

STATE OF INDIANA
CIVIL RIGHTS COMMISSION

DOCKET NO. Part03110409

LORRAINE C. EAST-MILLER,

Complainant,

VS.

LAKE COUNTY SHERIFF'S
DEPARTMENT,

Respondent.

FILE DATED

SEP 28 2006

Indiana State Civil Rights Commission


FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

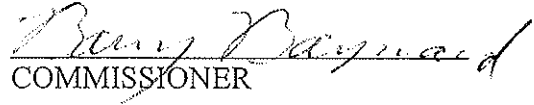
The Indiana Civil Rights Commission, has reviewed and considered the proposed Findings of Fact, Conclusions Of Law, And Order filed by Robert D. Lange, Administrative Law Judge ("ALJ") on August 11, 2006. On August 29, 2006 the Respondent filed a "Motion To Set Aside Default Judgment and Terminate Proceedings On The Basis of Settlement". The Commission finds that the Respondent's Motion in form and substance does not constitute objections to the ALJ's proposed decision. Accordingly, the Commission has ruled on Respondent's motion separately and finds that no objections have been filed to the proposed decision and therefore adopts the proposed decision.

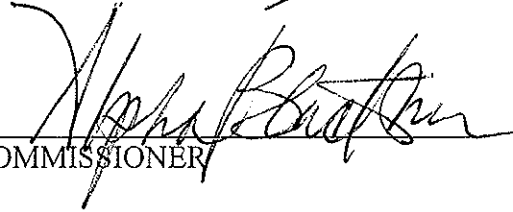
IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Proposed Findings Of Fact, Conclusions of Law, And Order, a copy of which is attached

hereto and incorporated herein by reference, be and hereby is adopted as the Final Findings of Fact, Conclusions of Law and Order of the Indiana Civil Rights Commission.

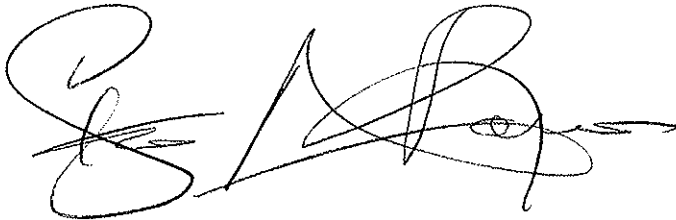
INDIANA CIVIL RIGHTS COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

COMMISSIONER



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

Lorraine East-Miller
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Lake County Sheriff's Department
c/o Sheriff
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Crown Point, IN 47307

GEORGE C. PATRICK & ASSOCIATES, P.C.
BY: Scott A. Pyle, Esq.
Attorneys for Respondent Lake County Sheriff's Department
706 Merrillville Road
Crown Point, IN 46307

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

Michael C. Healy, Esq.; Staff Counsel
Indiana Civil Rights Commission
Attorney for Complainant Lorraine East-Miller
Indiana Government Center North
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Indianapolis, IN 46204-2255

STATE OF INDIANA
CIVIL RIGHTS COMMISSION

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LORRAINE EAST-MILLER,
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FILE DATED

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AUG 13 2006

LAKE COUNTY SHERIFF'S
DEPARTMENT,

Indiana State Civil Rights Commission

Respondent.

**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 May 4, 2005. Complainant, Lorraine East-Miller ("East-Miller"), was present. Robin Clay, Esq., Staff Counsel at the ICRC, appeared in the public interest on behalf of East-Miller. Respondent, Lake County Sheriff's Department ("LCSD"), did not appear, by counsel or otherwise.

An opening statement was made on behalf of East-Miller. East-Miller testified on his own behalf and a closing argument was made. The ALJ ordered that East-Miller file her suggested proposed decision on or before June 3, 2005 and the cause was taken under advisement. This deadline was later extended to June 13, 2005.

