

STATE OF INDIANA  
CIVIL RIGHTS COMMISSION

DOCKET NO. EMra05080415  
EEOC NO. 24FA500355

EMMA POINDEXTER,  
Complainant,

VS.

MARION COUNTY FAMILY  
ADVOCACY CENTER, INC.;  
Respondent.

FILE DATED

JAN 26 2007

Indiana State Civil Rights Commission

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

On December 15, 2006, Robert D. Lange, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC"), entered his Proposed Findings Of Fact, Conclusions Of Law, And Order ("the proposed decision").

No objections have been filed to the ICRC's adoption of the proposed decision.

Having carefully considered the foregoing and being duly advised in the premises, the ICRC hereby corrects a typographical error in paragraph 3 of the Order by changing the word "sexual" to "racial" and otherwise adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

**INDIANA CIVIL RIGHTS COMMISSION**

  
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COMMISSIONER

  
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COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER

Dated: 26 January 2007

To be served by first class mail on the following parties:

Emma Poindexter  
P.O. Box 18984  
Indianapolis, IN 46218

Marion County Family Advocacy Center, Inc.  
c/o Chief Executive Officer  
4131 North Keystone Avenue  
Indianapolis, IN 46205

and to be personally served on the following attorney of record:

Joshua S. Brewster, Esq.; Staff Attorney  
Indiana Civil Rights Commission  
Attorney for Complainant Emma Poindexter  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255

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Indiana State Civil Rights Commission

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

A Hearing On Damages was held before the undersigned Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") on October 5, 2006. Complainant, Emma Poindexter ("Poindexter"), was present. Joshua S. Brewster, Esq. Staff Attorney at the ICRC, appeared in the public interest on behalf of Poindexter. Respondent, Marion County Family Advocacy Center ("MCFAC"), did not appear, by counsel or otherwise.

Poindexter waived her opening statement and testified on her own behalf. During the presentation of Poindexter's case, Complainant's Exhibit A ("CX\_\_"), CXB, CXC, and CXD were admitted into evidence without objection. Poindexter waived closing argument. The ALJ ordered that Poindexter file what she suggested that the ALJ enter as proposed findings of fact, conclusions of law, and order on or before October 13, 2006. The cause was taken under advisement.

On October 12, 2006, Poindexter filed her Notice Of Error In Service And Motion To Serve Notice Of Proposed Default Order. On October 13, 2006, the ALJ entered his Second Notice Of Proposed Default Order. On October 26, 2006, the ALJ entered his Second Order By Default And Order Concerning Hearing On Damages. On November 9,

2006, Poindexter filed [Complainant's Suggested] Proposed Findings Of Fact, Conclusions Of Law, And Order.

Having carefully considered the foregoing and being duly advised in the premises, the ALJ proposes that the ICRC enter the following findings of fact, conclusions of law, and order.

## FINDINGS OF FACT

1. Poindexter has been, at all material times, an adult African-American woman residing in the state of Indiana.
2. MCFAC is an Indiana corporation. There is no evidence that MCFAC, at any material time, employed less than 6 persons for wages or salary within the state.
3. The body of Poindexter's complaint reads as follows:
  - I. On 6/8/05 I was terminated from my job at Marion County Family Advocacy Center.
  - II. The reason I was given for my termination was that a case worker had complained about errors on a form I had generated..
  - III. I believe I was discriminated against and harassed on the basis of my race/ color because:
    - a. When Sarah Heying became Assistant Supervisor my work environment became hostile and harassing.
    - b. I was the only African American working in this particular office with Sarah.
    - c. Each day when I arrived at work the computers would be in a non-operational state. I shared a computer with Sarah.
    - d. I believe Sarah sabotaged the computer at the end of her shift, making it impossible to complete my work in a timely fashion. Due to this situation, I fell behind in some of my work, which may have contributed to my termination.
    - e. I reported this to Amber Kriech, Supervisor and others in management, but nothing changed.
  - IV. As a remedy I want my job reinstated, compensation for lost wages,

and all that is available for violation of Title VII of the Civil Rights Act of 1964 and the Indiana Civil Right Act.

