STATE OF NORTH CAROLINA	**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**
COUNTY OF EDGECOMBE	**12 OSP 00430**

MARVA G. SCOTT, Petitioner, **v.** EDGECOMBE COUNTY SOCIAL SERVICES BOARD (LARRY WOODLEY, FAYE TAYLOR, ERNEST TAYLOR, VIOLA HARRIS AND EVELYN JOHNSON), EDGECOMBE COUNTY COMMISSIONERS AND EDGECOMBE COUNTY MANAGER LORENZO CARMON, Respondents.	)	**FINAL DECISION** **ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

THIS MATTER came on to be heard before the undersigned Administrative Law Judge, Augustus B. Elkins II, on August 29, 2012 in Raleigh North Carolina, for consideration of Petitioner's Motion for Summary Judgment filed on August 3, 2012, and Respondents' Response filed on August 27, 2012, and Respondents' cross-motion for summary judgment, made orally at the hearing on August 29, 2012. Having considered the respective submissions of the parties and matters of record proper for consideration of this pending motion, this Tribunal concludes that there is no genuine issue of material fact and that, therefore, summary judgment in favor of Petitioner is appropriate. A hearing was conducted on December 4, 2012 regarding Petitioner Marva G. Scott's Second Amended Motion for Award of Attorneys' Fees.

APPEARANCES

For Petitioner: Gary K. Shipman
Kyle J. Nutt
Shipman and Wright, LLP
575 Military Cutoff Rd., Suite 106
Wilmington, NC 28405

For Respondents: Mary Craven Adams
Womble Carlyle Sandridge & Rice, LLP
One West Fourth Street
Winston-Salem, NC 27101

ISSUE

Whether "just cause" exists for Petitioner's termination as Director of the Department of Social Services for Edgecombe County, North Carolina?

PRIOR TO THE HEARING, by way of a stipulation filed on August 28, 2012, Respondents removed from consideration five (5) of the seven (7) grounds set forth in their February 29, 2012 letter terminating Petitioner, and during the hearing conceded to the Undersigned that one of the two remaining stated grounds was not an independent "just cause" for Petitioner's termination, and was offered as "corroboration" of the other remaining ground. As such, the only issue before the Undersigned was whether the following basis, stated in the February 29, 2012 letter of termination to the Petitioner, construing the facts in the light most favorable to Respondents, constituted "just cause" for Petitioner's termination:

> "Further, it appears that you [Petitioner] have intentionally bent rules for at least one of your church members, to-wit, encouraging C.B. to apply for a position after the deadline of the posting period had closed, allowing the application to be considered after the posting period, and then selecting C.B. over qualified applicants that submitted their applications in a timely manner. In doing this, you have intentionally broken rules and/or policies, and have done so to serve your own interests and to further your own agendas rather than the interests of DSS."

UNCONTROVERTED FACTS

1. Petitioner has been the director of the Edgecombe County Department of Social Services ("the Agency") since March of 2007.

2. At the time that Petitioner became director of the Agency, it was one of the lowest performing agencies in the State, and over the years, the Agency has substantially improved.

3. The Edgecombe County Social Services Board (the "DSS Board) is a body politic created and existing by virtue of the laws of North Carolina, and is vested with the sole power to hire and fire the Agency Director, subject to limitations imposed by the provisions of the North Carolina General Statutes, the North Carolina Administrative Code and other controlling law, including the State Personnel Act.

4. Petitioner attends a church in Goldsboro, North Carolina, with approximately 1800 members, where Petitioner serves as a church "greeter."

5. Petitioner's church is also attended by the individual identified as C.B, who the parties agree is Chester Brown (herein "Brown").

6. Sometime prior to January 27, 2011, Brown approached Petitioner at church and inquired if the Agency was hiring, to which Petitioner replied that Brown could submit an application. Petitioner did not encourage Brown to apply for any specific position, nor did Petitioner discuss any specific open positions with Brown.

7. Prior to the date Brown spoke to the Petitioner at church, the Petitioner and Brown had never spoken outside of brief greetings in passing at church, the two were not friends, had never been friends, were not friends with each other's family members, and had not been to each other's homes for meals or attended each other's family events, and had no other business or personal relationship.

8. Brown applied for a position at the Agency by emailing Petitioner an application on January 27, 2012, which did not identify any specific job posting which Brown was applying for.

