STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VANESSA BROWN, Petitioner, vs. CAPITAL CIRCLE HOTEL COMPANY, d/b/a SLEEP INN, Respondent.	)	Case No. 04-1591F

RECOMMENDED ORDER FOR ATTORNEY'S FEES AND COSTS

A formal hearing was held before Daniel M. Kilbride, Administrative Law Judge of the Division of Administrative Hearings on October 6, 2004, Orlando, Florida. The following appearances were entered:

APPEARANCES

For Petitioner: Tricia A. Madden, Esquire
Tricia A. Madden, P.A.
500 East Altamonte Drive, Suite 200
Altamonte Springs, Florida 32701

For Respondent: Stephen F. Baker, Esquire
Stephen F. Baker, P.A.
800 First Street, South
Winter Haven, Florida 33880

STATEMENT OF THE ISSUES

What amount of attorney's fees is to be paid to Petitioner pursuant to the award of fees in the Final Order Awarding

Affirmative Relief from Unlawful Public Accommodation Discrimination.

What amount of costs is to be paid to Petitioner pursuant to the award of costs in the Recommended Order and Final Order.

PRELIMINARY STATEMENT

A Final Order Awarding Affirmative Relief from Unlawful Public Accommodation Discrimination was entered by the Florida Commission on Human Relations (FCHR) on February 20, 2003. FCHR adopted the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendations for the remedy of discrimination. The Final Order confirmed the award of attorney's fees and costs to Petitioner, Vanessa Brown. The parties were unable to reach an agreement on the reasonable amount of attorney's fees and costs, and Respondent, Capital Circle Hotel Company, d/b/a Sleep Inn (Sleep Inn), had not yet paid to Petitioner the monetary amount awarded to Petitioner in paragraph 2 under affirmative relief in the Final Order when Petitioner filed a Notice of Failure of Settlement.

Prior to this hearing, Respondent had paid the amount awarded to Petitioner in paragraph 2. An Agreement had not been reached on the reasonable amount of attorney's fees or costs.

At the hearing, Petitioner's attorney, Tricia A. Madden, Esquire, testified and presented the expert testimony of George F. Indest, III, Esquire. Petitioner presented seven exhibits: a copy of amended time sheets; a copy of amended costs; the contingency contract; the resume of Tricia A. Madden; a letter from Respondent's counsel, Stephen F. Baker, dated January 28, 2002; a copy of the Rule Regulating Florida Bar 4-1.5; and the resume of George F. Indest, III, Esquire. Official recognition was taken of all pleadings and previous filings with the clerk, including specifically, the Recommended Order and Final Order and all exhibits entered into evidence at the hearing on the issue of discrimination held on September 4, 2002. Mr. Baker testified, offered one exhibit, and presented the expert testimony of Neil F. Young, Esquire. Mr. Indest and Mr. Young were accepted as expert witnesses on attorney's fees and costs without objection by the parties.

The hearing was recorded, but a transcript was not ordered. The parties were permitted 14 days to file memoranda of law or a proposed order. Each party timely filed post-hearing submittals, which have been carefully considered.

At the hearing, Respondent offered as a defense to the attorney's fees and costs that the award of same in the Recommended Order and Final Order was contrary to law and objected to by Respondent. This defense was untimely. Respondent did not correctly present his Exceptions to the Recommended Order and filed no appeals to the Final Order. The only issue remaining for determination by the Administrative Law

Judge is the amount of reasonable attorney's fees and costs to be awarded to Petitioner.

FINDINGS OF FACT

1. A Recommended Order was entered by Daniel M. Kilbride, Administrative Law Judge, on October 17, 2002, awarding affirmative relief as follows:

a. Finding that Respondent discriminated against Petitioner based on her race (African-American);

b. Awarding Petitioner $500 in compensatory damages;

c. Issuing a Cease and Desist Order prohibiting Respondent from repeating this practice in the future; and

d. Awarding a reasonable attorney's fee as part of the costs.

2. Respondent filed Exceptions to the Administrative Law Judge's Recommended Order, but did not file a transcript of the hearing as required in administrative proceedings. As a result of the failure, FCHR ordered the Exceptions stricken.

3. FCHR's Final Order adopted the Recommended Order's Findings of Facts, Conclusions of Law, and remedies for the discrimination.

