State of Wisconsin

Labor and Industry Review Commission

Faline E. Townsend, Complainant **Strouse Law Offices**, Respondent ERD Case No. CR202101559	**Fair Employment Decision**[1] **Dated and Mailed:** July 22, 2026 townsfa_rsd.doc:149

The decision of the administrative law judge is **modified** and, as modified, is **affirmed**. Accordingly, the commission issues the following:

Order

1. *Time within which respondent must comply with Order.* The respondent shall comply with all the terms of this Order within 60 days of the date on which this decision is issued, or, if it is timely appealed, within 30 days after it has been affirmed by a reviewing court and the decision of that court is not timely appealed.

2. That the respondent shall cease and desist from discriminating against the complainant based upon her sex.

3. That the respondent shall offer the complainant instatement to a position substantially equivalent to the position she held prior to her discharge. This offer shall be tendered by the respondent or an authorized agent and shall allow the complainant a reasonable time to respond. Upon the complainant's acceptance of such position, the respondent shall afford her all seniority and benefits, if any, to which she would be entitled but for the respondent's unlawful discrimination, including sick leave and vacation credits.

4. That the respondent shall make the complainant whole for all losses in pay the complainant suffered by reason of its unlawful conduct by paying the complainant the amount she would have earned as an employee, including pension, health insurance, and other benefits, from the date the respondent constructively discharged the complainant, June 21, 2021, until February of 2022, at which point the

[1] **Appeal Rights**: See the green enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the Labor and Industry Review Commission as a respondent in the petition for judicial review. Appeal rights and answers to frequently asked questions about appealing a fair employment decision to circuit court are also available on the commission's website http://lirc.wisconsin.gov.

complainant began new employment. The back pay for the period shall be computed on a calendar quarterly basis with an offset during each calendar quarter for any interim earnings from work the complainant would not have performed had she remained employed with the respondent. Any unemployment insurance or welfare benefits received by the complainant during the above period shall not reduce the amount of back pay otherwise allowable but shall be withheld by the respondent and paid to the Unemployment Compensation Reserve Fund or the applicable welfare agency. Additionally, the amount payable to the complainant after all statutory set-offs have been deducted shall be increased by interest at the rate of 12 percent simple. For each calendar quarter, interest on the net amount of back pay due (i.e., the amount of back pay due after set-off) shall be computed from the last day of each such calendar quarter to the day of payment. Pending any and all appeals from this Order, the total back pay will be the total of all such amounts.

5. That the respondent shall pay to the complainant reasonable attorney's fees and costs incurred in pursuing this matter in the total amount of $52,544.10. A check in that amount shall be made payable jointly to the complainant and her attorney, Nicholas M. Raef, and delivered to Attorney Raef at Hawks Quindel, S.C.

6. That, on or before the date on which the respondent is required to comply with this order as described in Paragraph 1 above, the respondent shall file with the commission a Compliance Report detailing the specific actions it has taken to comply with this Order. The Compliance Report shall be prepared using the "Compliance Report" form which has been provided with this decision. The respondent shall submit a copy of the Compliance Report to the complainant at the same time that it is submitted to the commission. Within 10 days from the date the copy of the Compliance Report is submitted to the complainant, the complainant shall file with the commission and serve on the respondent a response to the Compliance Report.

Notwithstanding any other actions a respondent may take in compliance with this Order, a failure to timely submit the Compliance Report required by this paragraph is a separate and distinct violation of this Order. The statutes provide that every day during which an employer fails to observe and comply with any order of the commission shall constitute a separate and distinct violation of the order and that, for each such violation, the employer shall forfeit not less than $10 nor more than $100 for each offense. *See* Wis. Stat. §§ 111.395, 103.005(11) and (12).

By the Commission:

/s/

Katy Meter Lounsbury, Chairperson

/s/

Michael H. Gillick, Commissioner

Procedural Posture

This case is before the commission to consider the complainant's allegation that the respondent discriminated against her on the basis of sex and engaged in or permitted sexual harassment, in violation of the Wisconsin Fair Employment Act (hereinafter "Act"). An administrative law judge for the Equal Rights Division of the Department of Workforce Development held a hearing and issued a decision finding that the complainant was discriminated against as alleged. The respondent filed a timely petition for commission review of that decision.

