STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
CHERYL LOCKARD,	)	
	)	**Charge No. 2004SN3084**
Complainant,	)	**EEOC No. N/A**
	)	**ALS No. SO5-472**
and	)	
	)	
FIRST BAPTIST CHURCH,	)	
	)	
Respondent.	)	

ORDER

This matter coming before the Commission pursuant to a Recommended Order and Decision, the Respondent's Exceptions filed thereto, and the Complainant's Response to the Respondent's Exceptions.

The Illinois Department of Human Rights is an additional statutory party that has conducted state action in this matter. They are named herein as an additional party of record. The Illinois Department of Human Rights did not participate in the Commission's consideration of this matter.

IT IS HEREBY ORDERED:

1. Pursuant to 775 ILCS 5/8A-103(E)(1) & (3), the Commission has **DECLINED** further review in the above-captioned matter. The parties are hereby notified that the Administrative Law Judge's Recommended Order and Decision, entered on **September 30, 2009**, has become the Order of the Commission.

STATE OF ILLINOIS)
) **Entered this 12th day of May 2010**
HUMAN RIGHTS COMMISSION)

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
CHERYL LOCKARD,	)	
Complainant,	)	CHARGE NO: 2004SN3085
	)	EEOC NO: N/A
and	)	ALS NO: S05-470
KEITH JONES,	)	
Respondent.	)	
CHERYL LOCKARD,	)	
Complainant,	)	CHARGE NO: 2004SN3084
	)	EEOC NO: N/A
and	)	ALS NO: S05-472
FIRST BAPTIST CHURCH,	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter comes to me on a petition filed by Complainant requesting an award of attorney's fees and costs due to her status as a prevailing party in a Recommended Liability Decision that was entered on September 30, 2009. Respondent has filed a response to Complainant's petition. Accordingly, this matter is ripe for a decision.

Contentions of the Parties

In her petition, Complainant seeks attorney's fees totaling $82,511.50 and an additional award of costs in the amount of $2,950.87. Attached to the petition is an itemized statement indicating that a total of 369.15 hours was expended by two attorneys representing Complainant. In their response, Respondents do not contest any of the time asserted by Complainant's counsel on this case or the costs asserted by Complainant. Respondents do, however, contest the hourly rates asserted by each counsel.

Findings of Fact

Based upon the record in this matter, I make the following findings of fact:

1. Attorney M. Michael Waters began his representation of Complainant on October 11, 2005 and has represented Complainant at all relevant times during the prosecution of the instant matter. Mr. Waters has been a licensed attorney since 1979. At the time of his representation of Complainant, Mr. Waters was a partner in the law firm of Vonachen, Lawless, Trager & Slevin and had a practice that was primarily focused on employment litigation and labor law. While Mr. Waters currently charges his clients $300 per hour for work in employment discrimination cases, Mr. Waters's rate for contingent employment litigation in 2005 was $275.00 per hour. In 2007, Mr. Waters received a court award of $275 per hour in a FMLA arbitration matter.

2. Attorney Jennifer L Morris also performed legal work on behalf of Complainant, beginning on March 30, 2007. Ms. Morris began work as an associate in Mr. Waters's law firm in 2005 after she had graduated from law school that same year. Complainant is seeking an hourly rate of $180.00 for the services rendered by Ms. Morris that generally ceased after the 2007 public hearing.

3. Attorney Nile J. Williamson has been a practicing attorney in the Peoria, Illinois area since 1973 and has concentrated his practice in the representation of plaintiffs in employment matters over a seventeen year period of time. Mr. Williamson's opinion is that the relevant hourly rate in the Peoria area for an attorney with 20 years of experience representing plaintiffs in employment discrimination cases is between $250.00 and $350.00 per hour. Mr. Williamson also believes that Mr. Waters is a highly skilled lawyer who could command the highest rates in the legal marketplace in the greater Peoria, Illinois area.

4. Attorney Richard L. Steagall has been a practicing attorney in the Peoria, Illinois area since 1978 and has been a partner in his own law firm since 1980. For the past 15 years Mr. Steagall has concentrated his practice on the representation of plaintiffs in personal injury,

civil rights and discrimination matters. Mr. Steagall currently charges $300.00 per hour for his legal services and had charged $250.00 per hour for similar legal services from 1999 to 2006. He also notes that another Peoria, Illinois attorney charges $350.00 per hour for representation of plaintiffs in discrimination claims and asserts that Mr. Waters's rate of $275.00 per hour is within the range charged for representation of plaintiffs in civil rights and discrimination cases in the Peoria, Illinois area. Mr. Steagall also acknowledged that, as of four years ago, the going rate for law firms in the Peoria, Illinois area that defended clients in discrimination cases was between $175.00 to $225.00 per hour, but maintained that the lower rates for defense firms were the result of volume discounts being given to employers as repeat clients, the lack of risk for non-payment of fees associated with the representation of employers and the lack of future business involved associated with the representation of employees.

5. Attorney L. Lee Smith has been an attorney in the Peoria, Illinois area since 1980 performing legal services first as an Assistant U.S. Attorney until 1990, and then in private practice since 1992. Mr. Smith, who has been a partner in his current firm since 2001 and has a primary focus of representing clients in the field of employment discrimination, charged Respondents $225.00 per hour in this case. He also believes that $225.00 per hour is a reasonable rate for someone with his experience in central Illinois.

6. Attorney Thomas P. Schanzel-Haskins has been an attorney in the central Illinois area since 1976, first as an assistant corporate counsel for the City of Springfield, Illinois from 1976 to 1979, then as an Assistant U.S. Attorney from 1979 to 1982, and then in private practice since 1983. Mr. Schanzel-Haskins has represented clients in the field of employment discrimination and was charging said clients $205.00 per hour in 2007.

7. Attorney Garth C.K. Madison has been an attorney since February of 2002 and has been admitted to practice in Illinois since 2004. Mr. Madison is presently an associate attorney in Mr. Smith's law firm of Hinshaw & Culbertson, LLP and has tried numerous cases in state and federal court, including two employment discrimination matters. Mr. Madison charged

Respondents $150 per hour in this case, which Mr. Madison believes is a reasonable rate for an attorney with his experience in central Illinois.

8. The reasonable per hour rate for Mr. Waters's services on behalf of Complainant is $275.00 per hour.

9. The reasonable per hour rate for Ms. Morris's services on behalf of Complainant is $150.00 per hour.

10. Attorney Waters spent 169.10 hours representing Complainant in her claims against both Respondents. Respondents have not contested the reasonableness of the number of hours asserted by Mr. Waters. The reasonable hours spent by Attorney Waters representing Complainant in this matter is 169.10 hours.

11. Attorney Morris spent 200.05 hours representing Complainant in her claims against both Respondents. Respondents have not contested the reasonableness of the number of hours asserted by Ms. Morris. The reasonable hours spent by Ms. Morris representing Complainant in this matter is 200.05.

12. Complainant incurred costs totaling $2,950.87. Respondents do not contest the reasonableness of any of the asserted costs. The reasonable amount of costs is $2,950.87.

13. All previous findings of facts in the Recommended Liability Decision are incorporated by reference.

Conclusions of Law

1. All previous conclusions of law in the Recommended Liability Decision are incorporated by reference.

2. A prevailing complainant may recover reasonable attorney's fees and costs to maintain her action.

Determination

Once there has been a finding that Respondents have violated the Human Rights Act and the damages have been determined, the focus of the remaining inquiry concerns the

amount of attorney's fees and costs that may be awarded to Complainant under the Act. (See, 775 5/8A-104(G).) To that end, the Commission has set forth numerous factors as guidelines to adjudicate requests for attorney's fee awards. (See, *Clark and The Champaign National Bank*, 4 Ill. HRC Rep. 193, 197 (1981), where the Commission observed that the purpose of such awards is to provide an effective means to the judicial process to victims of civil rights violations who might otherwise have insufficient means to afford counsel.) Under the *Clark* standard, the burden of proof is the same burden that is applied to anyone seeking a claim for a money judgment. Here, of course, the burden of proof falls on the Complainant. (*Clark*, 4 Ill. HRC Rep. at 198.) Furthermore, while the attorney's fee petition under the Human Rights Act should be accorded a liberal construction, the purpose of attorney's fees awards is not to give a windfall to prevailing attorneys, but rather to determine a prevailing community rate for which attorneys may be compensated. (Clark, 4 Ill. HRC Rep. at 198.) Indeed, as the Commission in *Clark* observed, the actual rate that a complainant's attorney can command in the marketplace is highly relevant proof of prevailing community standards.

After reviewing the instant petition and Respondents' response, it is significant to note that Respondents only contest the hourly rates (i.e. $275.00 per hour and $180.00 per hour) asserted by Mr. Waters and Ms. Morris and not the number of hours (i.e., 369.15) requested by Complainant's attorneys. Thus, as it stands, the potential range of attorney's fee awards at issue in the instant case (i.e., $68,055.00, as Respondents see it, to $82,511.50, as Complainant sees it) will surpass the total amount of damages awarded to Complainant (i.e. $63,045.00) on her underlying claims of sexual harassment and retaliation. While employers in other cases before the Commission have questioned the appropriate nature of fee requests that have exceeded the amount of the underlying recovery to the prevailing complainant, the Respondents have wisely not done so in the instant case since Complainant has been awarded a significant amount of damages that was commensurate with what she had requested in her case.

Still, the parties are about $14,500 apart on what the appropriate attorney's fee amount should be, and thus the remaining issue in this case is whether Complainant is entitled to recover the full amount of her attorney's fees request. To that end, the Commission in *Clark* has seemingly required that an attorney requesting fees must provide specific evidence of the prevailing rate for the type of work for which he or she seeks an award. This can be done in a number of ways, including, *inter alia*, the submission of affidavits reciting the precise fees that attorneys with similar qualifications have received from paying clients in comparable cases, or affidavits showing evidence of the attorney's actual billing practice during the relevant time period. In the instant matter Mr. Waters has attempted to comply with the *Clark* directive by supplying his own affidavit indicating that he has a current hourly rate for employment discrimination cases of $300.00 per hour, and that he received a judicial award of attorney's fees in December of 2007 of $275.00 per hour in an employment-related FMLA action. What Mr. Waters charged other clients for similar work and what fee awards he has received from other courts constitute strong proof of relevant legal community standards, and Respondents have not argued that Mr. Waters's requested rate exceeds the rate that he commands in the marketplace, or that the rate that he actually charged clients during the relevant time period was less that the instant requested hourly rate. Indeed, the information contained in Mr. Waters's affidavit about his own rate, as well as the two affidavits from Peoria, Illinois attorneys that established that $275.00 per hour was well within the range of fees charged by other attorneys with similar experience in the Peoria, Illinois area during the relevant time frame appear to satisfy Complainant's burden of establishing a relevant market rate in this case. See, for example, *People Who Care v. Rockford Bd. of Education, School District No. 205*, 90 F.3d 1307, 1311-13 (7th Cir. 1996), where the court looked to similar factors when determining an appropriate attorney's fee.

Respondents, though, in suggesting that $225.00 per hour is a more appropriate fee for Mr. Waters, submit that the $275.000 figure for Mr. Waters is inappropriate because

Respondents' counsel, who practice in the same Peoria market, charged lesser fees when representing clients in employment discrimination matters. For example, L. Lee Smith, who spearheaded the defense of both Respondents, and who enjoys a stellar reputation in the legal community with roughly the same level of experience as Mr. Waters, charged both Respondents "only" $225.00 per hour. Moreover, Thomas P. Schanzel-Haskins, a Springfield attorney with similar experience to Mr. Waters, goes one step further and asserts that he was charging $205.00 per hour in 2007 when representing clients in employment related matters. However, as Richard Steagall noted in his affidavit supporting Complainant's fee request, the difference in rates can be explained by the fact that: (1) unlike attorneys who regularly represent employees in discrimination matters, attorneys who regularly represent employers in discrimination matters have repeat business that permits the law firm to provide discounts in their hourly fees; and (2) it is more difficult to obtain a favorable decision when representing employees where the relevant information about the case more typically lies in the hands of the employer. Thus, accordingly to Mr. Steagall, it is neither fair nor logical to base a fee request on what an employer's counsel is charging his client since there are really two distinct legal marketplaces with separate applicable rates for representation of employers and employees. See, also *Bennett v. Central Telephone Co. of Illinois*, 619 F. Supp. 640, 652-53 (D.C. Ill. 1985), where the court similarly rejected a claim that a fee request may be reduced based solely on what the clients from the non-prevailing party paid their attorneys.