9. Prior to receipt of Brown's application, the Agency had posted an opening for a "Social Worker II" position, with an application period of December 30, 2010 to January 10, 2011.

10. On January 14, 2011, four (4) candidates who qualified for the Social Worker II position were scheduled to be interviewed.

11. The Agency's Recruitment Process Policy Manual requires four (4) interviews for an open position to be conducted if at all possible.

12. One of the four (4) candidates did not arrive for the scheduled interview; one candidate had already worked for, and quit, the Agency twice, with documented problems with a manager; and one applicant's listed reference could not be contacted.

13. Sometime after January 27, 2011, Petitioner approached the Deputy Director of the Agency, Betty Battle, who is in charge of personnel at the Agency, and inquired if Brown had been given an interview.

14. Petitioner and Ms. Battle then engaged in a conversation about whether or not Brown's application had been lost. At the time Petitioner asked Ms. Battle, the Deputy Director, to see that Brown got an interview as the "interview team" for the open Social Worker II position had not made a determination to hire or recommend the hire of any of the other candidates interviewed.

15. Chester Brown was qualified for the open Social Worker II position.

16. On February 16, 2011 Brown was interviewed by the interview team, which consisted of two supervisors. Petitioner did not participate in any aspect of the interview of Brown.

17. Petitioner did not instruct the Deputy Director or the interview team to select

Brown for the open Social Worker II position; nor did Petitioner tell the Deputy Director or the interview team that she preferred Brown for the open Social Worker II position.

18. Petitioner's longstanding policy at the Agency was to allow the interview team to select the candidate they preferred, as the candidate selected would ultimately work under one or more of the supervisors on the interview team.

19. No witness was aware of any situation in which Petitioner had ever overridden the interview team's selection of a candidate for an open position.

20. Petitioner's practice was to "sign off" on the interview team's selection.

21. The interview team ultimately selected Brown for the open Social Worker II position.

22. One member of the interview team assumed Petitioner wanted Brown to be selected for the open Social Worker II position because his application was accepted after the deadline. However, that member of the interview team did not inform Petitioner of her assumption, did not document her assumption, or otherwise protest the circumstances surrounding Brown's hire. Petitioner had no preference for Brown being hired one way or the other.

23. Brown has worked for the Agency since his hiring in March, 2011, without any disciplinary actions or complaints about his work and is regarded by his supervisor as a good employee.

24. Larry Dewitt Woodley ("Woodley") has been a member of the DSS Board since April, 2009, and at all times relevant to this action, was the Chairman of the DSS Board.

25. On May 2, 2011, Woodley sent the Petitioner a Written Warning for her "conduct and behavior at our regular [sic] scheduled board meeting on April 18, 2011 while in the Tarboro DSS Office." Woodley alleged Mrs. Scott's conduct consisted of her "speaking in an extremely loud and boisterous tone which was directed at the board chair, Larry Woodley and Commissioner Viola Harris." The letter then stated "[y]ou have the right of appeal under the rules outlined in State Personnel Policy 25 NCAC 01J.0610." The letter was signed individually by Woodley with no indication the full DSS Board had agreed to, or was aware, of the decision to implement discipline.

26. The Petitioner sent written appeals of this Written Warning to Woodley and the DSS Board on four (4) separate occasions, the last of which was sent on October 25, 2011.

27. During the months of October and November, 2011, the Petitioner and the DSS Board had a series of discussions and meetings over a vendor for the Agency named "It Starts With U" (hereinafter "ISWU"). On October 24, 2011, the DSS Board voted to "amend" a contract with the vendor, and ordered the Petitioner to pay this vendor certain funds, even though

County boards of social services do not have the legal authority, power or duty to approve or execute contracts involving the County social services department.

28. The Petitioner informed the DSS Board that she could not pay the vendor, as to do so would have been an illegal use of Federal monies.

29. On December 19, 2011, the DSS Board "moved to give full authority over DSS to County Manager, Lorenzo Carmon, effective immediately" and that "a disciplinary letter would be presented and read to Marva Scott for a period of suspension up to as much as 30 days." Mrs. Scott was then issued a letter purporting to serve as "official notification of the Edgecombe County Department of Social Services Board of Directors' unanimous vote to execute disciplinary action against you . . . . [for] [p]ersonal conduct unbecoming an employee that is detrimental to the Agency's Service . . . ." The Petitioner was informed that she was "placed on administrative leave without pay for a period of thirty (30) days."

