EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN

Ollie D Carver-Thomas 18 Ridgeview Ct #3 Madison WI 53704 Complainant vs. Genesis Behavioral Services Inc 1126 S 70th St Ste N610A West Allis WI 53214 Respondent	HEARING EXAMINER'S RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER Case Nos. 19992224 and 20002185

These complaints came before the Madison Equal Opportunities Commission Hearing Examiner, Clifford E. Blackwell III, for a consolidated public hearing on the merits of the complaints on July 16, 17, and 18, 2001. The Complainant, Ollie Dail Carver-Thomas, appeared in person and by her attorneys, Jeff Scott Olson and Jill Packman of the Jeff Scott Olson Law Office. The Respondent appeared by its corporate representative, Amy Winkler, and by its attorneys Jack D. Walker and Dana Erlandsen of Melli, Walker, Pease and Ruhly, S.C.

After review of the record in this matter, the Hearing Examiner now issues his Recommended Findings of Fact, Conclusions of Law and Order as follows:

PROPOSED FINDINGS OF FACT

1. Genesis is a corporation that provides alcohol and other drug abuse, mental health and reintegration services primarily to county-funded clients that come to Genesis through the Department of Corrections. Genesis has two hundred fifteen (215) employees statewide. During 1998 and 1999, the majority of Genesis' employees were African American; Genesis had approximately fifty-five percent (55%)

2. Genesis' first program in Madison was an outpatient program called Madison Phases, which started in 1997 and ended in June 1998.

3. The Complainant, Ollie Dail Carver-Thomas, is an African American woman who was employed by Genesis at its Madison office on two separate occasions.

4. During her employment at Genesis, the Complainant was also employed by Thomas & Associates, her husband's business, helping him with phone answering or doing pre-intake or intake. She had no written partnership agreement with him, but she had an oral partnership agreement with him that she would come down to the office and help out whenever she could. He sets what she will be paid and she never questions that.

5. The Complainant was hired as a Drug and Alcohol Counselor by a panel of three (3) Genesis managers, including Dan Langlois, Darren Matavka and Robert Lujan, for Genesis' Phases program, where she worked from October 30, 1997 through the end of Genesis' contract on June 30, 1998. Between the Complainant and Langlois, they served a population of about twenty-five (25) clients.

6. Langlois, a White man, supervised the Complainant and three (3) other employees at Madison Phases. In the Madison Phases program, two (2) of the four (4) employees Langlois supervised were African American, including the Complainant. There were no complaints of harassment by the Complainant or any of the other employees.

7. Langlois had previously supervised African American employees at two (2) other employers, Alpine Management and Tellurian U-Can, and never had any complaints of racial harassment.

8. The Complainant testified that her relationship with Langlois at Madison Phases was a good working relationship.

9. When Genesis got a second contract, Langlois phoned the Complainant and said it was time to come back to work. Langlois specifically recruited the Complainant to work for the Madison Day Reporting Center (DRC).

10. In fall 1998, Genesis opened the DRC, which employed five (5) to six (6) full-time employees and a few part-time people. There was a program manager (Langlois), four (4) full-time Day Reporting Center coordinators (the Complainant, Stephanie Anderson, Julie Frohling and later Derek Kraemer and Scott Caldwell), a full-time security supervisor (Herbert Bent) and some sort of a full-time office assistant. The Complainant and Herb Bent were African American; the other employees were White.

11. The Complainant was Lead Coordinator at the Day Reporting Center, but her printed job description was simply a Coordinator job description. The Complainant had specific duties that were not printed in the job description, such as overseeing the new coordinators and doing training with them, administering drug tests such as sweat patches, breathalyzer tests, and urinalyses, and working with Department of Corrections committees.

12. The Complainant was part of the panel that hired the other coordinators for the DRC, Stephanie Anderson and Julie Frohling; Anderson and Frohling were both White. (Neither Anderson nor Frohling works at Genesis any longer.) The Complainant trained Anderson and Frohling by familiarizing them with the Department of Corrections, the Genesis contract and responsibilities, urinalysis, and group facilitation. The duties of the Lead Coordinator position changed over time to assist with management tasks.

13. The Day Reporting Center served a larger client base than the old Phases program, with 75 clients instead of 25. The Complainant was given more responsibility. There was an abundance of work, and more demands on Langlois and the Complainant.

14. The Complainant felt that Langlois faulted her when the Department of Corrections got on his case, and that he talked more negatively to her. Langlois and the Complainant agree that he said things to her like, “How did you miss that?”

15. In February and March 1999, Langlois had a series of meetings with the Complainant that ended with a confrontation on March 5.

16. Langlois met with the Complainant in February 1999 to discuss her role as Lead Coordinator. The Complainant asked why she was not given more responsibilities as Lead Coordinator, and said she was feeling resentment and disappointment. Langlois told the Complainant he did not believe she was ready for more responsibilities until she was able to consistently manage her caseload and perform her regular duties as a Coordinator. Langlois removed the duty of conducting client orientations on Thursdays to give her more time to do case management activities.

17. In a meeting on or about February 26, 1999, Langlois and the Complainant met in a staff person’s office for about an hour and fifteen minutes. The primary topic of discussion was the Complainant’s concerns about Julie Frohling. Langlois recalls that the Complainant said that Frohling walked around the building with her nose up in the air like she owned the place, how Frohling didn’t go to the Complainant with concerns or questions about clients, and that Frohling did not show her respect. The Complainant also complained about Frohling and urinalysis, and referred to Frohling as “Snow White” and having “lily-white hands.”

18. The Complainant acknowledges that she characterized Julie as having lily-white hands when she was complaining about doing the urinalysis testing. The Complainant says she did not intend that to be a racial remark about Frohling, and it would be unreasonable in her view for anyone to take that as a racial remark about Frohling.

19. The February 26 meeting ended with the Complainant saying that she didn't want to talk about this any more. Langlois asked her for a list of concerns. The Complainant said she didn't want to give it to him at this time, and that they would discuss it when she got back from vacation.

20. Later on February 26, another coordinator, Stephanie Anderson, said she was concerned that the Complainant was talking disrespectfully about Frohling to other staff persons.

21. On or about March 5, 1999, Langlois told the Complainant he wanted to meet at lunch. She said she couldn't afford to go, and he said, "Well, I'm buying lunch." She said they had been meeting a lot and she didn't want the meeting. He said, "Well, I think it would be healthy, you know, and we'll go to Jingles next door and have lunch. " So then they went.

22. Langlois wanted to talk to the Complainant about some issues at the Day Reporting Center concerning clients and some of the staff. He had asked the Complainant to write down a list of the concerns. Langlois wanted to discuss that then, but the Complainant didn't really want to. The Complainant didn't want to discuss the concerns at all. She did talk with Langlois at lunch, and the way they left that meeting was that on Monday, Langlois would pull all the coordinators together and they would have a meeting.

23. Later that same day, Langlois mediated a discussion between the Complainant and Frohling in an agent's office. Langlois perceived the relationship between the Complainant and Frohling to be eroding quickly, and hoped to get them to speak to one another in hopes of resolving any differences so they could be more cohesive as a team and better serve clients.

24. Langlois was seated between Frohling and the Complainant. Langlois set up some ground rules, including that each would have an opportunity to get off whatever was on their chest. The Complainant said that she perceived that Frohling was not treating her with respect and not respecting her authority. Frohling's concern was that the Complainant was saying things behind her back to other staff members, and giving her sneers or looks and not being open to her. Each reacted to the other's statements. The Complainant had been becoming more upset as the meeting continued. Eventually she stood, opened the door and left the room.

25. Langlois did not attempt to block the Complainant from leaving. However, he had been standing between the Complainant and the door, which made it very difficult for the Complainant to leave. He followed her out of the office and went into her office. The door was not locked when he came in. He shut the door so as not to make a scene in front of the clients. The Complainant picked up the phone and called her husband. Langlois asked her what the hell she was doing, and said that her conduct was unprofessional and inappropriate. Langlois was angry, he was yelling and swearing. The Complainant went to the door and grabbed her coat. Langlois did not block her exit from the office, though he was standing next to the door and the Complainant had to repeatedly tell him to "Move!"

26. That weekend, the Complainant wrote a complaint to Darren Matavka and Amy Winkler. She dated it March 8, 1999, and mailed it on Tuesday, March 9.

27. Genesis has a policy prohibiting harassment of employees generally, as well as prohibiting illegal harassment. Genesis also prohibits retaliation against anyone that in good faith makes a harassment report or assists in an investigation.

28. Winkler did not find it to be a complaint of racial harassment. She never attempted to ascertain the basis of the Complainant's concerns.

29. Genesis's Human Resource Director, Amy Winkler, investigated the Complainant's complaint, with the assistance of Diane Ellis, another Human Resources manager. She interviewed Langlois, the Complainant and Julie Frohling. She made no effort to identify or locate any other possible witnesses. The Complainant was not initially available, because she was on vacation starting March 9.

30. In Langlois' interview with Winkler on March 12, 1999, Langlois confirmed to Winkler that he held a meeting to mediate between the Complainant and Frohling, and that he did this after other staff reported to him that the Complainant was talking poorly about Frohling behind her back. Langlois acknowledged that the meeting did not go well, that the Complainant left upset. Langlois disputed the Complainant's

claim that he blocked the door or used profanity. Langlois said he followed the Complainant to her office and closed the door behind him so that clients could not hear them argue. Langlois said he called her behavior inappropriate, and that he kept trying to talk to her about the situation, but that she left.

31. In Frohling's interview with Winkler on March 12, 1999, Frohling also disputed the Complainant's claim that Langlois blocked the door or used profanity in their meeting. No one indicates that Frohling followed Langlois out of the office or observed what occurred in the Complainant's office.

32. In her interview, the Complainant mentions several specific complaints about Frohling's conduct (that Frohling left out a confidential file, that Frohling did not give her and Bent phone codes, that Frohling was not bringing her paperwork to the Complainant for signing off, that Frohling was not doing urine analyses (UAs), and that as Lead Coordinator she needed respect from Frohling), but she made no complaint about Stephanie Anderson, the other coordinator. She added some more complaints about Langlois (that she wanted Genesis to solicit food donations but he said they were not a priority, that DRC staff should have a staff meeting that did not include Department of Corrections staff). The Complainant elaborated on the March 5 meeting with Frohling and Langlois. She said Frohling looked like she had been crying, and did not respond when the Complainant asked if she was okay. Frohling said she wanted the Complainant to apologize for not giving her as much attention as the other coordinators and for making snide remarks about Frohling under her breath. The Complainant told her she did not want her to feel bad, and that she has never said anything about Frohling under her breath and that if she had something to say to Frohling she would be direct. Frohling said what about saying "she should put some gloves on those lily-white hands." The Complainant said she was shocked by that because she believed the only way Frohling could know of that comment was if Langlois told her what Carver-Thomas said. She asked Langlois how Frohling knew this, but Langlois did not respond except to say to listen to Frohling. She told Frohling she thought the coordinators needed additional training to keep the staff safe with clients. Frohling said that the Complainant walked around looking mad at the world and that it made it hard for Frohling to approach her. The Complainant said she was leaving the meeting.

33. Winkler did not investigate any of the matters brought up by the Complainant.

34. Winkler asked the Complainant for her thoughts on how the complaint should be resolved, and the Complainant said she wasn't sure.

35. From the record, it appears that Winkler had come to a decision about how to resolve the Complainant's complaint on March 23, 1999, even before she received the facts from the Complainant with additional issues or concerns. She did not indicate that she needed additional time to investigate the additional allegations presented by the March 23, 1999 facts.

36. On March 23, 1999, Winkler and Ralph Kramer met with Langlois to discuss the resolution of the Complainant's complaint. Langlois still had not been shown a copy of the complaint. Though Winkler and Kramer expressed doubt about Langlois' version of events, they proceeded to assure Langlois that he would not be transferred, disciplined or terminated as a result of the Complainant's complaint.

37. For his part, Langlois wished to re-establish a good working relationship with the Complainant and to continue his employment.

38. Winkler contacted the Complainant to set up a meeting with her (Winkler), Otis Lockett and Langlois to move forward. The Complainant expressed her concern that she did not wish to meet with Langlois and that she was very uneasy about her ability to work with Langlois in the future. After a couple of changes in the schedule, it was agreed that Winkler, Lockett and the Complainant would meet on March 25, 1999, to discuss the resolution of the complaint.

39. On March 25, 1999, Winkler, Lockett and the Complainant met at the DRC offices. Winkler informed the Complainant that neither she nor Langlois would be transferred. Winkler also indicated Lockett would become Langlois' supervisor and would assist Langlois in improving his managerial style and techniques. Lockett was also to look into the additional allegations of the Complainant and to meet regularly with the Complainant and Langlois. Winkler and Lockett demanded that the Complainant meet with Langlois to accept Langlois' apology and to tell them if the Complainant was going to return to work that day or leave employment with the Respondent.

