

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota by Dolores Fridge,  
Commissioner, Department of Human  
Rights,

Complainant,

**AWARD OF LITIGATION COSTS  
AND ATTORNEY'S FEES**

v.

Schult Homes Corporation,

Respondent.

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on April 8-9, 1998, in Redwood Falls, Minnesota. Richard L. Varco, Jr., Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Complainant, the State of Minnesota by Dolores Fridge, Commissioner, Department of Human Rights. Frederick E. Finch and Mary L. Galvin, Attorneys at Law, Bassford, Lockhart, Truesdell & Briggs, P.A., 3550 Multifoods Tower, 33 South Sixth Street, Minneapolis, Minnesota 55402-3787, appeared on behalf of the Respondent, Schult Homes Corporation.

On October 9, 1998, a decision was issued in the above case in which the Administrative Law Judge found that the Respondent had discriminated against the Charging Party, Susan Anderson, in her employment and awarded damages for violation of the Minnesota Human Rights Act. As part of the Order, the Administrative Law Judge determined that it was appropriate to award costs and reasonable attorney's fees. Because those issues were not addressed in the Posthearing Briefs, counsel for the Complainant was permitted 30 days to file a petition for reimbursement of litigation and hearing costs and attorney's fees and expenses. The Respondent was given an opportunity to respond to the Complainant's petition within 20 calendar days of his receipt of the petition.

On November 11, 1998, the Judge granted Complainant's request for an extension of time in which to submit its petition for attorney's fees and litigation and hearing costs. The Complainant filed its Petition for Litigation Costs and Attorney's Fees on November 23, 1998. The Respondent filed an Affidavit and Brief Opposing Petition for Attorney's Fees on December 14, 1998. The Complainant filed a letter in response to Respondent's Brief on December 16, 1998, whereupon the record with respect to the litigation and hearing costs and attorney's fees issue closed.

## STATEMENT OF ISSUES

The following issues are presented:

1. whether the costs submitted on behalf of the Complainant are reasonable and properly taxable to the Respondent;
2. whether the attorney's fees submitted on behalf of Complainant are reasonable; and
3. what, if any, amount of litigation costs should be awarded.

Based upon all of the files, records, and arguments of counsel, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. On or about February 9, 1994, Ms. Anderson filed a charge of sex discrimination against Schult Homes Corporation with the Department of Human Rights ("Department").
2. On or about April 19, 1996, Ms. Anderson amended her claim to add a charge of disability discrimination.
3. On or about August 16, 1996, the Department of Human Rights made a finding that there was probable cause to believe Ms. Anderson's allegations that Respondent had engaged in an unfair discriminatory practice.
4. On January 28, 1997, the Commissioner of Human Rights through counsel participated in a settlement conference and thereafter engaged in settlement negotiations.
5. On October 3, 1997, the Complainant filed a Notice of and Order for Hearing and Complaint in this matter, thereby commencing this contested case proceeding.
6. A hearing on this matter took place on April 8 and 9, 1998, in Redwood Falls, Minnesota. The parties were both represented by counsel at the hearing.
7. On October 9, 1998, the Administrative Law Judge issued Findings of Fact, Conclusions, and Initial Order finding that the Respondent had discriminated against the Charging Party on the basis of perceived disability in violation of the Minnesota Human Rights Act. The Judge ordered Respondent to pay the Charging Party \$25,414 as compensatory damages (with prejudgment interest on lost wages in the amount of \$12,707 from July 12, 1993), \$5,000 as damages for mental anguish and suffering, and \$5,000 as punitive damages. The Judge also ordered Respondent to cease and desist from further discriminatory practices, prepare and distribute an appropriate written equal employment opportunity policy for inclusion in its employee

handbook, develop and distribute to its employees understandable written policies and procedures that effectuate that policy, train supervisors and department managers to respond properly to employees with disabilities and requests for accommodations made by employees, and pay a civil penalty of \$10,000 to the State of Minnesota. Finally, the Judge indicated in her Initial Order that Complainant's reasonable attorney's fees and litigation and hearing costs would be awarded and set forth a time period for the submission of a petition and response by counsel concerning these amounts.

