



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

WV HUMAN RIGHTS COMMISSION

1321 Plaza East

Room 104/106

Charleston, WV 25301-1400

TELEPHONE 304-348-2616

1 June 1990

GASTON CAPERTON
GOVERNOR

Quewancoii C. Stephens
Executive Director

Rhonda L. Nolan
167 8th Street
Huntington, WV 25701

Dwight J. Staples, Esquire
711 1/2 Fifth Avenue
Huntington, WV 25701

City Attorney
City of Huntington
P. O. Box 1659
Huntington, WV 25717

The Honorable Robert Nelson, Mayor
City of Huntington
City Hall
Huntington, WV 25701

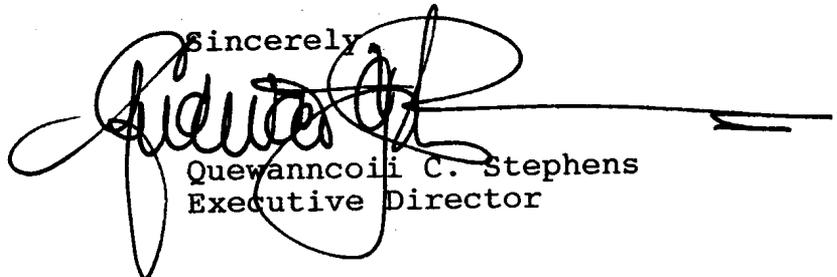
Mike Kelly
Deputy Attorney General
L & S Building, 5th Floor
812 Quarrier Street
Charleston, WV 25301

Re: Nolan v. City of Huntington/Huntington Civic Center
Docket No. ER-231-88A

Dear Parties and Counsel:

Herewith, please find the Final Order of the WV Human Rights Commission in the above-styled and numbered case. Pursuant to WV Code, Chapter 5, Article 11, Section 11, amended and effective July 1, 1989, any party adversely affected by this Final Order may file a petition for review. Please refer to the attached "Notice of Right to Appeal" for more information regarding your right to petition a court for a review of this Final Order.

Sincerely,



Quewancoii C. Stephens
Executive Director

Enclosures

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

cc: Secretary of State

NOTICE OF RIGHT TO APPEAL

If you are dissatisfied with this order, you have a right to appeal it to the West Virginia Supreme Court of Appeals. This must be done within 30 days from the day you receive this order. If your case has been presented by an assistant attorney general, he or she will not file the appeal for you; you must either do so yourself or have an attorney do so for you. In order to appeal, you must file a petition for appeal with the clerk of the West Virginia Supreme Court naming the Human Rights Commission and the adverse party as respondents. The employer or the landlord, etc., against whom a complaint was filed, is the adverse party if you are the complainant; and the complainant is the adverse party if you are the employer, landlord, etc., against whom a complaint was filed. If the appeal is granted to a nonresident of this state, the nonresident may be required to file a bond with the clerk of the supreme court.

IN SOME CASES THE APPEAL MAY BE FILED IN THE CIRCUIT COURT OF KANAWHA COUNTY, but only in: (1) cases in which the commission awards damages other than back pay exceeding \$5,000.00; (2) cases in which the commission awards back pay exceeding \$30,000.00; and (3) cases in which the parties agree that the appeal should be prosecuted in circuit court. Appeals to Kanawha County Circuit Court must also be filed within 30 days from the date of receipt of this order.

For a more complete description of the appeal process see West Virginia Code § 5-11-11, and the West Virginia Rules of Appellate Procedure.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

RHONDA L. NOLAN,
Complainant,

v.

DOCKET NO. ER-231-88A

CITY OF HUNTINGTON/
HUNTINGTON CIVIC CENTER,

Respondent.

FINAL ORDER

On 11 April 1990 the West Virginia Human Rights Commission reviewed the recommended decision filed in the above-styled matter by hearing examiner Gail Ferguson. After consideration of the aforementioned, and all exceptions filed in response thereto, as well as the transcript of record and arguments and briefs of counsel, the Commission decided to, and does hereby, adopt said recommended decision as its own with no modifications.

