City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Courtney Tarpein
Complainant,
v.

Polk Street Company d/b/a Polk Street Pub
and Jim Dziubla
Respondents.

Case No.: 09-E-23

Date of Ruling: April 18, 2012
Date Mailed: May 4, 2012

TO:

Nicholas A. Caputo, Ljubica Popovic
Caputo Law Firm
901 W. Jackson Blvd., Suite 301
Chicago, IL 60607

James P. Pieczonka
Law Offices of James P. Pieczonka, PC
7720 W. Touhy, Suite D
Chicago, IL 60631

FINAL ORDER ON ATTORNEY FEES AND COSTS

YOU ARE HEREBY NOTIFIED that on April 18, 2012, 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 Respondents to pay attorney fees of $26,439.30 and costs of $752.38, for a total award of $27,191.68. The findings and specific terms of the ruling are enclosed. Respondent is ordered to pay the total amount to Complainant's attorneys at the address stated above and as further explained in the ruling.

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 October 19, 2011, shall occur no later than 28 days from the date of mailing of this order.[1] Reg. 250.210.

CHICAGO COMMISSION ON HUMAN RELATIONS
Entered: April 18, 2012

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

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

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FINAL RULING ON ATTORNEY FEES AND COSTS

I. PROCEDURAL HISTORY

On October 19, 2011, the Commission on Human Relations entered a Final Order and Ruling on Liability and Relief ("Final Order") in this matter, finding that Respondents Polk Street Co. d/b/a Polk Street Pub and Jim Dziubla had discriminated against Complainant Courtney Tarpein based on sex by forcing her to take maternity leave prior to the time she had planned to do so. Respondents were ordered to pay damages totaling $6,400 plus interest from February 18, 2009, to pay to the City of Chicago a fine of $500, and to pay Complainant's reasonable attorney fees and associated costs. The Final Order provided for Complainant as the prevailing party to serve and file a petition for attorney fees and/or costs as specified in CCHR Reg. 240.630(a) on or before December 5, 2011, with any response to such petition to be served and filed on or before December 19, 2011.

On December 5, 2011, one of Complainant's attorneys, Ljubica J. Popovic, filed Complainant's Petition for Attorney's Fees ("Fee Petition"), requesting fees of $30,031.75 and associated expenses of $752.38, for a total of $30,784.13.

On December 19, 2011, Respondents filed Respondents' Objection to and Motion to Strike and Dismiss Complainant's Petition for Attorney Fees, raising three objections: (1) that the Fee Petition was not timely filed, (2) that Complainant did not prove the claimed fees were fair and reasonable, and (3), that Complainant did not prevail on her "major" claim such that fees should be reduced.

On January 14, 2012, the hearing officer issued her Recommended Decision on Attorneys' Fees and Costs ("Recommended Decision"). Respondents filed Objections to the Recommended Decision on February 14, 2012, again arguing that the Fee Petition was not timely filed and raising the additional objection that the Illinois Human Rights Act preempts this Commission from assessing attorney fees and punitive damages. Complainant did not file any objections to the Recommended Decision.

II. APPLICABLE LEGAL STANDARDS

In determining an attorney's appropriate hourly rate for fee award purposes, the Commission in *Sellers v. Outland*, CCHR No. 02-H-73 (Mar. 17, 2004), aff'd in part and vacated in part on other

grounds Ill.App.Ct. No. 1-04-3599 (1st Dist., Sept. 15, 2008), followed the reasoning of the Seventh Circuit set forth in *Small v. Richard Wolf Medical Instruments Corp.*, 264 F.#d 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 was stated in *Richardson v. Chicago Area Council of Boy Scouts*, CCHR No. 92-E-80 (Nov. 20, 1996), reversed on other grounds 322 Ill.App.3d 17 (1st Dist. 2001), dismissed on remand CCHR No. 92-E-80 (Feb. 20, 2002), "Once an attorney provides evidence of his/her billing rate, the burden is on the respondent to present evidence establishing a good reason why a lower rate is essential. A respondent's failure to do so is essentially a concession that the attorney's billing rate is reasonable and should be awarded."

