



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

**WV HUMAN RIGHTS COMMISSION
1321 Plaza East
Room 104/106
Charleston, WV 25301-1400**

**GASTON CAPERTON
GOVERNOR**

**TELEPHONE (304) 348-2616
FAX (304) 348-2248**

**Quewanncoi C. Stephens
Executive Director**

16 November 1992

Larry Davenport
Box 11
Handley, WV 25102

Belinda S. Morton, Esquire
P. O. Box 636
Fayetteville, WV 25840

Loretta's Place
c/o Loretta Jackson
156 Michigan Avenue
Smithers, WV 25186

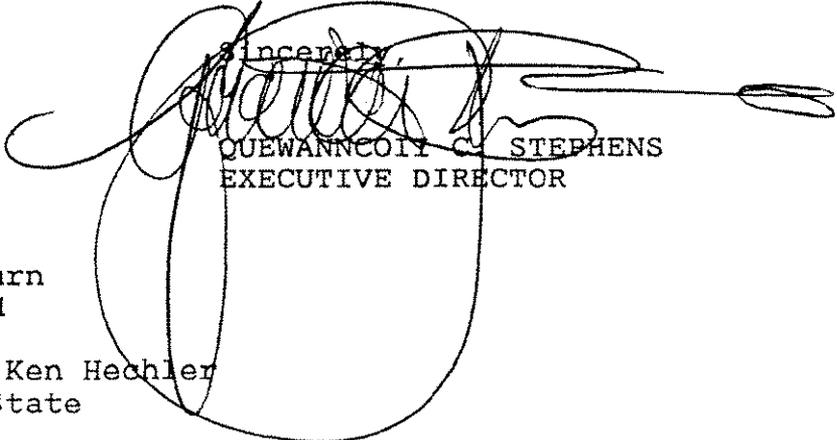
Kevin Burgess, Esquire
P. O. Box 1145
Oak Hill, WV 25901

Re: Davenport v. Loretta's Place
and Loretta Jackson
Docket No. PAR-189-84

Dear Parties and Counsel:

Enclosed please find the Final Order of the West Virginia Human Rights Commission in the above-styled and numbered case. Pursuant to W. Va. Code § 5-11-11, 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 review of this Final Order.

Sincerely,


QUEWANNCOI C. STEPHENS
EXECUTIVE DIRECTOR

Enclosures
Certified Mail/Return
Receipt Requested

cc: The Honorable Ken Hechler
Secretary of State

Mary Catherine Buchmelter
Deputy Attorney General

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

LARRY DAVENPORT,
Complainant,

v.

DOCKET NO. PAR-189-84

LORETTA'S PLACE and
LORETTA JACKSON,
Respondents.

FINAL ORDER

On April 6, 1992, this matter came on for evidentiary hearing before West Virginia Human Rights Commission Hearing Examiner Richard M. Riffe. Hearing Examiner Riffe issued a Final Decision regarding the merits of the case on April 27, 1992. The complainant subsequently submitted an Itemization of Fee Petition of Complainant's Attorney. Respondent Loretta Jackson filed an Appeal from the Hearing Examiner's Decision and a Reply to the Complainant's Attorney Fee Petition.

The matter came on before the Commissioners of the West Virginia Human Rights Commission on July 9, 1992, whereupon the Commissioners, by Order entered August 24, 1992, upheld the Final Decision of the Hearing Examiner, and remanded to the hearing examiner the matter of whether an award of attorney fees was appropriate.

On August 27, 1992, Hearing Examiner Richard M. Riffe entered an Order, pursuant to the remand, granting Belinda S. Morton fees for 75.55 hours, as requested, but reducing the hourly rate for fees awarded to \$85.00 per hour, for a total award of \$6,421.75.

This award was made contingent upon a verified Affidavit from Belinda S. Morton, which has since been submitted. This Order was served upon the parties on August 27, 1992. The Order specifically provided that it could be appealed by any aggrieved party to the West Virginia Human Rights Commission.

