0.50 (Line 91), 0.25 (Line 93), and 0.50 (Line 133). The hearing officer agreed that the time billed for a motion to continue was excessive and recommended the reductions listed below. But the hearing officer noted that some of the entries challenged clearly warrant the hours requested; for example, Ms. Stauff sought 1.25 hours for drafting discovery requests, although Respondent suggested that the time should be cut to 0.50 (Response, Exh D, Line 47).

The hearing officer found the following entries not excessive for the work performed and allowed the time:

Line 57 (03/02/09, LS, draft discovery requests, 1.25).

Line 70 (05/11/09, LS, draft letter, draft letter to Mike re: time slips, 1.00).

Line 74 (05/19/09, LS, review documents, 1.25).

Line 78 (07/27/09, LS, call /email client, 0.25).

Line 92 (09/14/09, CC, prepared and sent appearance form to CCHR, 0.50).

Line 102 (11/17/09, CC, read response on time records, looked at case file again, emails to/from LS, 0.50).

Line 108 (12/28/09, LS, Draft motion, draft motion to continue trial, 1.50).

Line 146 (08/09/10, LS, call/email opposing counsel, receive and review additional document production from opp counsel, discuss w/CC, 0.75).

Line 148 (08/11/10, LS, draft motion, draft, edit, research motion to compel, speak to CC re: case, 1.66).

Line164 (09/14/10, LS, misc., Exchange emails w/ client and CC re document production, damages calculation, 1.00).

Line 226 (02/22/11, LS, draft motion, draft joint motion for additional time to file post hearing briefs, 1.25)

Line 230 (04/01/11, CC, emails re: PHM (post hearing) brief, 0.50).

Line 231 (04/06/11, CC, more emails re: PHM, transcript, 0.50).

Line 234 (05/02/11, CC, emails to/from LS re brief, sent my section to LS, 0.25).

Line 235 (05/03/11, CC, emails to/from HS re: brief, 0.25).

Line 236 (05/03/11, LS, draft brief, post hearing brief, review documents, transcripts, legal research, 7.00).

Line 237 (05/04/11, LS, draft brief, post hearing brief, research, write, 6.00).

Line 238 (05/06/11, LS, draft brief, post hearing brief, research write, 5.50).

Line 239 (05/09/11, CC, review draft PHM brief, 0.50).

Line 245 06/20/11, CC, read final filed version of motion to strike, LS email to HS, 0.50).

Line 251 (03/26/12, LS, Misc., exchange emails w/ CC re: filing objections, 0.75).[5]

On the other hand, the hearing officer found certain line entries to be excessive. While hearing officer declined to accept Respondent's proposed reductions, she reduced the times for those line items as follows:

Line 93 (09/14/09, LS, Draft motion, motion to continue et al) from 1.75 to 1.00.

Line 133 (07/07/10, LS, Draft motion, draft motion to continue hearing; exchange emails with opp counsel re motion) from 2.33 to 1.00.

Line 165 (09/15/10, CC, txts to/from LS re hearing, reviewed docs) from 1.50 to 0.75.

Line 181 (09/29/10, LS, call/email client, exchange emails w/ client and CC re damages, trial prep) from 1.25 to 1.00.

Line 183 (09/30/10, LS, organize evidence/documents, trial prep work on pre-hearing mem, fwd draft to opp counsel) from 8.50 to 6.00.

Line 185 (10/01/10, LS, meeting, trial prep - meet with witnesses, review and organize documents) from 7.00 to 4.50.

Line 186 (10/03/10, CC, hearing prep, work with docs and exams) from 3.00 to 2.00.

Line 189 (10/04/10, CC, more hearing prep. Exhibit binders, talked to DM (Deanne Medina) and LS and client) from 7.50 to 5.00.

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[5] Line 84 (08/11/09, LS, call/email opposing counsel, 1.25) was inadvertently omitted from this list of allowed items.

Line 216 (02/12/11, CC, emails re: hearing transcript, reviewed) from 3.50 to 1.50.

Line 232 (04/29/11, CC, worked on PHM brief) from 2.00 to 1.00.

Line 233 (05/01/11, CC, more work on PHM brief) from 1.25 to 0.75.

Line 240 (05/09/11, LS, draft brief, final edits to post hearing brief) from 6.75 to 3.25.

Line 242 (06/08/11, CC, drafted motion to strike and sent to LS, emails re same) from 2.50 to 1.00.

Line 243 (06/10/11, CC, reviewed motion to strike, to LS) from 1.00 to 0.50.

Line 252 (04/02/12, CC, continued with fee info, prepped affidavit) from 1.50 to 1.00.

Line 264 (07/14/12, LS, draft document, work on fee petition) from 3.75 to 1.75.

Line 267 (07/17/12, LS, Draft document, final draft fee petition) from 1.66 to 1.00.

Overall, the Hearing Officer determined that of the 146.24 hours which Respondent has described as excessive on Exh. B, the hours should be reduced to 100.41 hours.