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

Complainant's Fee Petition included breakdowns by attorney and legal support staff of hours expended by date, number of hours, and activity. The petition was supported by the affidavit of Ljubica D. Popovic, lead attorney.

III. RESPONDENTS' OBJECTIONS

Not Timely Filed

Respondents have objected that the Fee Petition was not timely filed. This objection is not based on a late date of submission, as the Fee Petition was filed on December 5, 2011, the deadline for submission. Instead, Respondents argue that the Fee Petition was filed under a different law firm name than the original name of the law firm representing Complainant, namely Caputo Law Firm. The Fee Petition was filed in the name of "Caputo Law Firm, P.C.," which was incorporated in Illinois, according to evidence presented by Respondents, on October 4, 2011, a date after the administrative hearing and liability ruling in this matter. Respondents do not dispute that named attorneys are the ones who provided Complainant's representation and filed the Fee Petition, but rather contend that because the law firm named in the Fee Petition was not in existence during the pendency of this case, the Fee Petition was not timely filed.

In short, Respondents argue that the fee petition must be dismissed as "untimely" because it was filed by the wrong entity. According to this argument, the Caputo Law Firm was incorporated as a

professional corporation under the name Caputo Law Firm PC only after the legal work was performed, and because Caputo Law Firm PC did not have an attorney appearance on file, it could not act for Complainant as her attorney of record.

This objection was correctly overruled by the hearing officer in her Recommended Decision.

The Fee Petition states that it is submitted by Courtney Tarpein "by and through her attorney, Ljubica D. Popovic of the Caputo Law Firm P.C." It ends with a request that the Commission grant attorney fees and costs "to Caputo Law Firm P.C." It is signed by "L. Popovic, Attorney for the Complainant." In the contact information which follows, the first line lists the name of Popovic and the second lists the name of the law firm including the "P.C." designation. In the attached affidavit of Ljubica D. Popovic, she describes herself as an attorney and shareholder of Caputo Law Firm P.C.

This type of technical inconsistency does not invalidate the fee petition timely filed on December 5, 2011. The only attorney appearance on behalf of Complainant was filed on October 13, 2010, using the Commission's optional attorney appearance form. It lists on the line for Name of Attorney "Nicholas Caputo and Libby Popovic." On the "Firm Name" line is written "Caputo Law Firm." The address and other contact information are identical to what appears later on the fee petition.

Based on this appearance, subsequent filings, and what has occurred during the course of these proceedings, the attorneys of record for Complainant have always been Nicholas Caputo and Llubica "Libby" Popovic as individuals, regardless of their past or present law firm affiliations. Only Caputo or Popovic directly acted as Complainant's attorney either by signing documents in the case or personally appearing in scheduled proceedings. Neither "Caputo Law Firm" nor "Caputo Law Firm P.C." are treated by the Commission as Complainant's attorneys of record.

Whether Caputo and Popovic have represented Complainant as two individual practitioners, law partners, or shareholders in a professional corporation is irrelevant to their entitlement to attorney fees and to the determination and valuation of the legal services they provided. The determination of the amount of fees and costs Respondents must pay can be made without reference to the business structure under which they may have operated at any point during the course of their representation.

It appears to the Commission that during their initial representation of Complainant Caputo and Popovic acted as partners or perhaps partner and associate under the name Caputo Law Firm. As such, they have been jointly and severally responsible for the case, with each one fully entitled to act for Complainant. It further appears that at some later point in this litigation a professional corporation was formed under the name Caputo Law Firm P.C. Popovic describes herself as a shareholder of that corporation but the extent of her ownership is not known and need not be known. The fee petition was signed only by Popovic describing herself as a shareholder in Caputo Law Firm P.C. and including in the requested compensation documentation of charges for work of Caputo and certain support staff.

The only issue which may affect Respondents' rights with respect to the business structure under which Complainant's attorneys have operated is how to make out any check or other instrument to pay the fees and costs as adjudicated in this ruling, in order to ensure that compliance is achieved. The Commission reads the Fee Petition as requesting that Respondents direct payment to Caputo Law Firm P.C. However, to the extent that Respondents are concerned that payment to the professional corporation will not be deemed compliance with this ruling on fees and costs, and the parties cannot

resolve this concern on their own,[1] the Commission orders Respondents to direct their payment of fees and costs jointly to "Nicholas Caputo and Llubica Popovic." Attorneys Caputo and Popovic may then deposit and distribute the payment according to whatever business arrangements they may have with one another and with the support staff and vendors whose services are itemized in the fee petition.

