



STATE OF IOWA

TERRY BRANSTAD, GOVERNOR
KIM REYNOLDS, LT. GOVERNOR

IOWA CIVIL RIGHTS COMMISSION
BETH TOWNSEND
EXECUTIVE DIRECTOR

3/5/2013

JODIE PORTER
[REDACTED]

RE: JOHNSON COUNTY SHERIFF'S
DEPARTMENT
CP# 12-11-61830

Dear JODIE PORTER:

The Iowa Civil Rights Commission (ICRC) has completed its investigation of the above-captioned complaint.

The ICRC Administrative Law Judge has determined a probable cause finding effective as of the date on this letter. Please refer to the enclosed copy of the Administrative Law Judge's Order and Case Summary.

After a finding of probable cause conciliation is the next step. The Conciliator for ICRC will contact you. Thank you for your cooperation.

Sincerely,

Iowa Civil Rights Commission

Enclosures: Order and summary

CC: File
JEAN PENDLETON, Complainant's Attorney
ICRC/S36 (41C)



**BEFORE THE IOWA CIVIL RIGHTS COMMISSION
ORDER
FINDING PROBABLE CAUSE**

CP #	12-11-61830
Complainant	Jodie Jay Jones
Respondents	Johnson County Sheriff's Department, Deputy Susan Henderson

STATEMENT OF THE CASE

Complainant Jodie Jay Jones, formerly known as Jodie Porter, filed a Complaint with the Iowa Civil Rights Commission alleging Respondents Johnson County Sheriff's Department and Deputy Susan Henderson discriminated against her on the basis of gender identity, sex and sexual orientation in a public accommodation. Commission staff reviewed Jones' Complaint and determined her Complaint fell within the Commission's investigative jurisdiction. The Commission assigned the Complaint to an investigator who commenced an investigation.

The investigation included interviews of Jones, Deputy Henderson, courthouse records, jail records, the Sheriff's Department's policies, and surveillance video footage. At the conclusion of the investigation, the investigator prepared a written report detailing the investigative findings.

Pursuant to Iowa Code section 216.15(3) and 161 Iowa Administrative Code 3.13(1), Jones' Complaint comes before the Administrative Law Judge for consideration. This Order is based upon the investigator's report and investigative findings. Based on the evidence presented and for the reasons set forth below, the Administrative Law Judge finds Probable Cause exists to support the allegations of discrimination on the basis of gender identity, sex and sexual orientation in a public accommodation as set forth in the Complaint.

INVESTIGATIVE FINDINGS

Jones was born a male and is a transgendered female. Jones reports she has felt conflicted her whole life. The Veterans Administration diagnosed Jones with gender identity disorder in 2010. Jones began presenting herself as a female in her twenties, and has presented herself as a female 100% of the time since May 2011. Jones is currently receiving hormone therapy.

Jones had several interactions with the Sheriff's Department in 2011. In April and May she was arrested and spent time in jail. Jones reported that when she was arrested in the spring she was still presenting as a man. Jones was arrested on September 8, 2011 for domestic abuse assault against her domestic partner. The Sheriff's Department contends Jones was presenting as a male at the time of her arrest in September 2011. Jones asserts that at the time of her arrest she was presenting as a female 100% of the time.

The Sheriff's Department has 93 employees including deputies, administrative staff and jail staff. The Sheriff's Department has a male and a female deputy assigned to the Johnson County Courthouse.

The Sheriff's Department hired Deputy Susan Henderson in 1984. Deputy Henderson has worked patrol and in the jail. For the past ten years she has been assigned to the Johnson County Courthouse and works during the day, Monday through Friday.

On November 30, 2011, Jones went to the Johnson County Courthouse to obtain a protective order against her girlfriend. Jones was dressed in female clothing.

Michelle Mason works for the Johnson County Courthouse. Mason reported that on November 30, 2011, Jones attended a court hearing. At the conclusion of the hearing Mason observed Jones go into the women's restroom. Mason contacted Deputy Susan Henderson to report a man was using the women's restroom.