3. Excessive Time On Trial Preparation

Respondent challenged 102.08 hours billed by Complainant's attorneys arguing that the hours billed for trial preparation were excessive. Respondent proposed cutting those hours to 44.25. It appears that one basis for Respondent's argument is that Complainant was represented by two attorneys and that as such the work billed is either excessive or duplicative.

Clearly, while Respondent may have preferred that Complainant try this case with only one attorney, that was not the case, and Complainant was ably represented by both Ms. Stauff and Ms. Caporusso in the view of the hearing officer. As the Commission stated in *Sellers*, *supra*, there is no rule that precludes two attorneys from working on the same matter. Indeed, the Commission has awarded fees to two or more attorneys as well as paralegals and supervised law students in numerous cases. The appropriate question is whether the time spent on a particular task was reasonable. Where time records reveal that multiple attorneys are working together on what would customarily be considered in the legal community a two-person task, then both attorneys' time is reasonable. However, where documentation of tasks performed by each attorney is scant or where reasonable billing practices would dictate that only one attorney should bill for a task, duplicative time will be disallowed. *Id.*

The hearing took place over four days and both sides called witnesses, cross-examined witnesses, and submitted numerous documents for exhibits. It was difficult for the hearing officer to determine which hours expended in trial preparation were required and which were not. The hearing officer pointed out that Complainant prevailed in her case, which Respondent vigorously defended (a point Complainant presses in her objections to the recommended decision). However, the hearing officer estimated that counsel billed approximately 85 hours in trial preparation. Separately, Ms. Stauff billed 43.58 hours and Ms. Caporusso billed 42.50 hours. The hearing officer further noted

that Respondent added all the hours from Line 221, (2/17/11, CC, Hearing and follow up, 9.50 hours, $3,800.00) and Line 222 (2/17/11, LS, in court, Trial at CCHR, prep for next day, 8.75 hours, $2,843.75) as trial preparation, when a substantial number of those hours (approximately 8) were spent in the hearing itself. The hearing officer apportioned 0.75 hours from Ms. Stauff's 8.75 hours and 1.50 hours from Ms. Caporusso's 9.50 hours to trial preparation. With that reduction, the hearing officer determined that approximately 86.08 hours were spent in trial preparation.

The hearing officer found the time for trial preparation excessive given the scant information included in the descriptions. For example, for September 27, 2010, Ms. Caporusso billed 6.00 hours for "prep for hearing." For September 28, 2010, Ms. Stauff billed 2.75 hours for "Review documents, trial prep." For September 30, 2010, Ms. Stauff billed 8.50 hours for "Organize evidence/documents; Trial prep. Work on pre-hearing memo, Fwd draft to opp. Counsel." While there is no exact science to assessing the reasonableness of these times, the Hearing Officer recommended that 24.75 hours should be deducted from the hours sought, based on the following list:

Line 175 (09/27/10, CC prep for hearing) from 6.00 to 4.00.

Line 176 (09/28/10, CC, emails re: PHM, prep for hearing, work with Excel to sort; talked to LS re: same) from 1.00 to 0.50

Line 179 (09/28/10, LS, review documents, trial prep) from 2.75 to 1.75.

Line 181 (09/29/10, LS, call email client, exchange emails w/ client and CC re: damages, trial prep) from 1.25 to 1.00.

Line 182 (09/30/10, CC, prep for hearing, reviewed PHM) from 7.00 to 4.50.

Line 183 (09/30/10, LS, organize evidence/documents, trial prep work on pre-hearing mem, fwd draft to opp counsel) from 8.50 to 6.00.

Line 185 (10/01/10, LS, meeting, trial prep - meet with witnesses, review and organize documents) from 7.00 to 4.50.

Line 186 (10/03/10, CC, hearing prep, work with docs and exams) from 3.00 to 2.00.

Line 188 10/03/10, LS, organize evidence/documents, trial prep) from 6.00 to 4.00.

Line 189 (10/04/10, CC, more hearing prep. Exhibit binders, talked to DM (Deanne Medina) and LS and client) from 7.50 to 5.00.

Line 191 (10/04/10, LS, misc., trial prep) from 8.50 to 6.00.

Line 195 (10/05/10, LS, meeting, debrief day one w/ CC, prep for day two) from 2.33 to 1.33.

Line 216 (02/12/11, CC, txts, with client re hearing, prepped for hearing) from 3.50 to 1.50.

Line 217 (02/14/11, CC, prep for hearing, contact with ME, JT) from 5.00 to 3.00.

Line 220 (02/16/11, LS, misc., review documents, prep for trial) from 5.00 to 3.00.

In sum, then, the hearing officer reduced the hours which were identified as trial preparation on Respondent's Exh. E from 102.08 hours to 73.33 hours.[6]

4. Duplicative

Respondent also challenged a number of time entries as being duplicative, based on the standards set forth in *Sellers*, *supra*. (Response, p. 12; see also Response, Exhibit F – duplicative [Lines 101, 103, 104, 113, 119, 122, 138, 143, 145, 146, 147, 148, 149, 150, 151, 156, 163, 169, 170, 171, 176, 182, 192, 196, 202, 204, 212, 217, 221, 223, 230, 231, 232, 233, 235, 239, 242, 243, 245, 248, 257, 258, 267]) A number of these entries have already been addressed, either as inadequate description, excessive, or excessive trial preparation.