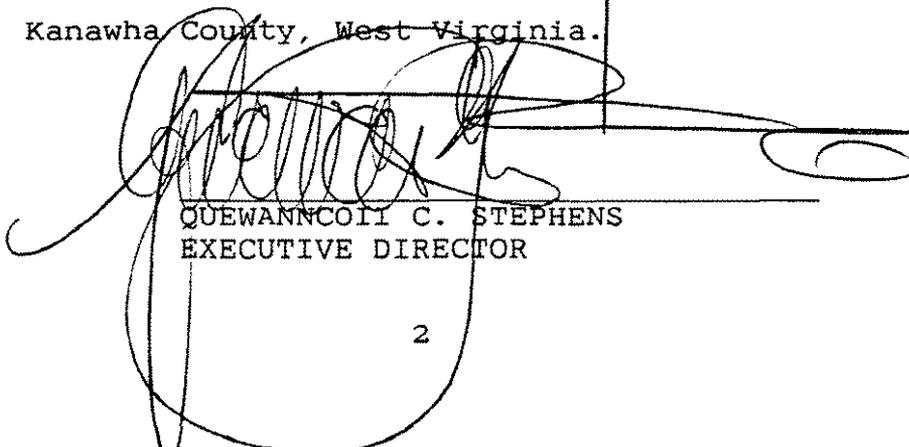
Neither party has filed a timely appeal to the Hearing Examiner's Final Decision Regarding Attorney's Fees. The Hearing Examiner's Final Decision Regarding Attorney's Fees, having not been appealed by either party, hereby becomes the Final Order of the West Virginia Human Rights Commission.

This is the Final Order of the West Virginia Human Rights Commission with regard to this matter, and incorporates the Commission's Order of August 24, 1992, and the August 27, 1992, Final Decision of the Hearing Examiner Regarding Attorney's Fees. Any party to this matter who is aggrieved by any portion of this decision or the decisions incorporated herein may petition for judicial appeal pursuant to W. Va. Code § 5-11-11, as described by 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 16th day of November, 1992 in Charleston, Kanawha County, West Virginia.



QUEWANNCOLI C. STEPHENS
EXECUTIVE DIRECTOR

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

RECEIVED

AUG 28 1992

ATTORNEY GENERAL
CIVIL RIGHTS DIV.

LARRY DAVENPORT,

Complainant,

v.

DOCKET NUMBER: PAR-189-84

LORETTA'S PLACE AND
LORETTA JACKSON,

Respondent.

HEARING EXAMINER'S FINAL DECISION
(UPON REMAND)

This claim is before me again upon remand to determine the amount of complainant's attorney fee. The respondent asserts that the claim of \$200.00 per hour is "excessive" with respect to work performed in 1992 and "clearly excessive" with respect to work performed in 1984; I agree. In fact, it is not hyperbole to say that I found the \$200.00 per hour claim "monstrous, enormous, at first blush beyond all measure, unreasonable [and] outrageous." (The standard which must be met before a court may set aside a jury verdict as excessive. See Roberts v. Stephens Clinic, 345 S.E.2d 791 [WV 1986].) Further, the respondent challenges the number of hours claimed by complainant's counsel; I am not, however, inclined to dispute or disturb that number.

Complainant's counsel neglected to submit a petition and affidavit for attorney's fees prior to issuance of my final decision. Rule 7.37.2 of the Rules of Practice and Procedure Before the West Virginia Human Rights Commission states:

"During the time period specified by the hearing examiner for submission of the parties'

recommended decision as set forth above, the parties shall be permitted to file by affidavit an itemized statement of reasonable attorney fees and costs, clearly setting forth the hourly rate and total amount, and any argument in support thereof. A party shall be given fifteen (15) days during which to file exceptions to the attorney(s) fee affidavit filed by any other party or ^{1/}as recommended (sic) by the hearing examiner."

Our Court has written about attorney fees in Human Rights Commission cases several times. In Casteel v. Consolidation Coal Co., 383 S.E.2d 305 (WV 1989) the Court wrote:

"When the relief sought in a human rights action is primarily equitable, 'reasonable attorneys' fees' should be determined by (1) multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate--the lodestar calculation--and (2) allowing, if appropriate, a contingency enhancement. The general factors outlined in Syllabus Point 4, Aetna Cas. & Sur. Co. v. Pitrolo, 342 S.E.2d 156 (1986) should be considered to determine: (1) the reasonableness of both time expended and hourly rate charged; and, (2) the allowance and amount of a contingency enhancement." Id. at Syll. Pt. 6.