The commission has considered the petition and the positions of the parties,[2] and has reviewed the evidence submitted at the hearing. Based on its review, the commission makes the following:

Findings of Fact

1. The respondent, Strouse Law Office (hereinafter "respondent"), is a business operating a law office located in Milwaukee, Wisconsin. Paul A. Strouse is the sole owner of the respondent.

2. The complainant, Feline Townsend (hereinafter "complainant"), is an individual whose sex is female.

3. The complainant worked for the respondent during two separate periods of time. The respondent initially hired the complainant in 2016 as a legal assistant. She was subsequently promoted to the position of office manager.

4. As office manager, the complainant was responsible for answering phones, completing reports, responding to emails, speaking with clients, managing Mr. Strouse's calendar, drafting and proofreading documents, and onboarding new employees. The complainant's position required her to have extensive interactions with both Mr. Strouse and the respondent's clients.

5. During the complainant's first period of employment with the respondent, several of the respondent's clients made sexually-charged comments towards her. The complainant told Mr. Strouse that she was not comfortable with these comments, and asked that Mr. Strouse remove her from those cases. Mr. Strouse initially laughed at the complainant's request, but ultimately agreed to remove the complainant from those cases. However, the complainant continued to be assigned to work with those clients.

6. Mr. Strouse also made inappropriate comments of a sexual nature in the complainant's presence in the workplace, often during meetings. Mr. Strouse would openly discuss pornography, and would ask the complainant whether she believed the actors in certain pornographic films were attractive. In one instance, Mr. Strouse inquired whether the complainant had ever considered obtaining a breast

[2] A briefing schedule was established at the respondent's request, but no briefs have been filed.

augmentation, adding that the complainant could make a lot of money serving drinks to men at golf courses if she had breast implants.

7. In the spring of 2020, the complainant underwent a hysterectomy. The complainant subsequently had a series of medical emergencies, which required additional hospitalization and periods of recovery. The complainant continued to work for the respondent until July of 2020. She did not return to work thereafter due to her medical issues.

8. Thomas Vaitys performed paralegal services for the respondent from some time in 2020 until November or December of 2021. During the complainant's break from her employment with the respondent, Mr. Vaitys openly discussed with Mr. Strouse his desire to have sex with the complainant. Mr. Vaitys told Mr. Strouse that he was upset that the complainant had quit her employment with the respondent and inquired about where the complainant was currently working and where she lived. Mr. Strouse did not respond and did not admonish Mr. Vaitys for his comments.

9. From July 3 to July 28, 2020, Mr. Vaitys sent the complainant a lengthy series of text messages, the vast majority of which went unanswered by the complainant. In these messages, Mr. Vaitys expressed his desire to have a sexual relationship with the complainant. In one message Vaitys stated he would "break [his] back to simply lay an obscene amount of treasure and warmth at [the complainant's] feet." In another message he stated:

> You came bouncing into my office with a devious smile months and months ago asking me if I wanted to have sex with you maybe it was a joke maybe not thought I guess as a cancer im more of a romantic so pro tip: you should have asked about a kiss instead[.]

Mr. Vaitys also told the complainant she was pretty and offered to give the complainant a massage.

10. On July 28, 2020, the complainant sent a message to Mr. Vaitys asking him to stop sending her text messages, stating that Mr. Vaitys' messages were unwanted. The complainant also specifically asked Mr. Vaitys not to come to her residence. Mr. Vaitys responded, "see you later alligator."

11. On February 15, 2021, the complainant returned to work for the respondent as an office manager. Upon the complainant's return, the complainant met with both Mr. Strouse and Mr. Vaitys, and Mr. Vaitys apologized for his behavior in the last year.