Respondent asserts, for example, that both Ms. Stauff and Ms. Caporusso seek attorney fees for speaking to Mr. Tighe, Respondent's counsel, on November 17, 2009. Ms. Caporusso billed 0.75 hours (Line 101) described as "talked to new D attorney, follow up with LS." Ms. Stauff billed 0.33 hours (Line 103) described as "exchange emails w/Joe Tighe re: case status, exchange emails w/ CC re response." However, in this instance, it appears that counsel were conferring with one other about the case as well as speaking with Respondent's attorney. Therefore, the hearing officer found that the time is not duplicative and should be allowed.

However, Respondent also points out that Ms. Stauff and Ms. Caporusso spent 8.0 hours drafting or reviewing the motion to strike, and that this is a motion that could be prepared by one attorney, and for that reason Ms. Caporusso's time should be disallowed (Lines 242 for 2.50 hours, 243 for 1.00 hours, 245 for 0.50 hours). However, as Respondent noted, the motion also appeared to seek sanctions (which were not ultimately granted by the hearing officer) and it is not unusual to have co-counsel participate in drafting a motion that is more complex than a simple motion to strike. For that reason, the hearing officer recommended that Ms. Caporusso's time not be totally disallowed but that a reduction in the hours expended is warranted. However, the hearing officer determined that he the issue had already been addressed in Respondent's challenges for excessive hours (Section 2, above), and that similarly, a number of other line entries were previously addressed (and in most cases the time was reduced), based on Respondent's challenges as being duplicative and excessive, or inadequately described.[7]

Of the entries not already addressed, the hearing officer found the following entries are not

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[6] On the other hand, the hearing officer allowed the following challenged charges as reasonable, although inadvertently she did not list them in the recommended decision: Line 155 (09/03/10, CC, prep for hearing, talked to LS, 0.25); Line 178 (09/28/10, LS, Misc., Exchange e-mails w/ CC re: damages, misc. trial prep., 0.50); Line 193 (10/05/10, CC, Follow up to hearing, talked to LS, prep for next day, 2.00).

[7] For example, Respondent challenged the time Complainant's counsel spent on the post hearing brief. (Response, p. 12). Respondent asserted that the attorneys billed 30.50 hours on the post hearing brief, in Lines 230-240, and compares that time to the 3.5 hours which attorneys in *Rankin* billed for the post-hearing brief. It is difficult to compare the work necessary to prepare a brief to another case, without more information. In any event, a number of hours were cut from this time based on Respondent's argument that the work was excessive, in Lines 232, 233, and 240. (See above, Section 2) The hearing officer thus found the remaining time warranted, based on the post-hearing brief that was submitted here.

duplicative and should be allowed:

Lines 101(11/17/09, CC, talked to new D atty, follow up with LS, 0.75)

Line 103 (11/17/09, LS, Call/email opposing counsel, exchange emails w/ Joe Tighe re: case status, exchange emails w/ CC re: response, 0.33).

Line 119 (04/28/10, CC, emails re: pre-hearing conference with LS and HS, 0.25).

Line 122 (05/05/10, CC, reviewed order from HO (hearing officer) and follow up, 0.25).

Line 143 (08/07/10, CC, emails re: documents to/from LS, 0.25).

Line 145 (08/09/10, CC, reviewed produced time slips, 1.00).

Line 147 (08/10/10, CC, talked to LS re: motion to compel, 0.25).

Line 163 (09/14/10, CC, talked to LS re: hearing prep., 0.25).

Line 171 (09/22/10, CC, talked to LS re: hearing, 0.50).

Line 192 (10/05/10, CC, hearing, 7.00).

Line 196 (10/06/10, CC, hearing, 7.00).

Line 223 (02/18/11, CC, hearing and follow up, 9.00).

Line 248 (03/07/12, CC, read HO decision, texts with Lisa, talked to client re: decision, 1.00).

Line 258 (06/25/12, CC, read CCHR decision, communicated with LS and HS re:, 0.50).[8]

The hearing officer did disallow the charge in Line 257. There Ms. Caporusso billed 0.25 hours for "read LS objections." As further explained below, in Section 7, Complainant had billed a time for preparing objections to the Recommended Decision on Liability and Relief; however, the hearing officer believed that no such objections were filed and so disallowed most of the time. As explained in Section 7, however, those objections were filed and are part of the hearing record in this case. Therefore, the Commission does not accept this recommended reduction and allows the charge of 0.25 hours in Line 257.

5. Administrative

Next, Respondent challenged a number of entries as being administrative and urged that they be disallowed. The Commission has noted that although "an essential aspect of operating a law practice is a system for accurately calendaring dates and deadlines, it is nevertheless administrative

[8] The following lines were also allowed, although inadvertently omitted from the hearing officer's list: Line 170 (09/21/10, LS, miscellaneous exchange of e-mails, speak to CC re document production, 0.66) and Line 221 (2/17/11, CC, Hearing and follow up prep for next day, 9.00).

work which is not ordinarily billed to paying clients but instead absorbed by the attorney as part of overhead." *Rankin, supra* at 8.

