

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

Saundra M. Spigner,

Complainant,

v.

County of Hennepin,

Respondent.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

The above-entitled matter came on for hearing before Administrative Law Judge (ALJ) Phyllis A. Reha on July 15-19, and 23, and August 1, and 6-8, 1996 at the Office of Administrative Hearings, 100 Washington Square, Minneapolis, Minnesota, 55401. The record closed on September 18, 1996, upon receipt of the parties' post-hearing memoranda and proposed findings of fact.

Sonja Dunnwald Peterson, Esq., Horton and Associates, 4930 West 77th Street, Suite 210, Minneapolis, Minnesota 55435-4804, appeared on behalf of Saundra Spigner ("Complainant").

Cheri Sudit, Assistant Hennepin County Attorney, A-2000 Government Center, Minneapolis, Minnesota 55487, appeared on behalf of Hennepin County ("Respondent").

NOTICE

Pursuant to Minn. Stat. § 363.071, subd. 2 and 3, this Order is the final decision in this case and under Minn. Stat. § 363.072, the Commissioner of the Department of Human Rights or any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.69.

STATEMENT OF ISSUES

1. Whether Respondent, in violation of Minn. Stat. § 363.03, subd. 1(2), discriminated against Complainant on the basis of race or sex in the area of employment.

2. Whether Complainant is entitled to damages or other relief pursuant to Minn. Stat. § 363.071, subd. 2.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

### FINDINGS OF FACT

1. Complainant, Sandra Spigner, is an African American woman residing in Minnesota. Hennepin County is a political subdivision located in Minnesota. Spigner worked for Respondent Hennepin County as a misdemeanor probation officer in its Ridgedale facility in Minnetonka, Minnesota from March of 1992 to April of 1995. Spigner was the only African American female probation officer at the Ridgedale facility. The other three full-time misdemeanor probation officers at Ridgedale who worked with Ms. Spigner were Alan Slacter, Norman Harris and Don Razskazoff. Mr. Slacter, Mr. Harris and Mr. Razskazoff are all Caucasian males.

2. Prior to becoming a misdemeanor probation officer, Ms. Spigner worked as a social worker at the Hennepin County Workhouse. As a social worker, Ms. Spigner provided case management, resource referral and counseling services to inmates at the Workhouse. Ex. 78; Testimony of Spigner (p. 15).

3. Donald Pafko was Respondent's Corrections Unit Supervisor for Ridgedale, Brookdale, and Southdale, from the fall of 1991 and throughout Ms. Spigner's employment at Ridgedale. Mr. Pafko also supervised misdemeanor probation officers located in Minneapolis. Mr. Pafko is a Caucasian male. As Corrections Unit Supervisor, Mr. Pafko had supervisory authority over all probation officers in the suburban divisions, including granting training requests, vacations and other leaves, and otherwise directing the work of the probation officers. Mr. Pafko has been employed by Hennepin County since 1963. Ex. 104; Testimony of Pafko.

4. Mr. Pafko's office is located in the Hennepin County Government Center in Minneapolis. Between 1992 and 1995, Pafko visited each suburban division approximately once every one to two weeks. Pafko spent anywhere from an hour to the entire day during his visits to the suburban divisions. Mr. Pafko's direct supervisor is Corrections Division Manager Joe Heinz. Since at least 1992, Pafko has had monthly meetings with Heinz. Pafko keeps Heinz informed as to any issues, complaints or problems involving the suburban probation divisions. At Heinz's request, Pafko copies Heinz on memos he sends to the probation officers he supervises. Ex. 107; Testimony of Pafko, Harris, Slacter and Heinz.

5. Mr. Pafko's personnel file includes a performance review issued on May 11, 1987 when Pafko was a Court Services Supervisor at the Hennepin County Home School. The narrative of the performance review written by Pafko's supervisor at the time describes Pafko as "protective" toward his female staff and prone to "problematic interactions" requiring Pafko's "continual awareness and corrective attention". Ex. 91, at 24-25.

6. Sometime in February or March of 1992, Ms. Spigner met Mr. Pafko for the first time in his office prior to commencing her employment at Ridgedale. During the course of their meeting, Mr. Pafko explained to Ms. Spigner that the pace at the Ridgedale office was hectic, particularly in the mornings. Mr. Pafko told Ms. Spigner that she would not be able to go to lunch or take coffee breaks until the court's morning session was finished. Testimony of Spigner and Pafko.

7. Between 1992 and 1995, there was no formal training set up for newly hired misdemeanor probation officers at the suburban divisions. Rather, misdemeanor probation officers were trained in on the job. Ms. Spigner received the same amount of training for her position that other misdemeanor probation officers hired by Mr. Pafko received. Ms. Spigner's training consisted of observing Kathy Vader, the probation officer Spigner was replacing, for about one week. After one week, Ms. Spigner was given her own caseload. Testimony of Spigner, Harris, Pafko and Meitz.

8. Sam Meade, a Brookdale misdemeanor probation officer hired at the same time as Ms. Spigner, received approximately one and a half weeks of training before receiving his own caseload. Like Ms. Spigner, Mr. Meade's training consisted of spending a week observing other probation officers. Mr. Meade also received a day and a half of computer training. Testimony of Meade.

9. Felony probation officers were required to complete 40 hours of training a year. Due to the hectic nature of their work and lack of control over their schedule, the suburban misdemeanor probation officers were exempted from the 40 hours of training requirement. Court demands on the suburban probation offices made it extremely difficult for suburban probation officers to leave the office to attend training sessions. While training was encouraged, suburban probation officers were not reprimanded if they failed to meet the 40 hours. Mr. Pafko told Ms. Spigner that she was exempt from the 40 hours of mandatory training and this exemption was reflected in at least one of Ms. Spigner's performance appraisals. Ex. 100A, p.2; Testimony of Spigner p. 418, Pafko, Harris and Meitz.

10. Pafko arranged for training sessions to take place at the suburban division offices on days when court was not in session, such as "Revo Mondays". Revo Monday was a designated Monday each month when Hennepin County District Court judges handled their probation revocation cases at the downtown courthouse. On Revo Mondays court would not be in session at the suburban offices. Ex. R-18; Testimony of Pafko and Spigner.

11. In order to receive credit for training sessions, probation officers were required to turn in reporting slips to Mr. Pafko. At the training sessions he arranged, Mr. Pafko would hand out reporting slips to the attending probation officers or remind the probation officers to turn in their reporting slips. Reporting slip forms were kept at the various suburban division offices including the Ridgedale office. Monthly training reports were generated on the basis of these reporting slips. Testimony of Pafko, Harris, Bokn and Zenner.