In reviewing the pleadings in this matter, I agree with Complainant that $275.00 per hour for Mr. Waters's work on behalf of Complainant is reasonable under this record. It is a rate that is below what he is currently charging his clients for similar work, and Respondents have not shown either that the rate exceeds what Mr. Waters could command in the marketplace or that it exceeds what Mr. Waters actually charged clients during the relevant time frame. Moreover, neither Mr. Smith nor Mr. Schanzel-Haskins indicated that they were representing plaintiffs-employees in discrimination cases at the rates cited in their affidavits. Accordingly, I will

recommend that Complainant receive a total of $46,502.50 (i.e., 169.1 hours times $275.00 per hour) for work done by Mr. Waters on behalf of Complainant.

The issue, though, is more complicated when it comes to Complainant's claim of $180.00 per hour for work performed by Ms. Morris. Specifically, a close examination of Waters's affidavit does not indicate that Ms. Morris actually billed any of her clients at the $180.00 per hour figure cited by Mr. Waters, and the two supporting affidavits similarly do not tell me what a reasonable rate is for work performed by associates, who, like Ms. Morris, had from zero to two years of experience in the employment discrimination field at the time she rendered her services. Indeed, the closest that Mr. Waters comes to providing proof of a market rate for Ms. Morris's work is his uncorroborated statement that "$185.00 per hour is a reasonable rate for associates with the experience and background of Jennifer Morris." On the other hand, the affidavit of Mr. Madison at least gives some framework for his belief that $150 per hour is an appropriate rate for an associate performing employment discrimination work in central Illinois, although it is an opinion based on what he is currently charging his clients. Moreover, Mr. Madison has three more years of experience than Ms. Morris. Thus, I will use Respondent's suggested $150.00 per hour figure for time spent by Ms. Morris and recommend that Complainant receive a total of $30,007.50 (i.e., 200.05 hours times $150 per hour) for work done by Ms. Morris on behalf of Complainant.

Finally, I note that Respondent Jones was found to be liable only on the sexual harassment count, while Respondent Church was found liable on both the sexual harassment and retaliation counts. In the petition for fees, Mr. Waters observed that it was extremely difficult to allocate time spent between the different claims since the facts supporting each claim were intertwined with each other. Moreover, Mr. Waters could only identify a total of 13.3 hours (out of a total of 369.15 hours spent on the case) for time spent solely on the retaliation claim against Respondent Church. Accordingly, because Respondent Jones is only responsible for one out of two counts in the instant Complaint in which Complainant prevailed, I will make him

jointly and severally liable for only 50 percent of the total award for legal fees. The same split shall apply to the uncontested costs of $2,950.87.

Recommendation

In addition to the relief contained in the Recommended Liability Decision, I recommend that:

1. Respondent First Baptist Church of Canton, Illinois pay Complainant reasonable attorney's fees in the amount of $76,510, with Respondent Jones being jointly and severally liable for $38,255 of said figure.

2. Respondent First Baptist Church of Canton, Illinois pay Complainant $2,950.87 in costs, with Respondent Jones being jointly and severally liable for $1,475.44 of said figure.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 16TH DAY OF DECEMBER, 2009

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
CHERYL LOCKARD,	)	
	)	
Complainant,	)	CHARGE NO: 2004SN3085
	)	EEOC NO: N/A
and	)	ALS NO: S05-470
	)	
KEITH JONES,	)	
	)	
Respondent.	)	
	)	
	)	
CHERYL LOCKARD,	)	
	)	
Complainant,	)	CHARGE NO: 2004SN3084
	)	EEOC NO: N/A
and	)	ALS NO: S05-472
	)	
FIRST BAPTIST CHURCH,	)	
	)	
Respondent.	)	

RECOMMENDED LIABILITY DECISION

This matter is ready for a Recommended Order pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). A public hearing was held before me in Springfield, Illinois on August 21, 22, 23 and 24, 2007. The parties have filed their post-hearing briefs. Accordingly, this matter is ripe for a decision.

Contentions of the Parties

In the instant Complaints, Complainant asserts that she was the victim of sexual harassment when Respondent Jones, and indirectly, Respondent First Baptist Church subjected her to a series of sexually offensive comments and physical contact during her tenure as the Church's treasurer. She also maintains that the Church unlawfully retaliated against her by terminating her employment shortly after she had complained of sexual harassment. Both Respondents deny that certain allegations occurred and assert that other allegations of sexual

harassment either did not happen as described by Complainant or were too tepid to constitute an actionable claim under the Human Rights Act. They also contend that Complainant's sexual harassment claim is untimely. As to Complainant's retaliation claim, Respondent First Baptist Church argues that: (1) Complainant's accusations against Jones did not constitute protected conduct under the anti-retaliation provisions of the Human Rights Act (775 ILCS 5/6-101(A)); (2) the "church exemption" under section 2-101(B)(2) of the Human Rights Act (775 ILCS 5/2-101(B)(2)) deprives the Commission of jurisdiction over her retaliation claim; and (3) Complainant's termination was not improper since it had a good faith belief that she was lying about her allegations of sexual harassment against Jones.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. In January of 2000, Respondent First Baptist Church (hereinafter referred to as the "Church") hired Complainant, a female, as its treasurer. At all times pertinent to the instant Complaint, Complainant's job duties consisted of doing the payroll, making bank deposits, ordering supplies and doing general secretarial work.

2. At the time of Complainant's hire, the Church employed three full-time employees (Complainant, another secretary and the pastor), as well as six part-time employees. At all times pertinent to the instant Complaint, Complainant was physically located in the Church's office, which consisted of an outer office, where Complainant's and the full-time secretary's desks were located, as well as an inner office, where the pastor's desk was located.

3. In January of 2000, Sue Anderson Weaver (hereinafter referred to as Weaver), a female, was hired as the full-time secretary and worked alongside of Complainant.

4. In August of 2000 Respondent Jones, a male, was hired as pastor of the Church.

5. In January of 2001, Jones called Complainant into his office to review some of the Church's finances. During the session, Jones told Complainant that he knew of ministers

who are having affairs from women who seduce them, and that he wondered why that did not happen to him. Complainant replied "well you know you're married."

6. In the spring of 2001, Weaver, who had been working overtime at the Church office, indicated in the presence of Jones and Complainant that she was going to lunch because she needed a break. Jones responded, in the presence of Weaver and Complainant: "I'll give you a break. If you want a break, get under the desk and give me a blow job." Weaver then told Jones: "Is this what Jesus would say? He can hear what you're saying." Complainant also stated: "I don't appreciate that."

7. Subsequent to comment mentioned in Finding of Fact No. 6 but also in the spring of 2001, Jones stated to Complainant in the presence of Weaver in the Church office: "Cheryl, you can give me a blow job." Complainant replied that she did not appreciate the comment.

8. In September of 2001, Weaver resigned her position and moved to Ohio to be with her fiancé. Weaver returned the next month and got married in the Church, with Jones presiding over the ceremony.

9. At or near September 2001, the Church hired Danielle Jarvis Brooks, a female, to replace Weaver as its full-time secretary.

10. Shortly after September 11, 2001, Jones and a member of the Church (John Grant) were in Jones's office discussing a picture of a Middle Eastern woman. Either Grant or Jones described the picture as a "Middle Eastern woman wearing a thong, who was not shaven" and invited Complainant to come into Jones's office to view the picture. Complainant declined the invitation.

11. In the fall of 2001, Brooks was at her work station when Jones, in the presence of Complainant, stood over Brooks's shoulders and told her that MapQuest is a program that allows you to obtain driving directions to individuals. Jones then used as an example an individual whose first and last names were "Dick" and "Head," who lived on "Blow Street." Jones laughed at his example.

12. During the winter months of early 2002, Brooks and Complainant were talking in the Church office about an incident that Brooks experienced while staying at her grandparent's home the prior evening. During the conversation, Brooks stated that she was reading in her bed when the headboard made a loud noise as it unexpectedly fell apart. Jones, who had overheard the conversation, stated: "Well, what were you doing to yourself in bed?"

13. In late spring of 2002, a member of the Church (Carol Haggerty) spoke to Jones about an outfit Complainant had worn, i.e., a pair of shorts and a form fitting knit top, that a friend of Haggerty's believed was inappropriate for the Church office. Jones seemed embarrassed about having to speak to anyone in the office about the issue and eventually asked Haggerty to speak to Complainant about her outfit. Haggerty told Complainant the next day that there had been complaints about Complainant wearing shorts in the office. After Haggerty left the office, Complainant became upset and spoke to Jones about her conversation with Haggerty. At some point during the conversation, Jones stated in front of Complainant and Brooks: "Well, I guess I can make the dress code miniskirts, but that really wouldn't help things, would it?"

14. Subsequent to the late spring 2002 miniskirt remark, Jones made periodic statements to both Complainant and Brooks, which continued to at least October of 2003, that the dress code in the office should be miniskirts and halter tops. Both Brooks and Complainant were offended by the comment.

15. In October of 2002, Complainant went to Brad Anderson, who at that time was the Church's Chairman of its Board of Ministries. During the conversation, Complainant objected to Jones's temper outbursts. Complainant did not give any examples of sexual harassment during this meeting, and the record does not indicate what, if anything, happened as a result of this meeting.

16. At some point around March of 2003, Dave Schoon was a deacon of youth at the Church, a position that brought him to the Church office two to three times a week. Schoon also

oversaw the youth programs and gave direction to Jennifer Curless, who at that time had served as the part-time youth director since March of 2002. At some point in March of 2003, Curless resigned her position as part-time youth director in a dispute with Jones over Curless's use of vacation time. On the day after Curless spoke to the youth group to explain her departure, Schoon witnessed Jones in the Church office sitting behind Curless's desk, pulling, opening and slamming drawers, as well as yelling in an angry tone at Complainant and Schoon about Curless's departure. Schoon and Complainant were emotionally shaken by the incident, and Schoon thereafter called Brad Anderson to come to talk with Jones about his behavior.

17. In June of 2003, Complainant came into work and discovered an icon on her computer that contained a video of a man passing gas and lighting his rear-end on fire. Jones and another member of the Church (Mike Russell) thereafter came into the office laughing and one of the men stated: "We downloaded this from the Bob and Tom Show. This is Mike Russell lighting his bottom on fire." Complainant left her desk, and both Jones and Russell played the video several times.

18. In the summer of 2003, Complainant was preparing to leave the office when Brooks told Jones, who had come out of his inner office, that she was going to be working overtime that evening. Complainant overheard Jones tell Brooks: "The only overtime you're going to be working is under my desk on your knees." Jones then left the office.

19. In the summer of 2003, Jones made a comment in front of both Complainant and Brooks about the bad mood of Wilma Smith, who was working at the time as the Church's part-time Children's Director. Specifically, Jones stated that Smith would be much happier if she had "six more inches at home."

20. In August of 2003, Complainant had a second meeting with Brad Anderson at her home. During the meeting, Complainant expressed a desire to quit her job because of Jones's temper problems, as well as because of the "inappropriate conversations" that Jones was having in the workplace and his unspecified off-color jokes. During this conversation,

Complainant also told Anderson that Jones had a practice of throwing a foam "stress ball" and flinging rubber bands at her. She also stated that there were times when Jones would stand a few feet away from her and throw the stress ball in a hard fashion at her and say, "Are you getting mad?" Complainant also mentioned examples of Jones's temper in the office and cited an incident in which Jones became upset with her after she had asked him whether the office staff was going to be allowed to take Labor Day as a holiday. At the conclusion of the meeting, Anderson told her that he did not want Complainant to quit, that others had complained about Jones's temper, and that he would be enlisting the help of others to address the problem.