40. The Complainant was extremely upset by the demands placed upon her by Winkler and Lockett. She still did not wish to meet with Langlois and expressed doubts about her ability to work with Langlois. She asked for an opportunity to think about her options alone. Winkler and Lockett gave her a short period of time to do so.

41. The Complainant returned to her office and after approximately fifteen (15) to thirty (30) minutes, again met with Winkler and Lockett. The Complainant indicated that she would reluctantly meet with Winkler, Lockett and Langlois, and that she would remain employed with the Respondent. The Complainant also asked if she might be able to take the remainder of the day off to reflect and compose herself.

42. Langlois was brought to the meeting room and apologized to the Complainant for the misunderstanding over his intentions in the March 5, 1999, meeting and confrontation. He indicated that he hoped that he and the Complainant would be able to get back to work together. The Complainant was permitted to take the remainder of the day off. Lockett, Langlois and the Complainant met briefly to schedule meetings at the DRC the following week.

43. From the beginning of the DRC contract, the Complainant felt isolated and the subject of discrimination and harassment from Langlois and others. She believed that Langlois displayed a degree of racial insensitivity to the clients and their needs by laughing at them, calling them names such as “lazy” or “lazy oaf.”

44. The Complainant objected to Langlois’ laughing at the results of photographic identification cards. Due to an apparent mistake in settings, the African American clients were hardly recognizable. Langlois said the photographs looked like “dark spots.” Because the camera did not belong to the DRC, he did not permit untrained staff to attempt to reset the camera for new photographs.

45. The Complainant felt that she had too large of a caseload, but also objected when certain minor administrative duties were reassigned to Frohling. Among the duties reassigned to Frohling because of Langlois’ perception that Frohling had good organizational skills, were management of the petty cash fund, and setting up the long distance phone codes and assignment of those codes to employees.

46. Frohling did not give the Complainant or Herbert Bent, the only African American employees, the phone codes that had been assigned to them. This fact became known when an emergency arose and the Complainant was unable to contact a family member by long distance. When Langlois became aware of the problem, he gave his code to the Complainant until she could be given her own code. The Complainant and Bent received their long distance codes within a few hours of the problem being identified.

47. The Complainant felt that African American clients were being assigned exclusively to the community work van. When she raised this issue with Langlois, his response that most of the White clients had jobs and were not eligible for the community work van did not satisfy the Complainant.

48. The Complainant believed that she was being required to sign in and sign out and to keep an hourly log of her activities while other members of the staff were not being so required. Such sign in, sign out and log procedures were required as part of the contract with the Department of Corrections (DOC). Langlois told the Complainant that as Lead Coordinator, she needed to set a good example for the remaining staff.

49. Though compliance with the sign in, sign out and logging procedures was sporadic at best, it became better as time went on. The notable exception to this improvement was the conduct of Frohling.

50. The Complainant believed that she was not permitted to sign up for leave until Langlois and the other coordinators were given the opportunity first. The Respondent appears to have used a “first in, first out” system. This system’s application created certain problems in the office.

51. Over the holiday period of 1998 to 1999, the Complainant requested time off to attend the Rose Bowl. Langlois denied her request saying that it was a busy time and she was needed at the facility. The Complainant later discovered that Frohling had taken three (3) or four (4) days off during that period and had attended the Rose Bowl. There is no indication whether Frohling or the Complainant had made the initial request for the time off.

52. The Complainant believes that she was treated unfairly when she was required to “cover” for an employee on vacation while no one was required to “cover” her cases when she went on vacation. Langlois stated that other employees were required to “cover” the Complainant’s cases and that he sent memos during her absence to make sure this occurred.

53. During the late fall or early winter (approximately November or December) of 1998, the Complainant and Bent were confronted in an office by a custodian carrying an electric drill. The custodian threatened the Complainant and Bent with the drill and made racial slurs to both of them. The police were called and the police investigated the incident. Langlois instructed the Complainant to complete an Incident Report to be sent to the Milwaukee office.

54. At a prior job with Lutheran Social Services, the Complainant was severely beaten by a client. Subsequent to that incident, she suffered from occasions of anxiety, back and body pain, and other symptoms of stress. She had a TENS Unit that assisted her in managing her pain and discomfort.

55. Starting shortly after she was hired for the Lead Coordinator position, the Complainant began to experience a reoccurrence of her physical and emotional symptoms. The incident with the custodian and the drill further exacerbated her symptoms. After the March 5, 1999, incident with Langlois and the meeting on March 25, 1999, with Winkler, Lockett and Langlois, the Complainant’s symptoms of stress and recurring pain increased markedly. She began to experience crying spells, both at work and at home, and experienced nightmares that reflected the incidents at the DRC. These symptoms ultimately resulted in the Complainant’s taking a medical leave of absence beginning on October 8, 1999. Shortly after beginning the medical leave, there was an exacerbation of her symptoms followed by a slow reduction. Though the Complainant had experienced a slow reduction in those symptoms, she still experienced them as of the time of hearing.

56. Lack of investigation and Winkler’s requirement that the Complainant decide about her re-employment left her jaundiced and expecting a continuation of the incidents that she believed to be discriminatory or harassing.

57. The Complainant continued to feel that she was the subject of discrimination and harassment by Langlois and other members of the DRC staff. She believed that she was being isolated and not given necessary information to perform her work. She felt that she was being given the hardest clients to deal with and that her caseload was greater than the other coordinators.

58. Lockett investigated the Complainant’s concerns about her being required to sign in and sign out, and maintain work logs while other coordinators were not so required. Lockett found that with the exception of Frohling, other coordinators were making progress at such activities. The Complainant contends that logs demonstrate that Coordinator Stephanie Anderson was also not signing in and signing out. However, Anderson left the employment of the Respondent in late spring or early summer 1999, and it is not clear whether the Complainant was looking at logs prior to or subsequent to Anderson’s termination.

59. Lockett also investigated the Complainant’s complaint that she was carrying a larger caseload than other coordinators. Again, Lockett found that all coordinators but Frohling were carrying about the same caseload. When Lockett spoke to Langlois about this, other coordinators caseloads were reduced, including the Complainant’s and Frohling’s was increased.

60. The Complainant asserts that her caseload was increased because of her race and her exercise of a right protected by the Ordinance. All coordinators’ caseloads were increased when Coordinator Stephanie Anderson left employment with the Respondent. There was no indication that her caseload was unequally distributed amongst the remaining coordinators.

61. In August of 1999, someone set fire to possessions of the Complainant’s in the back of her car while the car was in the Respondent’s parking lot. The police were called and subsequently investigated the incident. At the time of the incident, the Complainant only identified the custodial from the drill incident as a potential suspect. There is no evidence that Langlois had anything to do with setting the fire or that he was anything but solicitous to the needs of the Complainant at the time of the incident.

62. Langlois failed to inform Lockett or the Milwaukee headquarters of the fire incident, believing that he did not need to since the police were investigating. Langlois was later reprimanded orally and in writing for this failure.

63. In September of 1999, the Complainant found a handwritten note, including a pager number, on the windshield of her car. She felt threatened by this note and informed Langlois of the incident. Again, the police were called and subsequently investigated the incident. No suspects were identified or charged.

64. Lockett became aware of an otherwise unidentified incident in which Langlois was reported to have referred to clients as “monkeys” or “apes.” Langlois denied the allegation. Lockett did not believe him. Langlois was subsequently reprimanded for this incident.

65. The Complainant left on medical leave as a result of her continued feelings of stress and harassment on October 8, 1999. She was in regular contact with the corporate office over the requirements for her medical leave through the end of the year, 1999. Subsequent to that time, the Complainant’s attorney entered into discussions with the Respondent. Because of the Complainant’s representation, the Respondent did not communicate directly with the Complainant after the beginning of 2000.

66. In February 2000, the Respondent contacted the Complainant’s attorney and indicated that it needed additional medical information in order to maintain the Complainant on medical leave since her “FMLA” leave had expired. The Respondent indicated that if it did not receive further medical information from the Complainant or the Complainant did not return to work after proper medical authorization on or before February 15, 2000, the Respondent would terminate the Complainant’s employment.

67. It is not possible to determine whether the Complainant’s attorney informed the Complainant of the Respondent’s demand. However, the Complainant neither returned to work nor provided the Complainant with additional medical information. The Respondent terminated the Complainant’s employment as of February 17 2000, for a failure to provide the Respondent with needed medical information. In March 2000, the Respondent made arrangements for the Complainant to come and retrieve any personal possessions that had been left at the DRC site.

68. Subsequent to his oral and written reprimands, Langlois gave notice to the Respondent in November of 1999 that he would terminate his employment. As a result of a favor being done Langlois by the Respondent, Langlois did not actually terminate his employment until March of 2000.

69. Frohling left employment with the Respondent in December of 1999 or early in January of 2000.

70. In mid-February of 2000, the Complainant’s physician and psychologist both indicated that the Complainant had decided not to seek employment elsewhere, but to work in connection with her husband’s office.

71. In early December, 1999, the Complainant’s husband contacted first Langlois and then Ralph Kramer about the possibility of his (the Complainant’s husband) company’s running the DRC contract since Langlois was going to be leaving. Under this proposal, the Complainant’s husband would charge a management fee, plus his wife’s salary, to operate the facility. His wife would reassume her position and some of Langlois’ duties. Kramer indicated that the Complainant’s husband could submit a proposal and he would review it, but that the Respondent generally operated its own facilities. No proposal was ever sent.

72. While employed by the Respondent at the DRC, the Complainant made $25,000 per year. Once on medical leave, her salary terminated on or about October 8, 1999. From that time until the Respondent terminated her employment on February 17, the Complainant had no income other than that paid to her by her husband for services she provided at his office.

73. Other than applying for a single position, the Complainant did not seek employment from other than her husband’s office at any time since leaving employment with the Respondent.

74. The Complainant, though experiencing stress and other related issues, was apparently sufficiently well to return to work by the middle or end of December of 1999. This is evidenced by the Complainant’s husband’s interest in assuming the DRC operations contract and indicating that the Complainant would be able to resume her duties.

75. The Complainant began receiving a paycheck from her husband's business on or about April 8, 2000.

PROPOSED CONCLUSIONS OF LAW

1. The Complainant, an African American, is a member of the protected class "race" within the meaning of the Equal Opportunities Ordinance.

2. Due to her skin color, the Complainant is a member of the protected class "color" within the meaning of the Equal Opportunities Ordinance.

3. Because of her good faith complaint of discrimination and harassment dated March 8, 1999, and sent to the Respondent, the Complainant has exercised a right protected by the Ordinance and is entitled to the protections of Section 9 of the Equal Opportunities Ordinance.

4. The Respondent is an employer within the meaning of the Equal Opportunities Ordinance.

5. Prior to March 5, 1999, the Complainant did not experience either racial discrimination or harassment in violation of the Equal Opportunities Ordinance while employed at the DRC by the Respondent.

6. The Complainant, a member of the protected classes race and color, was treated less favorably than a White employee involved in the same incident as a result of the Respondent's investigation and resolution of the Complainant's March 8, 1999 complaint. This less favorable treatment violates the Equal Opportunities Ordinance's protection against discrimination in the terms and conditions of employment on the basis of race . . . or color in employment. Madison General Ordinance 3.23 (8).

7. The Respondent retaliated against the Complainant for her exercise of a right protected by the Ordinance by coercing, intimidating, harassing or otherwise discriminating against her for her filing of a complaint by requiring an immediate decision of whether she wished to be retained as an employee and by failing to properly investigate her complaint of discrimination and harassment, and by failing to provide a resolution to her complaint that would likely prevent any reoccurrence.

8. Though under stress from the inadequate investigation and resolution of her complaint, the Complainant was not subjected to further harassment or discrimination while in the employment of the Respondent from March 26, 1999, through her termination of employment on March 17, 2000.

9. The Complainant is entitled to be made whole for the Respondent's discrimination/retaliation against her.

ORDER

1. The Respondent shall pay to the Complainant back pay in the amount of eight thousand nine hundred and eight dollars ($8,908) within thirty (30) days of this order becoming final.

2. The Respondent shall pay to the Complainant prejudgment interest calculated at the flat rate of 5% per annum on Complainant's award of back pay.

3. The Respondent shall pay to the Complainant the sum of fifteen thousand dollars ($15,000) to compensate her for her emotional distress caused by the Respondent's discrimination/retaliation within thirty (30) days of this order's becoming final.