Accordingly, it is hereby ADJUDGED, ORDERED and DECREED that complainant be, and she is hereby, awarded all relief recommended by the hearing examiner as set forth in that section of her recommended decision entitled "Relief and Order." The hearing examiner's recommended decision is to be attached hereto and made a part of this final order.

By this final order, a copy of which shall be sent by certified mail to the parties and their counsel, and by first

class mail to the Secretary of State of the State of West Virginia, the parties are hereby notified that they have ten (10) days to request that the Human Rights Commission reconsider this final order or they may seek judicial review as outlined in the "Notice of Right to Appeal attached hereto.

It is so ORDERED.

WEST VIRGINIA HUMAN RIGHTS COMMISSION

Entered for and at the direction of the West Virginia Human Rights Commission this 31st day of May, 1990 in Charleston, Kanawha County, West Virginia.



QUEWANNCOII C. STEPHENS

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

RHONDA L. NOLAN,

Complainant,

v.

DOCKET NUMBER: ER-231-88A

CITY OF HUNTINGTON/HUNTINGTON
CIVIC CENTER,

Respondent.

HEARING EXAMINER'S RECOMMENDED DECISION

A public hearing, in the above-captioned matter, was convened on April 5, 1989 in Cabell County at the Cabell County Commission's Hearing Room, Cabell County Courthouse, Huntington, West Virginia. The Hearing Panel consisted of Gail Ferguson, Hearing Examiner, and Betty Thornhill, Hearing Commissioner.

The complainant, Rhonda L. Nolan, appeared in person and by counsel, Dwight J. Staples. The respondent, City of Huntington/Huntington Civic Center, appeared by its attorney, Paul E. Jordan, Assistant City Attorney.

All proposed findings submitted by the parties have been considered and reviewed in relation to the adjudicatory record developed in this matter. All proposed conclusions of law and argument of counsel have been considered and reviewed in relation to the aforementioned record, proposed findings of fact as well as to applicable law. To the extent that the proposed findings, conclusions and argument advanced by the parties are in accordance with the findings, conclusions and legal analysis of the

hearing examiner and are supported by substantial evidence, they have been adopted in their entirety. To the extent that the proposed findings, conclusions and argument are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or not necessary to a proper decision. To the extent that the testimony of various witnesses is not in accord with the findings as stated herein, it is not credited.

ISSUES

1. Whether the respondent discriminated against the complainant, a white female, in the compensation, terms, conditions and/or privileges of her employment in violation of the West Virginia Human Rights Act because she maintained a social relationship and/or closely associated with a black male.
2. If so, to what relief is the complainant entitled?

FINDINGS OF FACT

1. The respondent, Huntington Civic Center, maintains a list of part-time employees that they call in to work various events.
2. The complainant, Rhonda Nolan, is a high school graduate who initially went to work at the Huntington Civic Center in October, 1978 in the Operations Department.
3. The complainant is a white female.
4. During her tenure in the Operations Department of the Huntington Civic Center, the complainant worked for several

supervisors including, but not limited to, Tom McElhaney, Randy Adkins, Carl Adkins, Tracy Keith, Dan Hite, John Sizemore and Stephen Kessick.

5. The chain of hierarchy at the Huntington Civic Center, during the relevant time period, was four co-equal subdivisions: Operations, Concessions, Box Office and Security, Assistant Director, and Director.

6. Throughout her entire employment at the Huntington Civic Center, the complainant worked in the Operations Department. In 1986 and 1987, the complainant worked in both the operations and Security Departments.

7. The Operations Department was responsible for maintaining shows, setting up tables and stages for shows, cleaning up, and tearing down the stages once the shows were completed.

8. The duties of the Security Department included overall security for the building and equipment and taking care of time cards.