21. At some point after the August 2003 meeting with Complainant, Anderson spoke to Dondra Rupe, whom Complainant had identified as having witnessed Jones's temper surrounding Complainant's Labor Day request. After speaking with Rupe, Anderson concluded that Complainant's description of the event was "a little more dramatic" than Rupe's description, and that the incident was not as explosive as that portrayed by Complainant.

22. At some point after his August, 2003 meeting with Complainant, Anderson informed Jones that he had received complaints by office staff that Jones was making inappropriate jokes in the office. Jones responded by telling Anderson that the office in general had a casual atmosphere, that his telling of off-color jokes was a two-way street, and that both Complainant and Brooks had talked about inappropriate subjects such as their periods.

23. In September of 2003, Tammy Hamilton (the Church's Director of Music), Complainant and Brooks were in the Church office discussing Hamilton's recent weight loss associated with her bypass surgery. After Hamilton made the observation that, because of her weight loss, she needed to find a date, Jones stated: "Well here, Tammy, let me introduce you to Jack," an individual who suffered from schizophrenia who occasionally came into the Church office seeking assistance. At that time everyone in the office construed Jones's comment as a joke. Brooks then stated: "I thought Jack had a girlfriend." Jones then replied: "The only girlfriend Jack has is Rosy Palm with five fingers that he visits every day." While Jones began

to laugh, both Brooks and Complainant were offended at Jones's comment and returned to their desks.

24. In October of 2003, Complainant and Brooks was having a conversation about Curtis Scalf, a Church member who had dropped off certain paperwork related to his upcoming wedding. As Scalf was leaving the office, Brook mentioned to Complainant that she had a picture of Scalf when he was a child standing by a horse. Complainant responded to Brooks: "You got a picture of him standing by a horse?" Jones, who was also standing in the outer office and heard the conversation between Complainant and Brooks, said: "Well Cheryl, what's he doing—what do you think he's doing with that horse?" Complainant responded: "I don't appreciate that comment." Jones then replied: "Oh Cheryl, your mind's just as filthy as mine." Complainant then stated: "No, Keith, it's not."

25. At some point during the work week of October 20, 2003 to October 24, 2003, John Grant came into the office while Brooks was on vacation, powered up Brooks's computer and pulled up the web site for the Bob and Tom Show. Complainant was working on the lithograph machine that was besides Brooks's desk and could observe what was on Brooks's computer screen. With Jones standing nearby, Grant pulled up a picture of a semi-nude, topless model lying face down on a picnic table amidst several beer bottles and wearing only thong underwear. The picture contained the following written caption: "Optical Illusion. There are 26 long neck beer bottles hidden in this photo, but they are incredibly difficult to see unless you really concentrate. Good Luck." Both Jones and Grant were looking at the picture, with Grant saying "Count the beer bottles."

26. On October 28, 2003, Brooks tendered to Jones a resignation letter from her secretary position. In the letter, Jones gave the Church two weeks' notice of her resignation. Brook also stated in the letter that "I love the Lord, and love working in His Church, but I have a deep feeling that it is time for me to move on. I truly cherish the friendships I have made here, and it is with a sad heart that I am leaving this position."

27. On October 29, 2003, Anderson met with Complainant and Brooks in Brooks's apartment, where both Complainant and Brooks registered complaints against Jones. During the meeting Brooks informed Anderson about Jones's "under my desk" overtime comment. While Complainant did not specifically mention that Jones had made a similar comment directly to her, she did indicate that Jones had made a similar comment to Sue Anderson Weaver. Either Brooks or Complainant also told Anderson about Jones making frequent references to miniskirts and halter tops as being a part of the office dress code. Brooks additionally told him about a comment in which Jones told her that he could have an affair with any of the office staff if they would just reciprocate his feelings. Brooks additionally accused Jones of having a temper tantrum problem and told Anderson that things needed to change because she was experiencing severe anxiety attacks due to the bad working environment. At the end of the meeting, Anderson indicated that he would speak to Jones about the situation.

28. Anderson subsequently spoke to Jones about Brooks's accusation that he had made a request for oral sex in the office. Jones denied the accusation, and the record is unclear whether as to whether Anderson asked Jones about a similar request for oral sex made to Weaver.

29. As to Brooks's and Complainant's complaints regarding Jones's temper, Anderson spoke to Phyllis Vandermeer about the situation and both decided to bring the matter up with Richard Ricks, who was an Area III minister within the Baptist denomination. At the time he spoke to Vandermeer about Complainant's temper tantrums accusations, Anderson believed that another member of the church (Chris Gibbons) had quit the church because she felt that Jones had talked to her in an angry manner.

30. Anderson subsequently spoke to Ricks about Jones's temper problems, and Ricks told Anderson that Jones's temper issue was a church problem that could not be resolved by Area III personnel. Anderson relayed Ricks's response to Complainant and assured her that he was going to talk with Jones about the situation and that the problem would be taken care of.

31. On November 3, 2003, Barb Grant, the wife of John Grant and soon to be Chairman of the Church's Board of Ministries, encountered Complainant in the Church office while Complainant was crying. Grant asked Complainant if there was anything wrong, and Complainant replied that "It's just so stressful in here." Grant responded "Well, I thought Brad Anderson has taken care of all that with Richard Ricks."

32. At some point in November of 2003, the Church's Pastoral Relations Committee met with Jones to discuss among other things various concerns that Church members had raised against Jones. During the meeting, Bill Lockard, a member of the Pastoral Relations Committee and Complainant's father-in-law, accused Jones of having a temper problem and of creating a too casual atmosphere in the Church office by making crude comments and telling inappropriate off-color jokes. Jones indicated that while there may have been a casual atmosphere in the office, the office staff was also guilty of causing the casual atmosphere. There was no accusation at the meeting regarding any of Jones's requests for oral sex with the office staff, and there is nothing in the record to indicate that Anderson informed the Committee of Brooks's accusation that Jones had requested oral sex from her. The meeting ended with the Committee members telling Jones that they did not want to have a casual atmosphere in the office any longer, and that the casual atmosphere needed to change.

33. At some point in November of 2003, Jones approached Complainant's work station and began to massage Complainant's shoulders as she was typing. Jones asked Complainant how she was doing, and Complainant, who did not welcome the massage, replied by saying "I'm doing fine" and shrugging her shoulders in an effort to get his hands off her shoulders.

34. By January 1, 2004, Brad Anderson had a meeting with Barb Grant to discuss pending matters before the Board of Ministries. During the meeting, Anderson told Grant, who took over as Chairperson of the Board of Ministries on January 1, 2004, about complaints regarding Jones's temper, as well as his use of inappropriate comments and off-color jokes in

the Church office. While the record is unclear as to whether Anderson relayed Complainant's accusation that Jones had made a request for oral sex directed at Weaver, Anderson informed Grant that Brooks had complained about a request for oral sex made by Jones, and that Brooks had made the statement that she could file a sexual harassment claim against the Church because of Jones's oral sex remark.

35. On January 8, 2004, Complainant encountered Barb Grant in the Church's kitchen. During the encounter, Grant asked Complainant: "Has Keith showed any anger or has he made any sexual harassment towards you?" Complainant responded that Jones became angry during one encounter with Dave Bannister, the office manager, but that there had not been any sexual harassment since they last spoke.

36. On April 7, 2004, Complainant, Jones, Tammy Hamilton and various member of the Church Praise Team were in the Church sanctuary testing out new wireless microphones that attached to the speaker's head. During the session while Complainant was in the Church balcony, Hamilton, who was sitting in the front pew, told Jones, who was wearing one of the wireless headsets, that she would be uncomfortable using the headset. Jones, who was located some distance from Hamilton, then invited Hamilton to "speak into my cheek." Hamilton replied: "in your dreams, Big Boy." Jones then stated twice: "Just go tell Pastoral Relations."

37. On April 12, 2004, Barb Grant went to the Church office to meet with Complainant because Complainant had earlier asked Grant's husband if she could talk with her about the stress she was experiencing in the office. When Barb Grant arrived at the office, Complainant, after expressing a desire that the conversation be strictly confidential, accused Jones of "speaking filth" at a recent Praise Team rehearsal. Specifically, Complainant informed Grant that while attending the rehearsal, she overheard Jones say to Hamilton in the front part of the sanctuary: "I'm going to be rubbing your cheeks," and Hamilton respond "You wish." Grant initially stated that she thought Jones was joking at the time. Complainant responded that she did not think it was a joke given what she had experienced with Jones in the past.

Complainant then urged Grant to investigate other incidents of objectionable conduct that included accusations that: (1) Jones told Wilma Smith that her husband was unable to please her sexually; (2) Bob Hulvey told her that a woman had complained that Jones had asked to see her thigh while she was visiting her husband in the hospital; (3) Jones had made it known to the office staff that he would like to have an affair with them; (4) a member left the Church over a dispute with Jones about bringing Bibles to the Church; and (5) Jones had a temper problem that manifested itself in yelling, throwing papers and slamming doors.

38. After Grant heard Complainant's accusations, she asked Complainant whether she had confronted Jones about them. Complainant said she had not confronted Jones because, due to his temper problem, she feared that he might retaliate against by yelling at her.

39. Grant went home and spoke to Hulvey about the alleged hospital incident involving Jones's request to see a woman's thigh. Hulvey initially could not recall the incident. Grant then spoke to Harriet Lockard, Complainant's mother-in-law, who told Grant that the alleged hospital incident really did happen, and that the woman told Hulvey at a funeral home visitation: "I can't believe Keith Jones is a pastor after that comment he made to me about wanting to see my thigh." Grant then called Hulvey back, and Hulvey again indicated that he did not remember any such incident.

40. Grant then called Mary Beard who was at the April 7, 2004 Praise Team rehearsal. Beard stated to Grant that she was unaware of any inappropriate comments being made at the Praise Team rehearsal. Grant then asked Beard if Jones had ever made any comments to her that she would consider inappropriate or of a sexual nature. Beard indicated that she had not.

41. Grant also spoke to Wilma Smith, who did not confirm Complainant's accusation about Jones indicating to Smith that he could satisfy her sexually.

42. On April 13, 2004, Grant went into the church office and told Complainant that she was "not getting any indication of what you told me as being accurate." Grant then insisted

that they both go into Jones's office to confront him about Complainant's accusations. Complainant told Grant that Grant was placing her in a terrible position by insisting that they confront Jones and asked for a moment to pray about the situation. After Complainant and Grant prayed, both women went into Jones's office.

43. When Complainant and Grant went into Jones's office on April 13, 2004, they were joined by Jones, Smith and Hamilton. During the meeting, Jones indicated to Complainant that he had heard that Complainant had registered some complaints about him. When Complainant mentioned the "rubbing cheeks" comment, Hamilton stated that Jones had merely said "speak into my cheeks." Smith also stated that she did not believe that Jones had made any inappropriate comments to her, although they did joke around like a "brother and sister." Jones also denied making any comment about wanting to have an affair with members of the office staff, but did recall a conversation in which he cited pastor colleagues of his who had indicated that women have come on to them.

44. At the end of the meeting, Grant asked Complainant if she could continue to support Jones in his ministry, and Complainant indicated that she could. Jones eventually stated that Complainant's job was not in jeopardy at that time, but requested that she come to him with concerns instead of talking to other people in the church family.

45. On April 15, 2004, Grant met with other members of the Board of Ministries at a regularly scheduled meeting. During the meeting, Grant identified the actual complaints made by Complainant against Jones. The Board then decided to form an Ad Hoc Committee to do its own investigation of Complainant's allegations of misconduct. The Ad Hoc Committee consisted of Grant, Sarah Hinds, Dondra Rupe and Bob (a/k/a "Slick") Derenzy. Later that same day, Grant informed Complainant that the Ad Hoc Committee had been formed to investigate her complaint.