4. The Complainant shall be entitled to the payment of the costs and fees, including a reasonable actual attorney's fee for her bringing of this action. The Complainant shall within fifteen (15) days of this order's becoming final, file a petition for costs and fees with the Commission. The Respondent may respond to the Complainant's petition within fifteen (15) days of its receipt.

MEMORANDUM DECISION

While many of the facts are in dispute in this record, the real question comes down to the credibility of the respective sides and the allocation of the burdens of production and proof. In short, is one side's explanation more believable than the other's and has the Complainant carried the ultimate burden of proof on the issue of

discrimination and/or retaliation? In order to answer these questions, the Hearing Examiner must review the record as a whole and apply his judgment and experience of the world to the testimony of the witnesses.

The Complainant asserts that the Respondent discriminated against her on the basis of her race and color in a number of ways and retaliated against her for her exercise of a right protected by the Ordinance. In the context of this record the Complainant's claims of discrimination on the bases of race and color will be treated as a claim of discrimination on the basis of race. Though there are sometimes different allegations relating to race and to color, the record does not indicate that is the case here.

The Complainant's ultimate contention is that the Respondent's discrimination and/or retaliation became so severe that she was forced to terminate her employment rather than endure another day of mistreatment.

The Respondent argues that its working conditions are difficult for all employees and that it did not discriminate against the Complainant or retaliate against her for her exercise of any right protected by the ordinance. It contends that the Complainant, to the extent that she felt aggrieved, failed to utilize the process provided by the Respondent to enforce her rights. Once the Complainant did use the process established by the Respondent, and ultimately left the employment of the Respondent, the Respondent asserts that the Complainant failed to reasonably mitigate her losses.

The Respondent is a corporation providing a variety of alcohol and other drug abuse counseling, mental health and reintegration services to county funded clients who primarily come to the Respondent from or through the Wisconsin Department of Corrections (DOC). The Respondent counsels individually and in groups ex-convicts including provision of some drug screening and other analytical services. The Respondent works under contract or grant from the county with referrals from the DOC.

The Complainant first worked for the Respondent and with her eventual supervisor, Daniel Langlois, under a contract program called Madison Phases.

The Complainant began her work as an Alcohol and Drug Counselor in October of 1997 and continued to the end of the contract in June of 1998. During the Madison Phases contract, Langlois supervised four (4) employees; two (2) of them were African American including the Complainant. The record does not indicate that the Complainant had any problems with Langlois or the Respondent during this first contract. It appears that both the Complainant and Langlois felt their Madison Phases experience was positive.

The Complainant is an African American female. Her primary employment has been in the area of alcohol and drug treatment and the supervision of ex-convicts. Prior to coming to work for the Respondent, the Complainant experienced at least one traumatic injury at the hands of a client. This occurred while the Complainant was employed at Lutheran Social services in a program not related to any run by the Respondent. This injury had recurring physical and emotional effects.

Once the Madison Phases contract was completed, the Respondent began a new contract, which it operated under the name of the Madison Day Reporting Center (DRC). In October of 1998, Langlois specifically recruited the Complainant to work on this new contract. The Complainant began work in this new program as a Lead Coordinator. The DRC was managed by Langlois and initially the Complainant and three other Coordinators reported to Langlois. The Complainant had the most experience on the staff other than Langlois. The other Coordinators were Stephanie Anderson, Julie Frohling and later, Derek Kraemer and Scott Caldwell. Langlois and the other Coordinators are White.

The Complainant's job description was that of a Coordinator though she functioned as a Lead Coordinator with additional responsibilities.

With the hire of Frohling, things began to change for the worse so far as the Complainant was concerned.

Frohling was a White female. The only other African American employee of the DRC was Herbert Bent. Bent was responsible for security at the DRC.

The primary client population of the DRC was approximately 80 percent African American. The Complainant states that she experienced an increasingly hostile working environment that included unfair job assignments,

unfavorable workloads, and the use of racial stereotypes and racially demeaning language. This discrimination continued into calendar year 1999 and came to a head on March 5, 1999 during a heated meeting involving the Complainant, Frohling and Langlois.

This contentious meeting flamed into a confrontation between the Complainant and Langlois. The nature and severity as well as the underlying cause of this dispute forms one of the central foci of this complaint.

Over the following weekend, the Complainant wrote a complaint alleging violations of the Respondent's harassment policy. She dated and mailed the complaint on March 8, 1999. Almost immediately thereafter, the Complainant left for a previously scheduled vacation.

Upon returning to work, the Complainant was interviewed by Amy Winkler and Diane Ellis of the Respondent's Human Resources Department in Milwaukee. Concerning the allegations of the complaint. Prior to the interview with the Complainant on March 19, 1999, Winkler interviewed Langlois and Frohling about the allegations.

The nature of the Complainant's March 8, 1999 complaint is another matter of dispute. The Complainant asserts that it set forth a continuing pattern of racially discriminatory and harassing conduct on the part of Langlois culminating in the March 5, 1999 conflict. The Respondent states that the complaint did not indicate any form of racially discriminatory or racially harassing conduct and treated it as a complaint about an abusive meeting with a supervisor.

The Complainant contends that once the Respondent concluded its investigation, the remedial steps taken by the Respondent were inadequate to protect her from further discrimination and resulted in Langlois' retaliating against her for her filing of the complaint. The Complainant also charges that the Respondent's investigation was a sham and was inadequate to determine what had actually happened to the Complainant.

According to the Complainant, her harassment by Langlois continued and escalated after a meeting with Winkler, Langlois and Otis Lockett. Lockett became Langlois' supervisor as a result of the Complainant's complaint. Lockett was to investigate other allegations of discrimination/misconduct of Langlois provided to the Respondent by the Complainant on March 23, 1999 as part of the investigation.

In addition to Lockett's, an African American male, becoming Langlois' supervisor, Langlois was required to receive additional training and supervision to improve his management style and skills. Langlois also was to apologize to the Complainant for the March 5, 1999 incident. The Complainant was to return to work at DRC immediately. Langlois was to continue to supervise the Complainant.

The Complainant complains that her workload was increased, she was given more of the most difficult clients and her performance was more closely monitored while other employees were not held to so high a standard as the Complainant.

In this atmosphere of heightened tension, the Complainant, in August of 1999, had her car and some of its contents set on fire. At hearing, the Complainant attributed this attack to Langlois. Approximately a month later, an unidentified person left a note with a pager number on it on the Complainant's windshield. The Complainant also attributes this incident to Langlois.

On October 8, 1999, at the direction of her physician, the Complainant took a medical leave of absence. This leave resulted from emotional stress and anxiety experienced by the Complainant during her employment at DRC and a reoccurrence and exacerbation of physical discomfort perhaps relating back to a much earlier attack upon the Complainant while she worked for Lutheran Social Services.

The termination of the Complainant's employment and the termination of her medical leave are also fertile grounds for dispute in this record. The Respondent asserts that it requested and needed updated medical verification of the Complainant's condition in February of 2000. The Complainant had failed to keep the Respondent informed about her medical condition and ultimately failed and/or refused to provide any further documentation.

The Respondent argues that it terminated the Complainant's employment on February 17, 2000 due to her failure to provide documentation of her medical condition. The Complainant asserts that she constructively terminated her employment as of April 21, 2000 because she could not reconcile herself to returning to work for the Respondent.

Based upon the experience of the Hearing Examiner, both sides have problems with credibility. First, the Complainant never adequately explains if Langlois were the racist thug she depicts, why did his discriminatory conduct not begin until the beginning of the DRC contract. The record indicates that the Complainant and Langlois worked together without conflict during the contract preceding that of the DRC. It appears that Langlois recruited the Complainant to work on the DRC contract after his experience working with the Complainant at Madison Phases. This does not truly mesh with the image of a callous and insensitive Langlois.

The Complainant also contributes to her credibility problems by demonstrating a certain racial insensitivity in remarks she made about Frohling's failure to be assigned to perform urinalyses particularly for African American male clients. It is undisputed that the Complainant referred to Frohling as having "lily-white hands". The fact that the Complainant, in the same context, referred to herself as having "gingerbread hands" does little to diminish the impact for the Hearing Examiner.

The Complainant also appears to be particularly sensitive when there is a remote question of race involving African Americans. Her repeated insistence on hiring additional African American Coordinators who may be able to work better with African American clients even though she participated in the hiring panel that hired nothing but White coordinators at the DRC causes the Hearing Examiner to question the Complainant's own color blindness.

The Complainant also damages her credibility by making accusations against Langlois that are totally unsupported in the record. There is nothing more than suspicion to connect Langlois with the August 1999 fire in the Complainant's car. The Complainant attempts to raise an inference of involvement by contending that Langlois tried to thwart an investigation into the incident. The most suspicious fact here is that Langlois failed to report the fire to the Milwaukee office of the Respondent. Langlois was orally reprimanded for this and eventually received a written warning.

Similarly, there is nothing in the record to connect Langlois with the incident in September of 1999 in which someone left a note including a pager number on the Complainant's windshield.

The Complainant also holds somewhat contradictory positions relating to her claims of discriminatory treatment. At one point, she felt discriminated against when she was not conducting management level tasks and was not given responsibility commensurate with her level of experience. However, once given some of those duties and responsibilities, the Complainant objected to the increased workload.

The Respondent, on the other hand, has credibility problems of its own. The Respondent coyly asserts that Langlois' testimony must be judged worthy of credibility since he is not a named party and no longer works for the Respondent. As the Complainant correctly points out in her Reply Brief, Langlois' name may not appear at the top of the pleadings, but his conduct lies at the heart of the complaint's allegations. If for no other reason than personal vindication, Langlois' testimony must be viewed with the same jaundiced eye as that of the Complainant. On a professional basis, the outcome of this complaint may do Langlois damage in seeking or retaining employment in his chosen field.

Langlois' testimony on several important points was directly contradicted by that of Lockett, his supervisor. Most importantly, Lockett determined that Langlois had referred to African American clients of the Respondent as "monkeys or apes". Langlois denied that he had made such a characterization. However, Lockett found that he (Langlois) had in fact made such a characterization.

Lockett also testified that he believed that Langlois resented the Complainant for filing a complaint. Lockett attributed Langlois' outburst against the Complainant and the quality of her file maintenance to the Complainant's accusation of discrimination and harassment.

Langlois' explanation for the Complainant’s reaction to his conduct on March 5, 1999 was questioned by Winkler and Kramer in a meeting on March 23, 1999. When Langlois attributed the Complainant's reaction to

her own defensiveness, Kramer suggested to Langlois that he might want to come up with a better explanation. See exhibit G-13.

The Respondent's problems are not limited to Langlois. Amy Winkler, the Respondent's Human Resources Director in Milwaukee and the person in charge of the investigation of the Complainant's complaint, was unable to identify any specific training that she had undergone in the conduct of a discrimination investigation. She also testified to a lack of practical experience in such matters. In general, the Hearing Examiner finds that Winkler's testimony was halting and demonstrated a lack of confidence in her testimony.

Lockett too has certain questions about his credibility. As with Winkler, he is still employed by the Respondent and may well owe a debt of loyalty to his employer. On several occasions, Lockett testified about what were good practices for a supervisor in dealing with a subordinate. These included making written notes about important meetings with supervisees. However, Lockett notably failed to memorialize the vast majority of his contacts with either the Complainant or with Langlois.

It must be stated that despite certain problems with credibility, most of the witnesses also have points indicating that their testimony has credibility. For example, the Complainant's position over the life of the complaint has remained quite consistent. One might expect to see differing accounts throughout the process if one was changing his or her story to reflect new disclosures of the parties and witnesses. Similarly, Langlois' testimony in many respects is corroborated by the testimony of other witnesses. While those witnesses may present there own credibility issues, the Hearing Examiner is not inclined to find conspiracies without substantial proof in the record. It also should be noted that in 2000, the Complainant and Langlois were sufficiently friendly to share information about job availabilities in the Madison area.

These admittedly mixed conclusions about the credibility of various witnesses does not necessarily compel a particular outcome for the complaint. There are numerous allegations and claims. What this means is that the Hearing Examiner will need to address each claim or group of claims and apply the credibility findings in the analysis of each claim.

The Complainant's complaint can be divided into three general areas. The first area covers the period of time from October 1998 up to March 5, 1999. During this period the Complainant asserts that Langlois subjected her to less favorable working conditions than other employees not of her race. These less favorable conditions allegedly may form the basis of a claim of discrimination in the terms and conditions of employment, as well as, demonstrating that the Complainant was subjected to harassment due to her race.

The second area covers the period March 5, 1999 to approximately March 25, 1999. During this period, Langlois and the Complainant had a heated incident on March 5, 1999, which triggered the Complainant to file a written complaint. The Respondent then conducted an investigation of the complaint and reached a resolution on or about March 25, 1999. The Complainant contends that the incident with Langlois constitutes racially motivated harassment and that the Respondent failed to conduct an adequate investigation of her complaint. She further asserts that the Respondent failed to take remedial action that would likely prevent a reoccurrence of the harassment.