The hearing officer concurred with Respondent that a number of entries are for necessary but administrative work, such as scheduling conferences or interviews or calls to the Commission about simple administrative procedures. For that reason, the hearing officer disallowed the following entries based on the objection that the work is administrative, for example, filing documents, exchanging emails regarding packages, scheduling matters, docketing, and related clerical matters: Lines 14, 16, 17, 22, 24, 25, 29, 32-39, 43, 56, 63, 92, 94, 106, 110-116, 134, 135, 138, 139, 152, 200-205, 207-210, 214, 215, 225. [9] The total recommended reduction for administrative or clerical work amounted to 12.64 hours as calculated by the hearing officer.

In addition, the hearing officer addressed Respondent's contentions that Lines 50, 154, 199, 211, 224, 250, 260, 261, and 266 should be either disallowed or significantly reduced. The hearing officer recommended that the following entries in this group are acceptable charges and should be allowed:

Line 50 (10/16/08, LS, call email client, email client to inform that Mike has not responded to email dated 10/14, 0.08).

Line 154 (08/30/10, LS, review documents, receive order re: pre-hearing conference on Sept 8, 2010 email opp counsel to follow up on documents, 0.33).

Line 199 (11/10/10, CC, prep for hearing contact with ME, (Madeline Engel), court reporter, 0.50).

Line 211 (01/05/10, LS, Misc. Exchange emails re: ordering transcripts, 0.25).

Line 250 (03/26/12, CC, emails to/from LS re: possible objections, extension, started compiling fees, 0.75).

Line 260 (06/27/12, CC, worked on interest calculation, 0.50).[10]

As to Line 224—dated February 18, 2011, and seeking 9.00 hours for Ms. Stauff for "trial, organize documents, debrief"—Respondent argued that the time should be reduced by one hour as administrative. The hearing officer explained that while organizing documents generally may be an administrative duty (or one usually performed by a paralegal), during the hearing itself, allowing an hour to get trial exhibits in order and review them on the hearing day with co-counsel is not administrative but is a task that litigators regularly perform. For that reason, the hearing officer recommended that no time be deducted from this entry.

However, the hearing officer did recommend reductions in the remaining two line items in this group:

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[9] A number of line item entries on Exh. G of Respondent's Response have already been addressed above: lines 43, 50, 74, 91, 92, 94, 113, 138, 176, 185, 189, 198, 202, and 204. Where necessary, the hearing officer either adjusted the total time sought or disallowed the charge in its entirety.

[10] In addition, the hearing officer allowed payment for Line 42, although she did not discuss it specifically in her recommendation: Line 42 (09/25/08, LS, Call/email client, Speak w/ client re: Mike's mediation offer, 0.08);

Line 261, seeking 1.75 hours for drafting documents, to be reduced from 1.75 to 1.00 hours. This was described as organizing billing records and "information" for the fee petition, and as such appears partly administrative.

Line 266, in which Ms. Caporusso seeks 2.00 hours for "scanned in rate info., finalized affidavit [for fee petition]; emails to/from LS researched other rates," the hours to be reduced from 2.00 to 1.00. Again, this work is partly administrative.

Although the time to prepare a fee petition has been held compensable, time to maintain or review the billing records which may support a fee petition is administrative overhead, which is not compensable. *Huezo v. St. James Properties*, CCHR No. 90-E-44 (Oct. 9, 1991), *Lockwood, supra.*

In sum, of the total of 48.22 hours which Respondent challenged as administrative, the hearing officer reduced the total time to 28.32 hours.

6. Rounding

Respondent asserted that Attorney Stauff improperly "rounded" up the hours on a number of entries. (Response, Exh. H) Respondent contended that a number of entries "on their face, violate the regulation that the segment be in quarter hour increments, or less," citing *Lockwood.* (Response, p. 13) Of the 19.19 hours in which Ms. Stauff billed in times of 0.08, 0.33, 0.66, 1.66, 1.33 or 2.33, Respondent suggested that the figures be reduced to total 12.25 hours. Respondent appears to advocate that billings must be expressed in quarter-hour segments.

There is no basis for a finding that Attorney Stauff raised or lowered the number of hours or tenths of hours in her billings. Certainly, using two different means to keep time makes it more difficult to review the time sheets Attorney Stauff submitted. (Ms. Stauff indicated in her affidavit that she kept her time in the software PC Law, then in Freshbooks; Stauff Affidavit, ¶ 10). However, CCHR Reg. 240.630 requires that a fee petition be supported by affidavit and argument, and that it reflect the number of hours for which compensation is sought "in segments of no more than one-quarter hour" itemized by date and including a description of the work performed. The regulation does not prohibit billings in segments smaller than one-quarter hour, including tenths or hundredths of an hour. In fact, breakdowns in tenths or hundredths seem likely to produce more accurate time measurements and lower total billings than quarter-hour measurements. Attorney Stauff's time keeping thus does not warrant a reduction in actual time billed, as Respondent would have it. The hearing officer thus correctly recommended rejection of Respondent's challenges based on rounding regarding Lines 7, 18, 31, 44, 49, 54, 60, 64, 73, 77, 80, 120, 121, 123, 137, 151, 166, 167, 174, 195, and 246.