Reasonableness of Rates

Respondents did not object to any specific activities or times as itemized in the Fee Petition but only to the $250 hourly rates claimed for Popovic and Caputo. Respondents assert that Popovic and Caputo failed to prove the reasonableness of their $250 hourly rates and in particular did not prove that these were the rates they customarily charge, nor did they establish their expertise in the applicable areas of law sufficient to justify such "excessive" hourly rates. Respondents further assert that the $250 rates are not reasonable rates within the Chicago legal community for attorneys with comparable expertise. Respondents have not provided any evidence as to what they deem a reasonable hourly rate in the Chicago market for comparable work, but only argue that Complainant has not met her burden of proof as to the reasonableness of the claimed $250 rate and further appear to argue that counsel's competency as demonstrated in these proceedings does not justify so high a rate.

In resolving the issue of reasonable hourly rates, the Commission looks to its ordinances, regulations, and case law. The applicable ordinance provision, Section 2-120-510(l) of the Chicago Municipal Code, authorizes the Commission to order as relief "reasonable attorney fees, expert witness fees, witness fees and duplicating costs, incurred in pursuing the complaint before the commission or at any stage of judicial review." CCHR Reg. 240.630(a)(2) requires that a fee petition include a "statement of the hourly rate customarily charged by each individual for whom compensation is sought, or in the case of a public or not-for-profit law office which does not charge fees or which charges fees at less than market rates, documentation of the rates prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise." It is undisputed that the attorneys and paralegals for whom compensation is sought are private practitioners. As such, all the regulation requires in a petition is a "statement" of the hourly rate customarily charged by each individual for whom compensation is sought. This Fee Petition does state an hourly rate for each such individual, even though there is no explicit additional statement that these are the hourly rates "customarily charged."

Respondents argue that the lack of a more explicit statement is a fatal omission; however, it is not. The Commission can accept a statement of the rate for a private practitioner as supportive of an inference that this was intended as a statement of the rate customarily charged for similar work. The Commission considers the statements in the Fee Petition and Popovic's affidavit sufficient to provide evidence of the rates customarily charged by counsel, shifting the burden to Respondents to show that lower rates are appropriate.

Moreover, as explained in *Small, supra*, the Commission may look to other sources to determine whether requested rates are reasonable market rates, which may include recent prior decisions and the Commission's own knowledge of market rates. See *Nuspl v. Marchetti*, CCHR No. 98-E-207 (Mar. 19, 2003) at 4-5, citing the Commission's "knowledge of prevailing rates for attorneys with comparable experience in the Chicago area" as a consideration in determining the reasonableness of claimed hourly rates.

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[1] For example, Respondents might ask Caputo and Popovic each to sign an "accord and satisfaction" document upon receipt of payment, releasing Respondents from any further claims.

The Commission regularly looks to prior decisions approving particular hourly rates based on factors such as years of experience in the practice of law. Recent Commission decisions support that the claimed hourly rate of $250 for the two lead attorneys—Popovic, licensed in 1999, and Caputo, licensed in 2001—is well with the range of rates charged for litigation work in the Chicago market by attorneys with several years of practice experience and not excessive.

For example, in *Montelongo v. Azarpira*, CCHR No. 09-H-23 (Feb. 16, 2012), despite the lack of specific evidence of applicable prevailing rates for Chicago, the Commission approved $225 as a reasonable hourly rate in the Chicago market for a legal aid attorney with a two years of experience including a substantial amount of litigation, pointing to its earlier decision in *Lockwood v. Professional Neurological Services, Ltd.*, CCHR No. 06-E-89 (Jan. 20, 2010) approving law firm associate billing rates of $150 to $250 per hour. In *Lockwood*, the Commission also approved hourly rates of $475 for an attorney with 31 years of experience and $325 for an attorney with 19 years of experience, $350 for a senior associate, and $70-$110 for law clerks and other legal assistants.