8. Respondent has made no attempt to show that the amounts to be awarded in this proceeding will result in financial hardship or that Schult Homes Corporation is financially unable to pay any of these costs.

9. On November 23, 1998, Complainant filed a Petition for Litigation Costs and Attorney's Fees. Respondent filed an Affidavit and a Brief Opposing the Petition for Attorneys' Fees on December 14, 1998. Complainant filed a letter response to the Respondent's submission on December 16, 1998.

10. Complainant has requested attorney's fees totaling \$11,831.00, disbursement expenses totaling \$134.70, deposition costs in the amount of \$909.10, litigation and hearing fees totaling \$26,964.92 (through October 31, 1998), which includes travel and transcript costs of \$1,473.62 and charges for OAH services in the amount of \$25,491.30. Complainant has submitted copies of invoices reflecting these costs. In addition, the Complainant seeks recovery of the costs of the services of the OAH in connection with the consideration of the present petition for litigation costs and attorney's fees.

11. The Complainant has submitted an affidavit and invoice from Ms. Anderson's private attorney (Kurt Johnson) regarding his attorney fees and expenses incurred. The invoice demonstrates that Mr. Johnson expended 106.85 attorney hours on representation of Ms. Anderson since being retained in December of 1993. Mr. Johnson's hourly rate rose from \$100 in 1993 to \$120 in 1998. Included in Mr. Johnson's disbursement expenses are charges for photocopying, postage and mileage. The Complainant has not sought reimbursement for the cost of the attorney's fees charged to it by the Office of the Attorney General.

12. During the period from January 31, 1998, to October 31, 1998, the Office of Administrative Hearings billed costs of \$25,491.30 to the Department of Human Rights with respect to the time that was spent on this case by the two Administrative Law Judges that were assigned to the case, Supervisory Administrative Law Judges, and a staff attorney. During that same period of time, the OAH billed costs of \$1,473.62 to the Department for the cost of preparing a hearing transcript and travel expenses associated with the case. Additional charges to be billed to the Department of Human Rights by the Office of Administrative Hearings for time spent by the Administrative Law Judge and a staff attorney on the petition for attorney's fees and litigation costs in this case during the period from November 1, 1998, through January 15, 1999, total \$1,572.10. Accordingly, the total costs for OAH services are \$28,537.02.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS OF LAW

1. Minn. Stat. § 363.071, subd. 7, requires that the Judge order a respondent who has engaged in unfair discriminatory practices to reimburse the Minnesota Department of Human Rights for “all appropriate litigation and hearing costs expended”. It is appropriate to require the Respondent to reimburse the Department of Human Rights for litigation and hearing costs in the total amount of \$28,537.02.

2. Although Minn. Stat. § 363.071, subd. 2, does not expressly authorize an award of costs to the Complainant; the Minnesota Human Rights Act does provide for an award of costs to the prevailing party in a District Court action (see Minn. Stat. § 363.14, subd. 3). It is appropriate to reimburse the Complainant for costs and disbursements incurred in this proceeding, in the total amount of \$1,043.80 (\$909.10 + \$134.70). These charges are reasonable and are properly taxable to the Respondent.

3. Minn. Stat. § 363.071, subd. 2, provides that “the administrative law judge may . . . order the respondent to pay an aggrieved party who has suffered discrimination . . . reasonable attorney’s fees.” In the Initial Order issued by the Administrative Law Judge, the Charging Party was determined to have suffered discrimination. The Complainant is appropriately considered a “prevailing party” having prevailed on the merits of all issues and obtaining damages in the amount of \$35,414 for the Charging Party and a \$10,000 civil penalty for the State.