46. Between April 15 and April 19, 2004, the Ad Hoc Committee members met with Complainant, Hamilton, Smith, Alma Lee Wertman (a staff member who had occasion to be in

the Church Office) and Dave Bannister (the Church's Office Manager as of December 2003). The Committee decided to speak not only with the individuals identified by Complainant, but also with other employees of the Church who could provide input on Jones's behavior. Hamilton and Smith repeated to the Ad Hoc Committee what they had said to Grant. Bannister also indicated that he had not seen anything inappropriate during his tenure at the Church.

47. At some point prior to April 19, 2004, but after April 7, 2003, Complainant contacted the Department of Human Rights about filing a sexual harassment claim.

48. On April 19, 2004, the Ad Hoc Committee met with Complainant. At the start of the meeting, Complainant brought asked Grant a series of questions concerning the purpose of the meeting and any procedure for informing the full Board of the information gathered by the Committee. Grant responded that the purpose of the meeting was to find the truth and to take action either against Complainant or Jones. At some point during the initial interview, Dondra Rupe told Complainant: "Barb Grant's not on trial here. Stop asking those questions."

49. During the April 19, 2004 Ad Hoc Committee with Complainant, Complainant informed the Committee about additional instances of alleged misconduct: (1) Jones repeatedly mentioned that miniskirts were part of the dress code for the office; (2) Jones expressed an interest in having an affair in the office; (3) Jones repeatedly threw foam balls at her breasts; and (4) Jones made inappropriate statements in the office. As to the miniskirt accusation, Grant responded that Jones's comment was "funny" such that Complainant should laugh whenever he said it. At one point during Complainant's presentation, Rupe told Complainant to "quit lying" and asked Complainant "how dare [you] bring those inappropriate statements about Keith?" Rupe also made the observation during the meeting that: (1) if Complainant was so unhappy in her job, then she should find another job; and (2) Jones needed to be in an environment that let him be free-spirited to joke around.

50. Complainant also stated during the April 19, 2004 Ad Hoc Committee meeting that Brooks, Weaver, Smith, Jennifer Curless, and Dave Schoon had also witnessed Jones's

offensive conduct in the office, but that Smith would not acknowledge that the incidents happened because Smith was afraid of retaliation by Jones.

51. At some point during the April 19, 2004 Ad Hoc Committee meeting, Grant asked Complainant if she could continue to work in the Church office and support Jones's ministry if nothing changed about Jones's behavior. Complainant responded: "Then you are asking me to work in a sexually harassed work environment." Grant then rephrased her question by asking Complainant: "If nothing changed about Keith's behavior, would you still be willing to work in what you perceived to be a hostile and sexually harassed work environment?" Complainant responded "I don't know." At some point in the meeting Hinds asked Grant to contact Weaver to get her input.

52. On April 20, 2004, Granted called Weaver and asked whether she experienced anything inappropriate while she worked for the Church. Weaver responded that there were many inappropriate things said by Jones. When asked for specifics, Weaver began to cry and told Grant that Jones had said to her "[i]f you want a break, get under that desk and give me a blow job." Grant responded, "You're making this very hard for me," and Weaver responded, "You asked me and I'm telling the truth."

53. After Grant was finished with her phone call with Weaver, she spoke to Jones on the same day about the contents of Weaver's telephone call. A short time after Weaver spoke to Grant, Weaver received a telephone call from Jones, who told Weaver that he did not "remember saying those things," but that he knew Weaver well enough to know that she did not lie, and that if she said he did those things, then he believed that he had said those things. Again during this conversation Weaver was very emotional and crying very hard. Jones then apologized and hung up the telephone.

54. Later in the afternoon of April 20, 2004, Weaver decided to telephone Grant because she was afraid that Grant was not clear about her allegations with respect to Jones because she had been very emotional in her prior telephone call with Grant. During this

conversation, Weaver again told Grant about Jones's request for oral sex. She also told Grant that Jones had made a similar request to Complainant. During this conversation, Weaver never said that she was unable to give a context to Jones's statements to her.

55. Later in the day on April 20, 2004, Jones called Weaver a second time. During this conversation Weaver kept on saying "I'm sorry Keith that I had to do this. I'm sorry that I had to say these things, but I have to tell the truth." At some point in the conversation, Jones told Weaver, "Quit apologizing. You didn't do anything wrong. I did." Jones then hung up the telephone.

56. On April 20, 2004, the Ad Hoc Committee met again to discuss Complainant's accusations against Jones. At that meeting, Grant told the other members of the Ad Hoc Committee that Weaver told her during her recent telephone conversation that there were some inappropriate comments made in the office, that Weaver could not remember the context, that the comments were not a directive and that the comments were made as jokes. Grant withheld from the Committee members the fact that Weaver had relayed two incidents (one to Weaver and one to Complainant) in which Jones made a request for oral sex by getting under his desk, that Weaver was in a very emotional state when she made her allegations about Jones's reference to oral sex, that Brooks had made a similar allegation about a reference to a "blow job" by Jones prior to her resignation, or that Harriet Lockard (as opposed to Bob Hulvey) told her that a woman told Hulvey that Jones had wanted to see her thigh while she was visiting her husband in the hospital.

57. At the conclusion of the April 20, 2004 Ad Hoc Committee meeting, the Committee members agreed to recommend to the Board of Ministries to terminate Complainant after hearing from Jones that the "trust" he once had in Complainant was no longer existed.

58. During the evening of April 20, 2004, the Board of Ministries met to discuss the findings of the Ad Hoc Committee. During the meeting, Grant stated that the Committee's recommendation for Complainant's termination was due to the fact that there did not seem to be

anyone supporting the complaints that Complainant had made to the Ad Hoc Committee or to Grant. Grant did not relay to the Board Weaver's claim that Jones had made requests for oral sex to both herself and to Complainant, or that Brooks had made a similar complaint about a request for oral sex made by Jones to her. By the time of this meeting, neither Grant, nor any other Board member, obtained or made any attempt to obtain any statements from either Brooks, Jennifer Curless, or Dave Schoon, who had been identified by Complainant as individuals who could support her accusations against Jones. At the conclusion of the meeting, the Board voted unanimously to terminate Complainant.

59. On April 20, 2004, Complainant signed a verified Charge of Discrimination against Jones alleging that she had been the victim of sexual harassment. None of the Board of Ministry members, however, were aware of this Charge of Discrimination at the time they voted to terminate Complainant.

60. On April 21, 2004, Grant and two other Board of Ministry members met with Complainant at the Church office and terminated her.

61. On April 22, 2004, Complainant called Weaver to inform her that she had been fired by the Church and that she would be using Weaver as a witness.

62. At some point after the Church received notice that Complainant had filed a Charge of Discrimination, Grant telephoned Weaver because she had heard that Weaver was very upset because of Complainant's termination. Weaver confirmed that she was upset and asked Grant, "Didn't you believe what I told you?" Grant replied: "Oh yeah; but we really don't have to listen to you because of the statute of limitations. What you say doesn't matter because your name wasn't on these papers that we received, these investigation papers."

63. On May 15, 2004, Weaver received a telephone call from Jones. During the conversation Jones stated, "This may sound self-serving Sue, but if you say those things that you've said about me, it's pretty much going to be the end of me." Weaver, who interpreted

Jones's statement as a request to lie on his behalf or to recant her story told Jones, "I cannot lie. God has told me to tell the truth and I will tell the truth. I cannot lie."

64. On May 18, 2004, Frank Pollitt, a member of the Church's Board of Ministries, called Weaver to ask if anyone had contacted her about Complainant's claims of sexual harassment. Weaver told Pollitt about Jones's requests for oral sex. She also informed Pollitt that she had told Grant the same thing. At the end of the conversation, Pollitt invited Weaver to come back from her Columbus, Ohio home to speak at the Church's June, 2004 business meeting. Weaver went to the June, 2004 meeting and repeated her allegations that Jones had made requests for oral sex.

65. In the summer of 2004, Schoon had a conversation with Grant and Slick Derenzy after Complainant had been terminated. During the conversation, Grant asked Schoon to stop telling people in town that Jones had thrown Nerf balls at the breasts of the female office workers because Schoon's comments were "tearing down our pastor." Schoon told her that he was only relating what he had actually seen.

66. In June of 2006, Schoon was participating in a community event in downtown Canton, Illinois, when Jones approached him, started to bump him with his chest and started screaming: "What do you have to say now, Dave....You know you're a big man." Anderson, who was with Jones at the time, put his hands on Jones's shoulder and told him that, "This is not the place or time for this."

67. From 2001 through October of 2004, Jones made periodic references to jokes in front of Weaver, Brooks, Curless, Schoon and Complainant. These jokes, which were uttered at least two to three times per week and at times on a daily basis, were sexual in nature and demeaning towards women, and Complainant objected to them by saying that she did not appreciate his comments/jokes. At times, Jones also made specific references to crude or sexually-related jokes uttered on the "Bob and Tom Show" to church members in the outer office that were overheard by Complainant, Brooks and Curless.

68. From September 2001 through October of 2004, Jones periodically threw a foam ball located in a basket on Complainant's desk at Complainant, Brooks and/or Curless. Typically, the balls were thrown in a hard fashion at the chests of these women, who were generally seated at the time of the tosses.

69. At all times pertinent to the instant Complaint, the Church did not have a formal sexual harassment policy or mechanism for reporting sexual harassment. In late summer of 2004, the Church adopted a sexual harassment policy that set forth procedures an employee must take when experiencing actions which the employee deemed to qualify as sexual harassment. Specifically, the policy stated that:

> "1. The offended must confront the offending party in accordance with biblical principles (Matthew 18:15), stating what the behavior was and why it was offensive. This confrontation must be documented and the documentation given to a supervisor, the pastor, or the chair of the Board of Ministries.
> 2. If the behavior or similar behavior continues, the offended should, with the supervisor, pastor or chair of the Board of Ministries again confront the offending party. This confrontation should be documented as in Step 1.
> 3. If there is still no correction in the behavior of the offending party, all documentation, including a description of the offending behavior should be presented to the Board of Ministries for review and appropriate action."

The written policy further provided in pertinent part that "[b]ecause of the nature of allegations of sexual harassment, false allegations made without following the above procedure, will be treated seriously by the Board of Ministries and will be cause for disciplinary action which may include but not be limited to a formal reprimand, suspension, or dismissal."

66. Complainant sustained $7,742 in lost wages as a result of her termination in retaliation for having made a report of sexual harassment.

67. Complainant sustained a loss of $10,303.10 in un-reimbursed health care expenses as a result of her termination in retaliation for having made a report of sexual harassment.

68. Complainant sustained emotional damages arising out of the sexual harassment committed by Respondent Jones in the amount of $15,000.

69. Complainant sustained emotional damages arising out of the unlawful retaliation committed by Respondent Church in the amount of $30,000.

Conclusions of Law

1. Complainant is an "employee" as that term is defined under the Human Rights Act.

2. Respondent is an "employer" as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. A charge of sexual harassment based on a hostile work environment is timely as long as any of the acts that contributed to the hostile environment occurred no more than 180 days before the claimant filed her charge.

4. Complainant has established a prima facie case of sexual harassment arising out of conduct committed by Respondent Jones that had the purpose or effect of substantially interfering with her work environment and created an intimidating, hostile and abusive working environment.

5. Complainant established a *prima facie* case of unlawful retaliation arising out of her termination from her treasurer's position.

6. Respondent articulated a neutral, non-discriminatory reason for its decision to terminate Complainant from her treasurer's position.

7. Complainant established by a preponderance of the evidence that Respondent's articulated reason for her termination was a pretext for unlawful retaliation.

8. A prevailing complainant is entitled to provable back wages, un-reimbursed medical expenses, and other actual damages including emotional distress stemming from a violation of the Human Rights Act.