Similarly, in *Flores v. A Taste of Heaven et al.*, CCHR No. 06-E-32 (Jan. 19, 2011), the Commission approved hourly rates of $300 for junior attorneys with 4-5 years of legal experience including litigation, as well as $380 for attorneys with 9-24 years of experience as consistent with market rates for attorneys with similar experience levels in Chicago. The decision noted that in *Webb v. CBS Broadcasting* in the United States District Court for the Northern District of Illinois, 2010 U.S. Dist. LEXIS 106647, at 6-7 (Oct. 5, 2010), hourly rates of $375-435 for partners and $275 for associates were found reasonable.

In *Gray v. Scott*, CCHR No. 06-H-10 (Nov. 16, 2011), the Commission approved an hourly rate of $250 for a law school clinic attorney with about 20 years of experience as "well within the rage of prevailing rates for attorneys in the Chicago area with comparable experience and expertise," noting that in *Sellers, supra*, the Commission had approved hourly rates for legal aid attorneys of $350 for an attorney who had practiced law for 25 years and $275 for an attorney who had practiced for 12 years. Also in *Gray v. Scott*, the Commission approved an hourly rate of $150 for a clinic attorney who had practiced for about two years and $75 as the hourly rate for law students who had presented aspects of the case under Illinois Supreme Court Rule 711, noting that the $75 rate had been approved for law students in two prior Commission decisions.

In light of these recent decisions, the Commission finds that the hourly rate of $250 is not only reasonable but relatively moderate in the Chicago market for attorneys like Popovic and Caputo who have 10-12 years of experience. It is closer to rates found acceptable for attorneys at the associate level having less experience than that of Popovic and Caputo, with attorneys at the partner level often receiving fee awards at considerably higher rates.

In addition, the claimed hourly rate of $125 for the supportive work of Attorney Fudukos, licensed in 2008, is a reasonable market rate for relatively new attorneys in the Chicago market. In several recent fee rulings involving the same new attorney, the Commission approved a beginning rate of $125 per hour when the attorney was newly admitted to the bar, then approved higher rates of $140 and $150 per hour in later cases as the attorney gained experience. See *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (Sept. 16, 2009); *Hutchison v. Iftekaruddin*, CCHR No. 08-H-21 (June 16, 2010), finding the requested rate of $140 per hour for an attorney with two years of legal experience "not atypical or unreasonable given market rates in the City of Chicago" for relatively new lawyers; and *Cotten v. Top*

Notch Beefburger, Inc., CCHR No. 09-P-31 (June 15, 2011). Thus the $125 hourly rate claimed for Fukudos, with at least two years of experience, is at the low end of rates the Commission has recently approved.

Similarly, the paralegal rate of $85[2] and law clerk rate of $50 per hour are well within the range of rates the Commission has approved as reasonable in prior decisions. In addition to the $70-$110 rates approved in *Lockwood, supra*, in *Rankin v. 6954 N. Sheridan, Inc., DLG Management, et al.*, CCHR No. 08-H-49 (May 18, 2011), the Commission approved paralegal and law clerk rates of $110 and $120 per hour as reasonable in light of the Commission's understanding of such rates in Chicago, noting that in *Radinski v. Apex Digital, LLC*, No. 07 CV 571 (N.D. Ill. Dec. 5, 2008), a federal district court approved an attorney fee settlement in which the billing rate for law clerks in a Chicago firm was stated at $195 per hour.

In sum, the Commission does not find the claimed hourly rates to be excessive in the Chicago market for civil litigation work. They fall in the lower to middle range of rates found acceptable for counsel for prevailing parties in recent discrimination cases.

Adjustment for Unsuccessful Claim

Respondents are correct in pointing out that Complainant did not prevail on her claim that she was discharged because of her pregnancy and this calls for some reduction in the fee award. Complainant proved only that she was forced to begin maternity leave before she was ready to do so. Respondents argue that Complainant thus did not prevail on her "major" claim; therefore the attorney fees should be reduced by the percentage of damages actually recovered compared to the amount requested, or 97.5%.