The third area covers the period beginning on or about March 25, 1999 and concludes on or about October 8, 1999 when the Complainant states that she had to take medical leave as a result of Langlois' continuing harassment and his retaliation for the Complainant's filing of the complaint.

The Respondent denies any discrimination or retaliation. It states that the March 5, 1999 incident was not racially motivated and that it conducted a prompt and effective investigation into the Complainant's complaint. Further, the Respondent argues that it took reasonable steps to prevent additional discrimination and responded promptly to the Complainant's concerns.

The Hearing Examiner has separately addressed issues of credibility with respect to the major witnesses who testified at the time of hearing. In addressing the above claims, the Hearing Examiner will make reference to these credibility determinations and the strengths and limitations of each witness.

It should be noted that the Complainant made an interesting strategic decision by presenting its entire case through the testimony of the Complainant alone. This immediately creates a conflict between the Complainant's

credibility and that of the witnesses for the Respondent. It also means that there is little opportunity to find corroboration of the Complainant's testimony.

The impact of this choice is first seen when examining the claims and allegations relating to the period extending from October 1998 up to March 5, 1999. The Complainant presents a long list of actions to demonstrate her unequal treatment and the beginnings of her harassment. The Complainant states what she felt happened to her, but presents no documentary evidence by in large. She attributes a racially discriminatory motive to each of the items in her list. The Respondent is left with the task of either denying the items on the Complainant's list or to deny that there was an illegal motivation.

As with the complaint as a whole, the Complainant's complaints in the first period can be divided into three general areas. First, the Complainant contends that Langlois, from the beginning of the contract, treated the African American clients badly. She says that he laughed at the clients and called them names or referred to them as "lazy oaf". The Complainant asserts that Langlois was insensitive to the needs and feelings of the African American clients and that in turn created hostility for her. For example, the Complainant testified that Langlois laughed at the poor photo quality of the I.D. card photographs of the African American clients and called them "dark spots."

The Respondent generally denies the Complainant's allegations or indicates that there was nothing discriminatory in the incident.

The first issue confronting the Hearing Examiner with respect to these allegations is the uncontroverted testimony that the Complainant and Langlois worked together at the Madison Phases job without any indication of a problem. It is also undenied that when the DRC contract began, Langlois specifically recruited the Complainant. If she had observed conduct in Langlois that was of a concern to the Complainant, it seems unlikely that she would have agreed to come to work at the DRC. Additionally, she was offered and accepted the position of Lead Coordinator not something likely to occur if Langlois was harboring a discriminatory animus.

Even assuming that Langlois was laughing at the clients instead of an inherently funny situation, there is nothing in the record to draw a connection between Langlois' alleged insensitivity and the Complainant's conditions of employment. At this stage in the working relationship, there is no indication that Langlois compared the Complainant to the clients. Additionally, calling a person a "lazy oaf" in no way reflects upon that individual's race.

The incident with the I.D. card photographs seems to be a factual statement of an unfortunate technical problem. On its face, there is nothing to call racial discrimination into question. Langlois' unwillingness to let untrained individuals try to reset the camera which did not belong to the DRC, does not appear to demonstrate any discriminatory intent.

The Hearing Examiner sees the Complainant's claims of discrimination in these contexts as the start of a heightened sensitivity to issues of race on the part of the Complainant. Given the Complainant's failure to raise any of these alleged issues at the time they arose, they have the feeling of one's looking backwards in time to justify a later incident.

The second general area of problems for the Complainant deals with her duties and her caseload. The Complainant contends that she was required to sign in and out and to maintain a log of her activities while other employees were not. She also states that she was required to maintain a larger caseload, especially of more difficult clients, than others. She testified that duties that had originally been assigned to her were reassigned to another employee. She complains that she was required to perform urinalyses for male clients while other female Coordinators were not. The Complainant also argues that African American clients especially difficult ones were assigned to her because of her race.

Before addressing specific claims, the Hearing Examiner must make note of several uncontested facts. First, the Complainant was the only African American Coordinator. As Lead Coordinator, the Complainant participated in the interviewing, hiring and training of the remaining Coordinators including Stephanie Anderson and Julie Frohling. On this record, one cannot determine the racial makeup of the pool of available candidates for the Coordinator positions. However, the Complainant must have known that she would be working with an entirely White staff of coordinators.

Second, the client population of the DRC was approximately 80 percent African American. There were about 75 clients instead of the 25 clients in the Madison Phases program.

While a Lead Coordinator may not have all of the rights and duties of a manager, a Lead Coordinator does exercise some supervisory responsibilities and it is not unreasonable to except a Lead Coordinator to set a good example for other employees.

The Complainant's claim that she was required to sign in and out and to maintain a log of her work while others were not is not fully supported by the record in this matter. Langlois testified that he wanted all employees to follow these procedures. That he had less success with other employees does not mean that it was discriminatory to expect the Complainant, the Lead Coordinator to maintain these procedures. The record indicates that there was some slow increase over time in the number of employees complying with Langlois request. Otis Lockett, who became Langlois' supervisor in March of 1999 also tried to encourage compliance with these requirements. When the Complainant complained to Langlois about the fact that others particularly Frohling were not complying, Langlois told her that she was to set an example. As the Hearing Examiner has noted, it is not unreasonable to expect a Lead Coordinator to lead by example.

Even if the Complainant were the only person complying with the requirements, as she seems to believe, the record would not support a finding of discrimination. Herbert Bent, the Respondent's Head of Security, is an African American and apparently did not comply or did not comply until some months later. Bent's treatment indicates that the Complainant was not singled out because of her race.

The Complainant complains that certain duties originally assigned to her such as maintaining the petty cash fund and setting up the office telephone system were reassigned to Frohling. It is undisputed that such a reassignment took place. The question is whether there was anything discriminatory in the transfer of authority.

The Complainant felt that she had a high caseload at that time. She was having difficulty maintaining her caseload and her Lead Coordinator responsibilities. Langlois testified without contradiction that Frohling had good organizational skills. A transfer of relatively minor administrative duties from a busy worker to one with skills that might better fit the job does not support a claim of discrimination. Despite the fact that certain administrative duties were removed from the Complainant, the loss of these duties do not represent any kind of an adverse employment action.

An additional issue arises out of the reassignment of the responsibility for setting up the telephone system's long distance calling codes. Employees were to be assigned a long distance code to keep track of their long distance calls. When Frohling set up the codes, she gave all the employees their codes except for the Complainant and Bent, the only two African American employees. This failure on Frohling's part was identified when the Complainant needed to call a family member due to a family emergency. Because she did not have a current long distance code, the Complainant was prevented from contacting her family. When she told Langlois, he provided the Complainant with his code so that she could make the necessary call. Langlois indicated that Frohling must have forgotten to give the codes to the Complainant and Bent.

While the circumstances of this incident hint at the possibility of a discriminatory motive on the part of Frohling, Frohling's conduct cannot be attributed to the Respondent. The failure to be provided with the long distance code was remedied within hours of the problem’s identification and the short-term effects were minimized by Langlois' providing his code to the Complainant.

This incident did not adversely affect the Complainant's performance of her job in any material way. Even if Frohling withheld the codes from the Complainant and Bent based upon some degree of racial animus, it is a single incident. It will not serve to demonstrate a racially hostile work environment. Frohling was a co-worker not a supervisor. There is nothing in the record to indicate that Frohling acted for the Respondent or with the knowledge of the Respondent. At most, it might put the Respondent on notice that there was a potential problem between the Complainant and Frohling. Nothing in the record indicates, however, that the Complainant informed the Respondent through Langlois or anyone else that she suspected that Frohling's conduct was racially motivated.

The Hearing Examiner is somewhat troubled by the telephone code incident. Frohling's failure to give the codes to only the African American employees may be merely coincidental, but it could be more. At a

minimum, this incident, which must have occurred early in the contract, foreshadows the downward spiral in the relationship between the Complainant and Frohling. This downward spiral leads to further incidents.

The Complainant argues that she was required to perform urinalyses of male clients more frequently than Anderson or Frohling. The Complainant does not supply any documentary support for this contention. The record indicates that the Department of Corrections established the schedule for performing urinalyses of DRC clients. When a urinalysis was scheduled, the Coordinator on duty was required to perform the test. There is no allegation that either the Complainant was placed on the schedule more frequently or that Anderson or Frohling were on the schedule less frequently or were somehow otherwise permitted to avoid the scheduled work. On this record, there is no reason to find that one party is more credible than the other. The Respondent's legitimate, nondiscriminatory explanation is not rebutted by the Complainant. The Hearing Examiner finds nothing to support the Complainant's claim that she was required to perform more frequent urinalysis of male clients than Anderson or Frohling. Even if she were performing more of such urinalyses, nothing in this record indicates that it was because of her race.

It is noteworthy that the Complainant's allegation really focuses more on Frohling. It appears that the Complainant may not feel that she was performing more urinalyses than Anderson, another White female coordinator. The Complainant's concern seems aimed mostly at Frohling's assignment.

The Complainant contends that she was required to carry a heavier caseload than other Coordinators and that she had more "difficult" clients. After Lockett became Langlois' supervisor in March of 1999, he reviewed everyone's caseload. He found that the Complainant and Anderson had approximately the same number of clients. Frohling, however, had a significantly smaller client list than either the Complainant or Anderson. Nothing in the record explains why Frohling had so many fewer clients. However, the fact that Anderson had roughly the same number of clients as the Complainant indicates that the Complainant's race was not a factor in the number of cases.

The claim that the Complainant was assigned a higher percentage of the most difficult clients cannot be ascertained from the record in this matter. Neither party provided a definition or description of a "difficult" client or any list of "difficult" clients as opposed to "easy" clients.

One might suppose that as a Lead Coordinator, the Complainant was more experienced and would be better equipped to handle a more difficult client. However, the record is inadequate to determine whether this was the case or not.

There is similarly nothing in the record to indicate that the Complainant was routinely assigned clients because of her race or that of the client. The Complainant contends that Langlois asked her to take a client because none of the other Coordinators could understand him. In requesting the Complainant's assistance, Langlois stated that because she (the Complainant) was Black and the client was Black they might be able to understand each other.

While Langlois' statement may well be insensitive, it does not reveal any particular racial animus. If no one could adequately communicate with the client, the Respondent could not meet its obligation toward the client or under the contract.

The Complainant seems to believe that the basis of Langlois' request is an indication that he viewed the Complainant as an African American to be no better than the clients. This is a theme that is repeated throughout the Complainant's complaint. It appears to be a matter of personal respect rather than reinforcement of a negative stereotype. Particularly in the context of this incident, the Hearing Examiner can find no adverse employment action or any statement that might be patently offensive to a reasonable person.

The Complainant's third general area of complaints is somewhat of a grab bag. Some of the complaints may fall within the first two areas, though it seemed best to discuss them separately.

The Complainant states that Langlois was not interested in the issue of providing food for the clients. The Complainant was concerned that many of the clients were at the facility for a long time each day, particularly the African American clients. The Complainant was concerned that these clients had no source of food while at the DRC.

Langlois' response to the Complainant that perhaps they could get some vending machines was inadequate to the Complainant. Many of the clients would not have money for vending machines. Langlois' further response was that this was a low priority item for which there was currently no funding.

It is unclear how the Complainant sees this interaction in the context of her complaint. At a minimum, she seems to contend that Langlois' attitude towards the African American clients was insensitive. To the extent that Langlois' comments apply to the entire client population, they are race neutral. While the majority of the client population of the DRC was African American, approximately twenty percent (20%) of the population was White or at least not African American. Nothing in Langlois' statements seems to be directed at any particular part of the client population.

It is possible that the Complainant views Langlois' statements as demonstrating some lack of confidence in her judgment or abilities. Though the Hearing Examiner finds no such inference in Langlois' words, there is even less support for the notion that Langlois might have harbored such thoughts as a result of the Complainant's race.

The Complainant cites an instance in which Langlois assigned an African American client to the Complainant because the client had sent Coordinator Stephanie Anderson a "love letter" while he had been incarcerated. When the Complainant questioned Langlois, Langlois stated that the client probably had kids all over and just wanted an opportunity to have something going with a young White woman. Both agreed that it would be inappropriate for Anderson to be the Coordinator for this client, though the Complainant objected to Langlois' characterization.

Langlois once again demonstrates a lack of sensitivity, but nothing discloses a racial motivation for the transfer. The pre-program contact of Anderson by the client represented a safety risk for Anderson. Transfer of the client was warranted and there is no indication that the Complainant was selected because of her race.