The factors referred to in Casteel, supra, were quoted in Bishop Coal Co. v. Salyers, 380 S.E.2d 238 (WV 1989):

"The reasonableness of attorney's fees is generally based on...factors such as: (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 other 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

^{1/} The word "recommended" has been erroneously left in the Rules at several places. (See e.g. Rule 7.27.4). It is a holdover from the days when hearing examiners issued recommended decisions versus final appealable orders.

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." Id. at 248, citing Aetna, supra, and Johnson v. Georgia Highway, 488 F.2d 714 (5th Cir. 1974).

I am unable to comment upon a number of the factors set forth above and will assume that those I cannot comment upon (due to complainant's counsel's failure to submit an affidavit) do not militate towards a greater attorney fee than hereinafter awarded.

I next serially review the Bishop factors:

1. The time and labor required. I consider 75 and a half hours a reasonable amount of time to prepare for and try this case. Indeed, I would have liked to have seen additional time spent, such as about eight hours interviewing witnesses (Ms. Morton didn't appear to know what her witnesses would testify to), a couple of hours obtaining and reviewing the transcript of the previous aborted hearing (Ms. Morton allowed one of her witnesses, Ms. Davenport, to add substantial and material allegations to her testimony as compared to the previous hearing and then forthrightly admitted that she had not obtained or reviewed the transcript after Ms. Davenport had been impeached with it) and a couple more hours preparing proposed findings of fact and conclusions of law, argument and an attorney fee petition (I've attached as Exhibit I a recent fee petition from another case for comparison purposes). In any event, 75 hours is reasonable. (Note that Mr. Karlin spent 130 hours in the comparison case, which also sought primarily equitable relief. Additionally, he had co-counsel who assisted);

2. The novelty and difficulty of the questions. This was a simple and straight-forward case of refusal of service due to race;

3. The skill required to perform the legal service properly. I don't think it would have taken a great deal of skill to perform the legal services properly, just a little more diligence and energy;

4. The preclusion of other employment by the attorney due to acceptance of the case. Since Ms. Morton neglected to submit a proper affidavit, I will infer that this factor would not militate towards a greater attorney fee;

5. The customary fee. In Bishop, the Supreme Court of Appeals approved an attorney fee of \$95.00 per hour and \$110.00 per hour for an out-of-state lawyer who specialized in representing women coal miners. In Casteel, the Court approved \$130.00 and \$110.00 per hour, taking "notice of the high quality of counsel" involved. In Bishop, the Court noted that the U.S. Supreme Court in Blum v. Stenson, 465 U.S. 886 (1984), required reasonable fees "to be calculated according to the prevailing market rates in the relevant community." This case arose in Fayette County and was tried by Fayetteville lawyers. I called three Fayetteville law firms and asked for their "full corporate rate." Jesser and Harrington charge \$115.00 per hour; Harris and Blank charge \$100.00 per hour; Blankenship and Carte charge \$85.00 per hour;

6. Whether the fee is fixed or contingent. See item 4., above;

7. Time limitations imposed by the client or the circumstances. See items 4. and 6., above;

8. The amount involved and the results obtained. This claim involves equitable relief and "general damages" only, and is therefore capped at \$2,950.00. The result obtained is favorable, although the complainant may have a worthless judgment due to complainant's counsel's failure to first discover that Macon Dorsey was the owner of the bar and to then name him as a party respondent. He, at least, has property to execute on. Loretta Jackson, who the testimony showed was just his social acquaintance and the bar manager, may well not have any assets to execute against and the judgment may be uncollectible. So, while in the abstract complainant prevailed, he would have been in a lot better shape if he hadn't missed a defendant;

9. The experience, reputation and ability of the attorney. Ms. Morton has, I believe, been practicing law for about 15 years. Her reputation is not particularly good.^{2/} I thought her ability, as demonstrated in this case, was marginal. As previously mentioned, her witnesses did not appear to have been prepared, she had not reviewed her complainant's spouse's prior testimony, her proposed findings and conclusions were light, she missed a defendant who may have had assets, she twice neglected to file amended complaints when given the opportunity to do so and she either did not