12. It is unknown exactly how much training Ms. Spigner actually received during her three years at the Ridgedale office because Ms. Spigner did not turn in her

reporting slips to Mr. Pafko after she attended training sessions. Testimony of Spigner, pp. 298-304.

13. The computer-generated listing of training hours completed by Ms. Spigner is not a complete or accurate list. Ex. 69.

14. The Ridgedale office had a system of assigning cases by rotation. When a case was referred to the office by one of the judges on duty, a support staff person would assign the case to the next probation officer on rotation. A referral sheet with the probation officer's initials would be placed with the file to notify the probation officer of the case assigned. The rotation of cases insured that each probation officer handled an equal number of cases. Testimony of Spigner, Hays and Pafko.

15. It was the policy of the Ridgedale office that each of the four full-time probation officers would have one afternoon off rotation a week. The probation officer would not be assigned a case during his or her scheduled afternoon off. The purpose of this policy was to allow the probation officers time to catch up on processing paperwork and writing presentence investigation reports. Testimony of Spigner, Harris and Slacter.

16. Sometime in March or April of 1992, Mr. Pafko denied Ms. Spigner's request to attend a three day conference entitled "Blacks in Criminal Justice". Testimony of Spigner.

17. On May 4, 1992, Ms. Spigner wrote Mr. Pafko a memo requesting that he reconsider his denial of her request to attend the Blacks in Criminal Justice conference. Ms. Spigner was at the time the Treasurer of the National Blacks in Criminal Justice organization. Prior to Mr. Pafko issuing a decision regarding her request for reconsideration, Ms. Spigner obtained permission to attend the three day conference from Mr. Sig Fine, Director of Correctional Institutions. Ex. 101, p. 82; Testimony of Spigner and Pafko.

18. For approximately three weeks in August of 1992, Ms. Spigner's 20 year old daughter Jessica came to work with her in the morning. On the first day that Ms. Spigner's daughter accompanied her to work, she spent about a half day in the extra office/copier room making telephone calls in an attempt to find a job. After the first day, Ms. Spigner's daughter spent approximately forty-five minutes each morning waiting in the extra room at the Ridgedale office until her shift began at a retail store at the Ridgedale shopping center. After about three weeks, Ms. Spigner's daughter stopped coming with her to work because she arranged for a ride to her job with Dial-a-Ride. Testimony of Sandra Spigner, Jessica Spigner, Harris and Slacter.

19. On occasion, other family members of the Ridgedale probation officers stopped by to visit or to go to lunch. Testimony of Spigner, Slacter, Razskazoff and Harris.

20. Mr. Harris complained to Mr. Pafko about the amount of time Ms. Spigner's daughter was spending at the Ridgedale office. Mr. Harris told Mr. Pafko that Ms. Spigner's daughter was at the office every day for long periods of time and that she was using the extra office and telephone. Mr. Pafko told Ms. Spigner, that her daughter was not allowed to go past the "employees only" sign outside the reception area of the office. Testimony of Spigner, Slacter, Harris and Pafko.

21. On August 31, 1992, Spigner asked Pafko if she could take one week off of work to train in on writing felony presentence investigation reports with an experienced felony probation officer in the downtown location. Mr. Pafko denied Spigner's request. No other misdemeanor probation officer under Mr. Pafko's supervision was granted one week off work to train in on writing felony presentence investigation reports. Ex. 4; Testimony of Spigner and Pafko.

22. In September of 1992, Alan Slacter yelled at Ms. Spigner after she brought a case to his office on his scheduled afternoon off. Mr. Slacter shouted "I'm tired of this shit! Get the hell out of my office!" It was uncharacteristic for Mr. Slacter to raise his voice at work. Testimony of Spigner, Razskazoff and Slacter.

23. Spigner reported Slacter's behavior to Pafko shortly after it happened. Pafko discussed the matter with Slacter and with Heinz. Pafko decided not discipline Slacter or issue any memo to Slacter advising him to cease his offensive conduct. Pafko discussed his decision with Spigner. Pafko told Ms. Spigner that Slacter regretted how he behaved. Pafko also explained that Slacter had received some upsetting personal news that day. Ms. Spigner indicated that Slacter's explanation "wasn't good enough" and informed Pafko that she was unhappy with his resolution of the incident. As a result, Pafko set up a meeting between himself, Ms. Spigner and Mr. Heinz to further discuss Ms. Spigner's issues. At this meeting, Mr. Pafko suggested that Ms. Spigner consider transferring out of the Ridgedale office to another division. Ms. Spigner did not want to transfer out of Ridgedale. Mr. Heinz asked Ms. Spigner what specifically she would like to see happen. Ms. Spigner replied that Slacter could at least apologize for his behavior. Slacter eventually apologized to Ms. Spigner approximately three weeks after the incident. Testimony of Spigner pp. 62-66 and 330-337, Slacter and Pafko.

24. On September 19, 1992, Mr. Pafko reviewed Ms. Spigner's performance and recommended that she pass probation, thereby ensuring her a permanent position as a probation officer. Ex. 100A, pp. 8-10.

25. In October of 1992, Ms. Spigner received training in writing felony presentence investigation reports. Ex. 4; Testimony of Spigner p. 304, and Heinz.

26. In 1993, Norm Harris accused Spigner of not coming to work on time. In fact, Spigner had gotten to work on time that day. Spigner was away from her office faxing a document when Mr. Harris noticed her absent. When Ms. Spigner attempted to explain her whereabouts, Mr. Harris said he did not believe her. Spigner reported this incident to Pafko. Pafko did not discipline Harris for the incident. Testimony of Spigner pp. 81-83, Harris and Pafko.

27. In April of 1993, Gloria Dunleavy was hired as a part-time misdemeanor probation officer for Hennepin County. Ms. Dunleavy was initially hired to fill in at the various suburban divisions on an as needed basis. Sometime in September of 1994, Ms. Dunleavy began working permanently at the downtown Minneapolis office as a part-time probation officer. Ms. Dunleavy resigned in October of 1994 to take a full-time probation officer position with another county. Testimony of Dunleavy, pp. 8-9.

28. On May 12, 1993, Bonny Hays began working at the Ridgedale probation office as an Office Specialist III. This position provided clerical and support staff services to the misdemeanor probation officers at the Ridgedale division. Ex. 101, pp. 54, 57-59; Testimony of Hays.