9. John Sizemore was employed at the Huntington Civic Center from September 15, 1977 through January 19, 1987. The last two years of his employment he held the position of Chief of Security.

10. John Sizemore testified that the complainant was always a reliable, trustworthy and dependable worker. She had keys to the restrooms, supplies, and would close up the building whenever John Sizemore was not present.

11. The complainant worked in all parts of the Civic Center.

12. During ten years of employment, the complainant had never missed a day of work.

13. Steven Kessick was a high school graduate who was initially employed as Operations Manager at the Huntington Civic Center on May 1, 1986. When Steven Kessick was first hired at the Civic Center, John Sizemore was the Chief of Security.

14. All employees that worked in the Operations Department were "part-time" employees. The part-time employees in Operations were scheduled to work from a list; and normally the scheduled work assignments were posted and/or distributed each week.

15. In approximately 1987, Charles McComas was hired at the Huntington Civic Center as Chief of Security.

16. Steven Kessick was the complainant's supervisor in the Operations Department. John Sizemore or Charles McComas was the complainant's supervisor in the Security Department.

17. In addition to her part-time job at the Huntington Civic Center, the complainant worked a full-time job at Huntington State Hospital. The complainant maintained her full-time job during the tenures of John Sizemore and Steven Kessick up until she was terminated.

18. Steven Kessick knew that the complainant worked a full-time job at Huntington State Hospital which required her to work in the daytime. Steven Kessick also knew that nights and weekends were generally the times that the complainant was

available to work at the Huntington Civic Center. The complainant had worked her full-time job at Huntington State Hospital ever since Steven Kessick had been employed there at the Huntington Civic Center.

19. During the complainant's tenure at the Huntington Civic Center, it was customary for complainant to go to her supervisor and tell what her schedule was at her full-time job at Huntington State Hospital. In turn, the supervisor would schedule around her full-time job. Basically, Steven Kessick scheduled the complainant to work mostly nights and weekends, a time that did not interfere with her full-time job.

20. The fact that the complainant maintained a full-time job in addition to her part-time job at the Civic Center was not an unusual occurrence. The record is replete with testimony that other employees maintained full-time jobs outside of the Civic Center.

21. John Edmonds, a white male, was employed in the Operations Department of the Huntington Civic Center through 1987 and 1988. During this time, John Edmonds worked a full-time job with the Tri-State Transit Authority, a bus line that services the City of Huntington. John Edmonds was also a minister and would occasionally give talks on Sundays.

22. Jack Bentz, a white male, worked as an electrician in the Operations Department. Jack Bentz would, from time-to-time, play in the band and Steven Kessick would schedule his work hours around the time he had to play in the band.

23. In April, 1987, the complainant's car became dysfunctional and Jeffrey Daniels transported her to and from work at the Huntington Civic Center.

24. The complainant was dating Jeffrey Daniels, a black male, during April, 1987.

25. After an April, 1987 event at the Civic Center, as the complainant left work and Jeffrey Daniels sat in his car waiting for her to exit the building, Charles McComas asked the complainant if that was her ride.

26. Thereafter, Charles McComas and Dan Fields and other male co-workers would stare at the complainant whenever she exited Jeffrey Daniel's car upon arrival at work. Further, whenever the complainant would leave work at the Civic Center, someone would observe her through a window in the garage.

27. Approximately one week after Charles McComas saw Jeffrey McDaniel drop the complainant off at work, Steven Kessick told the complainant that she was no longer needed by him, Charles McComas or by John Isner, the then Assistant Director of the Civic Center in Security, to work the conference side.

28. Shortly thereafter, the complainant was told by Steven Kessick that she needed to "watch herself." Steven Kessick then indicated that "there are people in the building that are prejudiced." The complainant then asked Steven Kessick if someone had been talking about her. Steven Kessick replied that Charles McComas and John Isner had been talking about her. Steven Kessick then commented that "even I thought it was wrong to have

a white woman date a black guy until I read the Bible, and there wasn't nothing in the Bible that said anything about it."