^{2/} In Committee on Legal Ethics v. Belinda Morton, 410 S.E.2d 279 (WV 1991), the West Virginia Supreme Court of Appeals, while commending Ms. Morton's willingness to "accept difficult cases involving small amounts of money for people in destitute circumstances and...to do more than her fair share of pro bono work," nonetheless noted how her lack of training in law office management had contributed to her unethical neglect of cases she was prosecuting and ordered her to enter a mentor program.

read or ignored the regulations and thus submitted an untimely and improper fee application;

10. The undesirability of the case. This was a strong complainant's case and, I think, reasonably desirable;

11. The nature and length of the professional relationship with the client. As to the nature of the relationship with the client, it appeared cordial and I have nothing before me which would indicate otherwise. The relationship has thus far spanned at least eight years; and

12. Awards in similar cases. I haven't awarded attorney fees in many of my cases. Most have either settled and/or the attorney general (who historically does not request attorney fees) has prosecuted the claim. In number 5, above, I have reviewed our Supreme Court of Appeals' recent attorney fee awards.

In Jewel v. Maynard, 383 S.E.2d 536 (WV 1989), our Court set the court-appointed compensation rate at \$45.00 per hour for out of Court time and \$65.00 per hour for in-court time. They stated that, "A Public Legal Services survey of 259 West Virginia lawyers appointed to represent indigents discloses that the average hourly overhead cost of private lawyers is \$35.00 per hour." Id. at 539. Thus, if I award Ms. Morton \$85.00 per hour she should make about \$50.00 per hour (or \$3,777.50) before taxes.

Based upon all of the foregoing, I conclude that an hourly rate of \$85.00 per hour is reasonable within the meaning of the Human Rights Act and do, accordingly, ORDER respondent to pay complainant \$6,421.75 in attorney fees.

Inasmuch as our Rules require that attorney fee applications be based upon sworn affidavits, this order is contingent upon Ms. Morton submitting (and serving on opposing counsel) an affidavit stating that her itemized fee application previously submitted is accurate within ten days of receipt of this order. If such an affidavit is not received, then this order is to be deemed void.

Any party aggrieved by this order may appeal herefrom as set out in Exhibit II.

WV HUMAN RIGHTS COMMISSION

ENTER: 27 August 1992

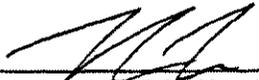
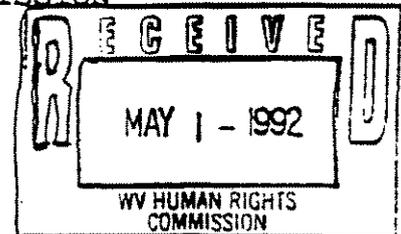
BY: 
RICHARD M. RIFFE
HEARING EXAMINER

EXHIBIT I

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

DAVID HOLLIS,)
)
 Complainant,)
)
 vs.)
)
 CONSOLIDATION COAL COMPANY,)
)
 Respondent.)



DOCKET NO.: REP-272-87

AFFIDAVIT OF ALLAN N. KARLIN

I, Allan N. Karlin, being first duly sworn, do depose and state:

A. REQUEST

1. I am requesting an attorney fee pursuant to my representation of David Hollis in such amount as the Commission may determine, but not less than \$150.00/hour as a lodestar figure with a multiplier because of the nature of the case. As discussed below, I have already been awarded that amount by the Commission in past years. Given the nature of this case, my representation, and the fact that fees have increased since my past awards, I believe that the lodestar of \$150.00 should be increased by a multiplier.

2. I represented David Hollis on a contingent fee basis and advanced all costs. Clearly, there was no chance of a "windfall fee" since there is no back pay award that encourages attorneys to take cases in the hope they will be rewarded financially by a percentage of the back pay award.

B. QUALIFICATIONS

3. I am a resident of Monongalia County, West Virginia. I am admitted to practice law in the State of California and the State of West Virginia.

4. I obtained my B. A. Degree from Yale University in 1969. I graduated summa cum laude. I was also admitted to Phi Beta Kappa.

5. I received my J. D. from Boalt Hall, the Law School of the University of California at Berkeley. Based upon my academic record, I was admitted to the Order of the Coif.