30. The DSS Board instructed Mr. Carmon to conduct an investigation of the Petitioner.

31. By letter dated January 9, 2012, after Petitioner formally appealed her suspension in writing, the DSS Board informed the Petitioner, in writing, that she was being reinstated with full back pay, but that her suspension would continue, as other disciplinary action was being contemplated against her, and in connection with that possibility, the Petitioner was being placed in investigatory leave effective January 10, 2012, with the January 9, 2012 letter containing new allegations against the Petitioner.

32. On February 23, 2012, approximately thirteen (13) months after Petitioner accepted Brown's application, the DSS Board provided another letter to Petitioner, notifying her for the first time of the Respondents intention to terminate her, including totally new grounds beyond those stated in its January 9, 2012 letter, including, as set forth above, the stated ground surrounding the hiring of Brown, along with six (6) other stated grounds of "just cause."

33. Respondents conducted a pre-dismissal conference with Petitioner on February 27, 2012, in which Petitioner outlined her objections and responses to the seven (7) grounds set forth by Respondents as "just cause" for her termination, both verbally and in writing.

34. Respondents terminated Petitioner by letter dated February 29, 2012, asserting the same seven (7) grounds as "just cause" for her termination.

35. No disciplinary action was taken against the Deputy Director or the interview team.

36. Although Mr. Carmon conducted an "investigation" of Petitioner for more than two months (from December, 2011 until February, 2012), there is no report of his investigation; no notes of any interviews that he conducted, documents that he reviewed or conclusions that he reached. There has been no evidence provided in the record regarding any documentation or other information provided by Mr. Carmon to the DSS Board prior to February 23, 2012, nor

minutes of any Executive Session in which the results of this investigation were discussed, together with the disciplinary action that the DSS Board proposed to impose.

37. The parties have engaged in extensive discovery in this case, and it is further uncontroverted that much of Respondents' knowledge surrounding the facts underlying the sole remaining allegation against the Petitioner was not fully developed until the discovery phase of this litigation, months after Petitioner was terminated.

38. During Mr. Carmon's investigation of Petitioner, Petitioner was never contacted by him for her version of events or for information concerning the events in question.

39. The Chairman of the Respondent Edgecombe County Board of Social Services acknowledged that Petitioner's responses and objections to the stated grounds for her termination were not independently looked into after the pre-dismissal conference; instead, the unspecified and unidentified information previously provided by the interim director/investigator, Lorenzo Carmon, was relied upon without further investigation.

40. The Petitioner, Marva G. Scott, is the prevailing party in the above captioned action.

41. Petitioner incurred significant costs in litigating not only the remaining issue for consideration in their motion for summary judgment but the six issues which Respondents abandoned prior to and during the hearing, including legal research, the deposition of fourteen witnesses, drafting discovery requests, reviewing documents and recordings, and drafting motions and memorandum in support of them and other matters.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this action. The parties received proper notice of all hearings in this matter. To the extent that the findings of fact contain conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to the given labels.

2. At the time of the termination of her employment, Petitioner was subject to the State Personnel Act in accord with N.C.G.S. § 126-5(a)(2). N.C.G.S. §126-35 provides that no career State employee subject to the State Personnel Act shall be discharged, suspended or demoted for disciplinary reasons, except for just cause.

3. The Petitioner is a "career state employee" as defined by N.C. Gen. Stat. § 126-1.1 and is subject to and governed by the provisions of the State Personnel Act, codified at N.C. Gen. Stat. § 126-1 *et seq*. The Petitioner's claim is that Respondent lacked "just cause" pursuant to N.C. Gen. Stat. § 126-35 to dismiss her for one or more alleged acts of "unacceptable personal conduct."