29. On May 13, 1993, Mr. Pafko received a memo from Bonny Hays' supervisor Debra Mueller. In the memo, Ms. Mueller described several incidences that took place between Ms. Spigner and Ms. Hays on May 12, 1993. Specifically, Ms. Mueller accused Ms. Spigner of interrupting Ms. Hays while she was on the telephone with clients; tossing files directly on Ms. Hays' desk instead of in her designated "in basket"; and confronting Ms. Hays in front of clients about computer "screens" she had not printed out. In addition, Ms. Mueller stated that after Spigner confronted Hays about the computer screens, Spigner called Mueller and talked to her about the lack of computer screens for approximately 45 minutes. Exs. 101, p. 54, R-10 and R-11; Testimony of Spigner and Pafko.

30. On May 24, 1993, Pafko sent a memo to Spigner directing her to "treat Ms. Hays and the other clerical staff as fellow professionals, and with dignity and respect" and to cease the behavior she was accused of immediately. Pafko did not interview Ms. Spigner about the incident prior to issuing his memo. Ex. 21; Testimony of Pafko and Spigner.

31. On May 28, 1993, Spigner sent a memo to Pafko disputing Hays' allegations. Ex. 22. Spigner also asked Pafko for a "fair investigation" in regard to Hays' allegations. Spigner then brought a union grievance regarding Pafko's memo and his alleged failure to fairly investigate the accusations. The union grievance was later dropped by agreement of all the parties. Sig Fine directed Pafko to destroy the memo he sent to Spigner regarding the Hays incident. Pafko maintained a copy of his memo in his own personnel file on Spigner. Testimony of Spigner and Pafko.

32. On August 26, 1993, Mr. Pafko sent a memo to Joe Heinz requesting that Ms. Spigner be reassigned from the Ridgedale division to another probation division. Ex. 101, p. 38.

33. On or about October 29, 1993, Spigner accidentally telephoned Mr. Harris when trying to reach Mr. Razskazoff. When Harris answered, Spigner indicated that she was trying to reach Razskazoff. Harris identified himself and hung up the telephone. Spigner again telephoned Harris and again asked for Razskazoff. Mr. Harris hung up the telephone. Spigner reported this incident to Pafko and requested that Pafko inform Harris that if his "abusive behavior" towards her continues, she will file harassment charges against him. Ex. 31. Pafko interviewed Harris about the incident and discussed the matter with Heinz. Pafko did not discipline Harris or issue a memo to him directing him to change his behavior. Ex. 31 and 101 pp. 4-5; Testimony of Spigner, Harris and Pafko.

34. In November of 1993 Spigner asked Pafko if she could interview a client outside the office at the Ramsey County Workhouse. Pafko denied Spigner's request. Pafko told Spigner that interviews outside the office were against office policy and were not allowed. The policy was based in part on safety concerns and in part on the need to

keep the office fully staffed to serve the court. Ex. 79; Testimony of Spigner pp. 34-42 and Pafko.

35. On September 22, 1993, Spigner received a copy of a letter of commendation that then Hennepin County District Court Judge Michael Davis wrote to Michael Cuniff, Director of Community Corrections, about Ms. Spigner. Mr. Pafko was also copied on this letter. Ex. 28.

36. On December 2, 1993, Spigner received a copy of a letter of commendation that Hennepin County District Court Judge Dolores Orey wrote to Mr. Cuniff about Ms. Spigner. Judge Orey requested that Mr. Cuniff send a copy of her letter to Ms. Spigner's supervisor. Ex. 35.

37. The letters of commendation Spigner received from the two Hennepin County District Court judges were noted in Ms. Spigner's subsequent employee performance appraisal completed on September 30, 1994 for the period covering 9/19/93 to 9/17/94. Ex. 100A, p. 3.

38. On December 1, 1993, Pafko issued a memo to all suburban division probation officers, ordering them to remove televisions from their offices. Ex. 33. Spigner had a small combination television/radio device in her office. Spigner was the only probation officer that Pafko knew had a television in her office. The memo did not mention Spigner by name. Ex. 33; Testimony of Spigner and Pafko.

39. On December 9, 1993, Spigner sent a memo to Pafko requesting that his policy against televisions be applied uniformly to all "non-business items" such as stereos and novels. Ex. 34.

40. On December 15, 1993, Pafko sent a memo to the four full-time probation officers at the Southdale division office notifying them of a letter of commendation he received from a Louann Merriam of Cornerstone Advocacy Service praising the four probation officers for the work they do on domestic assault cases. Pafko placed a copy of his memo and Ms. Merriam's letter in each of the Southdale probation officers' personnel file and sent copies to Sig Fine and Joe Heinz. The four probation officers were later presented with a plaque in recognition of their good work from Cornerstone. Ex. 83, p.8; Testimony of Bokn and Pafko.

41. In Norm Harris' 1993 performance appraisal, Mr. Pafko wrote comments praising Harris for his professionalism in dealing with the stressful environment at the Ridgedale office. Although he did not mention her by name, Mr. Pafko referred to Ms. Spigner as being the source of the stress. Mr. Pafko further described Ms. Spigner as lacking "professionalism", "initiative" and "commitment". Ex. 88, p. 3.

42. Sometime in 1993, Mr. Pafko criticized in open court a recommendation Spigner made regarding a felony sentencing. Pafko told the judge that Spigner's recommendation was "wrong" and that he did not agree with it. Pafko also stated that Spigner was new and implied that Spigner did not know what she was doing. Because of Pafko's comments, the plea was continued to a later date. It is not clear whether Pafko referred to Spigner by name when he made these comments. Testimony of Andre Morant and Pafko.

43. Sometime in 1993, Don Razskazoff asked Pafko if he could interview a client at the Brookdale office. Pafko granted Mr. Razskazoff's request because Razskazoff was scheduled to be at Brookdale for a meeting on the day of the proposed interview and Brookdale was a more convenient location for the client. Testimony of Razskazoff and Pafko.

44. In January of 1994, Pafko met with the misdemeanor probation officers of the various suburban divisions and informed them that he would need assistance approximately once a month in Minneapolis on the felony "Fast Track Property Calendar". This property calendar lasted from approximately January through October, 1994. Pafko suggested that the probation officers set up a rotation system to determine which officer would go downtown and when. The probation officers rejected this idea and requested that Pafko set up a system of assigning probation officers to assist him. Accordingly, Pafko assigned a probation officer to the property calendar duty by calling up the senior probation officer at the suburban division offices and requesting a volunteer. Alan Slacter was the senior probation officer at the Ridgedale office. Testimony of Pafko, Slacter, and Harris.