4. The hours claimed by Complainant for Charging Party’s private attorney’s fees have been carefully scrutinized. It is the determination of the Judge that 2.9 hours expended by Ms. Anderson’s attorney have not been shown to be reasonable. Therefore, it is appropriate to reduce the total amount of attorney’s fees requested by Complainant by 2.9 hours and award Complainant attorney’s fees based on 103.95 hours of attorney time. The fees awarded for Mr. Johnson’s time shall be calculated based on his hourly rate of \$100.00 for work performed before January 1, 1994; \$105.00 for work performed after January 1, 1994, and before January 1, 1997; \$115 for work performed after January 1, 1997, and before January 1, 1998; and \$120 for work performed after January 1, 1998. These rates are reasonable given the experience and performance of Mr. Johnson in this matter. Accordingly, the Complainant’s request for attorney’s fees is granted in the total amount of \$11,523.50. This amount reflects a reasonable number of hours of attorney time expended at a reasonable rate to represent Ms. Anderson in this matter.

5. These Conclusions are made for the reasons set forth in the attached Memorandum which is hereby incorporated in and made a part of these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

## ORDER

IT IS HEREBY ORDERED as follows:

1. The Respondent shall pay jointly to Susan Anderson and Kurt Johnson within 30 days of the date of this Order the amount of \$11,523.50 for reasonable attorney's fees and \$134.70 for disbursements,
2. The Respondent shall pay the Commissioner of Human Rights within 30 days of the date of this Order the amount of \$28,537.02 for litigation and hearing costs and the amount of \$909.10 for deposition costs in this matter.
3. This Order is effective immediately.

Dated this 15th day of January, 1999.

---

BARBARA L. NEILSON  
Administrative Law Judge

## NOTICE

Pursuant to Minn. Stat. § 363.071, subd. 2, this Order is the final decision in this case and, under Minn. Stat. § 363.072, any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 through 14.69.

## MEMORANDUM

### Attorney's Fees

Minn. Stat. § 363.071, subd. 1a (1996) authorizes the Administrative Law Judge to award "reasonable attorney's fees." Minnesota courts have generally followed case law developed under Title VII of the Civil Rights Act of 1964, as amended, in interpreting the attorney's fee provisions of the Minnesota Human Rights Act. For example, the Minnesota Supreme Court noted in Anderson v. Hunter, Keith, Marshall & Co.<sup>[1]</sup>

Because Minn. Stat. § 363.14, subd. 3 (1986), allowing a successful plaintiff in a discrimination case such as this to recover attorney fees is "virtually identical" to similar provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Secs. 2000a-3(b), in reviewing attorney fees awards, we have followed federal law. See, e.g., Sigurdson v. Isanti County, 386 N.W.2d 715, 722 (Minn. 1986).

The Court went on to point out that Hensley v. Eckerhart, 461 U.S. 424 (1983), is "[t]he seminal case addressing the analysis to be employed in awarding attorney fees under federal statutes."<sup>[2]</sup> It thus is appropriate to look to Hensley and other federal case law as guidance when assessing the proper amount of a fee award under the Minnesota Human Rights Act.

The Hensley decision requires, as a first step, that a "lodestar" figure be calculated by multiplying the hours reasonably expended in the matter by the

reasonable hourly rate. The Supreme Court in Hensley and later decisions has approved consideration of a twelve-factor checklist in arriving at a reasonable and proper award of attorney's fees.<sup>[3]</sup> These factors are as follows:

1. the time and labor required;
2. the novelty and difficulty of the questions;
3. the skill requisite to perform the legal services properly;
4. the preclusion of other employment by the attorney due to the acceptance of the case;
5. the customary fee;
6. whether the fee is fixed or contingent;
7. time limitations imposed by the client or the circumstances;
8. the amount involved and the results obtained;
9. the experience, reputation, and ability of the attorneys;
10. the "undesirability" of the case;
11. the nature and length of the professional relationship with the client; and
12. awards in similar cases.