6. I have taught and prepared materials for lawyers in the area of employment law. The most recent programs I have taught include:

(a) West Virginia Trial Lawyers Association Program, February 7, 1992, "Winning Plaintiffs' Employment Litigation in West Virginia." Written materials and oral presentation.

(b) Continuing Legal Education Program on Damages, 11/1/91 (West Virginia University College of Law), Damages in Employment Litigation. Oral presentation.

(c) West Virginia Continuing Legal Education, Parkersburg, West Virginia, March 27, 1992. "Punitive Damages in Employment Law Cases after *Haslip* and *Fleming Landfill*: Availability and Limitations." Written materials and oral presentation.

7. Over the years, I have also made presentations on employment law to lay persons through the People's Law School

sponsored by the West Virginia Trial Lawyers Association and programs sponsored by the West Virginia Chamber of Commerce.

8. I have frequently appeared at the West Virginia University Law School to speak to seminars/classes on a variety of topics including civil rights and employment litigation. I have also taught in the annual Intensive Trial Advocacy Program at the Benjamin Cardozo School of Law in New York City, New York. In addition, I have served as an adjunct professor of law at the West Virginia University College of Law where I supervised students in a criminal law clinic.

9. In the spring of 1989, I taught a civil rights course to undergraduates in the Department of Political Science at West Virginia University.

10. From September, 1974, through August, 1977, I was employed by the North Central West Virginia Legal Aid Society in Morgantown, West Virginia, on a Reginald Heber Smith Fellowship. In February, 1976, while on the Fellowship, I became Acting Director of the North Central West Virginia Legal Aid Society. In June, 1976, I was appointed Director and continued to serve as Director until I left the Legal Aid Society in November, 1981.

11. During my tenure as Director of the North Central West Virginia Legal Aid Society, I was actively involved in the practice of law and I also trained other attorneys. My involvement in training included programs at the Legal Aid Society, on a statewide basis, and, on two occasions,

in other states. Training programs in which I participated and/or which I coordinated included "New Lawyer Training," federal litigation training, and a variety of other skill and subject matter training programs.

12. Since entering private practice in November, 1981, I have specialized in employment law, criminal law, and litigation. I have advised a substantial number of individuals, as an attorney at Legal Aid and in private practice, on their rights under laws prohibiting discrimination. I have participated in a number of other employment cases before the Human Rights Commission and in state and federal courts. These claims include discrimination based on race, sex, age and/or handicap.

13. I am presently a member of the Employment Law Committee of the West Virginia State Bar. I am the Co-Chairman of the Committee's Subcommittee on Continuing Legal Education.

14. In a 1985 discrimination case, the Human Rights Commission Hearing Examiner recommended a fee at the rate of One Hundred Dollars per hour, but concluded:

Because counsel for complainant has indicated that an hourly rate of \$100.00 per hour is acceptable to him, the Hearing Examiner will not set a higher rate even though the hearing examiner is tempted to do so because of the vast experience and high level of training of Mr. Karlin as well as the great level of skill demonstrated by him during the instant hearing. Fuller v. Consolidation Coal Company, ER-11-82, Recommended Decision, p. 17.

In two subsequent cases, another Hearing Examiner of the Human Rights Commission recommended a fee based on an hourly rate of \$125.00:

The hearing examiner, in his private practice, has successfully been involved in trial work before judges and juries in West Virginia and Ohio and before judges and hearing examiners in Pennsylvania. Never has the hearing examiner observed such a high degree of lawyering skill as was displayed by Alan Karlin, counsel for Complainant, in this case.

Hollis v. Consolidation Coal Company, ER-288-81, Recommended Decision, pp. 8-9.

See also, Turney and McLaughlin v. WVU Hospital and the West Virginia Board of Regents, Case Nos. ES-16-76 and ES-379-77, Recommended Decision, p. 10. The Commission adopted all of these recommendations.

15. More recently, in a case that was settled shortly after the Commission's decision, the Human Rights Commission approved a recommended fee of One Hundred Fifty Dollars (\$150.00) per hour. The hourly rate of One Hundred Fifty Dollars (\$150.00) per hour sought by complainant's lawyers demonstrated a high degree of skill at the hearing herein. Holloway v. Consolidation Coal Company, ER-486-86 (1987).