29. Jeffrey Daniels continued to take the complainant to work at the Civic Center for a period of three to four months.

30. Near the end of April, 1987, Steven Kessick started cutting the complainant's hours. The complainant's hours were reduced substantially from the end of April, 1987 until September 21, 1987, the date of her termination. Further, shortly after the complainant was seen with Jeffrey Daniels, her keys to the Civic Center were taken away.

31. The complainant initially worked in two departments-- Security and Operations. After the complainant was told that she could no longer work in Security, Steven Kessick allowed other employees to work Security whenever "someone needed some help." Although Steven Kessick contends that Charles McComas implemented a policy that precluded employees from other departments from working in Security, other employees were allowed to work in Security even after the complainant was told she could not.

32. Although Charles McComas initially testified that the complainant was unreliable because she worked a full-time job and was frequently unable to work, he later admitted that other employees in his Security Department had other jobs and could not work at a time when their schedules conflicted.

33. Linda Bill, Cindy Holley and Mary Rowsey were all permitted to work in the Security Department after the complainant was told she could not work in Security. Mary Rowsey was also in the Operations Department.

35. Contrary to the testimony of Charles McComas that the complainant was not reliable, which was not credible, Steven Kessick testified that the complainant had always been dependable.

36. Steven Kessick admitted that prior to the incident which precipitated complainant filing a discrimination complaint, she had never received a write-up or reprimand of any kind.

37. The City of Huntington implemented a policy on part-time employees, the effective date was August 15, 1987. That policy, in pertinent part, reads as follows:

"Employees will be assigned to a primary and a secondary job title and job description. For example, a Security worker could have a secondary designation of a Facility worker. The Security supervisor would have first priority to call him/her for work with the Operations supervisor able to call the individual for Facility work when not needed in Security. The employee would be paid at the applicable rate for the job performed. Both primary and secondary jobs and pay rates will be listed on the 901 Form."

38. The fact that the complainant was not permitted to work in the Security Department after August 15, 1987, was in direct contravention of the City of Huntington's own policy.

39. The complainant was terminated due to her refusal to accept offered work on six occasions in August, 1987. The dates of her refusals were August 17, 18, 19, 26, 27 and 30, 1987.

40. Steven Kessick scheduled the complainant to work on dates in August, 1987 at a time that he knew she was unavailable because of her full-time job.

41. Steven Kessick scheduled the complainant to work August 17, 18 and 19, 1987 when there were no events. Steven Kessick contended that he needed the complainant to clean the dressing room that the wrestlers had torn up. However, the scheduled of events reveal that "NWA" Wrestling occurred on August 2, 1987, 15 days prior to scheduling the complainant to work

42. Steven Kessick contended that since the complainant was a female and her duties included cleaing the women's restroom, he needed someone to maintain the restroom in the daytime. However, the testimony revealed that Charlie Fossell, an Operation's employee, was employed by the Civic Center to clean the restrooms in the daytime. Also, Mary Rowsey, a female Operations employee, was specifically hired to clean the restrooms in the daytime while events were occurring.

43. Steven Kessick admitted that on the dates in August, 1989 that he called the complainant, he could have called Mary Rowsey or Charlie Fossell to clean the female restroom in the daytime. Finally, Steven Kessick openly admitted that he set the complainant up for termination.

44. The complainant was the only person terminated in the Operations Department for refusing to come to work during a time that conflicted with her full-time job even though the Operations Department had other employees who worked full-time jobs.

45. Glen Atkinson, a black male who had been employed in the Concessions Department by the Civic Center from December 1986 through March 1988, testified that he considered the Civic Center work place to be a racially hostile environment.

46. As a result of having her working hours substantially reduced and not being allowed to work in Security for reasons she believed to be racially motivated, the complainant complained to John Isner, Sue Thomas, then Director of the Civic Center and Russell Houck, Personnel Director for the City of Huntington, to no avail.