COMPLAINT OF DISCRIMINATION (July 28, 2005) ("COMPLAINT").

4. On or about August 30, 2005, the ICRC sent a NOTICE OF COMPLAINT ("NOTICE 1") to MCFAC at the address identified in Poindexter's COMPLAINT. APPLICATION FOR ORDER BY DEFAULT ("APPLICATION"), Exhibit B. NOTICE 1 enclosed a copy of the COMPLAINT and advised MCFAC that it "must file a written answer to the complaint within twenty (20) days of receipt of the complaint" and that "[f]ailure to file a written answer to the complaint within twenty (20) days will be deemed an admission of all allegations in the complaint; and upon proper application to the Commission, an Order by Default may be entered for the Complainant." APPLICATION, Exhibit B.
5. NOTICE 1 was received on or about August 31, 2005. APPLICATION, Exhibit B.
6. The ICRC, by and through its Investigator, Greg Snider, gave MCFAC another opportunity to respond by way of a letter dated May 24, 2006. APPLICATION, Exhibit C. This letter gave MCFAC 5 days from its receipt in which to file an answer. *Id.*
7. MCFAC did not respond to NOTICE 1 or Mr. Snider's letter.
8. On June 27, 2006, Poindexter filed the APPLICATION.
9. On July 14, 2006, the ALJ issued his NOTICE OF PROPOSED DEFAULT ORDER ("NPDO 1"), notifying MCFAC, among other things, that (1) the ALJ proposed to enter an Order By Default against MCFAC (NPDO 1, ¶1); (2) MCFAC could file a written motion requesting that the proposed default order not be imposed, stating the grounds, within 7 days after service of the NPDO. (NPDO 1, ¶2). NPDO 1 was incorrectly served on MCFAC at the incorrect address, 4131 North Keystone Avenue in Indianapolis.
10. MCFAC did not file a written motion requesting that the default order not be imposed in response to NPDO 1.
11. On August 9, 2006, the ALJ issued his ORDER BY DEFAULT AND NOTICE OF HEARING ON DAMAGES ("ORDER 1"). ORDER 1 was also incorrectly served on

MCFAC at the incorrect address, 4131 North Keystone Avenue in Indianapolis.

12. A Hearing on Damages was held without the participation of MCFAC.

13. On October 12, 2006, Poindexter filed her Notice Of Error In Service and Motion To Serve Notice Of Proposed Default Order,

14. On October 13, 2006, the ALJ issued his SECOND NOTICE OF PROPOSED DEFAULT ORDER ("NPDO 2"), notifying MCFAC, among other things, that (1) the ALJ proposed to enter an Order By Default against MCFAC (NPDO 2, ¶1); (2) MCFAC could file a written motion requesting that the proposed default order not be imposed, stating the grounds, within 7 days after service of the NPDO. (NPDO 2, ¶2). NPDO 2 was correctly served on MCFAC at the correct address, 4134 North Keystone Avenue in Indianapolis.

15. MCFAC did not file a written motion requesting that the default order not be imposed in response to NPDO 2.

16. On October 27, 2006, the ALJ issued his ORDER BY DEFAULT AND ORDER CONCERNING HEARING ON DAMAGES ("ORDER 2"). ORDER 1 was correctly served on MCFAC at the correct address, 4134 North Keystone Avenue in Indianapolis.

17. As alleged in the COMPLAINT, which must be accepted as true, Poindexter was subjected to a hostile working environment due to racial harassment in MCFAC's workplace. This harassment was offensive, unwelcome, severe, and pervasive.

18. Poindexter timely reported the harassment to her supervisor and others in management; however, the harassment continued.

19. The harassment of Poindexter involved actions that adversely affected Poindexter's work product. Due to Poindexter's diminishing job performance, she was terminated.

20. Poindexter was discharged from her job on the basis of race.

21. At the time of her discharge, Poindexter was being paid at the rate of \$11.73 per hour and working 24 to 30 hours per week.

22. Had Poindexter not been unlawfully discharged by MCFAC, she would have earned a total of \$21,979.67, gross, as of the date of the Hearing. This is 69 weeks and 2 days (or 69.4 weeks) times \$11.73 per hour times 27 hours per week.