16. A preliminary statement of the hours I have worked on this case are attached hereto as Exhibit A. I will be double-checking some of the dates against my calendar and supplementing the statement, if necessary, in the near future. I have submitted this preliminary statement at this time.

17. I am also requesting the costs I advanced.

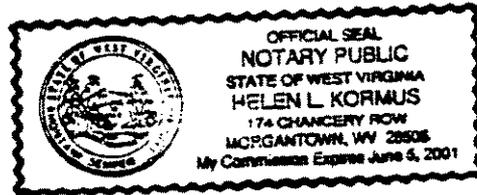
Allan N. Karlin
ALLAN N. KARLIN

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, to-wit:

Taken, sworn to and subscribed before me this 24th
day of April, 1992, by Allan N. Karlin.

My commission expires June 5, 2001

Helen L. Kormus
NOTARY PUBLIC



Invoice submitted to:

West Virginia Human
Rights Commission

April 29, 1992

	HOURS -----	AMOUNT -----
02/10/87-Trip to Charleston to meet with Human Rights Commission (only one-half of the driving time was included)	4.50	
02/20/87-Phone calls with Human Rights Commission	0.40	
03/17/87-Letter/Client	0.20	
03/24/87-Letter to Human Rights Commission	1.00	
07/06/89-Letter/Human Rights Commission	0.20	
11/05/89-Review Order from Human Rights Commission; letter to client	0.30	
11/13/89-Draft letter to Commission and witness	0.40	
11/15/89-Conference/client and witness	0.80	
-Call opposing counsel	0.20	
11/18/89-Prepare discovery	0.50	
11/20/89-Conference/client; phone opposing counsel (leave message)	1.20	
-Review, draft, and edit responses to Consol discovery and discovery requests to Consol	1.00	
-Letter/witness	0.20	

West Virginia Human

Page 2

April 29, 1992

	HOURS	AMOUNT
	-----	-----
11/21/89-Review and edit discovery; speak with client	0.40	
-Edit discovery	0.40	
11/22/89-Letter/Hearing Examiner	0.20	
11/29/89-Prepare for conference call; conference call	0.80	
11/30/89-Work on discovery	0.20	
12/07/89-Conference/client re: discovery	0.20	
12/10/89-Edit answers to interrogatories; draft interrogatories to Consol	0.50	
12/12/89-Edit interrogatories; letter to Hearing Examiner	0.60	
12/13/89-Respond to request for production of documents; letter	0.70	
12/14/89-Letter/Hearing Examiner	0.20	
12/18/89-Letter/Hearing Examiner	0.20	
12/19/89-Review correspondence; letters to Hearing Examiner and opposing counsel	0.30	
12/20/89-Letter/Hearing Examiner	0.20	
01/02/90-Conference with client (only portion of conference charged to this case)	0.20	
-Call Steptoe re: discovery	0.10	
01/03/90-Conference/client (only portion of meeting counted on this case)	0.20	
-Call Human Rights Commission; review discovery; draft discovery	1.00	

	HOURS -----	AMOUNT -----
01/06/90-Review discovery; motion to compel	0.80	
01/07/90-Work on discovery	2.00	
01/08/90-Edit discovery and motion to compel	1.00	
-Letter/Steptoe	0.20	
01/09/90-Continue editing of discovery pleadings	0.80	
-Letter/client	0.20	
01/10/90-Letter/Hearing Examiner	0.20	
01/12/90-Trip to opposing counsel to view documents; view documents and speak with client	1.70	
01/24/90-Conference/client re: case	0.30	
-Letter/Hearing Examiner	0.20	
01/25/90-Phone opposing counsel re: discovery (leave message)	0.10	
01/26/90-Opposing counsel returns phone call re: discovery	0.10	
02/27/90-Phone re: discovery	0.10	
-Letter/Hearing Examiner	0.20	
03/01/90-Review supplemental discovery	0.50	
04/24/90-Calls to Human Rights Commission and letter to Hearing Examiner	0.20	
05/16/90-Prepare for and participate in conference call	1.00	
05/22/90-Phone client	0.20	
05/23/90-Work re: protective order and discovery order	0.40	