On June 13, 2005, East-Miller filed Complainant's [Suggested] Proposed Findings Of Fact, Conclusions Of Law and Order.

Having carefully considered the testimonial and documentary evidence and the arguments of counsel, and being duly advised in the premises, the ALJ now proposes that the ICRC enter the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. East-Miller ("East-Miller") is an African-American woman who has resided, at all material times, in the state of Indiana.
2. LCSD is a municipal sheriff department and performs the usual functions of a police department in Lake County, Indiana..
3. East-Miller filed this complaint against LCSD on November 3, 2003, alleging discrimination in public accommodations based upon retaliation. COMPLAINT OF DISCRIMINATION (November 3, 2003) ("COMPLAINT"). The body of the complaint reads as follows:
 - I. On or about May 3, 2003 Respondent unjustly took my son from me. I believe I have been retaliated against because of my previous complaint of discrimination against Respondent.
 - II. I believe Respondent retaliated against me because:
 - A. The Lake County Sheriff Dept. unjustly released my son. The LCSD have not provided me with enough adequate information concerning their involvement with my child. I would like to know the facts. WHO RELEASE MY SON AND WHY!
 - B. After requesting to speak with the sheriff (Roy Domequez) concerning this case with my son, my request was denied. Even after requesting several meetings to discuss various concerns as well complaints that I had with the Lake County Sheriff Dept. DENIED AGAIN!
 - C. After speaking with the chief of the Lake County Sheriff Dept I still do not know anything. The Chief himself promised to provide me with information concerning my son. To this date no one has tried to contact me, or returned any of my phone calls.
 - D. I feel my rights were violated. I also feel I have been retaliated against. Due to my race. And also due to my previous complaint of discrimination against the LCSD.
 - III. As a remedy, I am seeking out-of-pocket expenses, compensatory damages for emotional distress, equitable relief and any others available under Indiana Civil Rights Law.COMPLAINT, ¶9.
4. On or about November 6, 2003, a Notice Of Complaint ("NOTICE"), together with a copy of East-Miller's complaint, was mailed by certified mail, return receipt requested to LCSD at the address listed for LCSD in East-Miller's complaint. The NOTICE advised

LCSD that it needed to file an Answer to the COMPLAINT and was received on or about November 13, 2003. APPLICATION FOR ORDER BY DEFAULT ("APPLICATION"), Exhibit A.

5. The ICRC made other efforts to obtain an Answer from LCSD. APPLICATION, Exhibits B, C.

6. No Answer or other response was filed by LCSD.

7. On November 18, 2004, the ALJ issued his NOTICE OF PROPOSED DEFAULT ORDER ("NPDO"), notifying LCSD, among other things, that (1) the ALJ proposed to enter an Order By Default against LCSD (NPDO, ¶1); (2) that LCSD could file a written motion requesting that the proposed default order not be imposed, stating the grounds, within 7 days after service of the proposed default order (NPDO, ¶2).

8. LCSD did not file a written motion requesting that the proposed default order not be imposed.

9. On December 10, 2004, the ALJ issued his ORDER BY DEFAULT AND NOTICE OF HEARING ON DAMAGES.

10. On January 31, 2005, LCSD filed its Verified Motion To Continue Hearing, a Motion denied the same day. ORDER DENYING MOTION FOR CONTINUANCE (January 31, 2005). At the Hearing on February 1, 2005, Staff Attorney Clay's request that the hearing be continued to enable the parties to discuss settlement was granted and a Status Conference was scheduled. Settlement did not occur. STATUS CONFERENCE ORDER AND NOTICE OF HEARING ON DAMAGES (March 10, 2005).

11. On more than one occasion, East-Miller's son was removed from school and the LCSD was involved in the incident. One of these incidents occurred on or about May 7 of 2003 and one of them involved the LCSD "placing" her son with her sister and it was a week before she got him back.