4. No appeal was filed by Respondent.

5. Respondent filed statement of defenses to the Motion for Hearing on Attorney's Fees and Costs in which Respondent denied that its action in the underlying proceeding was not justified and contended that the award requested by Petitioner would be unjust.

6. The amount of reasonable attorney's fees and costs was sought pursuant to Section 509.092, Florida Statutes (2003), unfair discrimination by the operator of a public lodging establishment. Section 509.092, Florida Statutes (2003), which establishes a right of action pursuant to Section 760.11, Florida Statutes (2003), specifically states that an award of attorney's fees should be interpreted in a manner consistent with federal case law involving a Title VII action.

7. Petitioner testified in the prior hearing that she was badly hurt by the treatment received at the Sleep Inn. When she was discriminated against, she threatened a suit against the hotel that night because she wanted them to give her a room. When she did not receive a room, she felt she had been treated in a humiliating fashion and was emotionally injured. She sought counseling professionally, then continued counseling with her sister, who was a licensed psychologist.

8. Petitioner determined that the Sleep Inn was not going to apologize to her or do anything except back-up its staff member. She felt she had to leave it to legal remedies to

secure relief for herself and others. When an offer was received from Respondent's attorney in a letter dated January 28, 2002, offering a sum to save costs of litigation, but denying any liability on the part of Respondent, Petitioner wanted to go forward with the matter to receive public acknowledgement that she had been discriminated against by Sleep Inn. Thus, Petitioner was satisfied with the Recommended Order and the Final Order of FCHR, even though the dollar amount awarded to Petitioner was only $500.00.

9. Petitioner was aware that there were financial differences in damages for filing an administrative proceeding versus a civil action in circuit court. Petitioner understood that monetary damage for pain and suffering could not be awarded in the administrative procedures. Only documented economic damages could be awarded to Petitioner along with affirmative relief declaring that she was discriminated against and directing Respondent to stop condoning discriminating acts.

10. Petitioner retained Tricia A. Madden, Esquire, on June 13, 2000, to represent her in seeking relief from the discriminatory act and signed a contingency contract. The contract states that Petitioner's attorney will be paid the greater of a reasonable attorney's fee awarded through the administrative process or a percentage fee from the total recovery. The contract further states that if the client

prevails or if the contract is terminated, the client must pay the costs listed on the contract to include all costs in investigation, research, and litigating the claim, including, but not limited to, telephone charges, copying costs, postage, and transportation charges.

11. A charge of discrimination was filed on October 18, 2000, with FCHR. When the charge could not be quickly identified as received by FCHR, a second charge was filed on May 23, 2001. Determination of Cause in favor of Petitioner was received after an investigation was conducted by FCHR. Respondent continued to deny liability and made no offers to accept liability or provide any relief to Petitioner. Thereafter, Petitioner's Petition for Relief was timely filed.

12. An attorney appeared for Respondent and filed a Motion to Dismiss. It was withdrawn after discussions with Petitioner's counsel when Respondent's counsel was made aware that the specific motion was inapplicable to a public lodging discrimination case.

13. Stephen F. Baker, Esquire, was substituted as counsel for Respondent on January 6, 2002. He filed a Motion for Summary Judgment on grounds which were not applicable to a public lodging establishment case and outside the jurisdiction of the Administrative Law Judge. The Motion for Summary Judgment was denied by the Administrative Law Judge.

14. Petitioner's counsel has practiced law for 20 years and has practiced in the area of discrimination law in various types of cases, including public lodging establishment cases, employment discrimination cases, Americans with Disabilities Act cases, and education cases for disabled children in civil court and in administrative proceedings. She regularly takes such cases on a contingency basis, believing it is necessary in order to give Petitioner access to the courts. Petitioner's counsel said that although she had a very capable paralegal and staff to assist her in other cases, her paralegal and staff were not qualified to provide more than secretarial assistance in handling discrimination cases; and she has never been able to find a paralegal who was knowledgeable in discrimination cases. Therefore, all of the legal work, including directing the investigation, contact with witnesses, and all pleadings were handled by her in discrimination cases. Her time on the case covered three and a-half years, when the Final Order was entered, and Mr. Indest was attorney-of-record for 13 months.