12. Mr. Vaitys' behavior did not improve after the apology. Nearly every day during the spring and summer of 2021, Mr. Vaitys made unwelcome sexual advances towards the complainant. For example, Mr. Vaitys would tell the complainant that she smelled good, or would compliment her hair. The complainant was not receptive

to Mr. Vaitys' comments, which caused Mr. Vaitys to become upset and defensive. Mr. Vaitys would insist that he was just trying to be nice, and would ask the complainant why she had an "attitude."

13. On March 20, 2021, the complainant celebrated her birthday at a local bar and restaurant. The complainant invited Mr. Strouse to the birthday party, but did not invite Mr. Vaitys. However, Mr. Strouse told Mr. Vaitys about the party, and Mr. Vaitys attended. At the party, while the complainant was speaking to a friend, Mr. Vaitys became upset because the complainant was not spending time with him. Mr. Vaitys slammed his drink on the complainant's table, mumbled something, then walked away.

14. After the birthday party, Mr. Vaitys texted the complainant:

> You know what if I have to pay $10 cover for the shit hole like that filled full of heifer bimbos like I had to go Wade through don't fucking bother to invite me.
>
> Thanks for wasting my time and yanking my chain for 3 hours hope you have a great evening.
>
> And thanks a lot for never once [giving] me the time of day its ok someone else will[.]

15. The following day, Mr. Vaitys approached the complainant in her office and, with a raised voice, accused the complainant of leading him on and being interested in him sexually, telling the complainant he "knows how pretty girls are and they like to pull people along and yank their chain because they know that they like him." Mr. Vaitys' comments and overall demeanor made the complainant extremely uncomfortable. The complainant told Mr. Vaitys that there was nothing romantic or sexual between them, and that nothing romantic or sexual would ever happen between them.

16. Mr. Strouse entered the complainant's office while Mr. Vaitys and the complainant were arguing. Mr. Strouse did not address either the complainant or Mr. Vaitys, and instead immediately turned around and left the office. Afterwards, the complainant spoke with Mr. Strouse about the argument, as well as Mr. Vaitys' conduct during the birthday party. Mr. Strouse told the complainant that he believed Mr. Vaitys had a crush on her.

17. On June 19, 2021, Mr. Vaitys sent the complainant a text message, in which he accused the complainant of being rude towards him while at work. Mr. Vaitys alluded to a situation where, during a conversation with two other coworkers, the complainant appeared friendly, but, upon seeing Mr. Vaitys, folded her arms and rolled her eyes at him.

18. The complainant immediately forwarded Mr. Vaitys' text messages to Mr. Strouse. The complainant told Mr. Strouse that she did not feel comfortable with Mr. Vaitys and needed Mr. Strouse's help. Mr. Strouse asked the complainant to wait a couple weeks to address the matter, because Mr. Vaitys was working on a deadline related to a pending case, but promised that Mr. Vaitys would not talk to the complainant anymore unless the conversation was work related.

19. The next day, Mr. Strouse and Mr. Vaitys were locked out of the respondent's office. Mr. Strouse directed Mr. Vaitys to send a text message to the complainant, asking if the complainant could bring a key. After receiving Mr. Vaitys' message, the complainant immediately texted Mr. Strouse, asking why he asked Mr. Vaitys to text him, and reiterating that she was uncomfortable with Mr. Vaitys' conduct and sexual advances. The complainant indicated that the situation was inappropriate and made her feel as if Mr. Strouse was not taking her concerns seriously. Mr. Strouse responded, "it would have been weird to him if I didn't have him call you. I need both of you happy and healthy." The complainant again explained to Mr. Strouse that she felt uncomfortable. She also stated that, previously, Mr. Vaitys had sent her a text message asking the complainant if she remembered "skipping into her office talking about sex," which she denied having done.

20. On June 21, 2021, Mr. Vaitys approached the complainant in her office and began yelling at the complainant and accused her of having previously entered his office and asking about sex. Mr. Vaitys also accused the complainant of being disrespectful, and claimed that the complainant had accused him of stalking her, which Mr. Vaitys denied. The complainant asked Mr. Vaitys to leave her alone. Mr. Vaitys left the complainant's office, but then returned and resumed yelling at the complainant. Mr. Vaitys' conduct occurred within earshot of Mr. Strouse, but Mr. Strouse did not respond.