The Complainant raises what appear to be two issues regarding a van used to transport clients to community work sites. First, the Complainant objected to Langlois apparent assignment of mostly or exclusively African American clients to the work van. She questioned why White clients were not assigned. Langlois told the Complainant that the White clients generally had jobs and were not appropriately assigned to the work van.

The exact purpose of the work van is not clearly established in the record. To the extent that it is used to transport those to work sites to comply with terms of probation, the fact that some clients already have obligations would seem to be a legitimate nondiscriminatory reason for those clients to be excluded. Even if assignments to the work van were to accomplish some punitive component of the client's probation or sentence, there is nothing in this record to indicate that anyone who was to be assigned such duty was excluded for any reason. The Complainant provides no information to suggest that Langlois was not correct with respect to his observation. For someone who has displayed some degree of insensitivity to his statements, Langlois appeared to be reasonably straightforward.

The second issue is presented less clearly. It appears that the Complainant observed that White coordinators were not accompanying clients in the work van as frequently as the African American employees, the Complainant or Bent. The Complainant contended that Frohling especially was being held off the van duty. Unfortunately, the record is so incomplete in this regard that any claim respecting it falls for a lack of evidence or even clarity.

The final issue in the pre-March, 1999 area raised by the Complainant relates to the granting or taking of leave. The Complainant asserts that she was not permitted to request vacation time until Langlois and less senior Coordinators had made their requests. In contrast, the Respondent states that vacation leave was granted on the basis of "first come, first serve". There are two related questions raised by the Complainant, but resolving this issue first will assist in the resolution of at least one of the additional questions.

The Complainant presents no documentary evidence in support of her position. While the evidence in support of the Respondent's position is somewhat lacking also, it has the benefit of being a generally accepted practice in an employment setting. The Hearing Examiner has not heard of a vacation scheme such the one described by the Complainant. On one hand, perhaps that is evidence itself of the discriminatory nature of the practice. However, given the record as a whole, the Hearing Examiner views this dispute as a matter of credibility.

In the context of credibility, the Hearing Examiner finds the Complainant's position wanting. The fact that the Respondent's explanation of a "first come, first serve" system makes more business sense gives it an edge on credibility. The Complainant's position without documentary support and in light of her other claims, lacks the ring of credibility.

The first additional question related to the system for signing up for vacation involves time off during the holiday season of 1998/1999. The Complainant requested time off to attend the Rose Bowl. Langlois denied the Complainant's request indicating that it was a busy time and she was needed at work. The Complainant later learned that Frohling had taken the time off to attend the Rose Bowl. The Complainant asserts that Frohling's being allowed to take leave instead of the Complainant was racially motivated.

Assuming that the Hearing Examiner's determination that the Respondent used a "first come, first serve" system is correct, there is nothing in the record to indicate who was the first to request the time off to attend the Rose Bowl. If Frohling had been first, then she would have been entitled to the time even though the Complainant was more senior. Assuming that Frohling had first requested the time off, Langlois' statement that the Complainant was needed because of the caseload was correct. The Hearing Examiner states this scenario in the form of an assumption because there is no evidence in the record sufficient to permit the Hearing Examiner to clearly find the facts of what did happen. Given this lack of a factual groundwork, the Complainant cannot carry her burden of proof as it always rests with the Complainant.

The final issue regarding leave relates to Langlois' requirement that the Complainant cover Frohling's caseload while Frohling was absent, no one was allegedly required to cover the Complainant's when she was on leave. The only evidence relating to race with respect to this issue is that Frohling and all the other Coordinators are White while the Complainant is African American. The Complainant seems to ignore the fact that as Lead Coordinator, it would be entirely reasonable to expect that she should cover the caseload of an absent Coordinator. It is also reasonable to expect that someone would cover the caseload of the Lead Coordinator when she is absent. However, to the extent that the Complainant's caseload was not covered when she was absent, the record is devoid of evidence demonstrating that her race was a factor in the lack of coverage. Langlois testified that in the Complainant's absence, he circulated memos to the other Coordinators requiring coverage of the Complainant's caseload. It is possible, as the Respondent suggests, that the Complainant was simply unaware of a memo circulated in her absence. On this record, it is impossible to determine what exactly happened, but that whatever happened had nothing to do with the Complainant's race seems clear.

To the extent that the Complainant asserts a claim for disparate treatment in her terms and conditions of employment based upon her race for the period from October, 1998 through the end of February, 1999, whether one considers the incidents individually or collectively, the Complainant fails to establish the required connection between her race and the incident(s) of which she complains. Without establishing a causal link, there can be no finding of discrimination. An adverse action must be linked to the Complainant's membership in a protected class because the essence of discrimination is less favorable treatment due to one's protected characteristic. The Hearing Examiner does not doubt the sincerity of the Complainant's belief that her race was the cause of the things she found wrong at the DRC, but she fails to adequately demonstrate that link.

In order to file a complaint of discrimination with the Commission, it is sufficient to merely allege facts sufficient to state a claim of discrimination.

In order to receive a finding of probable cause to believe that discrimination has occurred or may be occurring, the burden on the Complainant rises from one of articulation to one of production. This means that the Complainant must present or point to facts that if believed are sufficient to establish each element of a claim of discrimination. This point is reached without weighing disputed evidence, but by resolving all reasonable factual disputes in favor of the Complainant.

At hearing, the Complainant is not entitled to the same inference of credibility as during the investigative phase. The Hearing Examiner must weigh the evidence presented by both sides and determine which is the most credible. The Hearing Examiner's credibility determinations are sprinkled throughout this memorandum. Ultimately, the Complainant must establish each element of her claim of discrimination by the greater weight of the credible evidence. This is also referred to as the preponderance of the evidence.

In a case such as this one, the Complainant may attempt to show direct evidence of discrimination or demonstrate discrimination through the production of indirect evidence. While the Complainant was the only

person to testify on her behalf at the hearing, this case rests primarily on the production of indirect evidence. In such cases, the Commission follows the McDonnell Douglas/Burdine paradigm, also known as the burden-shifting test for evaluating the evidence of discrimination. McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973); Texas Dept. of Community Affairs v. Burdine, 450 U.S.248 (1981). In this approach, the Complainant must present enough evidence to establish a prima facie claim of discrimination. A prima facie claim is one that sets forth each element necessary to demonstrate that discrimination has occurred. In most cases, the minimum elements are membership in a protected class, an adverse action and a causal link between the Complainant's membership in a protected class and the adverse action.

If the Complainant establishes a prima facie claim of discrimination, the burden shifts to the Respondent to produce a legitimate, nondiscriminatory explanation for its actions or for the adverse action of which the Complainant complains. It must be stressed that this is a burden of production and not one of proof. It is sufficient for a Respondent to prevail to state a legitimate, nondiscriminatory reason.

Presuming that the Respondent meets its burden of production, the Complainant may rebut the Respondent's explanation by demonstrating that the Respondent's proffered explanation is either not credible or represents a pretext for an otherwise discriminatory reason. At all times, the final burden of proof rests with the Complainant.

For the items of which the Complainant complains up to the March 5, 1999 incident, she either fails to establish that there was an adverse action or to the extent that some action might be considered adverse that there is a causal connection between the action and her race. Perhaps the claim that comes closest to shifting the burden to the Respondent is that about scheduling of leave. The Respondent presents a legitimate, nondiscriminatory reason for Frohling's being able to attend the Rose Bowl while the Complainant was not. The Complainant fails to rebut the showing of a legitimate explanation, but more importantly fails to convincingly establish that she either experienced a more than trivial employment action or that her race likely played any part in the action.

To the extent that the Complainant presents her list of complaints to establish a pattern of conduct demonstrating that she was the victim of racial harassment, the Complainant again fails to carry her burden of proof. Though harassment claims arose from the notion of different and less favorable terms and conditions of employment, the elements of proof have developed a life of their own. Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57 (1986); Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993). The greatest number of cases in the harassment area stem from claims of sexual harassment and special elements have grown up around this type of litigation. At the state level and even in the Equal Opportunities Ordinance, special provisions have been adopted in response to claims of sexual harassment. See Wis. Stats. 111.36(1)(b) and (br) and M.G.O sec. 3.23(8)k. Because these provisions are "self-contained", they have not necessarily followed federal case law. Sanderson v. Handi Gadgets Corp., (LIRC March 31, 2005), and may not necessarily transfer well to other claims of harassment based upon other protected classes.

The Commission has developed its own line of cases in the area of racial or other harassment by a supervisor. Guyton v. Rolfsmeyer, MEOC Case No. 20424 (Comm. Dec. 07/18/86, Ex. Dec. 04/28/86), Vance v. Eastex Packaging, MEOC Case No. 20107 (Ex. Dec. 05/21/85). While these cases loosen the requirements for establishing a hostile workplace, they do not, as asserted by the Complainant, eliminate them entirely. Guyton, supra, and Vance, supra. Cases resulted from recognition that some federal courts were too restrictively establishing the requirements for determining a hostile workplace. Guyton, supra.

Generally, one must demonstrate that one is the recipient of patently offensive conduct, of a nature related to one's protected class, of a severity in time or extensiveness so as to interfere with one's ability to perform the requirements of his or her job. In the case of coworkers, harassing a co-worker, the employer must have notice of the harassment and be given the opportunity to correct it. In the case of harassment by a supervisor, notice may be presumed where the supervisor's actions are imputable to the employer.

Many of the incidents highlighted by the Complainant either do not represent patently offensive conduct or words. In other cases, as with above, the conduct complained of does not have any apparent connection with the Complainant's race. As such, these complained or situations do not establish a pattern of conduct demonstrating racial harassment.

As noted elsewhere, the Hearing Examiner neither doubts the sincerity of the Complainant's belief that her race was the motivating factor nor that the conditions at the DRC were particularly difficult. However, the Hearing

Examiner cannot find that the Complainant has successfully demonstrated a racial motive for the things the Complainant experienced.

Before moving to the March 5, 1999 through March 25, 1999 period, the Hearing Examiner must make some observations. Though, the Hearing Examiner does not find that there was a racially hostile workplace during the period from October 1998 to March 1999, it seems clear that the DRC was not a satisfactory place to work. As typified by the Complainant's meeting with Langlois on or about February 16, 1999, the Complainant wanted more responsibility as Lead Coordinator. The Complainant told Langlois that she was feeling resentment and disappointment over the lack of supervisory duties. That Langlois felt that the Complainant was not ready for additional duties because of an inability to appropriately manage her own caseload is, in the Hearing Examiner's opinion, what drove the Complainant's dissatisfaction in the early months of the operation of the DRC. Additionally, there was clearly a rising level of antagonism between the Complainant and Frohling. One more factor leading to the unhappy and unhealthy environment was the caseload. With only one or at most two additional Coordinators, the DRC was responsible for three times the Clients as Langlois and the Complainant experienced at Madison Phases.

After the February 16, 1999 meeting at which the Complainant requested additional duties as Lead Coordinator, Langlois gave her those duties a week or so later in February 1999. As part of the assignment of additional duties, Langlois reduced some other duties to permit the Complainant additional time for case management functions.

Despite the Complainant's assumption of some additional duties, Langlois was also feeling an increase in the level of stress. At one meeting in the second half of February with the Complainant, Langlois told her that he was responsible to too many "fucking" people.

Langlois was disturbed by the noticeable decline in the working relationship among the Coordinators especially between the Complainant and Frohling. On or about, February 26, 1999, Langlois held a private meeting with the Complainant in another staff person's office. The focus of the meeting rapidly became the relationship between the Complainant and Frohling.

As noted above, the relationship between the Complainant and Frohling seems to have been rocky since the beginning. This seems somewhat strange since the Complainant sat on the panel that hired Frohling. It should be noted that the Complainant apparently had little or no problems working with Stephanie Anderson the other White, female coordinator or either of the White male coordinators.

At the February 26, 1999 meeting, Langlois focused on the relationship issues between the Complainant and Frohling. The Complainant indicated that she felt that Frohling was "snobby", that Frohling did not consult with the Complainant about client matters and that Frohling showed the Complainant no respect. Additionally, the Complainant described Frohling as a "Snow White" and indicated that Frohling needed to get her "lily-white hands" doing some of the urinalyses.

Langlois pushed the Complainant for a list of concerns about Frohling. The Complainant did not want to provide the list at that time. She suggested that she would provide it at a meeting of Coordinators subsequent to her return from vacation.

The meeting came to an abrupt end when the Complainant told Langlois that she did not want to talk about the matter further. The meeting had lasted about an hour to an hour and a half and the Complainant was not feeling well.

Later in the afternoon of February 26, 1999, Anderson told Langlois that she was concerned that the Complainant was talking disrespectfully about Frohling to other members of the staff. This created a need for another meeting between Langlois and the Complainant.