47. After complainant's termination, which caused her to lose her part-time job, she was a "nervous wreck," she couldn't sleep, did a lot of crying and was worried about providing for her three children.

48. The complainant's average monthly wage prior to May, 1987, when her hours were reduced, was \$494.39.

49.	A.	\$ 494.39	Average wage prior to May 1987
		- 117.00	Complainant's salary in May, 1987 after
		<u>\$ 377.39</u>	hours were reduced. Difference.
		\$ 494.39	Average wage prior to May 1987
		- 56.26	Complainant's salary in June, 1987
		<u>\$ 438.13</u>	after hours were reduced. Difference.
		\$ 494.39	Average wage prior to May 1987
		- 150.75	Complainant's salary in June, 1987
		<u>\$ 343.64</u>	after hours were reduced. Difference.

\$ 494.39	Average wage prior to May 1987
- 21.38	Complainant's salary in August, 1989
<u>\$ 473.01</u>	after hours were reduced. Difference.

\$ 494.39	Average wage prior to May 1987
- 83.25	Complainant's salary in September, 1989
<u>\$ 411.14</u>	after hours were reduced. Difference.

=====

\$2,516.32 Total losses while employed at the
Huntington Civic Center. May of 1987
through September 21, 1987.

B. The complainant was unemployed in a part-time job
for nine months after her termination of September
21, 1987.

\$ 494.39	Average wage prior to May 1987
x 9	Months unemployed
<u>\$4,449.51</u>	Loss wages for nine months unemployed

C. In July, 1988, the complainant was employed in
another part-time job, Ernest Dolin Janitorial
Service. In that capacity the complainant earned
\$2,482.00 over a six month period.

\$ 494.39	Average wage prior to May 1987
x 6	Number of months employed by Dolin Janitorial Services in 1988
<u>\$2,966.34</u>	Complainant's wages if she had re- mained at the Civic Center
-2,482.00	Complainant's wages at Dolin Jani- torial Service

=====

\$ 484.34 Difference in pay for 1988

D. Complainant's Difference in pay for 1989

\$2,966.34	Complainant's wage for 6 months if she had remained at Huntington Civic Center
<u>-2,482.00</u>	Complainant's wage at Dolin Janitorial Service for 6 months
\$ 484.34	Difference in pay for 6 months in 1989

E. Total loss wages of the complainant through June, 1989.

\$2,516.32
4,449.51
484.34
+ 484.34
\$7,934.51

Total loss wages through June, 1989.

50. Complainant is entitled to reasonable attorney fees.

51. The complainant's attorney reasonably expended 112.30 hours in litigation of this matter, as set forth in his itemized fee affidavit.

52. An hourly rate of \$80.00 is reasonable for the legal services rendered by complainant's attorney, as supported by the fee affidavit.

CONCLUSIONS OF LAW

1. The West Virginia Human Rights Commission has jurisdiction over the parties and subject matter of this action pursuant to Sections 8, 9 and 10, Article 11, Chapter 5 of the WV Code.

2. At all times referred to herein, the respondent, City of Huntington, is an "employer" as that term is defined by the West Virginia Human Rights Act [WV Code §5-11-3(d)].

3. At all times referred to herein, the complainant, Rhonda Nolan, is and has been a citizen and resident of the State of West Virginia, and is a person within the meaning of Section 3(a), Article 11, Chapter 5 of the WV Code.

4. The complaint in this matter was properly and timely filed in accordance with WV Code §5-11-10.

5. The complainant has established a prima facie case of race discrimination.

6. Respondent has articulated legitimate nondiscriminatory reasons for its actions toward the complainant.

7. Complainant has demonstrated, by a preponderance of the evidence, that the reasons articulated by the respondent for its actions toward the complainant were pretext for unlawful discrimination.