Jones asserts that while she was using the restroom, Deputy Henderson entered the restroom and yelled she needed to immediately leave the restroom. Jones asserts Deputy Henderson told her she was not entitled to use the restroom and that Jones made her feel uncomfortable. Jones asserts she responded she had the legal right to use the restroom of her choice and Deputy Henderson replied she would not allow Jones to use the restroom, "regardless of what the law is." Deputy Henderson denies yelling at Jones during the incident.

Mason observed Deputy Henderson go into the women's restroom. Deputy Henderson exited the restroom a few minutes later and waited at the counter. Mason also observed Jones leave the restroom. Mason reported that when Jones came out of the restroom Jones approached the counter, stated she was sorry, and reported it would not happen again. Mason was stating nine to ten yards from the restroom and denied hearing Deputy Henderson yell at Jones.

Jones contends she was humiliated and frightened by the incident. Jones has a panic attack disorder and reported Deputy Henderson's actions caused her to have a major panic attack which lasted the remainder of the day.

Jones reported she had interacted with Deputy Henderson before at the jail. Deputy Henderson denied knowing Jones had begun transferring from a male to a female, but acknowledged she had seen Jones wear a wig and female accoutrements, including earrings and makeup in the past. Deputy Henderson sat in two hearings involving Jones prior to November 30, 2011. Deputy Henderson reported she first learned Jones was a transgendered individual when she received the Complaint. Mason also denied knowing Jones was a transgendered individual.

LEGAL CONCLUSIONS

I. Probable Cause Standard

Any person who claims to be aggrieved by a discriminatory or unfair practice may file a written complaint with the Commission.¹ After receiving a written complaint, an authorized member of the Commission staff is required to initiate an investigation of the complaint and issue a recommendation to an administrative law judge employed by the Commission or Division of Administrative Hearings (“DIA”).² The administrative law judge issues a determination finding probable cause or no probable cause.³ A finding of probable cause or no probable cause is exempt from Iowa Code section 17A.17.⁴ The Commission assigned an investigator who recommended a finding of no probable cause. The Commission then transferred the case to DIA for a determination of probable cause or no probable cause.

The Iowa Civil Rights Act (“ICRA”) does not provide a standard for making a probable cause or no probable cause determination under Iowa Code chapter 216. The Iowa Supreme Court has observed “the legislature did not intend to require the [ICRC] to process every complaint which merely generated a minimal prima facie case.”⁵ The Court found the Iowa Legislature intended to permit the Commission “to be selective in the cases singled out to process through the agency, so as to better impact unfair or discriminatory practices with highly visible and meritorious cases.”⁶ As a general rule, a finding of no probable cause means that following an investigation, the evidence supporting the allegations is insufficient.⁷ The standard of proof is less than a preponderance of the evidence.⁸

II. Gender Identity Discrimination in a Public Accommodation

This case involves allegations of discrimination on the basis of gender identity, sex and sexual orientation in the Complaint based on the public accommodation of using a restroom. A person commits a discriminatory practice under the ICRA “[t]o refuse or deny to any person because of . . . sex, sexual orientation [or] gender identity . . . the accommodations, advantages, facilities, services or privileges thereof, or otherwise discriminate against any person because of . . . sex, sexual orientation, [or] gender identity . . . in the furnishing of such accommodations, advantages, facilities, services, or privileges.”⁹ The ICRA defines gender identity as “a gender-related identity of a person, regardless of the person’s assigned sex at birth.”¹⁰ A “public accommodation” includes state and local government units or districts that offer services, facilities, benefits, grants or goods to the public.¹¹ Jones alleges Deputy Henderson interfered with her ability to use the women’s restroom, a public accommodation.

¹ Iowa Code § 216.15(1) (2011).

² *Id.* § 216.15(3).

³ *Id.*

⁴ *Id.*

⁵ *Estabrook v. Iowa Civil Rights Comm’n*, 283 N.W.2d 306, 301 (Iowa 1979).

⁶ *Id.* at 311.

