

BEFORE THE IOWA CIVIL RIGHTS COMMISSION

JAMES A. MONTZ, Complainant, and IOWA CIVIL RIGHTS COMMISSION,

vs.

CIVIL SERVICE COMMISSION and CITY OF ESTHERVILLE, IOWA, Respondents.

CP # 10-89-19298

SUPPLEMENTAL PROPOSED DECISION AND ORDER ON THE AWARD OF ATTORNEY'S FEES

FINDINGS OF FACT

1. Paragraphs J and K of the Commission's "Final Decision and Remand for Determination of Attorney's Fees" state:

J. Within 45 calendar days of the date of this order, provided that agreement can be reached between the parties on this issue, **Complainant Montz and the Respondents shall submit a written stipulation stating the amount of attorney's fees to be awarded Complainant.** If any of the parties cannot agree on a full stipulation to the fees, they shall so notify the Administrative Law Judge in writing and an evidentiary hearing on the record shall be held by the Administrative Law Judge for the purpose of determining the proper amount of fees to be awarded. If no written notice is received by the expiration of 45 calendar days from the date of this order, the Administrative Law Judge shall schedule a conference in order to determine the status of the attorneys fees issue and to determine whether an evidentiary hearing should be scheduled or other appropriate action taken. **Oncethe full stipulation is submitted** or the hearing is completed, **the Administrative Law Judge shall submit for the Commission's consideration a Supplemental Proposed Decision and Order setting forth a determination of attorney's fees.**

K. The Commission retains jurisdiction of this case in order to determine the actual amount of attorneys fees to which Complainant is entitled to under this order and to enter a subsequent order awarding these fees. This order is final in all respects except for the determination of the amount of the attorney's fees.

(Final Decision and Order of August 28, 1992)(emphasis added).

2. On November 5, 1992, a scheduling conference was held in order to set a hearing on attorney's fees. The hearing was set for February 11, 1993. (Scheduling Order).

3. On or about February 9, 1993, the Administrative Law Judge was informed by telephone by James Albert, attorney for Respondents, that the attorney's fee issue had been settled between the Complainant and the Respondents. A letter from Mr. Albert, dated February 9, 1993, indicated that a stipulation was being prepared.

4. On February 12, 1993, a joint stipulation of fees was received. This document entitled "STIPULATION RE: ATTORNEY'S FEES AND COSTS FOR PREVAILING PARTY CLAIMANT" is attached to this Decision and Order and is hereby incorporated by this reference as if fully set forth herein.

5. The amounts stipulated to as reasonable attorney's fees and reasonable costs are stipulations of fact. For reasons stated in the conclusions of law, the amounts stipulated to are binding on the Commission, as they would be on any court or other adjudicative body. It may not modify or reject the amounts stipulated to in making its award of fees and costs. See Conclusion of Law No. 4. In accordance with the joint stipulation, it is found that:

a. The complainant's attorney's fees, through September 24, 1992, in the amount of forty thousand dollars (\$40,000.00), are reasonable and should be awarded.

b. The complainant's litigation expenses, through September 24, 1992, in the amount of four thousand one hundred two dollars and sixty-five cents (\$4102.65), are reasonable and should be awarded.

CONCLUSIONS OF LAW

1. The Iowa Civil Rights Act allows the award of damages which "shall include but are not limited to actual damages, court costs, and reasonable attorneys fees" as part of the remedial action which the Commission may take in response to the Respondent's discriminatory practices. Iowa Code 601A.15(8) (1991).

2.

[A] 'reasonable attorney's fee' cannot have been meant to compensate only work performed personally by members of the bar. Rather the term must refer to a reasonable fee for the work product of an attorney. Thus the fee must take into account the work not only of attorneys, but also of secretaries, messengers, librarians, janitors, and others whose labor contributes to the work product for which an attorney bills her client; and it must also take into account other expenses and profit.

Missouri v. Jenkins, 491 U.S. ___, 105 L.Ed.2d 229, 241 (1989)(emphasis added).

3. An award of attorneys fees may be made in the absence of a separate evidentiary hearing where the opportunity for an attorneys fees hearing has been provided and all parties have elected to not take advantage of the opportunity. *See Rouse v. Iowa Department of Transportation*, 408 N.W.2d 767, 768 (Iowa 1987). **In this case, the parties have elected to resolve the matter through stipulation rather than litigation.**

4. A "stipulation" is a "voluntary agreement between opposing counsel concerning disposition of some relevant point so as to obviate [the] need for proof." BLACK'S LAW DICTIONARY 1269

(5th ed. 1979). **Stipulations as to fact are binding on a court, commission or other adjudicative body** when, as in this case, there is an the absence of proof that the stipulation was the result of fraud, wrongdoing, misrepresentation or was not in accord with the intent of the parties. In *Re Clark's Estate*, 131 N.W.2d 138, 142 (Iowa 1970); *Burnett v. Poage*, 239 Iowa 31, 38, 29 N.W.2d 431 (1948).

5. In accordance with the legal standards set forth above, and in light of the joint stipulation of fees, the Complainant should receive a fully compensatory reasonable attorney's fee award, including expenses, as set forth above.

DECISION AND ORDER

IT IS ORDERED, ADJUDGED, AND DECREED that:

A. The Complainant, James A. Montz, is entitled to a judgment against Respondents Civil Service Commission and City of Estherville, Iowa in the amount of forty thousand dollars (\$40,000.00) in attorneys fees and four thousand one hundred two dollars and sixty-five cents (\$4102.65) in expenses for the period ending September 24, 1992.

Signed this the 18th day of February, 1993.

DONALD W. BOHLKEN
Administrative Law Judge
Iowa Civil Rights Commission
211 E. Maple
Des Moines, Iowa 50319
515-281-4480

FINAL ORDER ON THE AWARD OF ATTORNEY'S FEES:

1. On this date, the Iowa Civil Rights Commission, at its regular meeting, adopted the Administrative Law Judge's supplemental proposed decision and order on attorney's fees and costs, for the period ending on September 24, 1992, which is hereby incorporated in its entirety as if fully set forth herein.

Signed this the 26th day of March, 1993.

Sally O'Donnell
Vice-Chairperson
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NOTE: The Commission's decision on the merits in this case was reversed by the Iowa District Court for Emmet County on June 25, 1993. The court's decision was affirmed by the Iowa Supreme Court on September 21, 1994. *Civil Service Commission v. Iowa Civil Rights Commission*, 522 N.W. 2d 82 (Iowa 1994).