Before considering Respondent's rounding argument, the hearing officer had considered Respondent's argument that some of the same challenged time entries were also administrative and determined that the following entries should not be allowed because they are administrative tasks: Lines 110, 111, 112, 135, 201, 225. Because the Commission accepts those recommended deductions, there is no need to consider Respondent's additional objection regarding rounding as to those lines.

Similarly, Respondent challenged the following entries as both rounding and duplicative: Lines 103, 148, 170, and 267. Those entries were addressed above in Sections 2 and 4.

Finally, Respondent challenges two entries on the basis of rounding as well as "undisclosed witnesses": Line 61 (03/26/09, LS, call email witnesses, email Deanne Medina and Karen Doran re: discovery requests, 0.66 hours, $214.50) and Line 72 (05/12/09, LS, Draft discovery requests, discuss discovery production issues w/KJD, client, 0.33, $107.25). Respondent further claims that three more line items should be disallowed because they "constitute witness statements and should have been produced in discovery and were not.": Line 177 (09/28/10, LS, call/email witnesses, exchange emails, phone messages w/ witnesses re: trial prep., 0.50 hours, $162.50), Line 180 (09/29/10, CC, emails with KD (Karen Doran) and LS re: hearing, 0.25, $100.00) and Line 189 (10/04/10, CC, more hearing prep., exhibit binders, talked to DM (Deanne Medina) and LS and client, 7.50, $3,000.00). (Response, p. 13, n. 19) Although Respondent did not specifically address Line 28 in its brief, on Exhibit A Respondent also challenged this entry for failure to disclose (Line 28, 02/14/08, LS, Call/email witnesses, exchange emails w/ Deanne Medina re charge, 0.25). In total, the time challenged on this basis over 9.50 hours.

As to this argument, the hearing officer found it unclear why Respondent believed the time entries should be stricken. The witnesses were disclosed, included in the Pre-Hearing Memorandum, and in fact several (Medina, Engel, and Doran) testified at the hearing. The challenged entries do not suggest that Complainant's counsel took written statements from these witnesses (and even if they had, Respondent offered no reason to support that the statements were required to be produced in discovery). If Respondent wanted to object to these witnesses, the time to do so was, at the latest, during the hearing, not in the context of the attorney fee petition. The entries indicate that Complainant's counsel communicated with the witnesses for purposes of scheduling for trial (e.g., on Line 177, 09/28/10, Ms. Stauff billed 0.50 for "exchange phone messages w/ witnesses re: trial prep"). Moreover, based on the entry of Line 189, it is apparent that Ms. Caporusso was engaged in a number of trial preparation activities, but not in interviewing a witness. From the entries, the hearing officer found that the work was necessary and appropriate trial preparation, and actually performed, such that counsel is entitled to be compensated for that time (with the reductions taken from Line 189 for excessive trial preparation) on Lines 28, 61, 73, 177, 180, and 189. [11]

7. Unnecessary

Respondent challenged a number of entries as being unnecessary. The hearing officer disallowed two of them on the ground that the work was administrative: Lines 33 and 35. However, Line 50 was allowed, as it was as not mere administrative work.

Respondent challenged Line 1 (06/23/06, LS, Meeting, initial consultation, 2.25 hours) on the grounds that this is not customarily billed. However, the hearing officer allowed it, noting that it is not unusual for an attorney to bill for the initial consultation, particularly where, as here, the attorney ultimately is retained. See *Lockwood, supra*, where fees were allowed for work prior to complaint

[11] Line 72 was inadvertently omitted from this list in the Recommended Decision but was also allowed.

filing as appropriate and related to the successful claim.

Respondent challenged Line 47—an entry for October 13, 2008, which Ms. Stauff described as "go over settlement proposal w/ client, draft agreement, cover letter, email to Mike and Aaron" and billed 1.75 hours—as unnecessary asserting that drafting a settlement agreement before mediation is premature. However, work spent in preparing for a mediation, which well may include reducing a proposal to writing, is not an unnecessary task. Nor is reviewing a settlement proposal with a client. For that reason the hearing officer recommended allowing the time and the Commission agrees. Attempting to reach a settlement is a proper and integral part of representing the interests of a client in litigation, and it is not unreasonable to prepare for mediation by outlining a settlement offer in writing.

Respondent also challenged Line 81 (08/06/09, Ms. Caporusso billed 2.50 hours for "meeting with LS re: co-counseling"), Line 82 (08/06/09, Ms. Stauff billed 2.50 hours for "Meeting w/ CC re co-counseling case, review documents, discuss case strategy"), and Line 90 (Ms. Caporusso billed 2.00 hours for "talked to and reviewed case files from LS"). The hearing officer found these challenges not well taken, explaining that an attorney will need to spend some time meeting or conferring with co-counsel, reviewing the nature of the case, becoming familiar with the case file, and developing an overall trial strategy. Such work is typical of work necessary to represent a party, and as such is allowed.