On March 5, 1999, Langlois approached the Complainant for a lunchtime meeting. The Complainant was reluctant. She stated that they had been meeting frequently and didn't want to meet then. Langlois insisted and told the Complainant that he would buy lunch next door when the Complainant said she couldn't afford it.

The Complainant eventually acquiesced to Langlois' request/demand for a meeting.

Langlois wanted to discuss concerns about clients and staff at the DRC. He had asked the Complainant to prepare a list of concerns. At first, the Complainant didn't want to discuss her list of concerns. By the end of the meeting, however, Langlois and the Complainant had agreed upon an approach to the problems that would be discussed the following Monday at a meeting of the Coordinators. Langlois heard additional concerns about the Complainant talking about Frohling to other staff. Langlois decided that he needed to mediate a meeting between the Complainant and Frohling before things got entirely out of control.

At Approximately 3 o'clock on March 5, 1999, Langlois called the Complainant to a meeting with Frohling. The Complainant did not want to attend the meeting, but Langlois insisted.

Langlois, the Complainant and Frohling met in another staff person's office for privacy. Langlois set ground rules for the meeting. The Complainant told Frohling about her concerns surrounding the lack of respect shown the Complainant by Frohling and the Complainant's frustration that Frohling was not coming to the Complainant on client related matters.

Frohling told the Complainant about how inapproachable the Complainant seemed to be, the lack of knowledge about reporting to the Complainant and the Complainant's harmful comments involving Frohling's "lily-white hands". Frohling indicated that she would do what she could to improve the working relationship.

The Complainant was shocked to hear Frohling make reference to the "lily-white hands" comment. The Complainant felt her conversation with Langlois was confidential and she felt that Langlois had betrayed her confidence. It appears that Langlois did not, in fact, tell Frohling of the comment, but Anderson had. Anderson had overheard the comment on February 26, 1999 while she was working in an office adjacent to that in which the Complainant and Langlois were meeting.

The Complainant became very upset and indicated that she no longer wished to participate in the meeting and started to leave. This angered Langlois who told the Complainant that the meeting wasn't finished and that she couldn't leave.

The Complainant got up anyway and headed for the door. Langlois was standing between the Complainant and the door. He was moving back and forth in agitation. On this record it is not clear whether Langlois intended to block the Complainant's exit or did so temporarily by accident. Langlois denies blocking the exit while the Complainant testified that Langlois would not let her leave.

Langlois' statements about the meeting and what happened next are subject to doubt. In the notes compiled by Amy Winkler, the Respondent's head of Human Resources, in a meeting on March 23, 1999 with Winkler and Ralph Kramer, the Respondent's Vice-President for Operations and Langlois, Kramer is reported to have told Langlois that he had better think about a better explanation for his (Langlois') actions and the Complainant's reactions.

The Complainant was able to navigate around Langlois and headed to her office. Langlois followed her, at least yelling loudly at her if not using profanity. He was comparing the Complainant's refusal to work out the problems with Frohling to the conduct of the clients. Langlois shouted at the Complainant that she should be in a "fucking" group like the clients and that the Complainant cared more for the clients than one of her coworkers.

Though Langlois was loud, angry and profane, no one indicates that he used racially explicit language while talking to or yelling at the Complainant.

The Complainant returned to her office with Langlois closely following her. Once in the Complainant's office, Langlois closed the door to minimize disruption in the office. He continued to be angry with the Complainant for leaving the meeting with Frohling.

The Complainant was frightened by Langlois' conduct and anger and tried to distance herself from him. She retreated to a place of safety behind her desk. Langlois approached the desk and while leaning over it with his hands upon it, continued to yell at the Complainant.

While the Complainant was behind her desk, she attempted to call her husband. She reached him after a couple of attempts and briefly indicated that she needed to leave the office. She started towards the door. Even though Langlois was not directly in front of the door, he was standing next to it. This frightened the Complainant and made it difficult to reach her coat and exit the office. Though Langlois took no steps to prevent the Complainant from leaving, it took the Complainant several attempts to actually leave. As she exited she asked Langlois to lock her door to protect her possessions.

The Hearing Examiner has opted to address the March 5, 1999 confrontation separately because it seems, in some ways, to be a watershed in the relationship between the Complainant and the Respondent. Despite this view of the Hearing Examiner, the record is clear that the Complainant considers the March 5, 1999 confrontation with Langlois as but a single star in a broad and painful constellation of mistreatment. The Respondent sees the incident as an unfortunate confrontation that triggered an investigation and preventative action.

With respect to the objective facts, there is a dispute between the Complainant and Langlois and Frohling as to what happened and its severity. The Complainant testified to an incident that escalated from a tense but professional discussion intended to ease office conflicts into a loud, profanity laced dressing down that placed the Complainant in fear for her physical safety. Langlois admits to being frustrated and angry. He denies using profanity or doing anything that might have reasonably put the Complainant in fear. Langlois asserts that it was the Complainant's own defensiveness that made her uneasy.

It is the Hearing Examiner's experience that the truth of the matter generally lies somewhere between the extremes of a given situation. In this situation, the Hearing Examiner finds that the Complainant's recounting of the objective facts is much closer to the truth however. Langlois' testimony is suspect in that he understands the difficulty of the position in which his conduct placed him. He does not strike the Hearing Examiner as the type of person who would easily lose control of his emotions and would not want to admit to such a loss. That his explanation of events unreasonably favors him is evidenced by the notes of a meeting held on March 23, 1999 between Langlois and Winkler and Kramer. See Exhibit G-13. When Langlois was asked why the Complainant felt threatened and felt that she needed to contact her husband, Langlois offered that the Complainant's own defensiveness was at fault. Winkler and Kramer clearly did not believe Langlois and told him that he had better seek a better answer for the Complainant's concerns.

While the March 5, 1999 confrontation clearly represented the abuse of a subordinate by a supervisor, the question is whether that incident was racially motivated. The Respondent contends that given the record of what she saw as racially motivated abuse in the months leading up to March 5, 1999 and Langlois' comparison of the Complainant to the client population which is overwhelmingly African American that the incident was clearly motivated by her race.

While the Hearing Examiner does not question the Complainant's sincerity, the Hearing Examiner finds that the confrontation was not motivated by the Complainant's race, but by Langlois' frustration with what he viewed as the Complainant's willful refusal to address serious personnel problems and her insubordinate behavior in walking out of the meeting with him and Frohling.

The record in this matter shows an increasingly tense and dysfunctional office. It appears that the Complainant was feeling anger and resentment towards both Frohling and Langlois, but was rebuffed by Langlois' efforts to address her problems. This is typified by the Complainant's reaction to the February 26, 1999 meeting in which she indicated she didn't want to talk about it then. The Complainant's own antagonistic conduct in meetings with the other Coordinators added to the problem. See generally exhibit G-11 (Langlois' notes) for some of the problems. Fueling the fire of the eventual melt down was the Complainant's reluctance to meet at lunch on March 5, 1999. When the Complainant refused to continue the meeting with Langlois and Frohling, the Hearing Examiner can accept that Langlois would have been angry and upset. The record indicates that Langlois had been attempting to resolve problems raised by the Complainant, but that it did not appear that the Complainant wanted to work to resolve them and took no responsibility for any part of the problems.

When Langlois' professional demeanor exploded, he focused his rage on what he saw to be a substantial part of the problem, the Complainant's unwillingness to address the problems she had identified and to some extent caused. His comments reflect this. They are not directed at the Complainant's race, but rather are reflective of the Complainant's failure to carry through to a resolution of the issues with Frohling and/or Langlois. Though a not unreasonable reading of Langlois' comparison of the Complainant with the clients could be because of

racial identity, such a reading would be superficial. When taken as a whole, the Hearing Examiner finds that Langlois' comments, though profane, were directed at the Complainant's conduct, not her skin color or heritage.:

The Hearing Examiner must conclude that despite the Complainant's beliefs, the March 5, 1999 incident is no more a part of a pattern of racial harassment than any of the earlier incidents. This finding however, leads the Hearing Examiner to the most troubling aspects of the complaint.

After the Complainant left the Respondent's offices on March 5, 1999, she did not return until Tuesday, March 9, 1999. The Complainant was scheduled to work on March 8, 1999 but called in sick. Though she was briefly seen in the offices, she did not report to work.

Over the weekend of March 6 and 7, 1999, the Complainant wrote a complaint of harassment under the Respondent's harassment policies. She dated it March 8 and sent it to the Respondent's Milwaukee offices. After filing the complaint, the Complainant left for a previously scheduled vacation.

The complaint was received by the Respondent's head of Human Resources, Amy Winkler. Winkler attempted to contact the Complainant, but discovered that the Complainant was on vacation. Once the Complainant returned from vacation, she set up a meeting with Winkler on March 19, 1999.

While the Complainant was on vacation, Winkler and Diane Ellis met with and interviewed Frohling and Langlois. Ellis was a Human Resources Manager with the Respondent in its office in Missouri.

When the Complainant returned from vacation, she met with Winkler and Ellis. At that meeting, she was not asked about the basis of her complaint or the various allegations of discrimination and harassment by Langlois. Winkler asked the Complainant for a list of possible resolutions or what she would like to happen. Though it took a couple of days, the Complainant eventually sent Winkler a fax, on March 23 1999, containing additional information about her complaint including a lengthy list of problems. Though the list was lengthy and contained some specifics, Winkler decided that she did not need to meet an additional time with the Complainant or to do any additional investigation.

Subsequent to receiving the list from the Complainant, Winkler and Kramer met with Langlois on March 23, 1999 to discuss the resolution of the investigation and to propose a meeting with the Complainant.

Winkler called the Complainant to explain that the investigation was complete and to set up a meeting with Lockett, Winkler, Langlois and the Complainant to move on. The Complainant expressed reluctance to meet with Langlois. It was agreed that the Complainant would meet with Winkler and Lockett and at that time consider meeting with Langlois.

The meeting was set for March 25. When the Complainant met with Winkler and Lockett, she was told that the Respondent would not fire or transfer Langlois. They would provide him with additional training and Lockett would meet regularly with Langlois and the Complainant to resolve any remaining issues. The Complainant was told that she needed to decide if she was coming back to work. The Complainant felt pressured and confused. She did not know whether she would be able to work with Langlois again. When she asked for time to make her decision, she was told that the decision needed to be made that morning. The Complainant went to her office and after no more than 30 minutes returned and agreed to stay.

The Complainant was still reluctant to meet with Langlois. Winkler and Lockett prevailed upon the Complainant to meet to hear Langlois' apology. Eventually, the Complainant acquiesced.

A brief meeting was held with Winkler, Lockett, Langlois and the Complainant. Langlois expressed that he was sorry that the Complainant had felt he was threatening and he hoped they could work together again.

The Complainant was allowed to leave for the rest of the day. Lockett and Langlois met to work on office needs.

The Complainant contends that the Respondent's response to her complaint was wholly inadequate. The investigation was incomplete and the eventual resolution did nothing to assure that there would not be a continuation of the incidents leading to the complaint.

The Respondent asserts that it promptly responded to the complaint. It states that it conducted a thorough investigation and took reasonable action to assure that there would be no repetition of incidents like those that preceded to the complaint.

The Hearing Examiner finds that this is one of the worst examples of an investigation of a complaint of harassment possible. It was incompetently run by an individual with virtually no training, did not address the issues set forth in the complaint and did little to correct any problem that existed or to prevent problems in the future.

The problems start with the individual who conducted the investigation. Though Winkler managed the Human Resources office in Milwaukee, she was strikingly unprepared to conduct an investigation into a claim of harassment. At hearing, she testified that though she was sure she had attended training where the subject of investigating a claim of discrimination had been discussed, she could not provide any information about when, where or how long the training had gone on. She could not bring to mind any specific training that she had attended in this area nor could she account for any reading she might have done. She was sure that the predecessor in her position had provided her with training, but again she could not quantify that training or indicate when or how it occurred.

Neither Winkler nor Lockett read the Complainant's complaint as being one for racial harassment. In fact, Winkler testified that she would treat any complaint of harassment, whether it be for an illegal basis or not, in the same manner. While this adoption of the Rodney King philosophy of "why can't we just get along together?" may sound good it hardly represents a professional approach to the investigation of claims of harassment.

Winkler knew prior to receiving the Complainant's complaint that the Complainant was an African American. The Complainant's complaint makes frequent and specific reference to protections of the Respondent's policy for "protected characteristics". With this in mind, Winkler never made any determination of the basis or bases of the Complainant's complaint. The record in this matter indicates that Winkler never even asked the Complainant about the basis for her complaint. This failure of reasonable investigative procedure set the tone for the rest of its failures.