23. At the time of her termination, Poindexter had accrued 64 hours of vacation for which she was not paid. This equates to lost wages of 750.72, gross.

24. There is evidence that Poindexter would have received a raise had she not been terminated; however, there is no evidence of the amount, or the time, of that raise.

25. Poindexter also lost the use of the income she would have earned from MCFAC.

26. Interest is the way to compensate someone for the loss of use of money to which the person was entitled. Calculated at simple interest at the rate of 8%, compounded annually, Poindexter is entitled to interest, up to the date of the Hearing On Damages, in the amount of \$2,490.17, calculated as follows:

|              |   |                |
|--------------|---|----------------|
| <b>2005</b>  | $\$22,730.39 \times .08 \times 29.4/52$ | \$1028.11      |
| <b>2006</b>  | $\$23,758.50 \times .08 \times 40/52$   | <u>1462.06</u> |
| <b>TOTAL</b> |   | \$2490.17      |

27. Poindexter's job with MCFAC was a second job. She is employed on a full time basis with the Indiana State Police. There is no evidence, or reason to believe, that she could have found another "second" job.

28. Poindexter lost a total of \$25,220.56 as a result of being constructively discharged by Rudich because of his race.

29. Poindexter does not seek employment with MCFAC.

30. Any Conclusion Of Law that should have been deemed a Finding Of Fact is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The ICRC has jurisdiction over the subject matter and the parties.
2. Poindexter and MCFAC are each a "person" as that term is defined in section 3(a) of the Indiana Civil Rights Law, IC 22-9-1 *et. seq.* ("the ICRL"). IC 22-9-1-3(a).

3. MCFAC is an “employer” as that term is defined in the ICRL. IC 22-9-1-3(h).
4. The ICRC’s Rule 6.1 provides, in material part, that “[w]hen a party has failed to plead or otherwise defend as provided by these rules, after proper notice, and that fact is made to appear by affidavit or otherwise, the party may be defaulted”. 910 IAC 1-6-1.
6. Default is appropriate under 910 IAC 1-6-1.
7. The effects of an order by default include that the allegations of the complaint are deemed admitted.
8. The ICRL defines what is an unlawful discriminatory practice at section 3(l), which provides, in material part, as follows:

“Discriminatory practice” means:

- (1) the exclusion of a person from equal opportunities because of race ...;

...

Every discriminatory practice relating to ... employment ... shall be considered unlawful unless it is specifically exempted by this chapter.  
IC 22-9-1-3(l).

- 
9. Causing the discharge of an employee because of race is a discriminatory practice under the ICRL. Because there is no applicable exemption for such a practice, it was unlawful. IC 22-9-1-3(l).
  10. If the ICRC finds that a person has committed an unlawful discriminatory practice, it shall issue an order requiring the person to cease and desist from that practice and to take further affirmative action as will effectuate the purposes of the ICRL, which may include restoring complainant’s losses and requiring respondent to file proof of compliance. IC 22-9-1-6(k)(A).
  11. Poindexter has proven that he sustained lost earnings that were the proximate result of the proven unlawful discriminatory practice.
  12. The loss of the use of wages is a part of the loss that a discriminatee incurs when the wages are lost. Thus, the awarding of interest to compensate for the loss of the ability of the victim to use the wages wrongfully denied is within the authority of the ICRC.
  13. Interest should be awarded at an annual rate of 8% compounded annually. This is the rate provided for in IC 24-4.6-1-103, a statute that is appropriate to consult in the



absence of a more specifically applicable statute. *Indiana Insurance Company v. Sentry Insurance Company* 437 N.E.2d 1381 (Ind. App. 1982).

14. The burden of proof on the issue of mitigation of damages is on the wrongdoer. *Colonial Discount Corp. v. Berkhardt* 435 N.E.2d 65 (Ind. App. 1982).

15. Administrative review of this proposed decision may be obtained by parties who are not in default by the filing of a writing specifying with reasonable particularity each basis for each objection within 15 days of after service of this proposed decision. IC 4-21.5-3-29(d).

16. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such

## ORDER

1. MCFAC shall cease and desist from terminating employees because of race.
2. MCFAC shall deliver to the ICRC a cashier's check payable to Poindexter, in the amount of \$25,220.56. Of this amount, \$22,730.39 shall be subject to deductions required by law and/or agreement.
3. The management and any supervisory personnel of MCFAC shall attend a professionally developed seminar approved by the ICRC's Executive Director addressing the recognition, elimination, and treatment of unlawful sexual harassment. MCFAC shall obtain the Executive Director's approval no later than 180 days after the effective date of this Order and all appropriate personnel shall have attended the seminar no later than 300 days after the effective date of this order. Proof of attendance shall be filed with the ICRC.
5. MCFAC shall post and maintain, on bulletin boards normally used to disseminate employee information, a bold print statement of policy on non-discrimination. Such statement shall include the following:

It is the policy of Marion County Family Advocacy Center, Inc. to provide equal employment opportunity to all individuals regardless of race, religion,

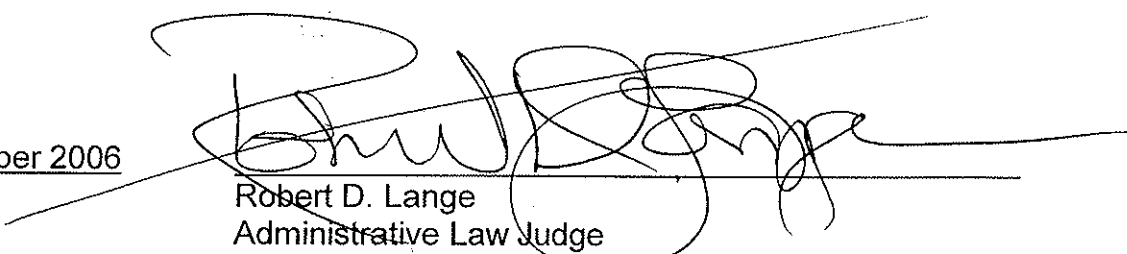
color, sex, disability, national origin or ancestry. This equal employment opportunity refers to all applicable company practices, including employee recruiting, hiring, transferring, training, promoting, disciplining, terminating, and all other conditions or privileges of employment.

The selection of persons for positions at Marion County Family Advocacy Center, Inc. is to be based on the qualifications and abilities required in the job.

Further, it is the policy of Marion County Family Advocacy Center, Inc. to expand and increase efforts of the company to promote the realization of equal employment opportunity through a positive and continuing program.

6. MCFAC shall notify, in writing, all supervisory personnel and departmental managers of the policy set out in paragraph 5 of this Order. This Notice shall make it clear to the supervisory personnel and departmental managers that any deviation from these policies and procedures will be cause for disciplinary action, up to and including possible discharge.
7. MCFAC shall report, in writing, to ICRC, when the undertakings outlined in paragraph numbers 4 through 6 of this Order have been accomplished. The report will describe the manner in which the undertakings were carried out, and include copies of the documents required by this Order. This report shall be submitted not later than July 2, 2007.
8. This Order shall take effect immediately after it is approved and signed by a majority of the members of ICRC, unless it is modified by ICRC pursuant to IC 4-21.5-3-31(a), stayed by ICRC under 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

Dated: 15 December 2006



Robert D. Lange  
Administrative Law Judge

To be served by first class mail this 15<sup>th</sup> day of December, 2006 on the following parties:

Emma Poindexter  
P.O. Box 18984  
Indianapolis, IN 46218

Marion County Family Advocacy Center, Inc.  
c/o Chief Executive Officer  
4134 North Keystone Avenue  
Indianapolis, IN 46205

and to be personally served this 15<sup>th</sup> day of December, 2006 on the following:

Joshua S. Brewster, Esq.; Staff Attorney  
Indiana Civil Rights Commission  
Attorney for Complainant Emma Poindexter  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255

Indiana Civil Rights Commission  
c/o The Honorable Gregory Kellam Scott, Esq.; Director  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255