The leading case discussing these factors is Johnson v. Georgia Highway Express, Inc.<sup>[4]</sup> In the past, courts calculated a lodestar figure and then considered these factors to adjust the figure so that it would be reasonable under the circumstances. Supreme Court pronouncements on the subject, however, "caution courts to take many of these factors into consideration when establishing the lodestar figure itself, and to award enhancements or reductions to the lodestar in only the exceptional case."<sup>[5]</sup>

Complainant seeks attorney's fees in the amount of \$11,831.00 based on an expenditure of 106.85 attorney hours at a median rate of \$110.00 per hour. A review of Mr. Johnson's affidavit and the time records attached as exhibits to Complainant's Petition, reveal that Mr. Johnson spent the majority of the total hours he billed in this matter counseling his client, drafting and filing her claim with the Department of Human Rights, drafting correspondence, conducting telephone conference calls with his client, staff at the Department of Human Rights, the Assistant Attorney General, and counsel for the Respondent, drafting answers to the Department's request for information, performing legal research, reviewing medical reports, preparing for and attending mediation, engaging in settlement negotiations, calculating damages and conducting periodic reviews of the file.

Respondent argues that Complainant's request for Attorney Johnson's fees should be denied or reduced by at least 50% because of the lack of specificity in the submitted time records. Respondent contends that vague entries such as "reviewing documents" are insufficient to establish the reasonableness of the fees requested. In particular, Respondent objects to Attorney Johnson's seven "periodic file review" entries between September 1994 and October 1997 totaling 4.5 hours of attorney time. According to Respondent, there is no indication as to what Attorney Johnson did during these time periods and consequently no showing that the time spent was reasonable. Similarly, Respondent argues that Attorney Johnson's entries of "reviewing correspondence" should be rejected because the entries "fail to indicate which correspondence is being reviewed."

After reviewing the time records and affidavit submitted by Attorney Johnson, the Judge does not find the seven "periodic file review" entries cited by Respondent to be so lacking in specificity as to render the 4.5 hours billed unreasonable. While each of these entries does list "periodic file review" in the description of the services rendered, each entry also lists other services rendered such as "correspondence to client," "correspondence to Department of Human Rights," or "correspondence to the Attorney General's Office." The Judge does not find it unreasonable for an attorney, over the course of three years, to review a client's file and draft correspondence on seven separate occasions. Moreover, on average, each disputed entry amounted to approximately 40 minutes of time.

With respect to Attorney Johnson's numerous entries of "review correspondence" and "reviewing documents," it is the determination of the Judge that 2.9 hours expended under these categories lacked sufficient description of the services rendered to establish the reasonableness of the time claimed. Specifically, these entries are dated 2/6/94, 2/17/94, 3/18/94, 9/12/95, 1/23/96 and 6/17/97. These entries do not appear to be related to any other service rendered. Consequently, without any more information, the Judge finds the 2.9 hours spent reviewing documents were not reasonably expended. Therefore, the total attorney's fees for which Complainant seeks reimbursement shall be reduced by \$307.50. This figure was arrived at by multiplying the specific time entry determined to be unreasonable by Attorney Johnson's hourly rate for that year.

Apart from the 2.9 hours mentioned above, the Judge finds Attorney Johnson's hours expended and hourly rate charged to be reasonable. Mr. Johnson adequately represented Ms. Anderson while this matter was pending before the Department of Human Rights. The issue of Ms. Anderson's perceived disability was rather novel and Mr. Johnson was successful in obtaining from the Department a finding of probable cause that Respondent had engaged in an unfair discriminatory practice.