Determination

Complainant has established by a preponderance of the evidence that Respondents violated section 2-102(D) of the Human Rights Act (775 ILCS 5/2-102(D)) when Respondent

Jones sexually harassed her in the workplace. Moreover, Respondent First Baptist Church violated section 6-101(A) of the Human Rights Act (775 ILCS 5/6-101(A) when it terminated Complainant in retaliation for having complained about sexual harassment.

Discussion

Sexual Harassment.

This case presents an interesting question with respect to whether Complainant has established a timely claim of sexual harassment where arguably all of the serious allegations that formed a potentially actionable claim occurred more than 180 days prior to the date of her Charge of Discrimination, and where the incidents that occurred within the relevant jurisdictional time period did not materially add to her understanding as to whether she had an actionable sexual harassment claim. Respondent asserts that Complainant's sexual harassment claim is untimely because she should have been aware of any sexual harassment claim more than 180 days prior to the filing of her Charge of Discrimination. As to the merits, it submits that some of the claimed activity either did not actually occur, was misinterpreted by Complainant or was too tepid to form an actionable sexual harassment claim. However, after reviewing the record and the briefs filed by the parties, I find that Complainant has filed a timely sexual harassment claim, and that she established by a preponderance of the evidence that she was the victim of sexual harassment in the workplace.

To understand why Complainant wins on her sexual harassment claim, it is important to note that sexual harassment is defined under the Human Rights Act as "any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment." (See 775 ILCS 5/2-102(D).) In *Harris v.*

Forklift Systems, Inc., 114 S.Ct. 367, 370 (1993), the United States Supreme Court, in examining the question as to whether a work environment has been rendered hostile or abusive, cited as significant factors the frequency of the discriminatory conduct, the severity of the conduct, the physically threatening or humiliating nature of the conduct and the interference of the conduct on the employee's work performance. The Commission has specifically relied upon the *Harris* standards when considering sexual harassment claims. See, *Davenport and Hennessey Forrestal Illinois, Inc.*, IHRC, ALS No. S3751R, March 30, 1998, and *Trayling v. Board of Fire and Police Commissioners*, 273 Ill.App.3d 1, 652 N.E.2d 386, 394, 209 Ill.Dec. 846, 854) (2nd Dist. 1995).

Before examining whether Complainant has established a *prima facie* case of sexual harassment, I must first establish what actually happened in the workplace, for indeed, credibility is typically at the heart of any sexual harassment case. (See, for example, *Camden and AAA-Chicago Motor Club*, 26 Ill. HRC Rep. 2 (1986).) Here, that maxim is altogether true since the parties are at odds with respect to the most serious allegations of sexual harassment. For example, Complainant, as well as Brooks and Weaver, who also worked full-time in the Church office, testified that Jones made separate requests for oral sex to each of them, while Jones maintains that he did not make any reference to oral sex (joking or otherwise) with any of these women. However, I found all three women credible as to this key fact and note that Sue Weaver, whom even Barb Grant (hereinafter referred to as Grant) conceded did not have an axe to grind with the Church, (Tr. Vol. II, pg. 285) was particularly credible in this regard.

Complainant's failure to cite Jones's oral sex request during the Church's investigation of Complainant's sexual harassment charges following the April 7, 2004 Praise Team incident, though, does give me pause on the issue as to whether the incident actually occurred since one would think that Complainant would have included all serious incidents of sexual harassment when making her complaint against Jones at that time. However, Complainant's public hearing testimony concerning Jones's oral sex request was backed up by Weaver, who had also

witnessed the request being made to Complainant. Moreover, Jones's denial of making any oral sex request to a female office member was belied by his telephone calls to Weaver on April 20, 2004, in which Jones eventually acknowledged making the request to her and apologized for his actions (Tr. Vol. II, pgs. 302-03.) While from a proof perspective, it would have been an easier finding had Complainant made the allegation to the Ad Hoc Committee, her failure to cite Jones's request for oral sex to Grant or any other member of the Ad Hoc Committee was understandable given: (1) the failure of Anderson to take any substantive action when Brooks and Complainant had made similar allegations against Jones in their October 28, 2003 meeting; and (2) the hostile reception Complainant had received from certain members of the Ad Hoc Committee, especially Dondra Rupe, who seemed unwilling or uninterested in listening to her complaints about Jones's conduct.

Thus, Jones was not telling the truth with respect to his denial of requesting oral sex from the female office staff at the Church office. He also was not telling the truth with respect to his denial of viewing in Complainant's presence at the Church office a "Bob and Tom Show" picture of a partially nude woman lying down on a picnic table amidst a cluster of beer bottles that John Grant (Barb Grant's husband) had called up on Brooks's computer. Remarkably, Jones admitted to seeing the picture (he asserted that some seminary "buddies" sent it to him in an e-mail), but adamantly insisted that he had not seen the picture in the Church office. If that were true, Jones did not provide a rational explanation for how Complainant would have otherwise known about the picture's existence (or more important, Jones's knowledge about the picture) if the incident did not happen as she described it. Moreover, Jones's willingness to lie about these serious allegations cannot help but have a deleterious effect on his overall credibility not only with his claim that, in spite of the Bob and Tom Show picture mentioned above, he "very rarely" mentioned Bob and Tom Show material at the workplace, but also with respect to other factual conflicts in the record. Thus, I have found Complainant and others including Brooks, Curless and Schoon credible with respect to their joint allegation that Jones

frequently used coarse and crude comments of a sexual nature in the workplace that were demeaning to women, as well as the testimonies of Complainant, Schoon and Curless that Jones frequently threw a foam stress ball that was aimed at the chests of Complainant and other women in the Church office.

Moreover, in addition to the above acts of sexual harassment, I found that Jones: (1) beckoned Complainant to come into his office to view a picture of an unshaven middle Eastern woman wearing a thong; (2) told Complainant that he could have an affair with any of the office personnel but that God would not let him; (3) provided the names "Dick," "Head" and "Blow Street" when explaining to Brooks the use of MapQuest; (4) implied sexual inferences with respect to Brooks's headboard falling off her bed and with respect to a picture of a church member standing next to a horse; (5) played a role in downloading on Complainant's computer a video of a man passing gas and lighting his rear-end; (6) stated in Complainant's presence that a co-worker (Smith) would be happier if she had six more inches at home; (7) made a sexual reference to "Rosy Palm" when referring to a church visitor who had displayed mental problems; and (8) made many unwelcome references to miniskirts and halter tops as the official office dress code. More important, I found Complainant to be credible in her assertion that she found all of the above incidents were subjectively offensive to her.

Of course, Respondents take a different stance regarding the above incidents by either asserting that they did not occur, that Complainant did not subjectively view these incidents to be offensive, that she was an equal partner in any crude behavior that occurred in the Church office, or that the incidents themselves did not arise to the level of sexual harassment. None of these arguments, though, are persuasive. Specifically, as noted above, I did not find Jones credible in the denials that three requests for oral sex and the "Bob and Tom Show" picture incident never took place. Moreover, while Respondents cite an incident in which Complainant was seen on a security video "coquettishly" pulling up a sweater that covered her blouse as an example that she did not view Jones's conduct in the workplace as unwelcome, I note that

Complainant's actions during the incident were directed at Mike Russell and not Jones. In this respect, when it came to conduct committed by Jones, I found Complainant believable that she protested his conduct by frequently telling him that she did not appreciate his offensive comments. To be sure, Respondents are correct that Jones somewhat cleaned up his act in November of 2003 after being told by the Pastoral Relations Committee members to change the casual atmosphere in the office. This evidence, though, does not necessarily support their related contention that he would have done the same if only Complainant had brought his conduct to his attention since the record shows that Complainant actually did protest some of his offensive comments, albeit not in the "What would Jesus do?" format used by Weaver, by stating to Jones that she did not appreciate his comments/jokes.

Respondents submit, though, that Complainant's failure to register a complaint about Jones's oral sex requests, or for that matter, the Bob and Tom Show/beer bottle picture to anyone on the Ad Hoc Committee constitutes evidence that she did not actually find said comments/picture to be offensive. However, there is nothing under the Human Rights Act that requires that a subordinate employee confront a supervisor who commits acts of sexual harassment in order to trigger an employer's (or for that matter the supervisor's) liability for sexual harassment under the Act. Indeed, Complainant specifically stated to Grant that she was afraid that Jones would use his bad temper to retaliate against her if Grant had failed to keep confidential Complainant's complaints against Jones. (Tr. Vol. III, pgs. 719-722.) As such, I cannot agree that Complainant's failure to bring her concerns directly to Jones or to the members of the Ad Hoc Committee is evidence of a tacit approval of Jones's conduct.

Finally, I find without merit Respondents' contention that the conduct attributed to Jones was too tepid to establish an actionable sexual harassment claim. Admittedly, some courts, especially in the federal forum, have found certain sexual comments, when made in isolation, are insufficient to establish actionable claims. However, when considering the instant request for oral sex, the offensive jokes and pictures, the foam ball tosses, and the back rub, as well as

giving credence to claims by Complainant, Brooks and Curless concerning the frequency of the crude comments of a sexual nature that they witnessed in the Church office, I find that Complainant has established an actionable sexual harassment claim under the Human Rights Act.

The closer question with respect to Complainant's sexual harassment claim, though, lies in Respondents' alternative contention that Complainant's sexual harassment claim must be dismissed on timeliness grounds if, as the record shows, her claim is based upon the April 20, 2004 signature date on her Charge of Discrimination. Specifically, Respondents maintain that there are only two potential incidents (i.e., the November 2003 shoulder massage and the April 7, 2004 speak into my cheek incident) that fall within the applicable 180-day time frame for establishing a timely sexual harassment claim. As such, they argue the Commission lacks jurisdiction over the instant sexual harassment claim since neither incident actually served as a contributing factor to Complainant's hostile work environment. Moreover, Respondents assert that Complainant cannot rely on the continuing violation doctrine to revive an otherwise stale claim of sexual harassment because: (1) the chronology of events demonstrates that any serious harassing conduct occurred prior to October 23, 2003, when the operative limitations period began to run; and (2) any harassment effectively ceased after Jones was instructed in November of 2003 to change the casual atmosphere in the office. Finally, Respondents, in citing to Seventh Circuit cases, submit that Complainant's reliance on the continuing violation doctrine to render her sexual harassment claim timely is especially inapt since: (1) the doctrine applies only if the initial conduct that occurred prior to the beginning of the limitations period was ambiguous with respect to the existence of a sexual harassment claim; and (2) Complainant should have realized the existence of any sexual harassment claim when the most egregious conduct occurred at least one to two years prior to the filing of her Charge of Discrimination.

As to Respondent's last point, I agree that the Seventh Circuit in *Galloway v. General Motors Service Parts Operations*, 78 F.3d 1164 (1996) and other cases have found that an

employee could not base a hostile environment claim on conduct that occurred outside the statute of limitations period unless said conduct could be recognized as harassment only in light of events that occurred within the relevant limitations period. (*Galloway* 78 F.3d at 1167.) In this regard, I agree with Respondent that Complainant probably should have realized at some point in 2002, after Jones had made his requests for oral sex to her and to Weaver, had repeated a series of sexually demeaning jokes in the workplace and had peppered her on a few occasions with the foam ball, that she had an actionable sexual harassment claim. However, the United States Supreme Court, in *National Railroad Passenger Corp v. Morgan*, 536 U.S. 101, 122 S.Ct. 2061, 2074-75 (2002), subsequently rejected the approach used by the *Galloway* court and the Seventh Circuit in favor of one that merely required the employee to show the existence of an act (and not necessarily the operative act) that occurred within the applicable limitations period, which contributed to the sexual harassment environment. (See also, *Gusciara v. Lustig*, 346 Ill.App.3d 1012, 806 N.E.2d 746 (2nd Dist 2004).) Here, I agree with Respondents that it would be difficult to point to the April 7, 2004 "speak into my cheek" episode as a qualifying incident to trigger the Commission's jurisdiction over Complainant's sexual harassment claim since no one, but Complainant, understood Jones to have said "I'll be rubbing your cheeks," and Jones's actual statement of "speak into my cheeks" does not on its own qualify as sexual banter under the circumstances of this case.