45. Alan Slacter worked on the property calendar approximately three times. Norm Harris worked on the property calendar two or three times. Saundra Spigner and Don Razskazoff each worked on the property calendar one time. Mr. Pafko never asked Ms. Spigner to assist him on the property calendar. Ms. Spigner was assigned to the property calendar by Gary Meitz while Pafko was on vacation. However, Ms. Spigner never told Mr. Slacter that she would like to volunteer to assist Pafko on the property calendar. Nor does Spigner remember ever discussing with Mr. Pafko her desire to assist him on the property calendar. Testimony of Spigner pp. 274-275, Razskazoff, Slacter, Harris and Pafko.

46. On or about January 26, 1994, Norm Harris asked Razskazoff to take a case for him because Harris thought he might have to leave work early. When Spigner became aware that Razskazoff was taking a case for Harris, she suggested that she take the case since she was the next probation officer in the rotation. Razskazoff agreed and gave the case to Spigner. Minutes later, Harris approached Spigner and told her that he did not want her to take his case. Harris took the case back and informed Bonny Hays that he did not want Spigner to take his cases because he did not want to owe her anything. Harris also posted a note on Spigner's door which stated: "I appreciate you taking the case. It was not necessary, I was still here. Please do not do it again if you can see I am still here. Thank you, Norm." Ex. 39. Spigner reported this incident to Pafko in a memo dated January 28, 1994. Pafko interviewed Harris about the incident and requested Razskazoff and Hays submit written memos regarding their knowledge of the incident. Pafko also discussed the matter with Heinz. Pafko did not discipline Harris or issue a memo to him directing him to change his behavior. Testimony of Spigner, Harris, Hays and Pafko. Ex.s 38, 41 and 101 pp. 108-110.

47. In February and March of 1994, two meetings were held with Joe Heinz, Don Pafko and all the probation officers at Ridgedale to try and resolve the conflicts and diffuse the tension in the office. Ex. 101, p. 107; Testimony of Spigner, Pafko, Slacter, Harris, Razskazoff and Heinz.

48. In March of 1994, Spigner asked Pafko if she could interview a client outside the office at Brookdale. Pafko denied her request. Pafko told Spigner that interviews outside the office are against office policy and are not allowed. Testimony of Spigner pp. 34-42, and Pafko.

49. In April of 1994, Pafko rejected Spigner's request to attend a training conference on jail programs and services. Pafko did not feel the sessions were relevant to Ms. Spigner's duties, except for the training on government data practices issues. Ex. 45; Testimony of Pafko and Spigner.

50. In June of 1994, Georgia Sushoreba started part-time employment as a probation officer at the Ridgedale office.

51. On July 27, 1994, Spigner filed a discrimination charge against Hennepin County with the Department of Human Rights. Ms. Spigner alleged that she was not receiving the same training opportunities as her co-workers; that she was not being allowed to interview clients outside of the office while all of her white male co-workers were allowed to leave the office to interview; and that her complaints of harassment by co-workers were not being appropriately addressed. Ex. 79.

52. In the Hennepin County Employee Handbook employees are notified that they have a right to file a complaint with the Human Resources Department if they feel that they have been treated unfairly due to sex or race. Ex. 108. Ms. Spigner never filed a complaint with the Human Resources Department of Hennepin County.

53. In August of 1994, Ms. Spigner brought her new puppy into the office on her day off work to show Mr. Razskazoff and Ms. Hays. While Spigner was in Razskazoff's office with the puppy, Razskazoff barked at the puppy. Alan Slacter, whose office adjoins Mr. Razskazoff, was interviewing a client during this time. Mr. Slacter found the barking to be distracting and unprofessional. Mr. Slacter complained about the barking to Pafko. Testimony of Spigner, Razskazoff and Slacter.

54. On August 19, 1994, Pafko sent a memo to all suburban division probation officers informing them that pets are not permitted in the office. Neither Ms. Spigner nor Mr. Razskazoff were mentioned by name in the memo. Ex. 47.

55. On September 1, 1994, Hennepin County responded to Ms. Spigner's discrimination charge in a letter to the Department of Human Rights. Ex. 101, p. 85.

56. In each of the four employee performance appraisals covering her employment at the Ridgedale office from 1992-1994, Ms. Spigner was given overall ratings by Mr. Pafko of "fully capable". Ex. 100A.

57. In four employee performance appraisals covering time periods from 1993-1995, Mr. Razskazoff was given overall ratings by Mr. Pafko of "fully capable". Ex. 92A.

58. In one employee performance appraisal covering the year 1992, Mr. Harris was given an overall rating by Mr. Pafko of "fully capable". In subsequent years, Mr. Harris received overall ratings by Mr. Pafko of "highly competent". Ex. 88.

59. In late November or early December 1994, Nancy Zenner started working part-time as a probation officer at Ridgedale. Ms. Zenner's hours of employment were 9:00 a.m. to 1:00 p.m. Prior to joining the Ridgedale division, Ms. Zenner worked for

approximately five months as a part-time misdemeanor probation officer in the downtown Minneapolis office. Ms. Zenner's training as a probation officer consisted of following an experienced probation officer around for one week. After one week, Ms. Zenner was given her own caseload. Unlike the full-time misdemeanor probation officers, Ms. Zenner was free to attend training seminars after 1:00 p.m. On occasion Mr. Pafko approved requests from Ms. Zenner to attend training sessions during her working hours. Testimony of Zenner.

60. On or about January 10, 1995, Bonny Hays told Ms. Spigner that she (Ms. Spigner) had called a client out of turn and that a different client was next. Ms. Hays made this statement in front of clients in the reception area. Ms. Spigner ignored Ms. Hays and directed the client she had originally called to follow her back to her office. Ms. Hays repeated to Ms. Spigner that she had the wrong case. Two days later, Ms. Spigner met with Mr. Pafko and complained about Ms. Hays' behavior. Ms. Spigner summarized her complaint against Ms. Hays in a memo to Pafko dated January 12, 1995. Mr. Pafko interviewed Ms. Hays regarding Ms. Spigner's complaint and discussed the matter with Mr. Heinz. Mr. Pafko did not discipline Ms. Hays. Exs. R-22, 50, 101, p. 142; Testimony of Spigner, Hays and Pafko.

61. On February 6, 1995, Pafko issued a memo to all suburban division probation officers directing them to check with support staff if they have a question regarding which case is up next in the rotation. Ex. 57 and R-26.

62. In February of 1995, Ms. Spigner attended a mandatory Rule 25 training regarding chemical dependency assessment of clients. Bonny Hays, on her own initiative, registered Ms. Spigner for the class. Testimony of Spigner and Hays.