15. Mr. Indest testified on behalf of Petitioner as an expert on attorney's fees and costs and provided his curriculum vitae. Mr. Indest testified to extensive experience in teaching seminars and classes and writing publications on the subject of attorney's fees and the law, standards, and method of determining the reasonable amount of fees and costs. Mr. Indest

is familiar with <u>Florida Patients Compensation Fund v. Rowe</u>, 472 So. 2d 1145 (Fla. 1985); <u>Standard Guaranty Insurance Company v. Quanstrom</u>, 555 So. 2d 828 (Fla. 1990); and the Rule Regulating Florida Bar 4-1.5 and testified to each factor identified in the rule. Mr. Indest had a previous opportunity to observe Ms. Madden's skills when they were opposing counsel in a nursing home case and when Ms. Madden testified for him as an expert witness on issues, not attorney's fees, in an administrative hearing case where he represented a Petitioner versus the Department of Children and Family Services. He testified that Ms. Madden had a reputation in the community of being a very skilled and aggressive attorney with 20 years' experience representing plaintiffs and petitioners. He further testified she was the only attorney that he was aware of who took discrimination cases on a contingency basis and one of only three attorneys he knew that regularly took discrimination cases on behalf of an employee. Mr. Indest testified he had specifically surveyed other attorneys in the Orlando area as to the fees charged in administrative proceedings and discrimination cases. He testified the range of fees for handling discrimination cases and administrative cases in the Orlando metropolitan area is from $250.00 to $450.00 per hour for one attorney who had only 15 years of experience and from $400.00 to $500.00 for one attorney with 30 years of experience. Other attorneys with 20 years of experience charge fees from $300.00 to $450.00 per hour. Mr. Indest charges $350.00 per hour and is raising his fee as of January 1, 2005, to $400.00 per hour. Mr. Indest said Ms. Madden had only requested $300.00 per hour in this case and should raise her fees to be commensurate with her skills, knowledge of the area of law, and the fees usually charged in the Central Florida area. It was his opinion that $300.00 per hour was a very reasonable fee in the local market for this case.

16. Mr. Indest reviewed the taxable costs submitted on the amended costs list and said that with exception of the Westlaw figures, which Ms. Madden had withdrawn, all costs were reasonable and had to be paid by Petitioner. They were less than he and others would have charged, were applicable, and should be awarded to Petitioner.

17. Mr. Indest testified he had spent eight hours prior to the day of hearing and approximately two more hours before the hearing reviewing the file on the Vanessa Brown case and asking questions on the case and proceedings. He stated he had reviewed the file, but had not read the depositions in detail, although he had scanned the six depositions. He noted Ms. Madden's time for preparation and attendance included travel time, depositions, research, investigation of the witnesses, and the trial of the case. He had read the Recommended Order and,

in his opinion, the necessary testimony to support the case was detailed. It was his opinion that it took a high level of skill to prosecute the case successfully. He stated the 122 hours claimed by Petitioner's counsel were very reasonable and that he would have probably had to spend closer to 200 hours preparing the case. He said Petitioner's counsel demonstrated her expertise and efficiency in handling the case by the fact that she prepared for and tried the case at hearing with successful results of her client with only 122 hours of work.

18. Mr. Indest noted Respondent's counsel billed no preparation time for depositions and hearings. He found that unusual and puzzling, and stated that preparation time was certainly necessary for a petitioner's counsel. He said Petitioner had to carry the burden of proof and had to marshall the evidence and witnesses. Mr. Indest stated he could accept that Ms. Madden put in 11 hours or more on any given day at times on this case since he often had to work more than 11 hours a day. Mr. Indest observed that the Proposed Order prepared by Petitioner's counsel was well prepared.

19. Respondent's attorney testified he had been an attorney since 1976 and had been retained by Respondent sometime in December 2001. Respondent's attorney said he felt the case was always a money case from his initial involvement. In the Proposed Recommended Order, Petitioner had asked for $15,000.00

as a monetary consideration. However, the monetary award was only $500.00. He agreed that the court costs claimed were reasonable. He would have discussed an apology if that was what Petitioner wanted with his client, who was a businessman. However, contrary to this suggestion that his client would have admitted liability, settlements normally do not admit liability or fault on the part of the defendant.

20. Respondent's attorney said he spent 44 hours on this case with six depositions and two witnesses at trial. He argued that Petitioner's counsel claimed that she had 140 other active cases and could not possibly have spent three weeks' preparation time on this case.