Respondent's challenge to Lines 189 was already addressed by the hearing officer under Respondent's challenges for excessive work, with the recommendation that the time be reduced to 5.0 hours.

Similarly, although the hearing officer determined that time spent on drafting Complainant's motion to strike portions of Respondent's post-hearing brief is compensable, having reviewed the motion itself, the hearing officer found that the total of four hours billed (Lines 242, 243, 245) is excessive and this motion should have taken no more than 3.0 hours to prepare. Accordingly, the hearing officer recommended a reduction of Line 242 to 1.0 hours[12] and Line 243 to 0.50 hours.

Finally, although Respondent did not challenge several entries, the hearing officer *sua sponte* found that 8.25 additional hours were unnecessary because counsel billed over eleven hours for legal research and drafting of objections to the recommended ruling on liability and relief, but the hearing officer determined that Complainant never filed such objections and therefore recommended disallowing or reducing the following line items:

Line 253 - (04/22/12, LS, Legal research, legal research re objections to hearing officer's recommendation) from 2.50 to 1.00.

Line 254 - (04/23/12, LS, legal research, research and draft objections) from 3.00 to 1.00.

Line 255 - (04/24/12, LS, Draft brief, research draft, edit, finalize objections) from 4.50 to 0.

[12] This is the typographical error in the Recommended Decision to which Respondent correctly objected. The hearing officer recommended reducing Line 242 to 1.0 hours, not 2.0 hours.

Line 257 – (CC, read LS objections) from 0.25 hours to 0. (See Section 4 above).

Complainant objected to this recommendation of the hearing officer, asserting that the objections were in fact filed. The Commission reviewed the hearing record in this case and confirmed that Complainant is correct. On April 24, 2012, Complainant filed at the Commission her five-page Complainant's Objections to Recommended Ruling on Liability and Relief. Complainant also filed a corrected version on May 2, 2012, out of concern that not all pages may have been received. On May 10, 2012, Complainant filed a Notice of Filing and Certificate of Service which affirmed that copies of the Objections were sent to Respondent's attorney and the hearing officer on April 30, 2012. Complainant's objections (along with those submitted by Respondent) were considered by the Board of Commissioners in reviewing and acting on the hearing officer's recommended ruling. (Final Ruling on Liability and Relief, pp. 1, 25) Accordingly, the Commission does not accept these recommended reductions and allows the 8 hours of charges itemized above along with the 0.25 hours also discussed in Section 4 above, for a total of 8.25 hours related to the work on the objections.

8. Adjustment for hourly rates

For a number of entries, Respondent did not raise specific objections; rather Respondent challenged the hourly rate charged for the work performed. As noted above, Section A, all work performed and allowed should be charged at the hourly rates allowed for each attorney. For that reason, in making the final determination on attorneys fees, the hearing officer adjusted the hourly rate for all work performed, including on lines where no specific objection has been raised.[13] In restoring the recommended deductions for objections to the recommended ruling on liability and relief, the Board of Commissioners has followed the same calculation method.

9. Adjusted Lodestar Calculations; Further Application of *Hensley* Factors.

Having reviewed all of the Fee Petition, line by line, the hearing officer determined that the lodestar calculation, allowing for the hearing officer's recommended deductions and the adjustment of hourly rates, was as follows:

HEARING OFFICER'S RECOMMENDATION:

Attorney	Hours	Fees
Ms. Stauff	168.21	$49,100.50
Ms. Caporusso	94.50	$35,393.75
Total	262.71	$84,494.25

Neither party objected to the calculations of the hearing officer. Accordingly, in reaching this final ruling, the Commission has not audited the hearing officer's mathematical calculations but has retained them as set forth in the Recommended Decision, presuming that any discrepancies would be

[13] Accordingly, the hearing officer adjusted the hourly rates on Lines 11-13, 20, 21, 23, 26-27, 30, 40-41, 46, 48, 51-53 55, 58, 65-69, 71, 75-76, 96-97, 107, 117, 124-132, 136, 140-142, 144, 155, 158-161, 187, 190, 194, 197, 218-220, 222, 244, 247, 249, 262-263, and 265 as follows: for work Ms. Stauff performed in 2006-2007 at the rate of $250, 2008-2009 at the hourly rate of $275, 2010-2011 at the rate of $300, and 2012 at the rate of $325. For work Ms. Caporusso performed, the hourly rates permitted were $350 for 2009, $375 for 2010-2011, and $400 for 2012.

de minimis.

The Commission has made only the adjustments required by its restoration of the 8.25 hours expended on objections to the recommended ruling on liability and relief (8.0 hours restored to Ms. Stauff and 0.25 hour restored to Ms. Caporusso). Because this restored work was performed in 2012, the added time is calculated at the hourly rate of $325 for Ms. Stauff (for an additional $2,600) and $400 for Ms. Caporusso (for an additional $100).

BOARD OF COMMISSIONERS DETERMINATION:

Attorney	Hours	Fees
Ms. Stauff	176.21	$51,700.50
Ms. Caporusso	94.75	$35,493.75
Total	270.96	$87,194.25.