63. In April of 1995, Spigner was reassigned from the Ridgedale division to the downtown Minneapolis facility. Ms. Spigner was placed under the supervision of William Calder. Testimony of Spigner and Pafko.

64. In Alan Slacter's 1995 performance appraisal, Mr. Pafko commented on Mr. Slacter's ability to work productively despite the "disruptive efforts", "negativity", and "antagonism and hostility" of a "particular employee" at the Ridgedale office. Although Mr. Pafko did not mention the particular employee by name, he was referring to Ms. Spigner. Ex. 95, pp. 6-7.

65. On April 11, 1995, Ms. Spigner filed with the Department of Human Rights a Request for Hearing. Ex. 101, p. 121.

66. Sometime in April of 1995, felony probation officer Janice Blackman introduced Ms. Spigner to Evelyn Donovan. Ms. Donovan was at the time a Case Aide in the adult investigations division of the downtown Minneapolis office. During the course of their conversation Ms. Donovan commented generally that she believed Don Pafko to be a racist. Testimony of Spigner and Blackman.

67. On April 21, 1995, Mr. Pafko recommended that Ms. Spigner be promoted to Senior Probation Officer. Ms. Spigner received a raise in pay when she received her promotion. Ex. R-30: Testimony of Calder.

68. On May 3, 1995, the Department of Human Rights referred Ms. Spigner's discrimination charge to the Office of Administrative Hearings for a contested case hearing. Ex. 101, p. 120.

69. On August 11, 1995, Ms. Spigner complained to Mr. Calder that she felt uncomfortable working on the same floor with Mr. Pafko and that Mr. Pafko was giving her "funny looks". Ex. 113.

70. On August 17, 1995, Chief Administrative Law Judge Kevin Johnson served the parties with a Notice of and Order for Hearing.

71. On September 18, 1995, Mr. Calder met with Ms. Spigner and Mr. Heinz regarding Ms. Spigner's concerns about what she perceived to be harassing conduct on the part of Mr. Pafko. Mr. Heinz requested that Ms. Spigner put her concerns in writing. Ex. 113; Testimony of Spigner and Heinz.

72. On September 26, 1995, Ms. Spigner sent a memo to Mr. William Calder summarizing Mr. Pafko's alleged harassing conduct. Specifically, Ms. Spigner complained that Mr. Pafko stares at her from his office atrium window and that Mr. Pafko "smirks" at her "from time to time". Ex. 63.

73. Partly in response to Ms. Spigner's complaint, Mr. Heinz relocated Mr. Pafko's office from the third floor to the 11th floor of the Hennepin County Government Center. Testimony of Heinz.

74. A hearing on this matter was held on July 15-19, and 23, and August 1, and 6-8, 1996.

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

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#### CONCLUSIONS OF LAW

1. The Administrative Law Judge has the authority to consider the issues raised by Complainant's discrimination charges under Minn. Stat. §§ 363.071, subds. 1 and 2, and 14.50.

2. Proper notice of the hearing was timely given and all relevant substantive and procedural requirements of statutes and rules have been fulfilled.

3. The Respondent is an "employer" as defined in Minn. Stat. § 363.01, subd. 17. Complainant is an "employee" as defined in Minn. Stat. § 363.01, subd. 16.

4. Pursuant to Minn. Stat. § 363.03, subd. 1(2)(c), it is an unlawful employment practice for an employer to discriminate against a person because of sex and/or race, with respect to the terms, conditions or privileges of employment.

5. Complainant is an African American woman. Therefore she belongs to two protected classes under the Minnesota Human Rights Act.

6. The three-step analysis established in McDonnell-Douglas v. Green, 411 U.S. 792 (1973) applies to sex and race discrimination under the Minnesota Human Rights Act. Hubbard v. United Press Int'l, Inc., 330 N.W.2d 428 (Minn. 1983). Using this analysis, the Complainant has the burden to establish a prima facie case of discrimination. If the Complainant establishes a prima facie case, a presumption is created that the employer unlawfully discriminated against her and the burden shifts to the Respondent to articulate some legitimate, nondiscriminatory reason for its actions. If the Respondent meets this burden, the Complainant must show by a preponderance of the evidence that the Respondent's reasons for its actions were merely a pretext for discrimination. Sigurdson v. Isanti County, 386 N.W.2d 715, 720 (Minn. 1986).

7. The ultimate burden of persuading the trier of fact that the Respondent engaged in intentional discrimination remains at all times with the Complainant. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 113 S.Ct. 2742 (1993); Greiner v. City of Champlin, 816 F. Supp. 528 (D. Minn. 1983).

8. In order to establish a prima facie case of discrimination, the Complainant must show that: (1) she is a member of a protected class; (2) she sought and was qualified for opportunities her employer made available to others; (3) despite her qualifications, she was denied opportunities or was subjected to other adverse employment actions; and (4) after denial, the opportunities remained available or were given to other persons with her qualifications but not of her protected class. See, Sigurdson v. Isanti County, 386 N.W.2d 715, 720 (Minn. 1986).

9. Complainant has failed to demonstrate that unlike her co-workers she was denied employment opportunities or subjected to adverse employment action. Therefore, Complainant has failed to establish a prima facie case of disparate treatment discrimination on the basis of race and/or gender.

10. Even if Complainant had presented a prima facie case of disparate treatment discrimination, Respondent has articulated legitimate nondiscriminatory reasons for its employment actions. Complainant has failed to show, by a preponderance of the evidence, that Respondent's reasons are a pretext for race and/or sex discrimination.

#### ORDER

IT IS HEREBY ORDERED:

1. That judgment be entered in favor of Respondent.
2. That Ms. Spigner's complaint be dismissed in its entirety and with prejudice.

Dated this \_\_\_ day of October, 1996.

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PHYLLIS A. REHA  
Administrative Law Judge

Reported: Taped and partially transcribed (27 tapes).

### NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

### MEMORANDUM

Complainant Sandra Spigner brought this action against her employer, Hennepin County, alleging she was subjected to race and gender based disparate treatment discrimination in violation of the Minnesota Human Rights Act, Minn. Stat. § 363.03, subd. 1(2). Ms. Spigner is an African-American woman who has been employed by Hennepin County as a probation officer from March of 1992 to the present. From March of 1992 to April of 1995, Ms. Spigner worked as a misdemeanor probation officer at the Ridgedale office. The other three full-time misdemeanor probation officers at Ridgedale who worked with Ms. Spigner were Alan Slacter, Norm Harris and Donald Razskazoff. Mr. Slacter, Mr. Harris and Mr. Razskazoff are all Caucasian males. Complainant alleges that she was treated differently than her co-workers and denied opportunities that were made available to them on the basis of her race and/or gender.