⁷ *Kern v. Iowa Civil Rights Comm’n*, 09-1661, 2010 WL 4103949, at *3 (Iowa Ct. App. Oct. 20, 2010).

⁸ *Clark v. Astrue*, 602 F.3d 140, 147 (2nd Cir. 2010) (noting EEOC standard of “reasonable cause to believe” is commonly referred to probable cause, which is “[a] reasonable belief in the existence of facts on which a claim is based and the validity of the claim itself”).

⁹ Iowa Code § 216.7(1)a.

¹⁰ *Id.* § 216.2(10).

¹¹ *Id.* 216.2(13)b.

In analyzing a public accommodation claim the Iowa courts apply the burden-shifting framework set forth in *McDonnell Douglas v. Green*, 411 U.S. 792 (1973).¹² To establish a prima facie case of discrimination, Jones must establish:

(1) she is a member of a protected class; (2) she sought to enjoy the accommodations, advantages, facilities, services, or privileges of a “public accommodation;” and (3) she did not enjoy the accommodations, advantages, facilities, services, or privileges of the public accommodation in that (a) she was refused or denied the accommodations, advantages, facilities, services, or privileges of the “public accommodation” under circumstances giving rise to an inference of discrimination, or (b) she was allowed to use the accommodations, advantages, facilities, services, or privileges of the “public accommodation,” but was otherwise discriminated against in the furnishing of those accommodations, advantages, facilities, services, or privileges by being subjected to markedly hostile conduct that a reasonable person would find objectively unreasonable under circumstances giving rise to an inference of discrimination.¹³

“Markedly hostile” is conduct that is “(1) is so profoundly contrary to the manifest financial interests of the merchant and/or her employees; (2) so far outside of widely accepted business norms; and (3) so arbitrary on its face, that the conduct supports a rational inference of discrimination.”¹⁴

Jones is a member of a protected class based on her gender identity. Jones sought to use the women’s restroom at the Johnson County Courthouse. Jones established that while using the restroom, Deputy Henderson told Jones she needed to leave the women’s restroom and should use the men’s restroom. Jones has set forth a prima facie case of discrimination in a public accommodation.

Given Jones has established a prima facie case, the burden switches to the Sheriff’s Department to set forth a legitimate, nondiscriminatory reason for its conduct.¹⁵ Deputy Henderson told Jones she needed to use the men’s restroom because she is biologically a male. Deputy Henderson reported she did not know Jones was a transgendered person. The investigation revealed Deputy Henderson had seen Jones in female clothing on more than one occasion at the Johnson County Courthouse. On November 30, 2011, Jones was dressed as a female and she used the women’s restroom. Deputy Henderson had sufficient information to conclude Jones was a transgendered woman. The Sheriff’s Department has not set forth establish a legitimate, nondiscriminatory reason for its action.

¹² *Kirt v. Fashion Bug #3253, Inc.*, 479 F. Supp. 2d 938, 959 (N.D. Iowa 2007) (noting the Iowa courts have not adopted one of the two tests for allegations of racial discrimination in public accommodations); *Kiray v. Hy-Vee, Inc.*, 716 N.W.2d 193, 202 (Iowa Ct. App. 2006) (declining to adopt one of two tests for analyzing allegation of racial discrimination in public accommodations and finding plaintiff failed to meet both tests).

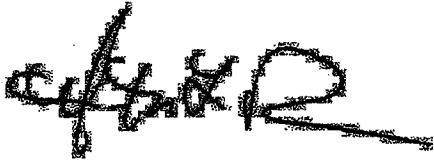
¹³ *Kirt*, 479 F. Supp. 2d at 963.

¹⁴ *Id.* at 966.

¹⁵ *Id.*

ORDER

I conclude Probable Cause exists to support the allegations of allegations of discrimination on the basis of gender identity, sex and sexual orientation in a public accommodation set forth in the Complaint.

A handwritten signature in black ink, appearing to read 'H. Palmer', with a long horizontal stroke extending to the right.

Heather L. Palmer
Administrative Law Judge
515-281-7183