21. Mr. Vaitys continued to engage in similar conduct during the course of the day. Each time Mr. Vaitys returned to the complainant's office he became more aggressive and upset. The complainant also became upset. The complainant began to cry, and repeatedly pleaded with Mr. Vaitys to leave her alone. At one point, Mr. Vaitys called the complainant a liar, and stated that he knew the complainant wanted him in a sexual way. Elizabeth Brown, one of the complainant's co-workers, who was observing Mr. Vaitys' conduct, shouted at Mr. Vaitys to leave the complainant alone. Ms. Brown then called for Mr. Strouse to intervene, but Mr. Strouse did not do so. Mr. Vaitys stated that he knew the complainant had been texting him, and insinuated that this meant the complainant was interested in a sexual relationship with him.

22. The complainant had recorded a portion of her argument with Mr. Vaitys, and later that day she played the recording for Mr. Strouse to hear. Mr. Strouse initially laughed, then told the complainant that she should not take Mr. Vaitys seriously. The complainant told Mr. Strouse that she did not feel safe and demanded that she have no further communication with Mr. Vaitys, but Mr. Strouse told her that this would not be possible. Mr. Strouse then grabbed the complainant's hand and told her

that he would never let anybody hurt her. At the end of their conversation, Mr. Strouse offered the complainant a dollar per hour raise from her current pay of $25.00. However, Mr. Strouse did not take any corrective action against Mr. Vaitys.

23. After speaking with Mr. Strouse, the complainant left work and drove to the local police station to obtain a restraining order against Mr. Vaitys. She never returned to the respondent's office thereafter.

24. Within days of the incident on June 21, 2021, the complainant moved out of state because she feared for her safety and the safety of her children, given Mr. Vaitys' conduct and his knowledge of where she lived in Wisconsin.

25. From February 15, 2021, through June 21, 2021, her last day of work for the respondent, the complainant earned $20,464.42 in gross wages from her employment with the respondent. After leaving her employment with the respondent, the complainant operated her own accounting business. In 2021, the complainant earned $19,521.00 in net income from her accounting business. The complainant also sought additional full-time employment while operating her accounting business. In February of 2022, the complainant retained full-time employment as a legal assistant in a commercial litigation law firm.

Conclusions of Law

1. The respondent discriminated against the complainant in the terms and conditions of her employment based on the complainant's sex, in violation of the Wisconsin Fair Employment Act.

2. The respondent constructively discharged the complainant from her employment based on the complainant's sex, in violation of the Wisconsin Fair Employment Act.

Memorandum Opinion

In its petition for commission review, the respondent states that it is dissatisfied and disagrees with the administrative law judge's decision. However, the respondent's petition does not provide the commission with any specific indication as to why it believes the administrative law judge's decision was in error or should be reversed. Notwithstanding this, the commission has conducted an independent review of the record and, for the reasons set forth below, the commission agrees with the administrative law judge that the complainant established that she was discriminated against as alleged in her complaint, in violation of the Act.

Sexual harassment

The Wisconsin Fair Employment Act provides, in relevant part:

> (1) Employment discrimination because of sex includes but is not limited to, any of the following actions by any employer. . . :

> (b) Engaging in sexual harassment; or implicitly or explicitly making or permitting acquiescence in or submission to sexual harassment a term or condition of employment; or making or permitting acquiescence in, submission to or rejection of sexual harassment the basis or any part of the basis for any employment decision affecting an employee, other than an employment decision that is disciplinary action against an employee for engaging in sexual harassment in violation of this paragraph; or permitting sexual harassment to have the purpose or effect of substantially interfering with an employee's work performance or of creating an intimidating, hostile or offensive work environment.