The Bob and Tom Show picture depicting a semi-nude woman lying down on a picnic table amidst empty beer bottles, though, potentially qualifies a timely incident of sexual harassment since Complainant testified that the incident occurred during the week before Brooks tendered her resignation on October 28, 2003. Recall, though, that Complainant testified that she provided the Department of Human Rights with information contained in her Charge of Discrimination and signed the Charge on the same day (i.e. April 20, 2004). Thus, because the operative date for calculating the existence of timely incidents of sexual

harassment is October 23, 2003, it is unclear whether this incident, which occurred during a work week that ranged from October 20, 2003 to October 24, 2003, would qualify.

Accordingly, the November 2003 back rub remains as the only potential incident of sexual harassment that could secure the Commission's jurisdiction over the instant sexual harassment claim. Respondents submit that the back rub cannot be considered as a qualifying incident since it neither substantially interfered with Complainant's work performance nor created by itself an intimidating, hostile or offensive working environment. However, the Commission is not required to accept Respondents' take on the significance of the back rub given Complainant's testimony that she did not welcome the physical contact and gestured for Jones to stop. Moreover, under *Morgan*, the timely incident of harassment need not be the final or operative act that led the employee to conclude that she was the victim of sexual harassment. Here, it is enough to say that although the November, 2003 back rub did not make Complainant first realize that she had an actionable claim, it nevertheless formed a piece of her sexual harassment claim where the incident constituted an unwanted touching during a time when Jones had subjected her to a series of sexually tinged comments and photographs/video that were demeaning to women. As such, and for all of the above reasons, I find that Complainant has established a timely and viable claim for sexual harassment.[1]

Retaliation.

Section 6-101(A) of the Human Rights Act (775 ILCS 5/6-101(A)) prohibits an employer from retaliating against an employee because "he or she has opposed that which he or she reasonably and in good faith believes to be ... sexual harassment in employment..." Typically,

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[1] Respondents also maintain that the doctrine of continuing violation does not apply since there was a cessation of harassing behavior that occurred between the Pastoral Relations Committee meeting in November of 2003 and April 7, 2004. However, the case used by Respondent to support its proposition (i.e., *Fitzgerald v. Henderson*, 251 F.3d 345 (7th Cir. 2001)) actually stands for the proposition that a change in the nature of harassing conduct precludes the employee from relying on the prior, untimely conduct to establish a harassment claim. Here, though, the alleged acts of harassment both inside and outside of the applicable limitations period were not qualitatively different.

a complainant can establish a *prima facie* case of unlawful retaliation by showing that: (1) she engaged in a protected activity that was known by the respondent; (2) the respondent subsequently took an adverse action against the complainant; and (3) a causal connection exists between the protected activity and the adverse action. (See, for example, *Pace and State of Illinois, Dept of Transportation*, IHRC, ALS No. 5827, February 27, 1995.) Moreover, proof of a causal connection can be established indirectly by showing that the protected activity was followed closely by discriminatory treatment, or through other evidence such as disparate treatment of similarly situated co-workers, who had not participated in a proceeding under the Act. See, *Westfield and Illinois Department of Labor*, 40 Ill. HRC Rep. 395 (1988).

The Church initially contends that Complainant failed to establish the first prong of the *prima facie* case scenario since none of the five complaints about Jones's conduct that Complainant cited to Grant, (i.e., "speak into my cheek" incident, a complaint by a woman about Jones's demand to see her thigh in a hospital, Jones's comment to Smith that Smith's husband could not satisfy her sexually, Complainant's claim that Jones discouraged people from bringing Bibles to Church, and Jones's displays of temper) related to sexual harassment directed by Jones to Complainant or qualified as acts of sexual harassment. Moreover, the Church maintains that Complainant's accusations against Jones essentially boiled down to a dispute over Jones's fitness to be a minister, which is an employment decision by the Church that is outside the jurisdiction of the Commission under the exemption provided to certain religious organizations contained in section 2-101(B)(2) of the Human Rights Act (775 ILCS 5/2-101(B)(2)). However, the Church's reliance on section 2-101(B)(2) is particularly inapt since: (1) the Church already conceded in its verified answer that it was an employer as to both of Complainant's claims, while an invocation under section 2-101(B)(2) would constitute an allegation that it was *not* an employer under the Human Rights Act; and (2) section 2-101(B)(2) comes into play only if the Church had contended that its decision to terminate Complainant

involved an aspect of the Church's spiritual functions.[2] Here, of course, the Church has only argued that Complainant was terminated because she lied about her accusations of sexual harassment against Jones and not because her actions conflicted with its religious doctrine.

The Church, though, still submits that Complainant's complaints to Grant and the Ad Hoc Committee cannot be considered protected conduct since the substance of her complaints could not be considered as an opposition to sexual harassment. However, regardless of the Church's current spin on Complainant's accusations, both Jones and Grant were actually aware that Complainant was making allegations of a sexual harassment nature, since Jones testified that Grant had advised him on April 13, 2004 that Complainant had found some of his comments to be sexually offensive and harassing. (Tr. Vol. III, pgs. 706-07.) Moreover, Grant acknowledged in her testimony that at the April 19, 2004 Ad Hoc Committee meeting, Complainant perceived that she was working in a sexually harassing office environment. Accordingly, I find that Complainant had voiced a sufficient opposition to perceived sexual harassment so as to satisfy the first prong of a *prima facie* case of unlawful retaliation.

As to the second prong of the *prima facie* case of retaliation, Grant and others explained at the public hearing that Complainant was terminated because: (1) the Board of Ministries members had a good faith belief that Complainant had lied with respect to her allegations against Jones; and (2) Complainant would be unable to work closely with Jones in the future due to nature of such false allegations. (Tr. Vol. III pg. 747.) This articulation, on its face, provides me with a neutral, non-discriminatory reason for Complainant's termination, and I

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[2] During the public hearing, Grant and others testified that the Church's current sexual harassment policy, which was drafted shortly after Complainant's termination, was based on certain Biblical passages that require employees to confront individuals directly when accusing them of misconduct or face the possibility of termination. While such policy sets up a potential conflict with the Human Rights Act, at least for those employees who fail to confront Church management and instead file a Charge with the Department of Human Rights, the Church did not plead in its verified answer that such a policy was in force at the time of Complainant's termination. Similarly, it did not plead that any other informal practice, which was based on its religious tenets that essentially required Complainant to confront Jones or face discipline, qualified it for the "church exemption" under section 2-101(B)(2) at least with respect to Complainant's retaliation claim.

would note that Complainant does not seriously contend that this articulation, if believable, would be insufficient to satisfy the Church's burden of production under *Burdine*. Thus, the only real question in the remaining portion of this case is whether Complainant has shown by a preponderance of the evidence that the Church's articulation is a pretext for unlawful retaliation.

In this regard, the Church argues that Complainant cannot satisfy her burden since the Board of Ministries could properly find that her initial allegations against Jones (i.e., the "speak into my cheek" comment, a woman's complaint that Jones had asked to see her thigh while she was visiting her husband in the hospital, Jones's comment that he could satisfy Smith sexually, Jones's comment discouraging people from bringing the Bible to church, and Jones's displays of temper) were either factually unsupported, or as in the case of the "speak into my cheek" comment, completely mischaracterized so as to unfairly damage Jones's reputation. Complainant on the other hand submits that the Church's articulation is a pretext for unlawful retaliation since: (1) Grant was actually aware during her investigation that some of Complainant's allegations were supported; (2) Grant withheld crucial evidence that would have informed Board that Complainant was telling the truth about her claim of sexual harassment; and (3) Grant's biased investigation deprived the Board of making an honest choice when determining whether Complainant was being truthful in her claim that she was working in a sexually harassing environment.

In its reply brief, the Church acknowledges that Complainant may have presented some evidence that corroborated some of her allegations against Jones, but maintains that the Board's termination decision was based on the lack of corroboration as to the five allegations that Complainant had initially made to Grant on April 12, 2004. A review of the record, though, does not support the Church's contention in this regard. Specifically, Grant conceded that there was some corroboration as to Complainant's "speak into my cheek" allegation against Jones, since Jones and Hamilton had confirmed that the incident occurred, although both gave an innocent context for both the "speak into my cheek" comment, as well as Hamilton's response of

"in your dreams, Big Boy." Moreover, while the Church now asserts that Complainant had maliciously mischaracterized the incident, I doubt whether Grant and the other Board members actually found the accusation to be a total mischaracterization of the incident, where any misstatement can easily be explained by the fact that Complainant was some distance away when the verbal exchange took place in the sanctuary between Jones and Hamilton, and where at least one Board member (Frank Pollitt) concluded that Complainant had not "falsified" the incident, but voted to dismiss Complainant on other grounds. Tr. Vol. II, pg. 373-74.

Other facts known to Grant during her investigation of the initial five incidents also cast doubt on the Church's assertion that Complainant's allegations with respect to Jones were wholly unsupported. Specifically, as to the alleged complaint by a woman that Jones made a request in a hospital to see her thigh, Grant spoke to Complainant's mother (Harriet Lockard) who confirmed that the woman had actually made the comment to Hulvey while the woman was in Hulvey's funeral home. While Hulvey ultimately could not recall the incident, the details about the incident supplied by Harriet Lockard, which included a verbatim statement by the woman, suggest either that Harriet Lockard was also a witness to the woman's comment, or that she had obtained knowledge about the incident from Hulvey. (Tr. Vol. III at pg. 725.) In any event, contrary to Grant's claim at the public hearing and at the time of her investigation, there was "some indication" that what Complainant was asserting about the incident was true.

As to Complainant's accusations with respect to Jones's comments about satisfying Smith sexually and about discouraging members from bringing Bibles to worship services, I agree with the Church that while I found that Jones actually made the sexually offensive statement to Smith, Grant could rely on Smith's denial that the incident as described by Complainant had occurred and on her own knowledge with respect to the Bible issue when determining in her own mind that these two accusations were without substance. However, the same cannot be said for Complainant's claims that Jones exhibited temper tantrums in the workplace. Specifically, while the Church cites the testimony of Dondra Rupe for the proposition

that one alleged occurrence of Jones's temper did not occur, the record suggests that Complainant was not talking about one specific incident of Jones's temper, and Grant confirmed at the public hearing that Complainant made a general accusation that Jones yelled, screamed, threw papers and slammed doors. (Tr. Vol. III, pgs. 721-22.) Indeed, Grant conceded that she asked Alma Lee Waterman and others about whether they had experienced any incidents of Jones's anger, because the Board wanted to know about the atmosphere in the office. Tr. Vol. III, pg. 738-39.

Additionally, Complainant's accusation that Jones displayed a terrible temper in the office was corroborated by Schoon, who, along with Complainant, witnessed one incident subsequent to the resignation of Jenifer Curless, which led him to contact Anderson to try to do something to calm down Jones. Complainant's accusation regarding Jones's anger problem was also corroborated by Anderson, who testified that he was aware of others who had complained about Jones's anger issues, and that, after hearing Complainant's complaint about Jones's anger/temper in the fall of 2003 and believing that a member had left the Church because of Jones's temper, he called upon a regional pastor to try to approach Jones about the issue. More important, Anderson told Grant about Complainant's complaint regarding Jones's temper prior to January of 2004 and about his efforts to recruit the regional pastor to help solve the problem. (Tr. Vol. III, pg. 769.) While Grant testified that she could properly ignore Complainant's accusations regarding Jones's anger/temper problems because they concerned pre-November 2003 behavior, which she assumed had been addressed by the Pastoral Relations Committee, such testimony is factually inconsistent with her earlier testimony that she had asked Rupe about an alleged temper tantrum that took place prior to Labor Day of 2003.[3] As such, I find that Grant and other Board members were concerned about all allegations of Jones's temper problems, regardless of whether they had occurred before or after November,

[3] Pollitt also confirmed that Complainant's allegations regarding Jones's temper problem was an issue before the Board. Tr. Vol. II, pg. 361.