8. The respondent unlawfully discriminated against the complainant on the basis of race in violation of WV Code §5-11-1, et. seq.

DISCUSSION

In fair employment, disparate treatment cases, the initial burden is upon the complainant to establish a prima facie case of discrimination. Sherpherdstown Volunteer Fire Department v. WV Human Rights Commission, 309 S.E.2d 342, 352-353 (WV 1983); McDonnell Douglas Corp. v. Green, 411, U.S. 792 (1973). If the complainant makes out a prima facie case, respondent is required to offer or articulate a legitimate nondiscriminatory reason for the action which it has taken with respect to the complainant. Shepherdstown V.F.D., supra; McDonnell Douglas, supra. If respondent articulates such a reason, complainant must show that such reason is pretextual. Shepherdstown V.F.D., supra; McDonnell Douglas, supra.

In the instant case, complainant has established a prima facie case of discrimination by proving facts which, if otherwise unexplained, raise an inference of discrimination. Furnco Construction Co. v. Waters, 438 U.S. 567 (1978); Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981). Complainant has proven that she is a member of a protected class. The West Virginia Human Rights Commission, in interpreting the West Virginia Human Rights Act, has consistently adopted federal judicial precedent which establishes that discriminatory practices based on an individual's association with persons of a particular race, national origin, or ancestry, is illegal. McDonald v. Santa Fe Transportation Company, 427 U.S. 273 (1976); Holiday v. Bill's Restaurant, 409 F. Supp. 904 (W.D. Pa. 1976); Parr v. Woodmen of the World Life Insurance Co., 791 F.2d 888 (11th Cir. 1986); Reiter v. Central Consol Dist., 618 F. Supp. 1458 (D.C. Colo. 1985); see also Satterfield v. Patrick Real Estate, Docket Number: HR-114-86.

The leading case on discrimination because of association is Whitney v. Greater New York Corporation of Seventh Day Adventist 401 F. Supp. 363 (1975). In Whitney the plaintiff, a white woman, alleged that she had been discriminated against because of her association with a black man when she was discharged from her place of employment. The defendants argued that Ms. Whitney's complaint should be dismissed because she was not a member of a protected class. The court explained the argument raised by the defendants:

Adventists contends that the complaint is defective because it does not allege that Whitney was discharged because of her race but, rather, because of the race of her friend, Samuel Johnson, and that the law is settled that white plaintiffs cannot maintain a Title VII action because of alleged discrimination against a minority group member. It is argued that the plaintiff therefore "lacks standing" to assert a claim under Title VII and fails to state a claim upon which relief can be granted.

The court in Whitney specifically rejected this argument and ruled as follows:

The argument is unpersuasive. Manifestly, if Whitney was discharged because, as alleged, the defendant disapproved of a social relationship between a white woman and a black man, the plaintiff's race was as much a factor in the decision to fire her as that of her friend. Specifying as she does that she was discharged because she, a white woman, associated with a black, her complaint falls within the statutory language that she was "discharge(d)...because of (her) race."

In the present case, the complainant, a white female, has established protected class status under the West Virginia Human Rights Act, given the language of the state statute, which is substantially similar to that of Title VII, recited in the Whitney case above. Having established the standing of the complainant to pursue this claim and given unrebutted evidence that the complainant's hours were reduced and that she was subsequently discharged, two elements of a prima facie case, the issue then, is whether the complainant has proven facts which, if unexplained, give rise to an inference of discrimination.

Credible evidence establishes that, during the complainant's tenure as an employee, she was a dependable employee; and that

her work schedule was accommodated by the respondent until she was observed by respondent in the company of a black male, after which time her hours were reduced, her keys taken away and she was discharged.