	HOURS -----	AMOUNT -----
05/23/90-Letter to Hearing Examiner and Order	0.50	
05/25/90-Letter to Human Rights Commission	0.20	
06/06/90-Letter/Hearing Examiner	0.20	
06/13/90-Letter to opposing counsel re: discovery	0.20	
10/12/90-Phone client	0.20	
10/30/90-Review supplemental discovery; letter to opposing counsel	0.60	
11/15/90-Letter and Motion to Compel	0.60	
01/23/91-Letter/opposing counsel	0.20	
02/06/91-Letter/Hearing Examiner	0.20	
03/11/91-Letter/Hearing Examiner	0.20	
05/06/91-Letter/Hearing Examiner	0.20	
05/23/91-Letter/Hearing Examiner	0.20	
06/10/91-Letter/Hearing Examiner	0.20	
09/03/91-Phone calls with Human Rights Commission re: Hollis	0.20	
09/06/91-Phone Human Rights Commission	0.10	
09/11/91-Conference/client	0.20	
09/19/91-Letter/Hearing Examiner	0.20	
10/26/91-Conference/client; prepare for hearing (one-half of meeting devoted to this case)	1.00	
10/31/91-Letter/Witness	0.20	
11/04/91-Letter/Hearing Examiner	0.20	

	HOURS -----	AMOUNT -----
11/05/91-Motions/letter to Hearing Examiner	0.30	
11/06/91-Letter/opposing counsel	0.20	
11/11/91-Letter/opposing counsel	0.30	
11/13/91-Hearing preparation	0.50	
-Letter/opposing counsel	0.20	
-Phone opposing counsel	0.10	
11/14/91-Continue hearing preparation	1.00	
-Review discovery	0.30	
11/15/91-Review documents; conference with client	1.90	
-Phone opposing counsel; phone Human Rights Commission	0.10	
11/17/91-Hearing preparation	3.00	
11/18/91-Meetings to prepare for hearing	1.00	
11/19/91-Phone witness	0.10	
-Miscellaneous phone calls regarding hearing and preparation	0.30	
-Conference/client; review documents; meetings with witnesses	12.00	
11/20/91-Hearing and hearing preparation	15.30	
11/21/91-Hearing and preparation	10.50	
04/07/92-Editing Brief	1.00	
04/08/92-Work on Brief	2.90	
04/09/92-Research and work on Brief	3.50	

	HOURS	AMOUNT
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04/10/92-Research and work on Brief	2.00	
04/11/92-Work on Brief	5.00	
04/12/92-Continue work on brief	12.00	
04/13/92-Phone Hammer; dictate motion; edit Brief	2.60	
04/14/92-Review regulations and prepare motion	0.30	
04/15/92-Phone opposing counsel re: motion	0.10	
04/18/92-Begin work on attorney fee request	0.60	
04/19/92-Work on fee request	0.50	
-Draft Brief	0.40	
04/22/92-Draft Brief	1.30	
04/23/92-Draft Brief	2.00	
04/24/92-Draft Brief	1.00	
04/26/92-Draft Brief	5.70	
04/27/92-Draft Brief	6.00	
04/28/92-Draft Brief	7.20	
-Prepare cost/witness fee motions	0.30	
04/29/92-Work on fee request	1.00	
	-----	-----
For Professional Services Rendered	135.80	\$20,370.00

EXHIBIT II

9.3.3. Award such other equitable relief as will make the complainant whole, including, but not limited to, an award of attorney's fees and costs.

9.3.4. If upon all the testimony, evidence and record of the hearing the hearing examiner shall find that the respondent has not engaged in any unlawful discriminatory practice as defined in the Act, the hearing examiner shall issue a decision dismissing the complaint as to such respondent.

9.5. Copies of the hearing examiner's final decision shall be served by certified mail, return receipt requested, on the complainant, the respondent, all intervenors, and counsel of record, and by personal delivery or first class mail on the Commission's attorney and all other persons, offices or agencies deemed appropriate by the hearing examiner or the Commission.

9.6. All final decisions rendered by a hearing examiner shall be filed at the central office of the Commission and shall be open to public inspection during regular office hours of the Commission.