This argument fails to recognize the legal standards for allocating fees when there are successful and unsuccessful claims. It misstates the application of *Diaz v. Prairie Builders et al.*, CCHR No. 91-E-201 (Jan. 27, 1993), cited by Respondents in support of their argument.

As the hearing officer pointed out in her Recommended Decision, it is appropriate to reduce an attorney fee award to take into account unsuccessful claims. However, in *Huezo v. St. James Properties*, CCHR No. 90-E-44 (Oct. 9, 1991), the Commission explained that a complainant "is entitled to attorneys' fees for both the claims on which she prevailed, and those that share a common core of fact. The interrelated nature of the lawsuit means that even if some time may have been spent on an unsuccessful claim, the claimant may recover fees if development of that legal theory was necessary to the claims on which she did prevail." As explained in *Bohen v. City of East Chicago*, 666 F.Supp. 154, 156 (N.D. Ind. 1987), citing *Lenard v. Argento*, 808 F.2d 1242, 1245-46 (7th Cit. 1987), counsel may pursue multiple legal theories in support of a single claim for relief without needing to win on each legal theory, but when a party pursues separate claims for relief, each must be assessed separately.

Diaz, supra, is based on the same principles. The complainant in that case prevailed on only one claim—that the respondent refused to give her a promotion after she refused to have sexual relations with him. She did not prevail on her claims of discriminatory and retaliatory termination, discriminatory terms and conditions of employment, and retaliatory reduction in hours. The

[2] Paralegal time was billed at $85 per hour, not $75 as appears at one point in the hearing officer's Recommended Decision.

Commission explained that "even if some time may have been spent on an unsuccessful claim, the claimant may recover fees if development of that legal theory was necessary to the claim on which she did prevail." (citing *Bohen, supra*). This is the same principle articulated in *Huezo*. However, in *Diaz*, the Commission pointed out that the prevailing promotion claim was a discrete one, for which the 7 pages of hearing testimony on that claim could be separated from the 84 total pages of testimony; thus there was *not* the same core of common facts between the successful and unsuccessful claims as existed in *Huezo*. As a result, in *Huezo* the Commission reduced the requested fee amount by only 5% to account for the unsuccessful claim, while in *Diaz*, the Commission determined that at least 50% of time expended by counsel was devoted to the unsuccessful claims.

What is clear from these leading Commission cases is that the standard for reduction of fees to account for unsuccessful claims is based on the reasonableness of time expended, not on proportionality of damages awarded to damages requested. *Huezo* clearly holds, citing the leading federal case on fee award standards *Hensley v. Eckerhard*, 461 U.S. 424 (1983), that "the percentage of claims on which a complainant prevails is not dispositive of the attorney's fees to which she is entitled." Similarly, *Huezo* holds that attorney fee awards need not be proportional to the damages recovered. *Id. Huezo, Bohen*, and similar cases recognize that rough approximations are inevitable in determining how much time was required on a successful claim when there are unsuccessful but related claims. *Id;* see also *Zabkowicz v. West Bend Co.*, 789 F.2d 540, 551 (7th Cir. 1986), holding that time spent on unsuccessful but related claims is compensable.

Respondents argue, unconvincingly and without offering any examples, that the claim on which Complainant prevailed did not involve the same core of facts as the claim on which she did not prevail. The hearing officer correctly analyzed the matter differently: the evidence presented including the witnesses who testified demonstrated a common core of facts. Little or no testimony could have been omitted had Complainant been arguing only that she was forced to take an earlier maternity leave. She would still have presented evidence of her work history; evidence of what occurred after she became pregnant and notified Respondent Dziubla of her condition and desire to take maternity leave; evidence about other employees who missed work due to illness but were not penalized; and evidence that Dziubla told her to start her maternity leave against her wishes and over her protests. While prevailing on her claim that she had been fired, not just forced to begin her leave, would have resulted in a larger damages award, all of the evidence leading to the key conversation between Complainant and Dziubla telling her to begin maternity leave (with the disputed interpretation as to whether he was firing her) is necessary evidence for either result. Thus there is a strong core of common facts.