Specifically, Complainant alleges that her supervisor Donald Pafko subjected her to harassment; failed to take timely and appropriate action to remedy co-worker harassment; denied her training and other employment related opportunities; and defamed her reputation. Respondent maintains that Complainant's allegations of harassment do not rise to the level of actionable claims; that Hennepin County acted timely and investigated each of Complainant's harassment allegations; that Complainant was not denied opportunities afforded other probation officers at Ridgedale; and that Complainant has presented no direct evidence that Mr. Pafko disparaged Complainant's reputation or that anyone treated her differently as a result of any comments made by Mr. Pafko.

The Minnesota Human Rights Act prohibits employers from discriminating with respect to terms or conditions of employment on the basis of race or gender. Minn. Stat. § 363.03, subd. 1(2)(c). For indirect discrimination claims, Minnesota has adopted the three-part test articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817 (1973). Under this test, once the Complainant establishes a prima facie case, a presumption is created that the employer unlawfully discriminated against her and the burden shifts to the Respondent to articulate some legitimate, nondiscriminatory reason for its actions. If the Respondent meets this burden, the Complainant must show by a preponderance of the evidence that the Respondent's reasons for its actions were merely a pretext for discrimination. See, Sigurdson v. Isanti County, 386 N.W.2d 715, 719-21 (Minn. 1986). The ultimate burden of persuading the trier of fact that the Respondent engaged in intentional discrimination remains at all times with the

Complainant. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 113 S.Ct. 2742 (1993); Greiner v. City of Champlin, 816 F. Supp. 528 (D. Minn. 1983).

In order to establish a prima facie case of discrimination, the Complainant must show that: (1) she is a member of a protected class; (2) she sought and was qualified for opportunities her employer made available to others; (3) despite her qualifications, she was denied opportunities or was subjected to other adverse employment actions; and (4) after denial, the opportunities remained available or were given to other persons with her qualifications but not of her protected class. Sigurdson, 386 N.W.2d at 720 (Minn. 1986). Complainant has established the first two elements of a prima facie case of sex and/or race discrimination. Complainant is an African-American woman and she is therefore a member of two protected classes. In addition, Complainant has established that she is qualified for her position as a probation officer.

Complainant maintains, in support of the third element of her prima facie case, that she was denied opportunities and subjected to disparate treatment due to her race and/or gender. Complainant alleges the following as examples of the disparate treatment she received: (1) she was denied a variety of opportunities that were afforded her co-workers, such as the right to perform client interviews outside the office, the opportunity to appear for court duty on the property calendar, and training opportunities; (2) she was denied prompt recognition of letters of commendation from judges unlike male probation officers at the Southdale division; (3) she was subjected to co-worker harassment and was not afforded timely and appropriate remedial responses to the harassment; and (4) she was subjected to unfair, derogatory comments by Mr. Pafko whereas the male probation officers were not.

#### Denial of Training/Orientation Opportunities

Complainant maintains that when she was hired, she was denied six to eight weeks of orientation and training offered to other misdemeanor probation officers hired at the same time. In support of her claim, Complainant specifically testified that Sam Meade, a Brookdale misdemeanor probation officer hired at the same time she was, received six to eight weeks of training before being assigned his own caseload. (Spigner Testimony p. 210.) However, contrary to Complainant's claim, Mr. Meade testified that like Ms. Spigner his orientation consisted of following a probation officer around for about one week before getting his own caseload. Likewise, Nancy Zenner, who was hired in 1993 as a misdemeanor probation officer, testified that her orientation consisted only of observing a probation officer for about one week prior to receiving her own caseload. In addition, testimony from Mr. Slacter, Mr. Harris, Mr. Meitz and Mr. Pafko further supported Respondent's claim that there was no formal orientation set up at the suburban division offices between 1992 and 1995. Rather, newly hired misdemeanor probation officers were trained in on the job. After considering all of the testimony and evidence relevant to this claim, the ALJ finds that Complainant has failed to establish that she received different treatment with respect to her orientation to her new position.

Complainant also alleges that throughout her three years at Ridgedale Mr. Pafko denied her requests for training resulting in her being unable to make the goal of 40 hours of training per year while other male co-workers were able to obtain 40 hours of

training per year. However, the evidence presented at the hearing demonstrated that suburban misdemeanor probation officers are exempt from the mandatory 40 hours of training per year that felony probation officers are required to obtain. Ms. Spigner admitted that she was informed by Mr. Pafko that she was exempt from the 40 hours of training requirement. Ms. Spigner's exemption from the 40 hours training requirement was also noted on at least one of Ms. Spigner's performance evaluations. Moreover, the testimony established that Mr. Pafko arranged for training sessions for the misdemeanor probation officers he supervised at times or on days when court was not in session at the suburban division offices, such as "Revo Mondays". In addition to the training sessions arranged by Pafko, the evidence established that unlike her co-workers, Ms. Spigner was allowed to attend felony presentence investigation training during normal work hours and Ms. Spigner was allowed to attend a three day conference in May of 1992.

In support of her claim that she received less training than her co-workers, Complainant submitted a computer generated report of her completed training hours as Ex. 69. However, Ms. Spigner admitted that she failed to turn in the reporting slips required in order to obtain credit for training received. As a result, the listing of Ms. Spigner's completed training hours submitted as Ex. 69 does not accurately reflect the actual hours of training Ms. Spigner received. For example, Ms. Spigner admitted under cross-examination that she attended a two day cultural diversity training in August of 1994 and that training is not reflected on Ex. 69. Accordingly, the ALJ is unable to determine how much training Ms. Spigner received during her three years at Ridgedale as compared to her co-workers. While Mr. Pafko did deny some of Ms. Spigner's training requests, the evidence established that Ms. Spigner received other training opportunities not afforded to her co-workers. Therefore, the ALJ finds that Complainant has failed to demonstrate that she was subjected to disparate treatment with respect to training opportunities.