2003, that Jones actually displayed severe temper tantrums on a number of occasions in the office, that Grant knew about the prior complaints concerning Jones's temper and the efforts taken by others to try to curb it, and that Grant knew that Complainant was telling the truth when she indicated that Jones displayed severe temper tantrums in the office.

Additionally, in light of the fact that Grant had asked Alma Lee Waterman, Mary Beard and others about their own experiences with Jones, the Church is just plain wrong in its assertion that Complainant was terminated because of the lack of corroboration regarding the initial five allegations of misconduct. Indeed, the Church has not explained why Complainant was told after the April 13, 2004 meeting in Jones's office, in which the five instances of misconduct were discussed and analyzed, that her job was safe, or why Grant testified that the Board of Ministries based its decision to terminate Complainant not only on the accusations that Complainant made to Grant, but also on complaints made by Complainant during her April 19, 2004 meeting with members of the Ad Hoc Committee. (Tr. Vol. III, pg. 752.) These incidents included Complainant's assertion that Jones made many unwelcome references to miniskirts and halter tops as being the office dress code, that Jones made a comment about his ability to have an affair with members of the office staff, and that Jones threw a foam stress ball at Complainant's breasts on many occasions. Moreover, as to these incidents, Grant was aware that the first two incidents actually occurred in some form, since Grant acknowledged at the April 13, 2004 meeting in Jones's office to hearing Jones make at least one of the miniskirt comments in her presence, and that Jones gave a context to the office affair comment.

The record, though, is unclear as to how much Grant told the other Board members about what she knew about these incidents, although the record is clear that Grant did not make any attempt to interview three of the four witnesses (Curless, Schoon and Brooks) whom Complainant had identified as individuals who could corroborate the accusations she made in front of the Ad Hoc Committee. Had she done so, she and the Board of Ministries members would have learned: (1) from Curless and Brooks that Jones had made many unwelcome

references to miniskirts and halter tops as being the office dress code; (2) from Curless and Schoon that Jones frequently threw a foam stress ball in a hard fashion that landed on Complainant's chest; and (3) from Curless, Schoon and Brooks that Jones frequently repeated offensive jokes of a sexual nature that were demeaning to women that he had heard on the radio or the Internet. Thus, there was plenty of corroboration of Complainant's accusations if only Grant had made the minimal effort to ask.

Of course, this assumes that Grant would have relayed the information that Curless, Schoon and Brooks would have told her about Complainant's accusations, and there is considerable doubt that she would have done so, especially where the record shows that she intentionally withheld from the Board information regarding requests for oral sex that Jones made to Complainant and to Weaver that she learned from Weaver in two telephone conversations that took place on April 20, 2004. Worse yet, not only did Grant withhold relevant information on Complainant's claim that she was being sexually harassed in the workplace, she intentionally misrepresented to the Board what Weaver had told her by suggesting that Weaver could not give any context to any of the non-specific offensive statements/off-color jokes that Weaver mentioned during the telephone conversations. However, Weaver was particularly credible on the witness stand when she flatly denied Grant's claim at the public hearing that she was unable to give a context to Jones's requests for oral sex during the April 20, 2004 telephone calls. (Tr. Vol. II, pgs. 320-21.) Moreover, Weaver's testimony regarding her emotional distress/bout of crying over having to relay to Grant the details of the oral sex requests totally belies Grant's and Jones's testimonies that Weaver indicated that Jones's oral sex requests were made "in a joking manner." Tr. Vol. II, pg. 320; Tr. Vol. III, pg 685; Tr. Vol. III, pg. 741.

The Church, though, argues in its reply brief that Grant's failure to give a verbatim recital of Weaver's conversation was not evidence of unlawful retaliation since: (1) employer investigations need not be perfect; and (2) Grant gave a plausible reason for not doing so, i.e.,

the comments were three years old, were perceived by Weaver as being made in a joking fashion, and were not directed toward Complainant. (Tr. Vol. III, pgs. 749-50.) The problem for the Church, however, is that I did not find Grant credible in her assertion that Weaver believed that Jones's oral sex request to her was made in a joking manner, and indeed, found Weaver credible in her assertion that she told Grant about the existence of a similar request for oral sex made by Jones to Complainant. (Tr. Vol. II, pg. 323.) Thus, contrary to her testimony, Grant was aware that Weaver had made two serious allegations of sexual harassment committed by Jones towards Weaver and Complainant. More important, by the time she hung up the telephone after her second conversation with Weaver on April 20, 2004, Grant was aware (via Weaver and Anderson) that two full-time female office workers (Brooks and Weaver) had accused Jones of requesting oral sex from three full-time female office workers (Brooks, Weaver and Complainant), and that one full-time female office worker (Brooks) had claimed that she could file a sexual harassment claim against the Church because of Jones's conduct towards her.

Additionally, while the Church submits in its reply brief that a verbatim recital would not have added "heft" to Complainant's accusations against Jones, Pollitt testified that as a member of the Board, he would have wanted to know about the requests for oral sex, and that he would have voted differently had he known of them, even if Jones's references to oral sex had been made two to three years in the past. (Tr. Vol. II, at pgs. 353, 372-73.) More significantly, the record suggests that both Grant and Jones, through their actions and words, actually believed that Weaver's accusations regarding Jones's requests for oral sex added considerable "heft" to Complainant's suggestion that she made at the April 19, 2004 Ad Hoc Committee meeting that she was working in a sexually harassing work environment. For example, Grant's statement to Weaver during one of the two April 20, 2004 telephone calls that: "You're making this very hard

for me"[4] (Tr. Vol. II, pg. 301) in response to Weaver's oral sex accusations, as well as Grant's relay of Weaver's oral sex accusations to Jones on the same day demonstrate that Grant actually believed Weaver's accusations were particularly relevant during her investigation into Complainant's claims against Jones. Indeed, any doubt about the relevancy of Weaver's oral sex request allegations was dispelled when Jones made two telephone calls to Weaver on the day of her conversation with Grant to apologize for his actions, and then made a third telephone call to Weaver on May 18, 2004, during which he told Weaver, "if you say those things that you've said about me, it's pretty much the end of me." Tr. Vol. II, pgs. 305-06.

To be sure, gatherers of information during an employer investigation should have some discretion in reporting the results of the investigation, and Respondent is otherwise correct that instances of employers conducting less than thorough investigations do not necessarily evidence a wrongful or retaliatory intent under the Human Rights Act. Having said that, though, Grant did not provide any explanation for why she neglected to make any attempt prior to the April 21, 2004 Board of Ministries meeting to contact Complainant's proposed witnesses, i.e., Brooks, Curless or Schoon, to confirm her new allegations of harassment made at the April 19, 2004 Ad Hoc Committee meeting, especially after what she had learned from Weaver about Jones's sexually harassing conduct in the Church office. Moreover, the cases cited by the Church to support the legitimacy of Grant's investigation (i.e., *Holly D. v. California Institute of Technology*, 339 F.3d 1158 (9th Cir. 2003) and *Waters v. Churchill*, 511 U.S. 661 (1994)) do not particularly help its defense in this case since Grant's transgression was not just that she neglected to contact the witnesses that Complainant identified as individuals who would support her accusations against Jones, but rather (and what was missing in those cases) was that Grant affirmatively and intentionally misrepresented to the Board of Ministries members what Weaver had told her with respect to the actions of Jones and withheld crucial facts that she knew would

[4] It is also an odd statement to make if Grant and the Church are correct that Complainant's fate rested on the accuracy of the five allegations against Jones that Complainant made to Grant on April 12, 2004.

have altered the outcome of the Board's decision. As such, I find that the Church's rationale for the termination of Complainant, i.e. a "good faith belief" that Complainant was "maliciously lying" with respect to her accusations of sexual harassment against Jones, is unworthy of belief and was a pretext for unlawful retaliation.

Finally, before leaving the pretext issue presented in this case, the Church, in citing to *EEOC v. Total System Services, Inc.*, 221 F.3d 1171 (11th Cir. 2000) argues that baseless claims by an employee do not protect the employee from subsequent discipline, and that an employer can properly discharge an employee without violating Title VII if it has a good faith belief that the employee had lied in an internal investigation into allegations of sexual harassment. In general, I agree that *Total System Services* stands for the proposition cited by the Church. However, a close review of the facts in that case actually supports Complainant's argument in this case. Specifically, the facts in *Total System Services* indicates that the employer was investigating a rumor that one of its male employees had unzipped his pants in front of female employees and stated "I've got your lunch right here." In the process of its investigation, the employer took a statement from a female co-worker, who had indicated that the zipper incident had actually occurred and had identified two co-workers, who had also observed the incident. The identified co-workers, however, denied that the zipper incident occurred. When the female employee re-confirmed the existence of the zipper incident, she was terminated for fabricating the incident. When the employer subsequently ordered a new investigation into the incident, it ultimately upheld the female employee's termination after discovering that the female employee had gone to one of the identified co-workers in a failed attempt to convince her to change her story to confirm that the zipper incident had actually occurred. 221 F.3d at 1173.

In finding that the employer could terminate an employee for lying during an investigation, the *Total System Services* court observed that an employer need not show more than a good faith belief that a false statement pertaining to a "significant historical event" was

"knowingly made," as long as it could establish that the choice between conflicting versions of the historical event was an "honest choice." (221 F.3d at 1176.) Significantly, the *Total System Services* court did not declare that all "false" statements made by employees satisfy the good faith belief test, and admittedly, the line of demarcation between a statement that is fabricated and a statement that is merely uncorroborated can be difficult to discern. However, the employer's determination in *Total System Services* that the false statement was "knowingly made" was defensible since the record showed that the female accuser had unsuccessfully attempted to have an identified co-worker change her story to support the accuser's version of the event. Yet, that cannot be the test that the Church wants the Commission to adopt when determining whether it made its decision to terminate Complainant in good faith since, while there is evidence that some of Complainant's accusations may have been uncorroborated or more likely, misinterpreted, there was no evidence that Complainant attempted to have others change their story in order to support her accusations against Jones. Indeed, on the question of who is fabricating his or her story about making requests for oral sex, it is Jones who loses the credibility battle under the authority of *Total Systems Services*, since it is Jones, who, in an attempt to add "heft" to his own denials of making inappropriate sexual remarks to Complainant and other female office staff, went to Weaver and apologized on multiple occasions for making his requests for oral sex, and then suggested that she not repeat her accusations in any investigation of his comments because "it would be the end of him."

Additionally, the "honest choice" requirement mentioned by the *Total System Services* court suggests, at a minimum, that the decision-maker be open to gathering facts relevant to both versions of the disputed event. Yet, how was this "honest choice" presented to the Board where: (1) Grant made no attempt to contact three individuals (Brooks, Curless and Schoon) named by Complainant as individuals who could support her allegations, after she had spoken to a fourth individual (Weaver) identified by Complainant, who actually did support Complainant's sexual harassment claim; and (2) Grant withheld certain facts from Pollitt and

other Board members that were relevant to the determination as to whether Complainant was telling the truth as to her general claim that she was working in a sexually harassing and hostile environment? While it is true that Grant had made some efforts at contacting individuals to ascertain the truth of Complainant's accusations, her transgression was in burying some, and misrepresenting other results of her investigation, which in turn served to deprive the Board members of any ability to make an "honest choice" as to whether Complainant was telling the truth about her accusations against Jones. In this regard, the instant case is on all fours with the decision in *Rivera and Group W Cable, Inc.*, IHRC, ALS No. 2559, October 25, 1993, where the Commission similarly found an employer liable for discrimination under circumstances where, like Grant, the supervisor failed to make any attempt to contact co-workers who would have cleared the employee of charges of misconduct and generated a biased and misleading report that was given to an "innocent" decision-maker. As such, and for all of the above reasons, I find that Complainant has shown that Church's articulation for why it terminated Complainant was a pretext for unlawful retaliation for having accused Jones of sexual harassment.

Damages.