4. Petitioner and all employees of Respondent are subject to the State Personnel Act pursuant to N.C.G.S. § 126-5(a)(2). Respondent is subject to the State Personnel Act as codified in N.C.G.S. § 126-1 *et seq*. and all applicable regulations. Notice is taken that Respondent presented no evidence that either Respondent Department nor the Board of County Commissioners had applied for "substantial equivalency" designation from the State of North Carolina's Office of State Personnel as to its employment policies regarding the matters in this case and they had not otherwise received a substantial equivalent exemption different from Chapter 126 pursuant to N.C. Gen. Stat. § 126-11. As Respondent was not exempt from the provisions of Chapter 126 for purposes of this matter, the Undersigned is guided by the law, regulations, guidelines and/or policies established by the Office of State Personnel.

5. N.C.G.S. §126 states that in contested cases pursuant to Chapter 150B of the General Statutes, the burden of showing that a career employee subject to the State Personnel Act was discharged, suspended, or demoted for just cause rests with the department or agency employer.

6. Petitioner's employment with the Edgecombe County Department of Social Services is subject to Title 25, Chapter 1, subsection 1I of the North Carolina Administrative Code, "Service to Local Government."

7. Under the Administrative Code, "The willful violation of known or written work rules" constitutes unacceptable personal conduct." 25 N.C. Admin. Code 1I.2304(a)(4).

8. Summary Judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. R. Civ. P. 56(c).

9. "[A]n issue is genuine if it is supported by substantial evidence." DeWitt v. Eveready Battery Co., Inc., 355 N.C. 672, 681, 565 S.E.2d 140, 146 (2002) (citing Koontz v. City of Winston-Salem, 280 N.C. 513, 518 186 S.E.2d 897, 901 (1972).

10. "'Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,' . . . and means 'more than a scintilla or a permissible inference.'" Id. (citations omitted).

11. The burden is upon the movant, in this case, the Petitioner, to come forward with evidence that establishes that she is entitled to judgment as a matter of law, with the Undersigned considering the entire record in the light most favorable to the nonmoving party, the Respondents, with all reasonable inferences drawn in that party's favor. Whitley v. Cubberly, 24 N.C. App. 204, 206, 210 S.E.2d 289, 291 (1974).

12. The moving party can meet its burden by one of two means: (1) by showing that an essential element of the opposing party's claim is non-existent; or (2) by demonstrating that the opposing party cannot produce evidence sufficient to support an essential element of the

claim or overcome an affirmative defense which would work to bar its claim. Wilhelm v. City of Fayetteville, 121 N.C. App. 87, 90, 464 S.E.2d 299, 300 (1995) (citing Roumillat v. Simplistic Enterprises, Inc., 331 N.C. 57, 414 S.E.2d 339 (1992)).

13. Once the moving party satisfies its burden, the burden shifts to the non-moving party to "produce a forecast of evidence demonstrating that the [non-moving party] will be able to make out at least a prima facie case at trial." Roumillat, 331 N.C. at 63, 414 S.E.2d at 342 (quoting Collingwood v. G.E. Real Estate Equities, 324 N.C. 63, 66, 376 S.E.2d 425, 427 (1989)).

14. Here, Respondents alleged Petitioner "bent rules" for a church member, and "intentionally broke[] rules and/or policies." However, Respondents failed to cite any rule that Petitioner allegedly "bent", or any rule that specifically prohibited Petitioner, as Director of the Agency, from considering an application submitted after the deadline.

15. When questioned by the Undersigned what "rule" Petitioner violated, Respondents cited a provision under sub-chapter "1H" of Title 25, Chapter 1 of the North Carolina Administrative Code, entitled "Recruitment and Selection." However, it is sub-chapter "1I", not subchapter 1H, of Title 25, Chapter 1 of the North Carolina Administrative Code (Service to Local Government) which applies to local Department of Social Services agencies and their employees, and therefore the "rule" that Petitioner allegedly violated, as recited by Respondents, does not apply, and there is no other evidence before the Office of Administrative Hearings as to any other "rule" that the DSS Board was informed that the Petitioner had allegedly violated.

16. Pursuant to the provisions of Subchapter 1I of Title 25, Chapter 1 of the North Carolina Administrative Code, local government agencies have their own Recruitment and Selection policies. Pursuant to the provisions of 25 NCAC 1I.1903(d), which contain the only controlling provision of the North Carolina Administrative Code that addresses the consequences of an application for vacancies at local government agencies being submitted after the deadline, applicants may be, but are not automatically, disqualified if an application is not submitted "within the prescribed time limits. 25 N.C.A.C. 1I.1903(d) ("An applicant may be disqualified if he: . . . (3) fails to submit an application correctly or within the prescribed time limits;").