Respondent has articulated legitimate reasons for its adverse action toward complainant. Respondent presented evidence that, a policy was instituted that precluded employees from one department from working in another department. Therefore, complainant could not work in both Operations and Security, which effectively resulted in a reduction of her hours. Respondent further asserted that it could not accommodate the complainant by providing her with available part-time work hours which did not conflict with the hours of her full-time job. Therefore, complainant had to choose between her two place of employment, the result being that she had to refuse work hours the respondent required, giving rise to her termination.

The complainant established these reasons to be pretextual by producing evidence that, notwithstanding respondent's policy against interdepartmental working, respondent continued to allow other employees to work interdepartmentally; at least one of whom worked in Operations as her primary assignment. The complainant also established that, although she had to refuse to accept the scheduled hours requested by respondent, because of conflicts with her full-time job, that respondent purposely scheduled her or "set her up," if you will, for work on days that it knew she would be unavailable because of her full-time job. Moreover

complainant showed, further, that respondent continued to schedule hours to accommodate the needs of other employees who held full-time positions elsewhere as it had the complainant, until she was observed with Jeffrey McDaniel.

Specifically, there was un rebutted evidence that John Edmonds, who worked in the Operations Department, worked a full-time job and was never disciplined for doing so. At the date of the hearing, John Edmonds continued to work at the Civic Center part-time, continued to maintain a full-time job and management continued to schedule around his full-time job. Moreover, after the complainant was told she could not work in the Operations Department and the Security Department, other employees--Linda Bills, Cindy Holly and Mary Rowsey--were allowed to do so. Finally, the examiner finds credible the testimony of complainant that comments were made by respondent's employees about her association with Mr. McDaniel.

The record evidence taken as a whole compels the conclusions that the complainant's hours were reduced by respondent, and complainant was discharged by respondent because of her association with a black person, and accordingly, that complainant was discriminated against on the basis of race.

The undersigned hearing examiner concludes that the petition for attorneys fees filed by the complainant's counsel are in compliance with the current law of this jurisdiction and are reasonable.

RELIEF AND ORDER

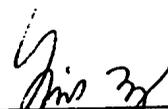
Pursuant to the above findings of fact and conclusions of law, it is hereby **RECOMMENDED** as follows:

1. The respondent shall cease and desist from engaging in unlawful discriminatory practices.
2. Respondent shall pay to the complainant backpay in the amount of \$7,934.51, plus interest at 10% per annum as set forth in Finding of Fact Number 49.
3. Respondent shall pay to the complainant incidental damages as compensation for humiliation, embarrassment, emotional and mental distress and loss of personal dignity in the amount of \$2,500.00.
4. Respondent shall pay unto complainant's counsel attorney's fees in the amount of \$8,984.00 as set forth in counsel's attached fee affidavit.
5. Respondent shall reinstate complainant to her former position at the Huntington Civic Center.

Entered this 22 day of January, 1990.

WV HUMAN RIGHTS COMMISSION

BY _____


GAIL FERGUSON
HEARING EXAMINER

A F F I D A V I T

STATE OF WEST VIRGINIA

COUNTY OF CABELL, TO-WIT:

This day came Dwight J. Staples, counsel for the complainant, Rhonda Nolan, being first duly sworn upon his oath deposes and says:

1. That the time and effort involved in work on complainant's case are reflected in the attached fee statement as to time expended. The case involved numerous conferences, research and correspondence with various individuals to assist the complainant in her attempt to prove racial discrimination.

2. The attorney performing the listed services did not handle other fee generating matters during the time period listed and concentrates a substantial portion of his law practice to discrimination cases.

3. The fees charged are commensurate with those for an attorney of similar experiences. That the office policy of Henderson and Henderson is that they do not bill separate for telephone calls, travel expenses, copies, etc. The firm bills on a hourly basis period.

4. There were not strict time limitations in this matter imported by the client or by the circumstances.

5. The complainant conferred this office on August 31, 1988; at which time she employed affiant and this relationship has been ongoing since that time.

6. The attorney handling this matter has practiced before the Circuit Courts throughout the State and has practiced before the Supreme Court of Appeals of West Virginia, has appeared before many administrative agencies and has handled cases in the United States Federal District Courts.