With respect to her sexual harassment claim, Complainant seeks an award representing her emotional distress that she claims she endured as a result of Jones's conduct towards her in the workplace. The Human Rights Act specifically provides for "actual damages" that may be awarded as a remedy to a prevailing complainant (775 ILCS 5/8-104(B)), and the court in *Village of Bellwood Board of Fire and Police Commissioners v. Human Rights Commission*, 184 Ill.App.3d 339, 541 N.E.2d 1248, 1258, 133 Ill.Dec. 810, 820 (1st Dist., 3rd Div. 1989), expressly included emotional harm and mental suffering within its interpretation of "actual damages" as that term is contemplated under the Human Rights Act. In this regard, Complainant asserts that she endured great emotional distress arising out of Jones's ongoing three-year campaign of harassment that caused her to experience flare-ups of diarrhea, vomiting and abdominal pain

arising out of a preexisting irritable bowel syndrome that generally corresponded to incidents of harassment committed by Jones. Complainant additionally maintains that Jones's conduct elevated her stress levels that in turn affected her relationships with her husband and relatives, who initially did not want to believe her claims that Jones was capable of sexual harassment in the workplace. In its response, Respondent questions whether Complainant was suffering from irritable bowel syndrome at the relevant times of the instant Complaint. Moreover, it submits that the incidents of harassment are relatively minor and would only support an award of under $5,000.

In reviewing the instant record, I agree with Respondent that, in the absence of any expert medical testimony and due to the preexisting nature of her irritable bowel syndrome, I do not know enough about irritable bowel syndrome to make the necessary finding that Jones's conduct was a medical cause of any flare-ups of Complainant's condition. However, I otherwise found Complainant believable in her contention that, for a variety of reasons, Jones greatly intimidated her in the workplace, that Jones's conduct had an effect on her life both inside and outside of the workplace, and that she felt humiliated and embarrassed as a result of having witnessed and being the target of Jones's offensive conduct. The cases cited by Complainant for receiving an award up to $50,000, though, are not particularly apt since the facts in those cases concerned either multiple incidents of offensive sexual touching, or in the case of *Garrity and Lockett*, IHRC, ALS No. 6389, May 3, 1996, incidents of criminal stalking that are not present in the instant case.

In *Savage and State of Illinois, Department of Corrections*, 37 Ill HRC Rep 265 (1988), *aff'd sub nom Illinois Department of Correction v. Human Rights Commission*, 178 Ill.App.3d 1003, 534 N.E.2d 161, 128 Ill.Dec. 140 (4th Dist., 1989), the Commission adopted a recommended award of $10,000 in a case where the harasser subjected the complainant to a series of sexually offensive comments about women and their body parts and a sexually offensive photograph. In the instant case, Complainant was also subjected to harassment that

included a series of sexually offensive comments/photographs/video. Accordingly, in view of the nature and duration of the harassment, as well as Complainant's credible testimony regarding the effect that said harassment had on her emotional well-being, I find that Complainant is entitled to $15,000 in emotional damages stemming from the sexual harassment committed by Jones.

Complainant has three components to her damages claim regarding her claim for unlawful retaliation, i.e., a lost wage claim, a claim for lost medical benefits, as well as a claim for emotional damages. In her lost wages claim, Complainant asserts that she is entitled to a total of $9,221 in lost wages from the date of her termination in April of 2004 through December of 2006. Respondent generally does not dispute the figures cited by Complainant in this regard, but does object to her failure to deduct her earnings that she made in a part-time job at K-Mart, i.e., 12 hours per week at $7.25 per hour for 17 weeks to the end of 2006. Complainant's rationale for not subtracting this amount is her contention that she was already working a "full-time" 37.5 hour job at Wells Fargo at the time of her K-Mart part-time position, and that the law does not require that she work two jobs when her Wells Fargo position essentially replaced her full-time job at the Church. Not surprisingly, Complainant does not cite any case law for this position, and the Church aptly notes that Complainant worked more hours in her Church position than what she worked at Well Fargo. Accordingly, because Complainant has a duty to mitigate her lost wages claim, I will deduct the wages she earned from her part-time K-Mart position (12 hours times $7.25 times 17 weeks = $1,479) from her lost wages claim and recommend that Complainant receive a total of $7,742 in lost wages.

As to her lost medical benefits claim, Complainant testified that the Church provided her with a $5,900 per year (use it or lose it) allowance to reimburse her for personal and family medical care expenses, and that: (1) beginning in May of 2004, she spent $300 per month at her new employer to obtain medical insurance; (2) she had a remaining balance of $2,325 in potential medical funds available for 2004; and (3) she had incurred more than $2,300 in out of

pocket costs in addition to the $3,600 cost of insurance for the years 2005 and 2006. Complainant's costs of insurance in 2004, i.e., $2,400, placed her over the $5,900 threshold for 2004, such that I will award Complainant the $2,325 remaining balance of medical costs she had available for 2004. Moreover, I do not find in the record any out of pocket medical charges incurred by Complainant for 2006, such that I will recommend that Complainant only receive the $3,600 that she spent on medical insurance for that time period.

The medical expense recovery for 2005 is more complicated since the medical bills contained in the record for 2005 indicate that Complainant was billed well more than $5,900 for medical services absent any consideration that Complainant had purchased medical insurance. Thus, absent any consideration that Complainant paid for medical insurance in 2005, it is clear that she should receive the entire $5,900 medical benefit for 2005. (See, for example, *Arthur v. Catour*, 216 Ill.2d 72, 833 N.E.2d 847, 295 Ill.Dec. 641 (2005), where the court determined that a tortfeasor cannot rely on insurance proceeds as a collateral source to offset a damages award, unless the tortfeasor actually paid for said insurance, and *Wills v. Foster*, 229 Ill.2d 393, 892 Ill.Dec. 3d 1018, 323 Ill.Dec 26 (2008) for the proposition that a prevailing party is entitled to recover her fully billed medical expenses, even though the medical bill was settled for an amount less than the initial billed figure.) However, because Complainant is seeking compensation for her medical insurance premiums for the relevant period of time, the Church is in essence paying for her medical insurance, and thus should receive credit not only for what the insurance company paid for the services rendered to Complainant, but also for any discounts that the medical providers credited to the insurance company. Here, after ignoring medical bills dating prior to April of 2004, and calculating Complainant's actual out-of-pocket loss for 2005 after the insurance proceeds were applied to her medical bills, I find that Complainant actually paid $778.10 in 2005 in additional to her medical premiums for medical services rendered to her. (The record does not contain any medical bills for other members of Complainant's family.) Accordingly, I recommend that Complainant receive a total of

$10,303.10 ($2,325 for 2005, $4,378.10 for 2005, and $3,600 for 2006) as a lost medical expense award under this record.

Complainant also seeks an award for emotional distress arising out of her termination from her position at the Church. In this regard, Complainant credibly testified as to the stress that she endured during the investigation of her accusations against Jones when Committee members such as Dondra Rupe yelled at her and called her a liar for having made such accusations against Jones. Moreover, Complainant cited to the stress that arose after her termination that continued to the date of the public hearing, where Church members, as well as relatives within her own family, would either call her at her home or confront her on the street in the small town of Canton, Illinois with questions as to why she would have made such accusations against Jones. Complainant also relayed an incident that occurred during her first week of employment at Wells Fargo, when someone anonymously telephoned Complainant's supervisor to verify that Complainant worked at the bank and, upon receiving confirmation of Complainant's employment, informed her supervisor that the person would never bank at Wells Fargo. Additionally, Complainant noted that the Church kept stoking the issue by periodically mentioning her and her lawsuit in the Church's monthly newsletter, and the record shows that Grant (verbally) and Jones (verbally and physically) confronted Schoon about his support of Complainant's accusations against Jones after Complainant had filed her Charge of Discrimination.

Yet, no one should have to endure this bullying abuse over a three-year period of time just because she had the courage to complain about sexual harassment from her supervisor. As a result, I can only conclude that Complainant has sustained a significant emotional distress injury arising out the mistreatment she endured that was causally linked to her report of sexual harassment committed by Jones, and that the Church, through its members and its publication of the lawsuit, played a significant role in such mistreatment. Accordingly, I recommend that

Complainant be awarded $30,000 for her emotional distress that was associated with respect to her retaliation claim.

One more matter, and then we are done. One of the items contained in the prayer for relief in both Complaints is the requirement that Jones and the Church (presumably the Board of Ministries members) be referred to the Department of Human Rights Training Institute for training to prevent future civil rights violations. Such a referral is particularly apt for Jones, who explained to the Board members that Complainant should be terminated because her presence in the office (and presumably her complaints of sexual harassment) served as an unwelcome check on his freedom to conduct his ministry. Grant and Rupe echoed a similar sentiment. But what freedoms are Jones, Grant and Rupe talking about? The freedom to count beer bottles strewn about a topless model in a picture allegedly sent by other prospective ministers and displayed on a Church office computer? Or perhaps is it the freedom to pull up a video on a Church office computer that depicted gross bodily functions, or to fling foam balls aimed at the breasts of female subordinates, or to relay sexually tinged jokes overheard on the radio or Internet, or to repeatedly request that female subordinates perform oral sex under his desk. If that is what Jones is talking about, the proposed training will hopefully assist him in recognizing how his conduct or his "sense of humor" has created a sexually harassing, hostile working environment. Moreover, I would normally recommend that Grant and Rupe also attend the Department's Training Institute, except the record indicates that their terms on the Board of Ministries have expired, and there is no other basis in the record to indicate that they are currently in positions of authority within the Church.

Recommendation

Based on the foregoing, I recommend that:

1. The instant Complaints alleging sexual harassment against Respondent Jones and First Baptist Church of Canton, Illinois, as well as the Complaint alleging unlawful retaliation against First Baptist Church of Canton, Illinois be sustained;

2. Both Respondents be jointly and severally required to pay Complainant $15,000 as damages for the emotional distress arising out of Respondent Jones's sexual harassment of Complainant;

3. Respondent First Baptist Church of Canton, Illinois, be required to pay Complainant $30,000 for the emotional distress arising out of the Church's unlawful retaliation of Complainant;

4. Respondent First Baptist Church of Canton, Illinois be required to pay Complainant $7,742 in lost wages arising out of her retaliation claim;

5. Respondent First Baptist Church of Canton, Illinois be required to pay Complainant $10,303.10 in unreimbursed medical expenses arising out of her retaliation claim;

6. Both Respondents be directed to cease and desist from discriminating on the basis of sexual harassment, and that Respondent First Baptist Church be directed to cease and desist from unlawfully retaliating against its employees;

7. Respondent First Baptist Church of Canton, Illinois be directed to clear from Complainant's personnel records all references to the filing of the instant Charges, and the subsequent dispositions thereof and to provide Complainant with a neutral letter of reference;

8. Respondent Jones be directed to enroll in the Department of Human Rights Training Institute by a date set by the Commission for the purpose of receiving training to prevent future civil rights violations. Any costs of said training shall be borne by Respondent Jones; and

9. Both Respondents be directed to pay Complainant's attorney's fees and costs as set forth in a motion and detailed affidavit and any other necessary supporting materials required by the Commission's decisions in *Clark and Champaign National Bank*, Ill. HRC Rep. 193 (1982) and *Schoneberg and Grundy County Special Education Cooperative*, 9 Ill. HRC Rep. (1982), to be filed within 21 days of the date of this Recommended Liability Decision. Any petition for fees shall, if practicable, differentiate between time spent on Complainant's sexual

harassment and retaliation claims. Failure to file such a motion will be taken as a waiver of Complainant's claim for fees. Following the filing of such a motion, pursuant to section 5300.765(c) of the Rules and Regulations of the Commission, 56 Ill. Admin. Code, Ch. XI, §5300.765(c), Respondents shall have 21 days in which to file a written response. Failure to file such a response will be taken as evidence that Respondents do not contest the amount of fees or costs sought.

10. The recommendations set forth in paragraphs one through eight are stayed, pending the issuance of a Recommended Order and Decision addressing the issues of attorney's fees and costs.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 30TH DAY OF SEPTEMBER, 2009