17. "The use of the word '*may*' generally connotes permissive or discretionary action and does not mandate or compel a particular act." Brock and Scott Holding, Inc. v. Stone, 203 N.C. App. 135, 137, 691 S.E.2d 37, 39 (2010) (quoting Campbell v. First Baptist Church of the City of Durham, 298 N.C. 476, 483, 259 S.E.2d 558, 563 (1979)) (emphasis added).

18. An applicant is not automatically disqualified by submitting an application outside of the deadline, and discretion to disqualify or accept such an application is vested in the Agency and its Director.

19. "General Statute 108A-14(2) gives the director of a county department of social services the exclusive power to hire and fire the department's personnel." In re Brunswick County, 81 N.C. App. 391, 397, 344 S.E.2d 584, 588 (1986).

20. The discretion to disqualify an applicant provided by 25 N.C.A.C 1I.1903(d) is held solely by the Director of Social Services, (i.e., the Petitioner).

21. The discretionary nature of 25 N.C.A.C. 1I.1903 was not disputed by Respondents; in fact, two of Respondents' witnesses, including Respondents' own expert, acknowledged that the referenced section of the Code gave the Petitioner the discretion to disqualify or accept an application submitted after the deadline.

22. Respondent Edgecombe County Board of Social Services "does not have the authority to overrule the director's decisions or interfere with the director's management of the department when state law vests authority for the department's management or administration in the director;" or to "establish personnel policies for county social services employees." John L. Saxon, Handbook for County Social Services Boards 61, 68 (University of North Carolina School of Government, 2009); *See also* N.C. Gen. Stat. § 108A-9 (enumerating the limited duties and responsibilities of county boards of social services).

23. Additionally, the Agency's official Recruitment Process policy manual does not contain any provision which specifically circumscribes the director's discretion to disqualify a late application under 25 N.C.A.C 1I.1903.

24. The Agency's official Recruitment Policy manual does, however, state "[t]he interview team will interview no less than (4) qualified applicants per position or combination of positions if available if at all possible."

25. At the time Petitioner accepted Brown's application, only three candidates had been interviewed, thus, her actions in causing Brown to be interviewed actually resulted in compliance with the Agency's written rules as stated in the Recruitment Policy manual.

26. Respondents contended Petitioner did not disqualify Brown's late application because he was a church member. As previously stated, the Director has the discretion to disqualify late applications, but is not required to do so as a matter of law; the fact that the applicant happened to attend the same church as Petitioner does not alter the law.

27. Regardless, there was insufficient evidence submitted to support the allegation that Petitioner failed to disqualify Brown because he was a church member and to "serve her own interests."

28. Respondents' relied on speculation in alleging Brown's application was not disqualified because he attended the same church as Petitioner. Such speculation is no more than an inference, thus it is not "substantial evidence," and is contrary to the only evidence submitted.

29. The evidence in the record establishes that Petitioner and Brown had no relationship other than Petitioner's greetings of all members of the church at the time of Brown's application, and she otherwise did not know him or have anything to gain by accepting his application.

30. Respondents offered no other evidence to support the contention that, at the time Brown submitted his application, Petitioner had any motive to "bend" or "break" the rules in favor of Brown, or that she "served her personal interests" or what those interests even were.

31. Respondents' "evidence leaves it all in the realm of mere conjecture, surmise, and speculation, and one surmise may be as good as another. Nobody knows. . . . A resort to a choice of possibilities is guesswork, not a decision." Monk v. Flanagan, 263 N.C. 797, 798, 140 S.E.2d 414, 415 (1965).

32. Finally, irrespective of the Undersigned's findings that Petitioner's conduct could not have constituted "unacceptable personal conduct," the alleged conduct fails to constitute "just cause" for Petitioner's dismissal.

33. "In order to discharge, suspend, or demote a career state employee for disciplinary reasons based on unacceptable personal conduct, the specific misconduct must constitute just cause for the specific disciplinary sanction imposed." Warren v. N.C. Dep't of Crime Control & Pub. Safety, 726 S.E.2d 920, 925 (N.C. App. 2012).

34. It is undisputed that Petitioner had the authority to accept an application submitted after the application deadline.