After making the line item reductions described above, the hearing officer utilized the *Hensley* factors to recommend that a further reduction of fees was warranted, applying several of the *Hensley* factors including the time and labor required, the novelty and difficulty of the issues presented, and awards in similar cases. In order to bring the award of attorney fees in this matter within the range of awards in similar cases, and consistent with the complexity of this case and the labor required, the hearing officer recommended an additional overall reduction of the attorney fees of 15%.

The hearing officer believed this further reduction produced an award consistent with the range of awards in similar cases. In *Pierce and Parker, supra*, the Commission used such an analysis noting that "this award [of fees of $56,484.50 for 220.35 total hours] 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.)"

The hearing officer reasoned that, as for *Pierce and Parker*, the recommended further adjustment in this case was based primarily on excessive and duplicative hours claimed for work by the complainant's two attorneys in relation to the level of difficulty of the work needed, but also to bring the award in line with awards in similar cases. The hearing officer rejected Respondent's argument that this was a simple case (Respondent's Objection, page 10, n. 16), noting that in fact, Respondent vigorously defended this case, causing the need for additional litigation and time at hearing. However, the hearing officer still found the time billed to be excessive given the nature of the case, even after a line-by-line review and specific line item deductions. The hearing officer found that Complainant was ably represented by her counsel and explained that the recommended further reduction was not intended to suggest otherwise. Rather it was deemed necessary to bring the award within a reasonable level consistent with the range of awards in similar cases.

Complainant has objected to this further percentage reduction. Complainant asserts that Respondent contested 192 of the 267 time entries in the Fee Petition and the hearing officer's line-by-line analysis resulted in a recommendation to disallow all or part of 44% of the contested entries. Complainant argues that this level of detailed review is similar to that done in *Rankin, supra*, where

the Board of Commissioner's rejected a hearing officer's proposed additional percentage cut while approving extensive line-item deductions. Complainant points to *Lockwood, supra*, as explaining that although a fee award may be adjusted by the *Hensley* factors, pursuant to *People Who Care, supra*, "most of those factors are usually subsumed within the initial lodestar calculation." Complainant argues that the hearing officer already applied the *Hensley* factors to analyze the contested line items and argues that further reduction of the fee award based on the *Hensley* factors is therefore unnecessary to bring the resulting fees in line with comparable cases. Complainant maintains that the resulting approved hours after the line item deductions—262.71 by the hearing officer's recommendation and 270.96 by the Commission's re-determination—is within the range of comparable cases for litigation of 72 months' duration with a four-day hearing and a complainant represented by counsel from the point of filing. Complainant points out that in *Lockwood*, 328 hours were approved for 50 months of litigation with a two-day hearing and a complainant represented by counsel throughout. Further, Complainant asserts that approximately 210 hours were approved in *Pierce and Parker, supra*, for litigation which took two years less than the present case with only a one-day uncontested hearing, and 206.05 hours were approved in *Flores, supra*, for litigation that took 15 months less than this case with a one-day hearing.

The Board of Commissioners has determined that the additional 15% reduction should not be adopted. In *Rankin*, the Board of Commissioners approved line item deductions for charges found excessive, duplicative, or administrative, resulting in a 16% reduction of the requested attorney fees. But the Board rejected the hearing officer's recommended further cut of 20% as unnecessary to bring the fee award in line with similar cases as reviewed in the ruling. In reaching the decision in *Rankin*, the Board made it clear that it did not reject its prior precedent allowing use of a combination of line-item and across-the-board reductions in an appropriate case, noting that percentage reductions remain warranted where more precise reductions cannot be determined from time records submitted and nothing that *Hensley* also supports further percentage reductions. At the same time, the Board reaffirmed in *Rankin*:

> This Commission has been very clear that attorneys who represent complainants successfully should be adequately compensated for the 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.

In *Rankin*, the Commission further explained its reasonableness standards quoting from *Hutchison v. Iftekarrudin*, CCHR No. 08-H-21 (June 16, 2010):

> In...*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 et al.*, 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.

Complainant is correct that in *Pierce and Parker*, where the Board of Commissioners drastically reduced the requested and recommended fees for work at the hearing stage by two thirds for each of the three attorneys representing the complainant, the percentage reduction was not combined with any line-item reductions at the hearing stage. The Commission viewed the circumstances of *Pierce and Parker* as similar to those in *Sullivan-Lackey*. In *Sullivan-Lackey*, the successful complainant was represented by a law school clinic through the collaboration of multiple law students and clinical faculty in a closely-supervised teaching environment which consumed more time than would be expended on comparable work in a law office setting. In *Pierce and Parker*, there was a similar collaboration between two *pro bono* attorneys from a law firm, who did not have specific expertise in civil rights litigation or in practice before this Commission, and a staff attorney from a civil rights organization who did provide that expertise, which extended the time to complete tasks due to a larger learning curve and perceived need for review. It was not possible under those circumstances to make line-item reductions identifying which specific work of which attorney should be disallowed or reduced; hence the percentage reduction method proved appropriate to adjust for the excessive and duplicative hours claimed in relation to the level of difficulty of the work required, bringing the total fees in line with the range of awards in similar cases as discussed in the ruling.