Wis. Stat. § 111.36(1)(b). The Act defines "sexual harassment" as:

> [U]nwelcome sexual advances, unwelcome requests for sexual favors, unwelcome physical contact of a sexual nature or unwelcome verbal or physical conduct of a sexual nature. "Sexual harassment" includes conduct directed by a person at another person of the same or opposite gender. "Unwelcome verbal or physical conduct of a sexual nature" includes but is not limited to the deliberate, repeated making of unsolicited gestures or comments of a sexual nature; the deliberate, repeated display of offensive sexually graphic materials which is not necessary for business purposes; or deliberate verbal or physical conduct of a sexual nature, whether or not repeated, that is sufficiently severe to interfere substantially with an employee's work performance or to create an intimidating, hostile or offensive work environment.

Wis. Stat. § 111.32(13). "[S]ubstantial interference with an employee's work performance" or "creation of an intimidating, hostile or offensive work environment" is established when the conduct is such that a reasonable person under the same circumstances as the employee would consider the conduct sufficiently severe or pervasive to interfere substantially with the person's work performance or to create an intimidating, hostile or offensive work environment. Wis. Stat. § 111.36(1)(b).

An employer is liable for the harassing acts of its workers if it knew about the harassment but failed to take adequate measures to prevent or eradicate it. *Lamont v. Nelson Glob. Prods.*, ERD Case Nos. CR201302178 and CR201401347 (LIRC June 10, 2019). Where the alleged sexual harasser is a co-worker, the co-worker's actions can only be imputed to the respondent if the respondent permitted the sexual harassment to occur. That is, a respondent is liable for the sexually related acts engaged in by a co-worker only if the individual informs the respondent of the harassment and the respondent fails to take appropriate action within a reasonable time. *Monroe v. Birds Eye Foods Inc.*, ERD Case No. CR200304303 (LIRC Mar. 31, 2010).

In this matter, the complainant credibly established by a preponderance of the evidence that Mr. Vaitys sexually harassed her, and that the respondent, despite

being aware of the harassment, failed to take any action to stop it. The complainant testified to a workplace environment in which both Mr. Strouse and Mr. Vaitys frequently made unsolicited comments of a sexual nature, including comments specifically directed towards the complainant. The complainant's testimony was supported by the testimony of two of her former co-workers who observed similar behavior. The complainant also established that Mr. Vaitys sent the complainant numerous harassing text messages indicating his desire to pursue a sexual relationship with the complainant, all of which were rebuffed by the complainant. Upon the complainant's return to work with the respondent in February of 2021, Mr. Vaitys' efforts to pursue the complainant romantically intensified, creating an intimidating, hostile, and offensive work environment.

Mr. Strouse knew that Mr. Vaitys continued to make unwelcome sexual advances towards the complainant in the workplace, and the complainant repeatedly told Mr. Strouse that Mr. Vaitys' comments were unwelcome and made her uncomfortable. Mr. Strouse acknowledged that Mr. Vaitys was interested in a sexual relationship with the complainant and that Mr. Vaitys had a "crush" on the complainant. Despite this, Mr. Strouse took no action, or even appeared to be amused, when Mr. Vaitys made inappropriate sexual comments in the workplace and, when approached by the complainant regarding her concerns, Mr. Strouse would either dismiss them or ask to delay action into the future. In particular, when the complainant brought her concerns regarding Mr. Vaitys' aggressive conduct and sexual advances on June 21, 2021, to Mr. Strouse, he took no action, instead dismissing Mr. Vaitys as harmless and offering the complainant a salary increase by way of compensation for her complaints.

Based upon the facts above, the commission is persuaded that Mr. Vaitys engaged in conduct amounting to sexual harassment, within the meaning of the Act, that Mr. Strouse knew about the sexual harassment, and that he took no action to stop it. The commission, therefore, agrees with the administrative law judge that the respondent violated the Act by permitting sexual harassment to create a hostile and offensive work environment for the complainant.

Constructive discharge

To find a constructive discharge it must be established that, due to a discriminatory reason, working conditions are rendered so difficult or unpleasant that a reasonable person would feel compelled to resign. *See Waedekin v. Marquette Univ.*, ERD Case No. 8752240 (LIRC Mar. 5, 1991) (citing *Bourque v. Powell Elec. Mfg. Co.*, 617 F.2d 61, 22 FEP Cases 1191 (5th Cir. 1980)). Here, the complainant credibly established that she no longer felt safe working for the respondent because of Mr. Vaitys' continued unwelcome sexual advances towards her, which became increasingly aggressive over time. The complainant further established that the respondent would take no action to address the situation, although he had been apprised of it many times. Therefore, she reasonably concluded that she had no alternative but to quit.