It seems to the Hearing Examiner that one must know of the basis of a complaint before one can take any action to correct the allegations of the complaint or to prevent their reoccurrence in the future. It is not necessary that a complaint use "magic words" to state a claim. Gentry v. Export Packaging Co., 238 F.3d 842 (7th cir. 2001). Though in Gentry the allegations of sexual harassment could have easily been read from the complaint, the case still is a good example of the relaxed standards that should be applied to internal complaints of harassment. In the present case descriptions of potentially discriminatory conduct are present along with specific claims of sex discrimination. It is noteworthy that none of the Complainant's allegations of sex-based discrimination were investigated by the Respondent either. Winkler seems to have been driven more by a desire to assure a quiet workplace than to determine what happened, why it happened and how can it be prevented in the future.

The second major failing of Winkler's investigation is its focus on the events of March 5, 1999. Though this was perhaps the most immediate manifestation of a problem, the March 8, 1999 complaint by itself raises a host of other issues. The Complainant's additional list faxed to Winkler on March 23, 1999 gives additional issues into which Winkler never looked

The Respondent indicates that Lockett was to look into those additional concerns. However there was no time frame set for Lockett's investigation and the record indicates that he never prepared or filed any kind of a report concerning the additional issues. Winkler testified that Lockett might have talked to her about some of those issues, but admitted that there is no record of any such communication and that Lockett never filed any written reports about his investigation. On this record, the Hearing Examiner cannot determine if any issues other than the March 5, 1999 confrontation between Langlois and the Complainant was ever investigated.

The next problem with the investigation is the lack of contact with other witnesses. First, assuming that the March 5, 1999 incident was of paramount and exclusive interest, there is no indication that Winkler, Ellis,

Kramer or Lockett made any effort to identify and locate anyone who might be able to provide more information about what actually happened. In the notes of the first interview with the Complainant, there is an indication of possibly two witnesses. It is clear that from the notes of the Complainant's recollections that the witnesses might have been illusory. However, there is absolutely no indication that Winkler or anyone else involved in the investigation made any effort to identify those potential witnesses or to contact them or to identify anyone else who may have seen or overheard any part of the exchange between Langlois and the Complainant.

Putting aside the importance of the March 5, 1999 incident, the record is devoid of any indication of efforts on the part of the Respondent to identify or find anyone who might be able to provide any information about any of the other allegations in the complaint or in the follow up list provided by the Complainant. Even Lockett does not appear to have attempted to locate witnesses so as to determine the accuracy of the Complainant's allegations. This failure to seek out additional perspectives on the Complainant's complaints is further evidence of an interest on the Respondent's part to simply sweep matters under the rug and return to work and not to determine what actually had occurred so that future repetitions could be avoided.

Winkler only addressed the allegations of the Complainant about the March 5, 1999 incident in her investigation. Despite the fact that the Complainant clearly referenced multiple allegations of discrimination and harassment beyond those of the March 5, 1999 confrontation in the March 8, 1999 complaint, Winkler made no effort to investigate those other incidents. Nothing in Winkler's investigation file (exhibit G-13) shows a single question about any of those additional allegations. When on March 23, 1999, the Complainant sent Winkler an extensive list of additional issue/concerns instead of the list of requested resolution items, Winkler did nothing to expand her investigation.

The Respondent indicates that Lockett was to look into those other areas. There is no memorialization of this charge to Lockett and no written explanation to the Complainant about how her concerns were to be addressed.

Even assuming that it might be appropriate to triage the Complainant's allegations and delay investigation and remediation of some issues, nothing in this record indicates that there was some process of evaluation of the Complainant's allegations. Additionally, there is no documentation of any investigation or steps taken to address the Complainant's concerns. Both Winkler and Lockett admitted that there are no written reports by Lockett of his efforts in furtherance of an investigation.

It should also be noted that Winkler's investigation file contains no original statements of anyone other than the Complainant. Winkler only includes her notes of the interviews of Frohling and Langlois. Given Winkler's apparent predisposition not to investigate but to smooth over the bumps in the Respondent's road, the accuracy of these notes must be called into question. Without original statements from Frohling and Langlois in their own words, it is impossible to judge to what extent, if any, their interviews were directed by Winkler's presuppositions about the Complainant's complaint. This calls into question, the adequacy of the investigation as a whole.

During the investigation, the Complainant made it clear to Winkler and Ellis that she felt traumatized by the event at the DRC. She indicated that she just wanted to stay in her office. She didn't want to meet Langlois for fear of another incident. These feelings of fear were additionally, communicated to Winkler on March 24, 1999 when Winkler was trying to set up a final meeting. The Complainant indicated that she was willing to meet, but that she didn't want to meet with Langlois.

The Respondent took no steps to try to remedy the Complainant's concerns. The Complainant was not directed to an Employee Assistance Program or given any referral for counseling or other help.

Instead of considering the needs and concerns of the Complainant, Winkler and Lockett, on March 25, 1999, first insisted that the Complainant decide whether she would return to work or would terminate her employment with the Respondent and second meet with Langlois to accept his apology. The Complainant was given 15 to 30 minutes to decide her future after having been told that Langlois would remain as her supervisor, that she would have to work with Langlois or leave employment with the Respondent and that it would all have to happen immediately.

The record does not show any consideration of transferring either Langlois or the Complainant despite the Complainant's clear statements that she doubted her ability to work with Langlois. It does not reveal any discussion of steps that could be taken to re-integrate the Complainant into Langlois' supervision.

The Respondent's failure to undertake, conduct and complete an adequate investigation of the Complainant's March 8, 1999 complaint creates an interesting question of liability. It is clear that even where the allegations of a complaint are demonstrated not to show discrimination that an employer can still be held responsible for acts of retaliation triggered by the complaint. The first question that comes to the mind of the Hearing Examiner is whether an employer's failure to conduct a reasonable investigation of a complaint of harassment or discrimination can be held liable per se for its failure. The theory rests on the notion that there is a legal obligation on the part of an employer to provide its employees with a workplace free of discrimination and harassment. Meritor, supra. If it fails to determine whether discrimination or illegal harassment has occurred, should the employer not face liability for such a failure? To give an employer a "pass" on a patently inadequate investigation does nothing to create an environment in which employees will seek to protect there own rights through the employer's internal complaint process. If employees are unwilling to complain because their complaints will not be taken or acted upon seriously by the employer, a workplace may become an incubator for discrimination and harassment. This would seem to run contrary to the public policy stated and furthered by the Ellerth/Faragher line of cases. Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998), Faragher v. City of Boca Raton, 524 U.S. 775 (1998).

Though the present case is one that cries out for the recognition of such a claim, the Hearing Examiner is reluctant to rely upon a novel approach. Extensive research failed to reveal any cases either supporting such a theory or rejecting it. While the Hearing Examiner believes that the public policy and structure of the ordinance are sufficiently broad to support such a claim, there is no specific language that endorses such a theory. However, at this time the Hearing Examiner declines to recognize this theory.

Rather, existing theories of liability are adequate to find liability on the part of the Respondent. First, the Hearing Examiner finds that the Respondent's failure to conduct any reasonable investigation of the Complainant's complaints coupled with its resolution on March 25, 1999 represent illegal retaliation within the meaning of the ordinance. The ordinance prohibits any person from coercing, intimidating or otherwise discriminating against any person for that person's exercise of rights protected by the ordinance. In the present case, the Complainant opposed an allegedly discriminatory practice by filing her complaint with the Respondent on or about March 8, 1999. The Respondent's insistence on a decision about continuing employment immediately on March 25, 1999 and insisting upon an immediate meeting with Langlois on the same date without taking into account the Complainant expressed concerns for her safety had the effect of coercing and intimidating the Complainant.

The Respondent's actions are both temporally connected with the complaint as well as being transactionally connected. The Respondent clearly either wanted the Complainant to be "back in the fold" of the Respondent's employment or to be gone. Its callous disregard of the Complainant throughout the investigation and on March 25, 1999 demonstrates its unhappiness with the Complainant for her exercise of her rights.

The effect of the Respondent's retaliation was to poison the workplace towards the Complainant. Equally, the Complainant's view of her workplace was poisoned so that it became increasingly difficult for the Complainant to meet her responsibilities at work and to accomplish that for which she was hired. Every set back, slight or problem took on the appearance of discrimination or retaliation.

It is not the intent of the Hearing Examiner to create a system in which every adverse outcome of an investigation gives rise to a claim of retaliation. Such determinations can only be made on a case-by-case basis. However investigations of complaints must be performed in a manner reasonably calculated to come to a good faith determination of each claim and a good faith resolution of those claims.

The second possible theory of liability for the Respondent's failure to conduct an investigation that would reasonably correct any discrimination found and prevent it from occurring or reoccurring in the future rests simply on discrimination. In the shortest form possible the elements of this claim are: that the Complainant, an African American is a member of the protected class race; that she suffered an adverse employment action by failing to have her complaint reasonably investigated and was subsequently placed in a workplace in which she felt neither physically nor emotionally safe which made it unusually difficult for her to perform the duties of her job and; that there is a reasonable connection between the Complainant's race and the adverse action.

The only element of such a race claim that needs additional discussion at this time is that of the causal link between the Complainant's race and the adverse action experienced by the Complainant. On this record there is no comparative data to judge the existence of a causal connection. In other words, there are no examples of similarly situated White employees who complained about something and how their complaints were handled. Equally, there were no racially explicit words used during the investigation to show animus. However, Winkler knew before the filing of the complaint that the Complainant was an African American. Since Langlois is White, the Respondent's resolution coupled with a wholly inadequate investigation of the Complainant's allegations against Langlois raise an inference that race motivated the Respondent's actions. Given the racial nature of the Complainant's complaints and the lack of any action that comes close to being disciplinary taken against Langlois adds to the weight of the inference. As noted earlier, the Hearing Examiner ascribes no racially discriminatory motive to Langlois especially in connection with the March 5, 1999 confrontation, but his conduct during that incident was sufficiently outrageous as a supervisor to warrant some formal discipline. The fact that Langlois only received some additional supervision is an indication of his favored status.

It is true that the Respondent employs a majority of African American employees, however that was not the case in the DRC. The racial composition of the rest of the Respondent's workplaces does not overcome the inference that the Complainant's race was a motivating factor in her treatment.

Before moving to the topic of damages for the Respondent's retaliation or discrimination, the Hearing Examiner will address the Complainant's remaining claims of discrimination and retaliation. These claims represent the third and final major area of the Complainant's complaint.

The Complainant asserts that subsequent to her return to work, the harassment and discrimination continued and increased. She attributes the adverse circumstances to Langlois and to retaliation on his part. Much of the harassment and discrimination identified by the Complainant appears to be a continuation of things of which the Complainant complained prior to March, 1999, greater scrutiny of her work, more work than others, complaints about assignments to the work van. The Complainant asserts that negative stereotyping continued by Langlois. The Complainant adds that Langlois held staff meetings with other Coordinators and excluded her. As a result of this exclusion, the Complainant was not always current on the forms used in the office. Finally, the Complainant accuses Langlois of setting a fire in her car in August of 1999 and putting a threatening note on her windshield in September of 1999 and then not appropriately reporting the incidents to Lockett or the headquarters office.

With respect to claims that the workplace had become more hostile towards the Complainant by isolating and shunning the Complainant, the record lacks any evidence other than the Complainant's allegation. While one of the consequences of the Respondent's inadequate investigation and resolution of the Complainant's complaint was likely a lack of certainty about how to deal with each other in the workplace, there is nothing inherent in the situation that makes the Complainant's allegation more credible than Langlois' and Lockett's denial. Absent some corroborative evidence, the Hearing Examiner cannot find that the Complainant was treated as an outcast and isolated by others on staff.

Similarly the Complainant asserts that negative language about the clients and unflattering comparisons between herself and the staff continued and increased. However, there is again no corroboration of the Complainant's allegations. Without some evidence supporting the allegation, the Complainant, on this record, fails to carry her burden of proof.

The Complainant asserts, as she did earlier, both that she was overburdened with work and that some of her duties were removed. Shortly after beginning as Langlois' supervisor, Lockett reviewed the workloads of the various Coordinators and that of the Complainant. He determined that the Complainant and Anderson, a White female, had about the same number of cases while Frohling, another White female, had a substantially smaller caseload. Once this discrepancy was brought to Langlois by Lockett, the caseload was adjusted to more equally balance the levels. The resulting reduction to the Complainant was only temporary as all Coordinators caseloads were increased again when Anderson resigned in the late spring or early summer.