Further, Respondents request for a 97.5% reduction in the fee request fails to take into account the time Complainant's attorneys expended to respond to Respondents' many pleadings and motions such as a motion in limine, motion to dismiss, discovery motions, and so on. The additional insertion of Dziubla's bankruptcy as a proposed rationale for dismissing him from the case necessarily required research on that motion and time to respond to it, regardless of whether Complainant prevailed on her claim that she was terminated.

In sum, the hearing officer correctly determined that most of the time expended by Complainant's counsel in pursuing the termination claim would still have been expended had Complainant been arguing only that she had been forced to take an earlier maternity leave.

It remains to determine what percentage reduction is appropriate given that Complainant did not prove she was terminated but only that she was forced to take an earlier maternity leave. There is

clearly a common core of facts, and the unsuccessful claim led to the successful one. Yet, as the hearing officer pointed out, there was some time and effort devoted solely to the unsuccessful discharge claim. For example, Complainant testified during the hearing to damages that would have been appropriate had she been discharged. She testified regarding her inability to find another job after her child was born, her lack of child care to search for another job, and the job she did finally obtain. But in the context of the scope of the entire hearing including the pre-hearing and post-hearing process, the time spent on advancing the claim of discharge rather than forced early leave and proving the impact of discharge did not necessitate a large reduction of attorney fees in the opinion of the hearing officer, and the Commission agrees with her analysis.

This case is similar to the situation in *Barnes v. Page, supra,* where the complainant prevailed on her claim that she was forced to endure a sexually hostile environment but did not prevail on her claim that she had been unlawfully discharged. The Commission in *Barnes* reduced the attorney fee award by 15% to adjust for the unsuccessful claim.

Also, in *Alexander v. 1212 Restaurant Group et al.*, CCHR No. 00-E-110 (Oct. 16, 2008), aff'd Cir.Ct. Cook Co. No. 09 CH 16335 (Feb. 19, 2010), aff'd Ill.App (1st), No. 1-10-0797 (Sept. 29, 2011), PLA Denied Ill.S.Ct. No. 113274 (Jan. 25, 2012), where the complainant prevailed on his claim of harassment based on sexual orientation but not on his claims related to the termination of his employment, the Commission reduced the fee award by 15%.

In this case, Complainant was somewhat more successful than the complainants in *Barnes* and *Alexander,* prevailing on one of two possible findings that had a closer common core of facts. The hearing officer therefore recommended a 10% reduction to account for the unsuccessful discharge claim. The Commission finds the recommendation appropriate to the circumstances of this case and adopts it.

Respondents' argument that Complainant's counsel never pleaded or argued for a claim of forced maternity leave but only for a claim of discharge does not change the result as to liability or entitlement to attorney fees. A complainant before this Commission is not required to plead the legal theories or arguments in support of a complaint in either the complaint or the pre-hearing memorandum. See CCHR Regs. 210.120(c) and 240.130 and *Garnett v. Chicago Transit Authority*, CCHR No. 93-E-243 (Sept. 30, 2003). Here, Complainant alleged all of the facts necessary to establish the timing, location, and facts with respect to the alleged sex discrimination.

Preemption Argument

Respondents in their objections to the Recommended Decision argue that the Illinois Human Rights Act preempts the assessment of attorney fees or punitive damages under the Chicago Human Rights Ordinance. This preemption issue has been long resolved by the Illinois Appellate Court. *Page v. City of Chicago et al.*, 299 Ill.App.3d 450, 701 N.E.2d 218 (1st Dist. 1998), held that the Illinois Human Rights Act does not preempt the City of Chicago's home rule authority to prohibit discrimination by small employers or to award punitive damages under the Chicago Human Rights Ordinance. *Page* also recognized the authority of the Commission on Human Relations to award attorney fees and costs to remedy violations of the Human Rights Ordinance. Accordingly, this objection is overruled.

IV. ANALYSIS OF TIMESHEETS

The Fee Petition includes timesheets detailed by individual, position, date, activity, and time documented by the allowable increments not exceeding one quarter hour. Total hours for each individual are multiplied times the claimed hourly rate and presented in a summary statement. The analysis below approves and adopts the recommendations of the hearing officer with one modification regarding charges for paralegal time.