In Houghton v. SIPCO, Inc.,<sup>[6]</sup> the court held that the prevailing plaintiffs in an age discrimination case were entitled to attorneys' fees for time spent before the EEOC and the Iowa Civil Rights Commission. Citing Reichman v. Bonsignore, Brignati & Mazzotta, P.C.,<sup>[7]</sup> the court reasoned that, where plaintiffs were required to give administrative proceedings a chance before commencing an action in federal court, the time spent

before the administrative agencies should be compensable.<sup>[8]</sup> While there is no requirement under the Minnesota Human Rights Act that a complaining party pursue administrative remedies, once a complaining party chooses to do so the party must follow the specific procedural requirements of Minn. Stat. §§ 363.06 - 363.071. These requirements include filing a written charge with the Commissioner and waiting at least 180 days before requesting a contested case hearing before an Administrative Law Judge.<sup>[9]</sup> The time spent presenting a charge to the Department of Human Rights is for all practical purposes a prerequisite to obtaining a contested case hearing. Therefore, the Administrative Law Judge finds that Complainant should be compensated for reasonable attorney's hours expended while this matter was pending before the Department of Human Rights.

The Judge has considered the relevant factors discussed above in arriving at a reasonable award of attorney's fees in this case.<sup>[10]</sup> Mr. Johnson was admitted to practice in the State of Minnesota in October of 1983. Mr. Johnson's hourly rates are reasonable and consistent with the rates charged by other attorneys of comparable skill and experience in the New Ulm area.<sup>[11]</sup> Ms. Anderson's discrimination claim based on perceived disability involved unusual factual and legal issues and Mr. Johnson obtained a favorable finding of probable cause from the Department. Adequate representation of a client in a case arising under the Human Rights Act requires litigation skills as well as familiarity with a large body of state and federal rules, guidelines, statutes and case law. The Judge finds that Mr. Johnson adequately represented Ms. Anderson while this matter was pending before the Department of Human Rights and up until the time Assistant Attorney General Varco took over the matter for the contested case hearing. Therefore, based upon the applicable factors set forth above, the Administrative Law Judge concludes that the amount of \$11,523.50 constitutes reasonable attorney's fees in this matter based on 103.95 hours of attorney time.

### Costs

As mentioned in the Conclusions of Law above, there is no express authorization contained in the Minnesota Human Rights Act for an award of costs in an Administrative Procedure Act proceeding. The statute does authorize such an award to prevailing parties in District Courts. In light of the similarities between the Executive Branch and Judicial Branch processes in human rights cases, Office of Administrative Hearings decisions have concluded that such an award is appropriate in instances in which a complainant is represented by a private attorney.<sup>[12]</sup>

The Complainant should not be penalized for requesting an Executive Branch hearing rather than bringing suit in District Court. The nature of the action in District Court is identical to the proceeding before an Administrative Law Judge, and the Legislature must have intended that the same types of award could be made in both. Accordingly, the Judge has concluded that it is appropriate to allow an award of costs and disbursements in this proceeding. The Respondent has not raised any challenge to the particular costs and disbursements sought by Complainant. The costs and disbursements consist of \$909.10 for deposition transcript charges and \$134.70 for photocopying, postage and mileage costs. The Administrative Law Judge concludes

that the costs and disbursements sought in this matter are reasonable and justified under the circumstances of the case.<sup>[13]</sup>

### Litigation and Hearing Costs of the Department of Human Rights

Pursuant to Minn. Stat. § 363.071, subd. 7 (1996), the Administrative Law Judge must order a Respondent who is determined to have engaged in an unfair discriminatory practice to reimburse the Department of Human Rights for all appropriate litigation and hearing costs, unless payment of the costs would impose a financial hardship on the Respondent. This provision defines appropriate costs to include the cost of services rendered by “administrative law judges, court reporters . . . as well as the costs of transcripts and other necessary supplies and materials.” Respondent has not asserted that the costs to be awarded in this proceeding will result in financial hardship. As of the date of this Order, litigation and hearing costs either charged or to be charged to the Department of Human Rights by the Office of Administrative Hearings for this matter amount to \$28,537.02. This overall total includes the amount of \$1,473.62 for transcript preparation costs charged by the court reporter and travel expenses of the Administrative Law Judge; \$25,491.30 for OAH services provided during the period of January 1998-October 1998; and \$1,572.10 for OAH services provided since November 1, 1998, in connection with the present petition for attorney’s fees and litigation costs. The Respondent did not specifically object to the costs associated with the preparation of the transcript or the travel costs, and these costs are found to be reasonable costs. Travel expenses were incurred because the hearing was held in Redwood Falls, near the Charging Party’s home and the business location of the Respondent. The Complainant’s request for a transcript was reasonable in light of the divergent testimony of the witnesses and the need to render accurate findings of fact in this matter, and the cost charged for transcript preparation was reasonable.