The Complainant contends that when Anderson left, she (the Complainant) was assigned Anderson's entire caseload or, at least, the majority of it. While the Complainant may have believed that she was the recipient of the large majority of Anderson's cases, the Complainant admits that she did not know what the other Coordinators received or had previously scheduled. On this record, the Hearing Examiner cannot determine that the Complainant was treated adversely to the other coworkers with respect to her race or her filing of a

complaint. In this regard, it must be noted that when Lockett audited the caseloads, he found that the Complainant and Anderson had just about the same caseload. As Anderson was a White female who had not complained of discrimination, her treatment similar to that of the Complainant tends to disprove any allegation of discrimination or retaliation. It appears that either Frohling was particularly adept at avoiding work or held some personal advantage in Langlois' eyes. However, either explanation does not implicate illegal discrimination or retaliation.

Related to the Complainant's claims about a greater caseload is her allegation that she was assigned a greater number of "difficult" or high-risk clients. Lockett observed at Hearing that virtually all of the Respondent's clients had a lot of needs. Almost all of the clients had some history of violence. The Complainant does not define or describe what made her clients particularly difficult or high-risk, or why the other Coordinators' clients were less difficult. On this record, the Hearing Examiner can make no determination that the Complainant was being treated less favorably than the other Coordinators at all or for a discriminatory or retaliatory reason.

The Complainant contends that Langlois specifically informed some clients that the Complainant had made reports that led to the clients return to jail. The Complainant alleges that this placed the Complainant's safety at risk. The Hearing Examiner is somewhat confused about this allegation. It was the job of the Coordinators to report the conduct of the clients and it was acknowledged by all that those reports sometimes returned clients to prison. Even if Langlois had specifically identified the Complainant as the Coordinator providing information, it is not clear how this would be different than normal operation of the DRC. There is no evidence in the record from which the Hearing Examiner could conclude that the Complainant was attempting to cultivate a reputation as a Coordinator who did not return clients to jail. This might have been contrary to the requirements of the Coordinator position if she had. The Hearing Examiner can find no evidence of an adverse action with respect to this allegation.

In her post-hearing brief the Complainant asserts that Langlois failed to report three attacks on her person or possession and believes that Langlois may have been responsible for two of the incidents. The three incidents are: a threat made by a custodian against the Complainant and Bent with a drill; a fire set to possessions in the Complainant's car and an allegedly threatening note left on the Complainant's windshield.

With respect to the "drill" incident, the Complainant must be mistaken. The evidence in the record establishes that this incident occurred at the end of 1998. It or its reporting could not have had anything to do with retaliation.

The incident of the fire set in the Complainant's car occurred in August of 1999. At the time of the incident, Langlois seems to have been of help to the Complainant. He stood with her and helped the police to determine what had happened. The police had to ask Langlois to give them the opportunity to interview the Complainant. At no time did the Complainant tell the police that she suspected Langlois to have had any connection with the fire. The only person identified by the Complainant as a possible suspect was the custodian responsible for the drill incident in 1998.

It is acknowledged that Langlois did not report the fire incident to Lockett or to the Respondent's headquarters. Langlois was later reprimanded by Lockett for this failure. Langlois testified that since the police had been called and were investigating the incident that he need not further report it. It is also agreed that he had asked/directed the Complainant to file an Incident Report. That was apparently not done.

At hearing, the Complainant testified that she believed Langlois had something to do with the fire. If Langlois had actually set the fire, it would clearly support the Complainant's claim of retaliation. However there is no evidence at all of Langlois' involvement. The best one can say is that perhaps Langlois' assistance provided to the Complainant at the time somehow was an effort to mask his involvement. The Hearing Examiner will not entertain any speculation along this line absent some corroborative evidence. There is no such evidence in this record.

The final incident involves a note including a pager number left on the Complainant's windshield. There is nothing in the record to demonstrate that the note itself contained any credible threat made against the Complainant or even to whom the pager number belonged. Though the Complainant believes that Langlois was responsible for the note, there is no evidence at all of his involvement. Langlois was later reprimanded by Lockett for his (Langlois) failure to report this incident too.

To the extent that the Complainant truly believes that Langlois had some involvement in either incident, it is a reflection of the deterioration in the Complainant's confidence in Langlois and the Respondent engendered by the March 5, 1999 incident and the Respondent's investigation and response. However, there is nothing in the record to convince the Hearing Examiner that Langlois or anyone else connected with the Respondent had anything to do with the car fire or the note left on the Complainant's windshield.

There is one additional incident presented by the Complainant as demonstrating retaliation on the part of Langlois and the Respondent. At hearing, Lockett indicated that he looked into an allegation that Langlois had referred to the clients as "monkeys" or "apes" in a meeting of the staff. This is not an incident ever reported by the Complainant at any time during this process. Lockett was unable to identify when the incident had allegedly occurred. When Lockett looked into the incident, Langlois denied it. Lockett did not believe Langlois' denial. The problem with including this as part of the Complainant's complaint is that there is no point of reference for its occurrence and no way to determine whether it represents a misstatement of an earlier incident or an entirely new and previously undisclosed one. As such, the Hearing Examiner cannot find that it forms the basis of any discrimination or retaliation.

At hearing, Lockett testified that he believed Langlois to have retaliated against the Complainant in one specific manner. Subsequent to the Complainant's leaving on her medical leave, Langlois was upset and contended that she had left her files in a mess and her office in shambles. It is not clear how this outburst might be retaliatory or how it adversely affected the Complainant since she was already on leave.

The final issue to be resolved by the Hearing Examiner is how the Complainant may be made whole for the Respondent’s act of discrimination or retaliation. The Ordinance requires the Commission to adopt a “make whole” remedy should it find a violation of the Ordinance. This “make whole” remedy is intended to return the Complainant to the condition in which she would find herself had the Respondent’s discrimination not occurred.

The Hearing Examiner first turns to the issue of back pay. The Complainant requests a complete award of back pay from October 8, 1999 to the present. Her back pay would be reduced by those wages or other employment remuneration that she has received since receiving her last pay from the Respondent. Unfortunately, the record does not support the Complainant’s request.

The first question arises from whether the Complainant’s medical leave, commencing on October 8, 1999, was required as a result of a violation of the Ordinance by the Respondent. The Respondent has all along denied any violation of the Ordinance that might lead to any award of damages. Specifically, the Respondent notes that the reasons given for the Complainant’s medical leave by the Complainant herself are mostly related to actions outside of the control of the Respondent. The Respondent also argues that to the extent that the Complainant’s medical leave was triggered in part by the March 5, 1999 incident, that it is unreasonable for the Complainant to have taken six (6) months to decide that she needed to be on leave. While the Hearing Examiner agrees that the lapse of time from March 25 (the triggering date for the Respondent’s retaliation in the view of the Hearing Examiner) until the Complainant’s taking of medical leave on October 8, 1999, is lengthy, the record supports the conclusion that the leave was appropriate. The Respondent’s action in retaliating against the Complainant created a workplace where the Complainant continued to feel uncomfortable and doubted each action of her co-workers and her supervisor. This unrest exacerbated existing medical conditions that came to a head with the incidents of August and September 1999. Though it is clear to the Hearing Examiner that the Respondent was not to blame in any way for those incidents, the Complainant’s reaction to them was entirely foreseeable as a result of the Respondent’s retaliatory or discriminatory conduct in March of 1999. The accumulation of stress and tension resulted in the Complainant’s need for medical leave.

The next question for the Hearing Examiner is whether the Complainant’s employment with the Respondent terminated as a result of the Complainant’s conduct on February 17, 2000, or whether she involuntarily terminated her employment through a constructive discharge on April 21, 2000. On this record, the Hearing Examiner must conclude that the Complainant’s own conduct resulted in her termination by the Respondent on February 17, 2000.

The Complainant denies having any knowledge of the Respondent’s requests, even demands, for medical information in January and February of 2000. The record is clear that the Respondent communicated these needs to the Complainant’s then attorney, Jason Studinsky. Whether Studinsky relayed those requests or demands to the Complainant is not clear on this record. However, to the extent that Studinsky was representing the Complainant and was apparently engaged in settlement negotiations on her behalf, he was

acting as her agent. The Complainant cannot simply wash her hands of her responsibilities by employment of an attorney to act on her behalf.

The Respondent reasonably wished to fill the Complainant's position if she was unwilling or unable to return to employment with the Respondent. The clear ultimatum, along with a rational explanation for its need, was reasonable on the Respondent's part. When the Complainant failed to respond in any meaningful way to the Respondent's legitimate request for either documentation of her need for continuing medical leave or her ability to return, it took the reasonable action of terminating the Complainant's employment.

The Complainant could have returned as of February 17, 2000. It is suggested in the record by the notes in the Complainant's medical record that she had decided to work in connection with her husband's office and with her husband's indication that he was willing to enter into a contract with the Respondent whereby the Complainant would reassume her duties and pay once Langlois had left. The Complainant's contention that Thomas Wex had extended her leave and ultimately recorded that she not return to employment with the Respondent runs contrary to other credible evidence in the record.

This fixes the Respondent's liability for back pay from the period October 8 to February 17, 2000. The Complainant, while in the employ of the Respondent, was paid approximately twenty-five thousand dollars ($25,000) per year or two thousand and eighty-four dollars ($2,084) per month. The period of time for which the Complainant was not being paid by the Respondent was slightly over four (4) months and one (1) week. The Hearing Examiner took that period of time for the Complainant's back pay times twenty thousand eighty-four dollars ($20,084) to arrive at the same amount indicated in the order.

On this record, given the Hearing Examiner's reasoning, the issue of mitigation does not arise. A failure to mitigate damages must be raised by the Respondent. The Respondent does not present any information or evidence that the Complainant was able to return to work or failed to return to work appropriately during the period from October 8, 1999 through February or March of 2000. Accordingly, the Hearing Examiner makes no findings with respect to this matter.

In order to make the Complainant whole, the Complainant must receive prejudgment interest on the wages to which she is otherwise entitled. She has done without the ability to use those funds during the intervening period and prejudgment interest would return her to her economic position as it would have been absent the Respondent's discrimination/retaliation.

The Hearing Examiner now turns to the issue of emotional distress damages. Awards in connection with such injuries are always somewhat speculative. However, it is well-recognized that the finder of fact has some latitude and discretion in fashioning such an award. While the Hearing Examiner is convinced that for some period of time, the Complainant's emotional injuries were intense, he is not convinced that the record indicates that they were particularly long lasting or solely attributable to the actions of the Respondent. As the Respondent notes in its brief and reply briefs, much of the subject of the Complainant's nightmares involve flashbacks to the drill incident and the fire set in the Complainant's car. Neither of these incidents can be attributed to the Respondent. While the Respondent's callous disregard of the Complainant's complaints of March 8 and March 23, and the unfeeling way in which the Respondent resolved the Complainant's complaint created an atmosphere of suspicion for the Complainant at the DRC, it appears that once removed from the employment setting, she was able to recover her emotional stability fairly quickly. Had she been the emotional basket case described in the Complainant's briefs, it seems unlikely that her husband would have offered her services as part of a contract proposal in early December of 1999. Similarly, by mid-February, the Complainant was already making plans to join her husband in his office's work and not to seek employment elsewhere.

The Commission's largest award of emotional distress damages was in the case of Leatherberry v. GTE Directory Sales Company, MEOC Case No. No. 21124 (Comm. Dec. 4/14/93, Ex. Dec. 1/5/93). There, the Commission awarded the Complainant twenty-five thousand dollars ($25,000) for her emotional distress. In that case, the Complainant had been the recipient of specific racial and ethnic slurs from her supervisor and had a promising career in a large corporation eliminated by abuse of at least two (2) corporate managers. While the Complainant in that case did not present the same type of medical evidence presented in the current case, the Complainant's testimony was corroborated by her husband and others. Here, the Complainant's testimony, though adequate to some degree to establish a claim for damages, stands as uncorroborated. Without some additional corroboration, the Hearing Examiner might be viewed as impermissibly speculating instead of exercising his reasonable discretion.

The Hearing Examiner believes that the level of distress and medical intervention needed by the Complainant appears closer to that of the Complainant in Laitainen-Schultz v. The Laser Center, MEOC Case No. 19982001 (Ex. Dec. 7/1/2003). Both needed some attention for their symptoms, but did not necessarily experience the same level of loss as did the Complainant in Leatherberry.

There is no question that the Complainant is entitled to the payment of her costs and fees incurred in connection with bringing this matter. It is longstanding case law that a prevailing Complainant is entitled to payment of their reasonable costs and fees, including a reasonable attorney's fee in order to assist with making them whole. As the Ordinance, along with most civil rights statutes, provides for a private attorney general theory to assure enforcement of the Ordinance, not to award a prevailing Complainant her costs and fees would actually deprive the Complainant of the benefits of her enforcement activity.

Signed and dated this 25th day of January, 2006.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell III
Hearing Examiner