35. Petitioner took no part in the selection of Brown with the exception of "signing off" on the interview team's decision, which was her practice in 100% of previous selections.

36. Brown was qualified for the position, and the uncontroverted facts established that Petitioner did not instruct the Deputy Director or any members of the interview team to select Brown, nor did she inform anyone that she preferred Brown over any other candidate, nor was there any evidence that she would have rejected a different selection by the interview team.

37. While the responsibility for hiring decisions ultimately rests with the Director, the evidence established that Petitioner made no intentional decision to select Brown over any other qualified candidate, and instead relied upon the interview team's decision. Petitioner's conduct in accepting an application after the posting deadline, cannot not serve as "just cause" for her dismissal.

38. In accordance with N.C. Gen. Stat. § 126-37 entitled, "Administrative Law Judge's final decision", "The administrative law judge is hereby authorized to reinstate any employee to the position from which the employee has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority."

39. In accordance with N.C. Gen. Stat. § 150B-33(b)(11), an administrative law judge may "order the assessment of reasonable attorneys' fees and witnesses' fees against the State

agency involved in contested cases decided under Chapter 126 where the administrative law judge …orders reinstatement or back pay."

40. The starting point for determining the amount of a reasonable fee is the calculation of "the number of hours reasonable expended on the litigation multiplied by a reasonable hourly rate." Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed2d 40 (1983).

41. The determination of a reasonable attorney's fee is a matter of discretion with the Court. *See* Robinson v. Equifax Info. Services, 560 F.3d 235, 243 (4th Cir. 2009). In determining what is reasonable, the Fourth Circuit has instructed that a Court should be guided by the following factors, known as the "Johnson factors": (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation;(7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases. Grissom v. The Mills Corp., 549 F.3d 313, 321 (4th Cir. 2008) (applying twelve-factor test set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir.1974)) (citation omitted).

42. Petitioner seeks an award of attorneys' fees and related costs in the amount of $62,750.00 based upon legal services and travel related to the handling of this case. The primary attorneys in this matter, Kyle J. Nutt and Gary K. Shipman, as well as the associated attorneys, Angel Adams and James Monroe, are all licensed in the State of North Carolina and are attorneys in good standing with the North Carolina Courts.

43. In support of Petitioner's claim for attorneys' fees, Mr. Nutt has submitted a Second Amended Motion for Award of Attorneys' Fees which includes the General Contract for Legal Services between Petitioner Marva G. Scott and the firm of Shipman & Wright, L.L.P., as well as some fifty-eight (58) pages of detailed billing records. The Undersigned is satisfied that the time spent for legal services plus travel was reasonably expended in furtherance of this litigation.

44. An award of attorney fees should be based on rates prevailing in the community where the action takes place. In the December 4, 2012 hearing on Petitioner's Second Amended Motion for Award of Attorneys' Fees, Mr. Nutt reviewed the qualifications and experience of the attorneys involved in the matter as well as the associated paralegals and office staff. Based on the information provided and the Undersigned's own knowledge of and experience with prevailing rates charged in the relevant community, the Undersigned finds the requested hourly fees to be reasonable.

45. Petitioner seeks to recover costs incurred by her attorneys for filing fees, postage, coping, faxes, and the like. The Undersigned finds the claimed costs are reasonable.

FINAL DECISION by Summary Judgment

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Petitioner's Motion for Summary Judgment is **ALLOWED,** Respondents' Motion for Summary Judgment is **DENIED**, and that Respondents' decision to dismiss Petitioner is **REVERSED**.

Petitioner is entitled to be reinstated, effective immediately, to her position of employment as Director of the Edgecombe County Department of Social Services, with the same pay. She is to be paid all compensation to which she would otherwise have been entitled since the date of her termination, including but not limited to back pay and any and all benefits to which she would have been entitled.

IT IS FURTHER ORDERED that Petitioner Marva G. Scott's Second Amended Motion for Award of Attorneys' Fees is **GRANTED** and Petitioner shall have and recover of the Respondents the sum of **Sixty-Two Thousand, Seven Hundred and Fifty Dollars** ($62,750.00) in attorneys' fees and costs.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. GEN. STAT. § 150B-34. Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with the Office of Administrative Hearings' Rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 19th day of December 2012.

_____

Augustus B. Elkins II
Administrative Law Judge