The Respondent argues that the Department’s claim for fees and litigation costs must be denied or reduced. The Respondent contends that the hearing costs are unreasonable in light of the length of the hearing and the size of the Charging Party’s award.<sup>[14]</sup> In addition, the Respondent maintains that Assistant Attorney General Varco’s affidavit testimony indicating that the attached invoices from the Office of Administrative Hearings reflect the amount billed to the Department for hearing services is inadmissible hearsay and must not be considered.

As an initial matter, the Administrative Law Judge takes administrative notice of the billing procedures of the Office of Administrative Hearings.<sup>[15]</sup> In addition, Minnesota Rules 1400.7300, subp. 1, allows the admission of hearsay “if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs.” As the OAH and the Department customarily rely on these invoices in managing their financial affairs, the Judge will consider the OAH invoices in determining the appropriate amount of litigation hearing costs.

As of October 31, 1998, the hearing costs in this matter totaled \$25,491.30 plus travel and transcript expenses of \$1,473.62. The vast majority of the time billed by the Office of Administrative Hearings reflected time spent by the Administrative Law Judge

and the staff attorney in conducting legal research and preparing the Findings of Fact, Conclusions, and Initial Order in this matter. Although the hearing lasted only two days, the case presented several novel and complex issues of fact and law. It was necessary to address in the Initial Order two motions to dismiss that were brought by the Respondent at the close of the Complainant's case and taken under advisement by the Administrative Law Judge. The first motion was based on the Department's delay in issuing its finding of probable cause (under the reasoning of State v. RSJ<sup>[16]</sup>), and the second was based on the exclusivity provision of the Minnesota Workers' Compensation Act (under the reasoning of Karst v. F.C. Hayer Co.<sup>[17]</sup>). Both of these motions required significant research and analysis, outside of the parameters of what the parties submitted, in order to properly consider and address the issues raised. In addition, Ms. Anderson's claim that she was discriminated against while a probationary employee based upon a perceived disability, and the issues raised with respect to the elements necessary to establish a prima facie case, were novel with little Minnesota case law on point. The witness testimony was at odds with respect to the major events, and it was necessary to analyze and resolve these differences. It was also necessary to extensively revise and expand the proposed findings of fact submitted by counsel. The complex factual and legal issues presented by this case required an unusual amount of legal research and analysis on the part of the Administrative Law Judge assigned to the case and a staff attorney assisting her. The culmination of this research and analysis, including resort to EEOC interpretive guidelines for possible instruction, is reflected in the Administrative Law Judge's Initial Order, which is 44 pages long and contains 72 findings of fact.

As mentioned above, Respondent further argues that the hearing fees are unreasonably high in light of the size of the award recovered by Ms. Anderson. Several courts have approved attorney's fee awards that approach or exceed the award obtained by the plaintiff. For example, a Wisconsin district court<sup>[18]</sup> has approved attorney's fees of \$38,345 where the client was awarded only \$5,580.65; the Minnesota Supreme Court<sup>[19]</sup> has determined that an award of \$60,000 in attorney's fees, which was only a few hundred dollars less than the plaintiff's recovery, was not unreasonable (but remanded the case for more specific findings); and the Minnesota Court of Appeals<sup>[20]</sup> has approved attorney's fees in the amount of \$18,527.50 where the client was only awarded \$12,000. The Judge finds these holdings to be analogous to and instructive on the issue of hearing fees, and concludes that the amount recovered by the Charging Party in this matter does not render the hearing fees unreasonable. As the Minnesota Court of Appeals noted in Giuliani, "[I]n light of the complexity of these cases, often involving modest damages, it is not surprising nor particularly material that the attorney fees in this case exceed the amount of damages awarded."<sup>[21]</sup> The additional fees of \$1,572.10 to be billed for the time of the Administrative Law Judge and a staff attorney in connection with consideration of the petition for attorney's fees and litigation costs are also found to be reasonable. After consideration of all the circumstances, therefore, the Administrative Law Judge finds the litigation and hearing costs associated with this matter to be reasonable.