Attorney Ljubica D. Popovic: Popovic was the lead attorney for Complainant and requested $23,962.50[3] for her work on the case, representing 95.86 hours at $250 per hour. Her timesheet is detailed and the time expended it not unreasonable for a case with the level of activity and complexity of this one, including an administrative hearing that took place over two separate days.

Attorney Nicholas Caputo: Timesheet details for Caputo have four entries, all approved except for an entry of nine hours for the administrative hearing on February 28, 2011. That hearing lasted eight hours, as documented by the timesheet of Popovic and the hearing officer. In the absence of clarifying documentation for the extra hour (which Caputo did not provide), Caputo's total hours are reduced from 15.14 to 14.14 and the allowable dollar amount reduced from $3,785 to $3,535.

Attorney Nikitas Fudukos, Of Counsel: The Fee Petition requests $1,276.25 for Fudukos, representing 10.21 hours of work at a rate of $125 per hour. The hearing officer found the items listed appropriate for a supporting attorney except that the entry for May 5, 2011, claims 1.61 hours with no activities detailed and is disallowed. No objection to this recommendation was raised, so it is adopted. This reduces the request for Fudukos to 8.6 hours and $1,075.

Joe Carlasare, Law Clerk: The Fee Petition claims 1.35 hours at $50 per hour for Carlasare to drive one of Complainant's witnesses "back from hearing." This totals $67.50. Without additional information on where the witness was transported and why this transportation was necessary rather than perhaps a taxi which could have cost considerably less, the hearing officer disallowed this claim. No objection to her recommendation was received, so it is approved.

Carlos Vera, Law Clerk: The Fee Petition itemizes 16.09 hours for Vera at $50 per hour, for a total of $804.50. Activities listed are appropriate for a law clerk—including drafting pleadings, editing citations, and reviewing rulings. The request is approved.

Rachel Bierma, Paralegal: The Fee Petition seeks compensation for 1.6 hours of paralegal work at $85 per hour, for a total of $136. Although the hourly rate is reasonable, the Commission disagrees with the hearing officer that the activities listed are paralegal-level work. Scanning and saving documents, copying or printing pleadings and exhibits, and preparing and mailing documents are all clerical functions not normally billed to paying clients. These costs should be absorbed into overhead in setting hourly rates for professional-level work. As such, the charges are disallowed. See *Nash and Demby v. Sallas Realty et al.*, CCHR No. 92-H-128 (Nov. 15, 1995); *Matias v. Zachariah*, CCHR No. 95-H-110 (Feb. 19, 1997); and *Rankin v. 6954 N. Sheridan, Inc., DLG Management, et al.*, CCHR No. 08-h-49 (May 18, 2011).

[3] The Commission corrects a clerical error in the hearing officer's Recommended Decision which showed this figure as $23,692.50.

V. COSTS

Complainants submitted appropriate documents supporting their request for compensation for costs incurred in the amount of $752.38—including mailing, local travel, copying, and court reporter services. In the absence of any objections, the claimed costs are found reasonable and approved.

VI. SUMMARY AND CONCLUSION

The Commission on Human Relations approves the base amounts of attorney fees and associated costs as listed below. The 10% reduction of the approved base fees in light of the unsuccessful discharge claim is also calculated below:

Attorney Ljubica J. Popovic	$23,962.50
Attorney Nicholas Caputo	$3,535.00
Attorney Nikitas Fudukos	$1,075.00
Joe Carlasare, Law Clerk	$0.00
Carlos Vera, Law Clerk	$804.50
Rachel Bierma, Paralegal	$0.00
Total Base Fees	$29,377.00
Less 10% for unsuccessful claim	-$2,937.70
Fees Awarded	$26,439.30
Costs Awarded	$752.38
TOTAL AWARDED	$27,191.68

Accordingly, Respondents are ordered, jointly and severally, to pay Complainant's reasonable attorney fees of $26,439.30 and associated costs of $752.38, for a total of $27,191.68. Unless otherwise agreed between the parties, the ordered amount shall be made payable to "Nicholas Caputo and Llubica Popovic."

CHICAGO COMMISSION ON HUMAN RELATIONS

By: _____

Mona Noriega, Chair and Commissioner
Entered: April 18, 2012