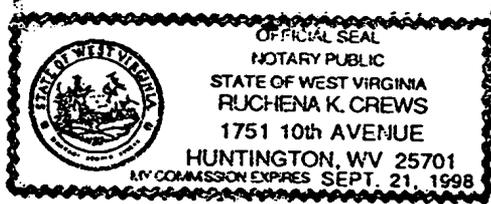
7. At the time of employment in this matter it was agreed that any fee would be paid by the respondent with the hope and anticipation that claimant would prevail. No fees nor costs have been paid to Henderson and Henderson, Attorneys.

And further affiant saith not.



Taken, sworn to and subscribed before me this 26th day of May, 1989.

My commission expires: September 31, 1998




NOTARY PUBLIC

FEE APPLICATION

<u>DATE</u>	<u>SERVICES</u>	<u>TIME</u>
8/31/88	Letter to client	.25 hrs.
9/1/88	Conference with client	1.25 hrs.
9/1/88	Letter to Atty. General	.25 hrs.
9/6/88	Review of Answer & Letter from Commission	.25 hrs.
9/7/88	Telephone conf. with client	.25 hrs.
9/14/88	Review correspondence from Atty. General	.1 hr.
9/23/88	Receipt & review of commissioner's file	1.5 hrs.
10/10/88	Review of calendar	.50 hrs.
3/6/89	Office conf. with client	2.0 hrs.
3/8/89	Research discrimination because of assoc.	3.0 hrs.
3/9/89	Research discrimination because of assoc.	3.0 hrs.
3/9/89	Drafter Motion for Amended time frame Order	.5 hrs.
3/10/89	Drafter interrogatories & request for production of documents	2.0 hrs.
3/16/89	Review of order & conf. with client regarding same	.1 hr.
3/16/89	Telephone conf. with City Atty. Paul Jordan	.1 hr.
3/26/89	Reviewed defendants interrogatories to plaintiff & drafted letter to plaintiff	.50 hrs.
3/28/89	Telephone conf. with client & meeting with Atty. Jordan	.50 hrs.
3/28/89	Review of respondent's interrogatories, answers, research & perusal of Commission file	3.5 hrs.
3/29/89	Research, conference with client, continued perusal of all documents; started drafting trial questions	8.0 hrs.
3/29/89	Research, drafting pre-hearing memo & arranging exhibits	3.0 hrs.

3/30/89	Edited pre-hearing memorandum; arranged exhibits; reviewed letter from Commission Drafted joint stipulations	6.0 hrs.
3/31/89	Conf. with Atty. Paul Jordan & drafting answers to interrogatories	1.0 hr.
4/3/89	Drafting answers to interrogatories; gathering & duplicating responses to production of documents & reviewing	6.0 hrs.
4/4/89	Drafted motion to compel production of personnel files & prepared subp. duc.	.75 hrs.
4/4/89	Research; trial preparation; drafted questions; arranged exhibits	10 hrs.
4/5/89	Witnesses interviewed & actual trial of case	7 hrs.
4/6/89	Research discrimination	4.0 hrs.
5/17/89	Outlining transcript & research for brief	7.0 hrs.
5/18/89	Outlining transcript & research for brief	7.0 hrs.
5/19/89	Drafting proposed findings of fact	7.0 hrs.
5/20/89	Drafting proposed findings of fact & started conclusions of law	5.0 hrs.
5/23/89	Drafting proposed findings of fact & conclusions of law	5.0 hrs.
5/24/89	Research & drafting conclusions of law	9.0 hrs.
5/25/89	Editing document & making corrections of final draft	2.0 hrs.
5/26/89	Preparation of filing & sending copy to all parties	1.0 hr.
	Total Hours	<u>112.30</u>

112.30 hours at \$80.00 per hour = \$8,984.00

Total Due: \$8,984.00