§77-2-10. Appeal to the Commission.

10.1. Within thirty (30) days of receipt of the hearing examiner's final decision, any party aggrieved shall file with the executive director of the Commission, and serve upon all parties or their counsel, a notice of appeal, and in its discretion, a petition setting forth such facts showing the appellant to be aggrieved, all matters alleged to have been erroneously decided by the examiner, the relief to which the appellant believes she/he is entitled, and any argument in support of the appeal.

10.2. The filing of an appeal to the Commission from the hearing examiner shall not operate as a stay of the decision of the hearing examiner unless a stay is specifically requested by the appellant in a separate application for the same and approved by the Commission or its executive director.

10.3. The notice and petition of appeal shall be confined to the record.

10.4. The appellant shall submit the original and nine (9) copies of the notice of appeal and the accompanying petition, if any.

10.5. Within twenty (20) days after receipt of appellant's petition, all other parties to the matter may file such response as is warranted, including pointing out any alleged omissions or inaccuracies of the appellant's statement of the case or errors of law in the appellant's argument. The original and nine (9) copies of the response shall be served upon the executive director.

10.6. Within sixty (60) days after the date on which the notice of appeal was filed, the Commission shall render a final order affirming the decision of the hearing examiner, or an order remanding the matter for further proceedings before a hearing examiner, or a final order modifying or setting aside the decision. Absent unusual circumstances duly noted by the Commission, neither the parties nor their counsel may appear before the Commission in support of their position regarding the appeal.

10.7. When remanding a matter for further proceedings before a hearing examiner, the Commission shall specify the reason(s) for the remand and the specific issue(s) to be developed and decided by the examiner on remand.

10.8. In considering a notice of appeal, the Commission shall limit its review to whether the hearing examiner's decision is:

10.8.1. In conformity with the Constitution and Laws of the state and the United States;

10.8.2. Within the Commission's statutory jurisdiction or authority;

10.8.3. Made in accordance with procedures required by law or established by appropriate rules or regulations of the Commission;

10.8.4. Supported by substantial evidence on the whole record; or

10.8.5. Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

10.9. In the event that a notice of appeal from a hearing examiner's final decision is not filed within thirty (30) days of receipt of the same, the Commission shall issue a final order affirming the examiner's final decision; provided, that the Commission, on its own, may modify or set aside the decision insofar as it clearly exceeds the statutory authority or jurisdiction of the Commission. The final order of the Commission shall be served in accordance with Rule 9.5.

\$77-2-11. Judicial Appeal.

11.1. Judicial review of a final order of the Commission may be obtained by the complainant, respondent or other person aggrieved by such order.

11.2. A party who seeks judicial review must file his/her appeal within thirty (30) days after receipt of the final order of the Commission.

11.3. For purposes of judicial appeal, the decision of the Commission affirming, modifying or setting aside the final decision of the hearing examiner shall constitute the final order of the Commission.

\$77-2-12. General Investigations.

12.1. The Commission may, at its discretion and in accord with the power conferred upon it by the Act, conduct such general investigations and hearings into problems of discrimination as it deems necessary or desirable and may study and report upon the problems of the effect of discrimination on any field of human relationships.

12.2. In pursuing its functions authorized by the Act and by this section, the Commission may exercise its full powers of discovery as set forth in the Act and in these regulations.

\$77-2-13. Declaratory Rulings and Guidelines.

13.1. Petitions for declaratory rulings filed with the Commission pursuant to W. Va. Code § 29A-4-1 shall contain the following:

13.1.1. A statement of the question on which the declaratory ruling is sought.

13.1.2. A full statement of the facts giving rise to the question.

13.1.3. A statement of the basis for the petitioner's interest in the question.

13.1.4. Any legal argument which petitioner wishes to submit.

CERTIFICATE OF SERVICE

I, Richard M. Riffe, Hearing Examiner for the West Virginia Human Rights Commission, do hereby certify that I have served the foregoing HEARING EXAMINER'S FINAL DECISION (UPON REMAND) by depositing a true copy thereof in the U.S. Mail, postage prepaid, this 27th day of August, 1992, to the following:

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RICHARD M. RIFFE
HEARING EXAMINER