B.L.N.

<sup>[1]</sup> 417 N.W.2d 619, 628 (Minn. 1988).

<sup>[2]</sup> *Anderson*, 417 N.W.2d at 628.

<sup>[3]</sup> See, e.g., *Pennsylvania v. Delaware Valley Citizen's Council for Clean Air*, 483 U.S. 711, 714-17 (1987); *Blum v. Stenson*, 465 U.S. 886, 897 (1984); *Hensley*, 461 U.S. at 434.

<sup>[4]</sup> 488 F.2d 714, 717-19 (5th Cir. 1974). *Accord City of Minnetonka v. Carlson*, 298 N.W.2d 763, 766-67 (Minn. 1980) (decided prior to *Hensley*; sets forth nine factors corresponding in large part to those discussed in Johnson).

<sup>[5]</sup> 5 A. Larson & L. Larson, *Employment Discrimination* § 97.10 at 97-66 (Matthew Bender 1998).

<sup>[6]</sup> 828 F.Supp. 631, 649 (S.D. Iowa 1993).

<sup>[7]</sup> 818 F.2d 278, 282 (2nd Cir. 1987).

<sup>[8]</sup> 828 F. Supp. at 649.

<sup>[9]</sup> Minn. Stat. § 363.071, subd. 1a.

<sup>[10]</sup> Several of the factors were not deemed relevant in this case, such as the preclusion of other employment by the attorney due to the acceptance of the case and the nature and length of the professional relationship with the client.

<sup>[11]</sup> Affidavit of John Rodenberg, Attorney at Law.

<sup>[12]</sup> See, e.g., Findings of Fact, Conclusions of Law and Order and Award of Attorney's Fees in *Tracey Schelin v. PGI Companies, Inc.*, 3-1700-8948-2 (Sept. 21, 1995); and Findings of Fact, Conclusions of Law and Order and Award of Attorney's Fees in *Karen Vovk v. Tom Thumb Food Markets, Inc.*, 11-1700-4595-2 (Nov. 4, 1991), *aff'd in unpub. decision*, No. C6-91-2377 (1992 WL 174729) (Minn. App. 1992).

<sup>[13]</sup> See *Green-Glo Turf Farms, Inc., v. State*, 347 N.W.2d 491, 495 (Minn. 1984); *Romain v. Pebble Creek Partners*, 310 N.W.2d 118, 123-24 (Minn. 1981) (allowing costs of depositions as disbursements).

<sup>[14]</sup> In its brief, the Respondent miscalculated the amount of the award to the Charging Party under the Initial Order issued by the Administrative Law Judge. That award totaled \$35,414 plus the amount of prejudgment interest on lost wages of \$12,707 from July 12, 1993. As mentioned above, the State of Minnesota also received a civil penalty of \$10,000 under the Initial Order.

<sup>[15]</sup> See Minn. Rules 1400.8100, subp. 2.

<sup>[16]</sup> 552 N.W.2d 695 (Minn. 1996).

<sup>[17]</sup> 447 N.W.2d 180 (Minn. 1989).

<sup>[18]</sup> *EEOC v. Accurate Mechanical Contractors*, 863 F. Supp. 828 (E.D. Wis. 1994).

<sup>[19]</sup> *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619 (Minn. 1988).

<sup>[20]</sup> *Giuliani v. Stuart Corp.*, 512 N.W.2d 589, 596-97 (Minn. App. 1994).

[\[21\]](#) 512 N.W.2d at 596.