21. Mr. Young testified that he has practiced since 1976 and has handled a variety of cases. He said he has been involved in discrimination cases as the attorney for the City of Davenport and later the City of Winter Haven. He stated on cross-examination that he has not gone to trial on a discrimination case; that they were always settled before litigation. He reviewed Respondent's file to prepare his Affidavit for an hour and a-half. He spent another hour and a-half the day of the hearing to review Respondent's file to refresh his memory and review Petitioner's counsel's hours. He testified that the outcome of the case should have been apparent from the first, and it was a routine case. He did not read the

depositions, but he read the Recommended Order and felt it was a simple case of limited complexity. He said in his opinion the case could have been done in five days of work altogether, with one-half day for all pleadings and one day to both prepare and try the case. It was a straight-forward presentation and story, and the fee should only be $200.00 per hour. He had not surveyed any other attorneys who had litigated discrimination cases or who represented plaintiffs/petitioners in discrimination cases. He said in Central Florida, fees are all over the block; and they had attorneys in Winter Haven who charged up to $450.00 per hour. He said litigation should be a last resort, and it was a public interest case with no monetary recovery. He was of the opinion that 40 hours at $200.00 was reasonable, and he had reduced the fee to $6,000 based on results obtained.

22. The expert witness for Respondent alleged that the delay in response to interrogatories and a Request to Produce were demonstrations that Petitioner's attorney had not performed her role efficiently, had wasted the time of Respondent's counsel, and time for such actions should not be billed or awarded to Petitioner. Respondent wasted Petitioner's counsel time also with two erroneous motions, but Respondent's counsel billed his client for his motion as noted in his time statement. Urging clients to complete discovery is a known time requirement

of attorneys, and the delay was caused by Petitioner's personal problems, not by Petitioner's counsel. Ms. Madden voluntarily withdrew the entry of eight hours on her item slips listed as time spent proofing the attorney's fees time delineation. Entitlement to attorney's fees and costs had already been established by this tribunal in the Recommended Order and Final Order. Petitioner's counsel also voluntarily deleted $356.35 for Westlaw research, as a cost not chargeable to Respondent.

CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this procedure pursuant to Sections 120.569 and 509.092 and Subsections 120.57(1) and 760.11(4), Florida Statutes (2004).

24. Section 509.092, Florida Statutes (2003), provides:

> Public lodging establishments and public food service establishments; rights as private enterprises.-- Public lodging establishments and public food service establishments are private enterprises, and the operator has the right to refuse accommodations or service to any person who is objectionable or undesirable to the operator, but such refusal may not be based upon race, creed, color, sex, physical disability, or national origin. A person aggrieved by a violation of this section or a violation of a rule adopted under this section has a right of action pursuant to s. 760.11.

25. Subsection 760.11(6), Florida Statutes (2003), provides, in pertinent part:

(6) Any administrative hearing brought pursuant to paragraph (4)(b) shall be conducted under ss. 120.569 and 120.57. The commission may hear the case provided that the final order is issued by members of the commission who did not conduct the hearing or the commission may request that it be heard by an administrative law judge pursuant to s. 120.569(2)(a). If the commission elects to hear the case, it may be heard by a commissioner. If the commissioner, after the hearing, finds that a violation of the Florida Civil Rights Act of 1992 has occurred, the commissioner shall issue an appropriate proposed order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay. If the administrative law judge, after the hearing, finds that a violation of the Florida Civil Rights Act of 1992 has occurred, the administrative law judge shall issue an appropriate recommended order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay. Within 90 days of the date the recommended or proposed order is rendered, the commission shall issue a final order by adopting, rejecting, or modifying the recommended order as provided under ss. 120.569 and 120.57. The 90-day period may be extended with the consent of all the parties. An administrative hearing pursuant to paragraph (4)(b) must be requested no later than 35 days after the date of determination of reasonable cause by the commission. In any action or proceeding under this subsection, the commission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action.

26. The court in University Community Hospital v. Department of Health and Rehabilitative Services, 493 So. 2d 2 (Fla. 2d DCA 1986), stated when attorney's fees are to be awarded under administrative law in Florida, the standards and methods in Florida Patients' Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985), are to be applied. Rowe has since been reviewed and modified to some extent by Standard Guaranty Insurance Company v. Quanstrom, 555 So. 2d 828 (Fla. 1990).