The commission agrees with the ALJ that under these facts the complainant established she was constructively discharged.

Remedies

The administrative law judge awarded the complainant backpay for the period between June 21, 2021 and February of 2022. The respondent does not challenge the administrative law judge's backpay award in its petition for commission review, and the commission sees no reason to question the reasonableness of this award.

The administrative law judge also awarded the complainant $51,644.10 in attorney's fees and costs based on the complainant's attorney's representation of the complainant up until the point of the administrative law judge's decision. Again, the respondent has not challenged this award, and the commission considers it to be reasonable.

The complainant's attorney is also entitled to fees related to the time spent successfully responding to the respondent's petition for review by the commission. However, the commission may exclude hours that were not reasonably expended—that are excessive, redundant, or otherwise unnecessary. *Schultz v. Safelite Fulfillment Inc.*, ERD Case No. CR202001057 (LIRC July 14, 2025) (citing *Hensley v. Eckerhardt,* 461 U.S. 424, 434, 103 S. Ct. 1933, 76 L. Ed. 40 (1983)).

The complainant's attorney requests additional payment in the amount of $1,100 in attorney's fees incurred in contesting the respondent's petition, representing 3.7 hours of attorney time billed at $300 per hour. A review of the complainant's fee petition reveals that the majority of the requested time was spent reviewing the file and researching and drafting a motion to affirm the administrative law judge's decision based upon the respondent's failure to file a brief. In addition, the complainant's attorney has requested reimbursement for the time spent preparing a request for the fees incurred for researching and drafting that motion.

The commission notes that the respondent filed no brief in this matter, and thus the complainant's attorney was not required to file a responsive motion or brief on behalf of the complainant. Notwithstanding this, the commission believes that a portion of the time spent by the complainant's attorney reviewing the file, considering potential arguments, and responding to the respondent's petition was reasonable. Based on its review of the totality of the complainant's attorney's request for fees, the commission finds that compensation for 3 hours of attorney time billed at $300 per hour, for an additional award of $900 related to the proceedings before the commission, is appropriate, resulting in a total of $52,544.10 in reasonable attorney's fees related to this matter.

Finally, the complainant's attorney requests that the commission award interest, computed at the 12% annual rate set by Wis. Admin. Code § DWD 218.20(4), on the administrative law judge's previously-issued award of $51,644.10 in attorney's fees

and costs. There is little or no Wisconsin authority on the question of whether interest can be ordered on attorney's fee awards, and it is unclear whether such an interest award could be available. *See Geen v. Stoughton Trailers,* ERD Case No. 199700618 (LIRC Aug. 8, 2008). However, the commission need not decide that question at this time. The administrative law judge's order included interest on the award of backpay but did not include interest on the award of attorney's fees and costs. The complainant did not request reconsideration of the administrative law judge's decision on that basis, and did not file a petition for commission review of the administrative law judge's fee award. While the commission does routinely grant supplemental attorney's fees for time spent responding to a petition for review, that does not mean that the complainant may piggyback onto the respondent's petition with a claim for an additional form of relief that was not ordered by the administrative law judge. The request for the payment of interest is therefore denied.

NOTE: In drafting its remedial order, the commission has returned to its historic practice of setting the deadline for compliance to coincide with the exhaustion of appeals, which the commission considers to be more efficacious than requiring payment of monetary awards and/or reinstatement to a position with the employer before the courts have concluded their review of the matter. With respect to the concurring commissioner's opinion, the majority would simply note that the parties were afforded a full opportunity to file a petition and present argument on any and all issues arising from the administrative law judge's decision, which also did not require payment of remedies immediately upon issuance of the decision but, rather, when all appeals were final, but there were no arguments raised on this point.