#### Assisting with Property Calendar

Complainant alleges that Respondent, through Pafko, denied her opportunities to appear in court on the felony property calendar. The testimony at the hearing demonstrated that Complainant was treated no differently than her co-worker Mr. Razskazoff in that she assisted on the Minneapolis property calendar one time. In addition, the testimony further established that Mr. Pafko initially suggested at a suburban unit meeting that probation officers be assigned to assist him with the property calendar on a rotation basis. This suggestion was rejected by the probation officers at the meeting. Accordingly, Pafko called the lead probation officers at the different divisions and requested volunteers. Ms. Spigner admitted that she never told Mr. Slacter, the lead probation officer at the Ridgedale office, that she wanted to assist on the property calendar. Ms. Spigner also testified that she doesn't remember telling Mr. Pafko that she wanted to assist on the property calendar. Given this testimony and the fact that Ms. Spigner appeared on the property calendar as often as her co-worker Mr. Razskazoff, the ALJ finds that Complainant has failed to establish that she was treated differently with respect to the opportunity to appear in court on the felony property calendar.

### Interviewing Clients Outside the Office

Complainant also claims that, unlike her co-workers, she was denied the opportunity to interview clients outside of the office. The evidence at the hearing established that Complainant twice requested to interview clients outside the office. On both occasions, Mr. Pafko denied her requests as against office policy. It is not completely clear why Complainant views interviewing clients outside of the office to be an “opportunity”. Nevertheless, the testimony demonstrated that on only one occasion in the three years that Complainant worked as a misdemeanor probation officer at the Ridgedale division did Pafko deviate from his stated office policy and allow a misdemeanor probation officer to interview a client outside of the office. That occasion was in 1993, when Mr. Pafko allowed Mr. Razskazoff to interview a client at the Brookdale office. Mr. Pafko testified that he approved Razskazoff’s request to interview at Brookdale because Razskazoff was going to be at Brookdale for a meeting on the day of the proposed interview. In addition, Brookdale was a more convenient location for the client. While different probation officers testified that they were allowed to interview clients outside the office on felony matters, no misdemeanor probation officer except Razskazoff was ever allowed to interview clients outside the office during the three years Ms. Spigner worked at Ridgedale. Because felony probation officers have more control over their schedule and are not at the mercy of the court’s immediate demands, they can arrange outside interviews and be absent from their offices. However, misdemeanor probation officers serve the court on an as-needed basis and are not able to leave their office until court sessions are completed. Pafko’s rationale that allowing misdemeanor probation officers to conduct interviews outside the office would short staff the suburban divisions is reasonable. The ALJ finds that Complainant has failed to establish that she was treated differently than her co-workers with respect to conducting interviews of clients outside of the office.

### Harassment by Co-workers and Lack of Remedial Action

Complainant maintains that she was harassed by fellow misdemeanor probation officers Mr. Slacter and Mr. Harris. Complainant does not claim that Slacter’s and Harris’ harassment of her was based on race or sex. (The alleged incidents of harassment are more thoroughly described in Findings of Facts Nos. 22, 26, 33, and 46.) Rather, Complainant contends that Respondent’s and Pafko’s failure to take timely and appropriate action in response to the “harassment” was discriminatory. Complainant maintains that since she received a disciplinary memo in response to Ms. Hays’ and Ms. Mueller’s complaint about her (Finding of Fact No. 27), Respondent’s lack of disciplinary memos in response to her complaints reflects disparate treatment.

Contrary to Complainant’s assertion, the record adequately demonstrates that Mr. Pafko investigated each of Ms. Spigner’s complaints and discussed each complaint with his immediate supervisor Mr. Joe Heinz. The fact that neither Mr. Harris nor Mr. Slacter were ever disciplined or issued memos directing them to cease their behavior does not support Ms. Spigner’s claim that the incidents were not investigated or addressed. Rather, based on the facts of each of Ms. Spigner’s harassment charges, Mr. Pafko and Mr. Heinz made reasonable determinations that the complaints did not warrant discipline and remedial action was not appropriate. For example, the evidence

presented concerning the September 1992 incident where Mr. Slacter yelled at Ms. Spigner clearly demonstrated that Respondent timely investigated Ms. Spigner's complaint, listened to Ms. Spigner's concerns, and took appropriate responsive action. In that instance, Mr. Slacter yelled at Ms. Spigner "I'm tired of this shit! Get the hell out of my office!" after Ms. Spigner brought a case to him on his afternoon off. Ms. Spigner complained to Mr. Pafko, and Mr. Pafko spoke to both Ms. Spigner and Mr. Slacter. When Pafko conveyed Mr. Slacter's regret and explanation to Ms. Spigner, Ms. Spigner expressed dissatisfaction with Mr. Pafko's decision not to discipline him. In response to her dissatisfaction, Mr. Pafko took the matter one step higher and arranged a meeting with Mr. Heinz. Mr. Heinz listened to Ms. Spigner's concerns and asked her specifically what she wanted to be done. Ms. Spigner stated that she wanted Mr. Slacter to apologize. Mr. Slacter eventually did apologize.

Based on the evidence presented at the hearing, The ALJ finds that Respondent investigated and appropriately responded to each of Ms. Spigner's complaints of harassment. Therefore, the ALJ concludes that Complainant has failed to establish that Respondent inadequately responded to her harassment complaints or treated her differently based on her race and/or gender with respect to her harassment complaints.

#### Recognition of Letters of Commendation

Complainant also maintains that Mr. Pafko failed to promptly or publicly recognize her for the letters of commendation she received from two judges, when male probation officers at Southdale received a plaque and presentation ceremony in recognition of praise they received from a social service agency. Complainant argues that this failure of recognition reflects disparate treatment. However, contrary to Complainant's claim, the evidence demonstrated that both of Ms. Spigner's letters of commendation were sent directly to Michael Cuniff, Director of Community Corrections, and Ms. Spigner and Mr. Pafko were copied on each. Likewise, the Southdale probation officers and their supervisors received copies of their letter of commendation. Furthermore, the judges' letters of commendation were mentioned in the narrative section of Ms. Spigner's subsequent performance review. The fact that Ms. Spigner did not receive a plaque and ceremony in honor of her letters of commendation does not support her claim that she was denied appropriate recognition. Therefore, the ALJ finds that Complainant has failed to establish that she was subjected to disparate treatment with respect to Respondent's recognition of her letters of commendation.