27. In Weaver v. School Board of Leon County, 624 So. 2d 761, 763-764 (Fla. 1st DCA 1993), the court found the case against a state agency was a vindication of both public and private wrongs and a case involving partially public policy. However, the legal proceedings resulted in personal and economic benefit to Petitioner, but no dollar award. The court found the case to be a vindication of a private wrong. The court considered the three general categories of cases relevant to the application of a contingency fee multiplier as discussed in Quanstrom, 555 So. 2d at 833, and determined petitioner's discrimination case was closer to a Category II case--tort and contract--and applied a contingency risk factor. The court also found that even if it had been only a public interest case against a public agency and even though there was no award of dollars for economic damages for lack of evidence of quantitative economic damages, a contingency factor was

appropriate because without an adjustment for risk, petitioner would have faced substantial difficulties in finding counsel in the local or other relevant market. Weaver, 624 So. 2d at 763. See also Franklin County School Board v. Page, 540 So. 2d 891 (Fla. 1st DCA 1989) (Contingency enhancement ordinarily not applicable under federal standards for determining amount of attorney's fees in civil rights actions may be applicable when such entitlement is necessary to secure competent counsel.) See also Lane v. Head, 566 So. 2d 508, 513 (Fla. 1990), Justice Overton specially concurring.

28. FCHR may award pre-litigation fees as long as those hours do not duplicate time charged later. In Terry v. Carlton Manufacturing, Inc., 610 So. 2d 703, 704 (Fla. 1st DCA 1992), the First District Court of Appeal determined fees may be awarded to the prevailing party for time charged in the administrative proceedings that included fact-findings conducted before FCHR in an age discrimination case. The court also awarded expert witness fees to attorneys who appeared at the evidentiary hearing on the attorney's fees and costs. Although the court in Terry did not reverse the trial court's failure to use the contingency multiplier, there was no discussion of facts and reasons; therefore, Terry is not applicable on that issue in this case. See Ramsey v. Chrysler First, Inc., 861 F.2d 1541, 1545 (11th Cir. 1988). In Ramsey, citing federal cases awarding

fees for pre-litigation services under Title VII of the Civil Rights Act and ADEA, the Eleventh Circuit Court held that a strong case could be made for awarding fees for pre-litigation services in an ADEA case, even though the language in the fee provision of ADEA was different from that in Title VII.

29. The court may award attorney's fees in excess of the percentage arrangement in a contingency contract if language in the contract permits recovery of a reasonable attorney's fee, if awarded by the court, and if greater than the agreed percentage of the total gross award to the client. Kaufman v. MacDonald, 557 So. 2d 572 (Fla. 1990). Petitioner's contract with counsel contained the required language.

30. Petitioner is entitled to the costs listed in the sum of $4,115.19, which represents the costs listed, less the cost of Westlaw research of $356.35. Mr. Indest's opinion was that the costs met the guidelines as specified in Rule Regulating Florida Bar 4-1.5(b)(2). Respondent's only objection to the costs was to the Westlaw fee, which sum was voluntarily withdrawn by Petitioner's counsel at the beginning of the hearing.

31. Petitioner is also entitled to costs for her expert witness, Mr. Indest. Pursuant to Section 92.231, Florida Statutes (2003), an expert witness shall be allowed a witness fee which shall be taxed as costs. Mr. Indest said he spent ten

hours reviewing the file and his time at the hearing. The hearing lasted approximately two hours. Mr. Indest said he charged $350.00 per hour to Petitioner. Respondent offered no objection to that hourly fee or to the number of hours Mr. Indest stated he spent reviewing the case file, questioning Ms. Madden on the case, and researching fees in the local market. The costs to be awarded to Petitioner for payment to Mr. Indest is the sum of 12 hours times $350.00, which is $4,200.00 to be paid by Respondent to Petitioner.

32. Mr. Indest testified specifically to the factors addressed in Rowe, supra; Quanstrom, supra; and Rule Regulating Florida Bar 4-1.5. Each of those factors has been considered in making the determination of the appropriate fee. Boyle v. Boyle, 485 So. 2d 879 (Fla. 2nd DCA 1986). The Recommended Order in paragraph 30 specifically stated that in this case the issue of discrimination was a close question. Contrary to Mr. Young's testimony, it was not a simple, straight-forward story in which the outcome should have been apparent from the first. Clearly, Respondent and his counsel did not agree with that appraisal since Respondent, through counsel, denied Respondent was responsible for unlawful discrimination even in the latest pleadings on the amount of attorney's fees and costs to be awarded. Mr. Young spent only three hours on the file, but his testimony demonstrated that he was not familiar with and

read none of the depositions, even briefly, and did little research on fees in the market area to compare cases or discuss the case in any detail with counsel.