The commission has rewritten the administrative law judge's decision to better reflect the evidence contained in the record and to more fully set forth the commission's reasoning for concluding that discrimination was established.

cc: Attorney Nicholas M. Raef

MARILYN TOWNSEND, Commissioner (concurring in part and dissenting in part):

I concur with the commission's finding that the respondent engaged in unlawful discrimination. I write separately to dissent from the part of the majority decision that changes the commission's current policy as to the date that its Order is enforceable.

Under the current policy, the commission's Orders become enforceable within 60 days of the Order unless the losing party obtains a stay from a circuit court, pursuant to Wis. Stat. § 227.54.[3] The current policy is working well. It provides the parties with notice and an opportunity to be heard before any decision is made to delay enforcement until all appeals are exhausted.[4]

The current policy is efficacious because, unlike the new policy, it provides each party with an opportunity to be heard and the opportunity to persuade the circuit court why enforcement should or should not be delayed until all appeals have been exhausted. In deciding whether a delay in enforcement is warranted, the court is required to consider all relevant factors including (1) whether the losing party has more than a "mere possibility" of success on the merits, (2) the need to "fully ensure the collectibility of the judgment," and (3) whether if payment is made, the losing party can recover what it has paid. *Scullion v. Wisconsin Power & Light Co.*, 2000 WI App 120, ¶¶ 18, 21, 25, 237 Wis. 2d 498, 614 N.W.2d 565.

The current policy also serves as an important public policy, as it helps to discourage the filing of appeals whose purpose may be only to delay or avoid paying the judgment, or to use the appeal process as an inducement to obtain a substantial discount on the judgment. Under the current policy, if the court is persuaded that the appeal has little merit, it can "fully ensure the collectibility of the judgment plus interest." *Scullion*, 2000 WI App at ¶ 25.

The majority's only rationale for changing the current policy is that it would be "more efficacious" to delay enforcement until all appeals are exhausted. However, it would appear that only the losing party benefits, as the Order, unlike the current policy, provides no safeguards to assure that the prevailing party will ever be paid once all appeals are exhausted. The current policy, as detailed above, gives the circuit court the tools to ensure the collectability of the judgment, and to recoup any payments that a court may order to the prevailing party.

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[3] Wisconsin Stat. § 227.54 provides that the institution of a proceeding for review shall not stay enforcement of the commission decision unless a stay is ordered by the reviewing court.

[4] For example, in the case of *Woodman's Food Mkt. v. LIRC*, No. 25-CV-67 (Wis. Cir. Ct. Rock Cnty. Nov. 6. 2025), and in the case of *Oconomowoc Area Sch. Dist. v. LIRC et al.*, No. 21-CV-1232 (Wis. Cir. Ct. Waukesha Cnty. June 13, 2022), *rev'd,* 2024 WI App 8, 418 Wis. 2d 619, 3 N.W.3d 736, *rev'd*, 2025 WI 11, 416 Wis. 2d 1, 20 N.W.3d 182, the losing parties filed motions within 60 days of the commission's Order. In both cases, the circuit court judges scheduled a hearing where each party appeared to persuade the judge why an order to delay enforcement should or should not be granted.

In its response to this dissent, the majority states that the parties in this case do not challenge when the decision becomes final. However, the parties were never put on notice that the commission's Order would delay enforcement until all appeals were exhausted. The administrative law judge's decision notifies the parties that the decision would become final if not appealed to the commission.

To sum up, I dissent from that part of the majority decision which changes the commission's current policy as to the date that its Order is enforceable. In this regard, the new policy enables the losing party to engage in three levels of appeal (circuit court, court of appeals, and supreme court) without ever having to demonstrate any merit to its appeal or ever having to demonstrate that should the appeals be unsuccessful, the prevailing party will be paid and paid promptly. The current policy provides such safeguards.

I also dissent from the majority's deduction of 0.7 hours from the complainant's request for attorney's fees. I believe that the attorney's action in drafting a motion to affirm the judgment was a reasonable and necessary expenditure of the attorney's time given that the claim had been pending for five years, and the respondent had failed to file a brief.

/s/

Marilyn Townsend, Commissioner