The Commission has afforded deference to the assessment of its hearing officers as to what are appropriate time expenditures in the hearing process, given that Commission hearing officers are experienced in civil rights litigation and have observed the work product of counsel in the cases assigned to them. For this case, the Board of Commissioners is persuaded that the line-item reductions made by the hearing officer reflect careful consideration in the context of the case and reasonable factual findings which should not be overruled absent persuasive evidence to the contrary (such as the evidence that objections to the recommended liability ruling were actually prepared and filed).

Nevertheless, the Board of Commissioners respectfully declines to adopt the hearing officer's recommendation of an additional 15% reduction of the requested fees beyond the line item reductions which it has approved, finding that the circumstances of this case are closer to those in *Rankin*. The line item reductions which the Commission has approved result in total fees 30% lower than the amount sought in the Fee Petition. That itself is a substantial reduction, which is a sufficient adjustment to achieve a reasonable attorney fee award in this case.[14]

10. Costs

Complainant sought $2,036.37 in costs in her Fee Petition. Complainant stated that the costs incurred included transcript cost, copying costs, and minor office supplies (e.g., binders and related materials). However, Complainant noted that not all of the original receipts were attached to the Fee Petition and that Complainant intended to supplement her petition with the missing receipts within seven days of the filing of the Fee Petition on July 23, 2012. The Fee Petition included receipts

[14] $124,951.35 - $87,194.25 = $37,757.10.

totaling $1,253.70 in costs for transcripts. See Stauff Affidavit and Exhibit H. However, neither the hearing officer nor the Commission received any supplementation.

CCHR Reg. 240.630(a)(3) requires a party seeking an award of costs to provide documentation for the costs sought, or compensation will be denied. See, e.g., *Richardson, supra*, and *Austin v. Harrington*, CCHR No. 94-E-237 (Mar. 18, 1998). There being no opposition from Respondent regarding costs, and Complainant having provided documentation for $1,253.70 in costs, the hearing officer recommended that costs in the amount of $1,253.70 be allowed. Neither Complainant nor Respondent objected to this recommendation; accordingly, and as the total recommended amount is reasonable, the Commission adopts it.

11. Interest

Complainant's counsel sought $3,844.98 for pre- and post-judgment interest on the award of fees and costs. Complainant attached the calculation to the Fee Petition, and it appears that the calculation method set forth in CCHR Reg. 240.700 was followed. Respondent did not oppose Complainant's calculations of interest (Response, page 1).

Although interest is awarded on the attorney fees and costs as determined in this ruling, the Commission does not adopt the requested and recommended dollar amount. First, the modifications of the requested fees which have been made in this ruling will change the interest calculation presented by Complainant in her Fee Petition.

Second, the request and recommendation did not follow the Commission's method for establishing the date when interest begins to accrue on an award of attorney fees. The Commission has followed federal court guidance under which interest on attorney fees runs from the date of the initial entry of judgment. See *Anderson v. City of Bessemer City*, 619 F.Supp 153 (W. Dist. N.C. June 25, 1985) and cases cited therein; *Shontz v. Milosavljevic*, CCHR No. 94-H-1 (May 20, 1998); and *Sullivan-Lackey, supra.* In other words, only post-judgment interest is awarded on attorney fees.

Therefore, interest on the award of fees and costs shall be calculated pursuant to the same method for determining rates set forth in CCHR Reg. 240.700,[15] but starting from the date of entry of the Final Order of Liability and Relief on May 16, 2012, rather than from the date of violation as for damages awarded to a complainant.

In the Commission's adjudication process, where an initial ruling of the Board of Commissioners determines liability and entitlement to relief including entitlement to attorney fees, the date of that initial ruling is appropriate for the commencement of interest on fees and costs, rather than the date of a second, follow-up ruling like this one determining the amounts. See CCHR Regs 240.610(a)(5), 240.620(b), and 240.630.

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[15] CCHR Reg. 270.700 provides as follows: "Pre- and post-judgment interest on damages shall be awarded at the bank prime loan rate, as published by the Board of Governors of the Federal Reserve System in its publication entitled 'Federal Reserve Statistical Release H.15 (519) Selected Interest Rates.' The interest rate used shall be adjusted quarterly from the date of violation based on the rates in the Federal Reserve Statistical Release. Interest shall be calculated on a daily basis starting from the date of the violation and shall be compounded annually."

Interest will continue to accrue on any unpaid balance until fully paid, as it does for damages. Also as for awards of interest on damages, no exact amount of the interest on fees and costs can be stated in this ruling because it is not yet known when full payment will occur.

III. CONCLUSION

For the reasons stated above, the Commission orders Respondent to pay attorney fees and costs in the total amount of $88,447.95 plus interest as follows:

1. To Attorney Lisa M. Stauff—attorney fees of $51,700.50 and costs of $1,253.70, for a total payment of $52,954.20.

2. To Attorney Catherine A. Caporusso—attorney fees of $35,493.75.

3. To each attorney respectively, post-judgment interest on the total award to the attorney starting from the date of the Final Order on Liability and Relief on May 16, 2012.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: _____

Mona Noriega, Chair and Commissioner
Entered: February 20, 2013