33. The formulary in determining fees in a discrimination case is a complex combination of the factors and methods considered in Rowe, supra; Quanstrom, supra; and Rule Regulating Florida Bar 4-1.5 and must be consistent with case law in Title VII actions. Mr. Indest's testimony is accepted as it relates to Petitioner's counsel's experience and skill in the prosecution of discrimination cases, his evaluation of the difficulties of the case, and the necessity of solicitation of detailed evidence to prevail. The time expended by Petitioner's counsel produced such evidence, and the level of detail of time spent is evidenced by the extensive findings and case law produced in the Proposed Recommended Order for the hearing in September 2002. The likelihood that the acceptance of Petitioner's case precluded other employment is relevant only to the extent that Petitioner's counsel could process other types of tort cases with less expenditure of her own time and more of her staff's time.

34. Mr. Indest's testimony is accepted in regard to a reasonable fee based on the work he expended to survey the rate of fees customarily charged in the locality of similar types of cases. Mr. Young testified he had made no such evaluation of

the local market area and no attempt to determine such fees. Mr. Indest's testimony is accepted that the fee for Ms. Madden is reasonable for the case and for an attorney with her experience and skill in the Central Florida/Orlando area.

35. Based on the evidence presented, it is determined that $300.00 per hour is a reasonable hourly rate and 122 hours was a reasonable amount of time to expend in the litigation of this case. Therefore, $36,600.00 is a reasonable lodestar fee for Petitioner. Weaver, supra; Quanstrom, supra.

36. Issues of discrimination are always significant, as has been stated by courts, legislative bodies, and Congress. As stated by the Florida Supreme Court, issues of discrimination are significant as they:

> encourage meritorious civil rights claims because of the benefits of such litigation for both the named plaintiff and for society at large, irrespective of whether the action seeks monetary damages.

Quanstrom, 555 So. 2d at 832. The major purpose of fee-shifting statutes is to encourage private enforcement of statutes. The court has determined that a contingency adjustment has a strong public-interest factor when a case is taken with a risk of nonpayment. Quanstrom, 555 So. 2d at 833. The amount of damages is not controlling in public interest cases because plaintiffs would not, and could not, pursue such cases if their attorney's fees were not included in the potential award or remedy. Quanstrom, 555 So. 2d at 833-834.

37. The mandates of Section 509.092 and Subsection 760.11(6), Florida Statutes (2003), provide that the intent of the Legislature in the provision of attorney's fees be interpreted in a manner consistent with federal case law involving Title VII actions. It is determined that a contingency multiplier is appropriate in this case. The case vindicated a public policy and a private wrong of serious concern to Petitioner. Using the Quanstrom categories as in Weaver, the case falls into a Category II type case. This was a wrong to a private person by a private company, not a public agency. The case was a close question, and Petitioner's counsel expended extensive time and took a significant risk of nonpayment without any means to mitigate that risk except to prevail at hearing. Success was unlikely at the outset of the case. Petitioner could not have secured competent counsel without her counsel's willingness to take a contingency risk.

38. The multiplier effect for cases with success considered likely even at the outset, the range is 1.5 to 2.0; and for cases with success considered unlikely at the outset, the range is 2.0 to 2.5. Quanstrom, 555 So. 2d at 834. Taking the low end of the range of the two evaluations of the possible outcomes at the outset, a multiplier factor of 1.5 will be

applied and Petitioner awarded attorney's fees in the amount of $54,900.00.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED that a final order be entered:

1. Awarding attorney's fees to Petitioner in the sum of $54,900.00; and

2. Awarding costs to Petitioner in the sum of $8,315.79, which includes $4,200.00 to be paid to Petitioner for payment of Petitioner's expert witness, George F. Indest, III, Esquire.

DONE AND ENTERED this 23rd day of November, 2004, in Tallahassee, Leon County, Florida.

Daniel M Kilbride

DANIEL M. KILBRIDE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of November, 2004.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.