#### Harassment by Pafko

Complainant argues that Mr. Pafko issued memos regarding "absurdly trivial matters" such as bringing pets to work or having television sets in offices in direct response to conduct on her part. Yet, according to Complainant, Pafko did not issue memos regarding the behavior of her male co-workers such as having stereos or novels in their offices. The memo Pafko issued prohibiting the bringing of pets into the office was directed to all suburban probation officers. Ex. 47. Complainant admits that persons besides herself brought pets into the Ridgedale office on occasion. While Complainant may have felt singled out, the directive in the memo applied equally to all the probation officers. In addition, the memo prohibiting television sets in offices was sent to all of the suburban probation officers. Ex. 33. Again, Ms. Spigner was not

mentioned by name or singled out. Furthermore, the ALJ finds that a legitimate distinction can be made between televisions and radios or stereos. If turned on, a television program is more likely to be intrusive and distracting than the background music provided by radios or stereos. Complainant also argues that Mr. Pafko's directive prohibiting her daughter from visiting the Ridgedale office evidences unequal treatment because no other probation officer's family member was likewise restricted. However, the testimony presented at the hearing made clear that, while other probation officers' family members stopped by on occasion, only Ms. Spigner's daughter came to the office every morning for three weeks. In light of these unique circumstances, Mr. Pafko's directive regarding Ms. Spigner's daughter does not reflect disparate treatment. Therefore, based on all the evidence presented at the hearing, the ALJ finds that Complainant has failed to establish she was harassed or treated differently by Mr. Pafko with respect to these memos.

### Damage to Reputation

Finally, Complainant alleges that Mr. Pafko published defamatory comments about her and disparaged her reputation. Specifically, Complainant claims that Mr. Pafko referred to her as a "lazy Black female"; criticized her work in open court; wrote negative comments about her in Mr. Harris' and Mr. Slacter's performance reviews; and spoke negatively about her in general to probation officer Gloria Dunleavy. In order to prove defamation Complainant must show that the alleged statements were false, that the statements were communicated to someone besides herself, and that the statements tended to harm her reputation and to lower her in the estimation of the community. Richie v. Paramount Pictures Corp., 541 N.W.2d 21, 25 (Minn. 1996); citing, Rouse v. Dunkley & Bennett, P.A., 520 N.W.2d 406, 410 (Minn. 1994).

Complainant maintains that after she was transferred to the downtown Minneapolis office, felony probation officer Janice Blackman introduced her to adult investigations case aide Evelyn Donovan. According to Complainant, Ms. Donovan stated "So, you're the lazy Black female at Ridgedale that Don is trying to get rid of." In her testimony, Ms. Donovan denied making this statement. Although Ms. Donovan was not a very credible witness, Ms. Blackman was also unable to corroborate Complainant's claim. While Ms. Blackman testified that she believed Ms. Donovan made some general comment to the effect that Mr. Pafko was a racist, Ms. Blackman was unable to remember the specifics of the conversation. No other witness testified that they heard Mr. Pafko refer to Complainant as a "lazy Black female".

With respect to Mr. Pafko's criticism of Ms. Spigner's probation recommendation in open court, Hennepin County public defender Andre Morant testified that he did not think any less of the Complainant or treat her any differently as a result of anything Mr. Pafko said. In addition, Mr. Morant could not recall if Mr. Pafko referred to Ms. Spigner by name when he spoke out in court about her recommendation. The ALJ agrees with Respondent that Mr. Pafko was within his authority as Ms. Spigner's supervisor to question her recommendation. Moreover, Mr. Pafko testified that in the three years that Ms. Spigner worked for him, this was the only time that he disagreed with a recommendation she made to the court. Complainant did not produce any witness who

testified that they thought differently or less of Complainant as a result of anything Mr. Pafko said in open court that day.

As to the statements about Ms. Spigner that Mr. Pafko wrote in Mr. Harris' and Mr. Slacter's performance reviews, these statements were Mr. Pafko's opinion and were not demonstrated to be false. Mr. Harris and Mr. Slacter were certainly aware of the tension and personality conflicts existing at the Ridgedale office. Moreover, Complainant failed to present any evidence that her reputation was damaged or that Mr. Harris or Mr. Slacter thought differently of her as a direct result of the comments Mr. Pafko made in their performance reviews. Furthermore, as Respondent has pointed out, employee performance reviews are considered private data under the Minnesota Government Data Practices Act and no other employee has access to them without a subpoena.

Complainant did present one witness who testified that Mr. Pafko often made negative comments about Ms. Spigner. This witness, Gloria Dunleavy, was a part-time probation officer for Hennepin County from April of 1993 through October of 1994. Ms. Dunleavy was initially hired to fill in at the various suburban divisions on an as needed basis. Eventually, Ms. Dunleavy worked permanently at the downtown Minneapolis office as a part-time probation officer. The only specific negative comments that Ms. Dunleavy could recall Mr. Pafko saying about Ms. Spigner were a statement that Mr. Pafko "hated minorities because of people like Ms. Spigner" and a declaration that "one day you're going to read about Ms. Spigner in the newspaper, and I am going to be involved." Mr. Pafko, not surprisingly, denies making these statements. Ms. Dunleavy further testified that she believed that Mr. Pafko "horribly and irreparably damaged Ms. Spigner's reputation". However, apart from expressing this opinion, Ms. Dunleavy put forward no evidence to substantiate that as a result of comments made by Mr. Pafko people thought differently of Ms. Spigner or held her in lower esteem. While Ms. Dunleavy claimed that two probation officers, Renee Louck and Brian Kopperud, told her they did not want to work with Ms. Spigner because of the things they heard about her from Mr. Pafko, both probation officers testified that they did not make such statements.

Based on all of the evidence presented at the hearing and the arguments of counsel, the Administrative Law Judge finds that Complainant has failed to demonstrate that she was denied opportunities afforded her White male co-workers or that she was unequally subjected to adverse employment action. Even if the ALJ were to find that Complainant had presented enough evidence to support a prima facie case of disparate treatment discrimination, Respondent has sufficiently articulated legitimate and non-discriminatory reasons for its actions. Complainant has failed to present sufficient evidence that Respondent's explanation for its actions are pretext for racial or gender discrimination. Sigurdson v. Isanti County, 386 N.W.2d 715, 719-21 (Minn. 1986); St. Mary's Honor Center v. Hicks, 509 U.S. 502, 113 S.Ct. 2742 (1993). In fact, the only evidence Complainant produced in support of her argument that Respondent's actions were motivated by gender discrimination were a statement allegedly made by Sig Fine that Mr. Pafko "has a problem with women" and a 1987 performance review of Mr. Pafko in which Mr. Pafko is described as being "protective" toward his female staff.

Therefore, the ALJ concludes that Complainant failed to establish a prima facie case of disparate treatment discrimination and Complainant has failed to meet her burden of persuasion that Respondent engaged in intentional discrimination on the basis of race and/or gender. Accordingly, it is the order of the ALJ that judgment be entered in favor of Respondent and the complaint be dismissed with prejudice.

P.A.R.