12. Efforts by East-Miller to obtain information about the situations with her son were unsuccessful. She attempted to make an appointment with the Sheriff on more than one occasion and was denied an appointment every time. Promises to contact East-Miller were not kept. As of the date of the Hearing, East-Miller has not heard from anyone acting on behalf of LCSD providing any information about the situations involving her son.

What exactly happened and why is not clear even now.¹

13. Before these events, East-Miller had filed at least one prior complaint with the ICRC against LCSD. LCSD had knowledge of that complaint at all material times.

14. LCSD denied East-Miller information about her son's release from school because of race and because East-Miller had filed a previous complaint against LCSD.

15. The COMPLAINT and East-Miller's testimony set out a *prima facie* case that LCSD refused to communicate with East-Miller because of race and because she had filed a previous complaint against LCSD with the ICRC.

16. East-Miller experienced extreme inconvenience, stress in her pregnancy, strain on her family, emotional distress, humiliation, and embarrassment as a result of LCSD's actions.

17. 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. East-Miller and LCSD are each a "person" as that term is defined in the Indiana Civil Rights Law, IC 22-9 ("the ICRL"). IC 22-9-1-3(a).

3. LCSD offers its services to the general public and, as a result, is a "public accommodation". IC 22-9-1-3(m).

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.

5. The effects of an order by default include that the allegations of the complaint are deemed admitted.

6. The ICRL makes it a discriminatory practice to exclude a person from equal opportunities because of race. IC 22-9-1-3(l). Every discriminatory practice relating to, among other things, public accommodations is unlawful unless specifically exempted by

1. There is no evidence of inquiries made, or information received, from the school.

the ICRL. *Id.* Because there is no such applicable exemption, LCSD's failure to communicate with East-Miller was unlawful.

7. The ICRL provides that

[t]he commission shall prevent any person from ... otherwise discriminating against any other person because he filed a complaint....

IC 22-9-1-6(h).

8. Section 6(k) of the ICRL governs ICRC's authority upon the finding of an unlawful discriminatory practice and provides that, among its powers and duties, the ICRC

... shall state its findings of fact after a hearing and, if the commission finds the person has engaged in an unlawful discriminatory practice, shall cause to be served on this person an order requiring the person to cease and desist from the unlawful discriminatory practice and requiring the person to take further affirmative action as will effectuate the purposes of his chapter, including but not limited to the power:

(A) to restore complainant's losses incurred as a result of discriminatory treatment, as the commission may deem necessary to assure justice

IC 22-9-1-6(k).

9. Monetary relief, including actual damages, is appropriate under section 6(k) of the ICRL.

10. "Actual damages" includes compensation for emotional distress. *Indiana Civil Rights Commission v. Alder*, 714 N.E.2d 632 (Ind. 1999). Ten Thousand Dollars (\$10,000.00) is an appropriate amount in this case.


10. Administrative review of this proposed decision may be obtained by any interested and affected person who is 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.

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

ORDER

1. LCSD shall cease and desist from refusing to communicate with affected persons because of race.
2. LCSD shall cease and desist from refusing to communicate with affected persons because those persons have previously filed a complaint with the ICRC.
3. LCSD shall develop and implement a training program that will educate its staff on dealing with the minority population, and that stresses the duty to deal with all of its customers on a fair and impartial basis.
4. LCSD shall include a written non-discrimination statement in all of its training manuals for officers that deal with the public.
5. LCSD shall deliver a check, payable to the ICRC, as escrow agent for East-Miller, in the amount of Ten Thousand Dollars (\$10, 000.00).
6. 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: 11 August 2006



Robert D. Lange
Administrative Law Judge

To be served by first class mail this 11th day of August, 2006 on the following parties and attorney of record:

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KOPACK & ASSOCIATES

BY: John M. Kopack, Esq.

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and to be personally served this 11th day of August, 2006 on the following

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Indiana Civil Rights Commission
c/o The Honorable Gregory Kellam Scott, Esq.; Director
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