EXHIBIT B

TAMMI P. BOWDEN, Plaintiff, v. KIRKLAND & ELLIS LLP, Defendant, NANCY J. GAGEN, Plaintiff, v. KIRKLAND & ELLIS LLP, Defendant.

No. 07 C 975,No. 07 C 979

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

2010 U.S. Dist. LEXIS 91730

September 2, 2010, Decided
September 2, 2010, Filed

PRIOR HISTORY: *Grey v. Kirkland & Ellis, LLP, 2010 U.S. Dist. LEXIS 91726 (N.D. Ill., Sept. 2, 2010)*

COUNSEL: [*1] Tammi P Bowden (1:07cv975), Plaintiff, Pro se, Chicago, IL.

For Tammi P Bowden, Plaintiff: Joseph A. Morris, LEAD ATTORNEY, Charles Haxton Bjork, Morris & De La Rosa, Chicago, IL.

For Kirkland & Ellis, LLP, an Illinois limited liability partnership, Defendant: Brenda H. Feis, LEAD ATTORNEY, Jay C. Carle, Jessica E Chmiel, Tracy Marie Billows, Seyfarth Shaw LLP, Chicago, IL.

For Nancy J. Gagen, Chicago, IL (1:07cv979), Plaintiff: Alfred D. Ivy , III, LEAD ATTORNEY, Alfred D. Ivy, III, Urbana, IL; Charles Haxton Bjork, Joseph A. Morris, Morris & De La Rosa, Chicago, IL.

For Kirkland & Ellis, LLP, an Illinois limited liability partnership, Defendant: Brenda H. Feis, Nicole K Peracke, LEAD ATTORNEYS, Jay C. Carle, Tracy Marie Billows, Seyfarth Shaw LLP, Chicago, IL.

JUDGES: REBECCA R. PALLMEYER, United States District Judge.

OPINION BY: REBECCA R. PALLMEYER

OPINION

MEMORANDUM OPINION AND ORDER

Plaintiffs Tammi Bowden and Nancy Gagen are both former employees of Chicago-area law firm Kirkland & Ellis LLP ("Kirkland"). Bowden, who is African-American, claims that the firm subjected her to a hostile work environment and discriminated against her on the basis of her race in violation of Title VII of the Civil Rights Act of 1964 [*2] ("Title VII"), *42 U.S.C § 2000e et eq.*, and *42 U.S.C. § 1981* ("*Section 1981*"). Specifically, Bowden asserts that her two direct supervisors gave her less favorable work assignments and subjected her to greater scrutiny than they applied to Bowden's Caucasian colleagues. When Bowden complained internally and filed a charge against the firm with the Equal Employment Opportunity Commission ("EEOC"), she asserts, her supervisors and co-workers retaliated by harassing her. Gagen, who is Caucasian, is Bowden's friend and co-worker. She advised and encouraged Bowden to file an EEOC charge. In her complaint, Gagen asserts that Kirkland unlawfully terminated her in retaliation for providing assistance to Bowden. Kirkland moves for summary judgment against both Plaintiffs.

As explained below, the court concludes that the specific acts of which Plaintiff Bowden complains do not support her race discrimination claim because they do not constitute materially adverse employment actions; they do not support a claim of retaliation because they would not have discouraged a reasonable person from filing a charge, and, notably, did not discourage Bowden herself. Plaintiff Gagen has failed to demonstrate [*3] a causal relationship between her activities and any adverse employment action taken against her. The court concludes that neither Plaintiff has adequately established the necessary elements of a claim for discrimina-

tion. Kirkland's motions for summary judgment are therefore granted as to both Bowden and Gagen. [1]

1 Bowden, Gagen, and their mutual friend Faye Grey have also asserted claims against Kirkland based on the firm's alleged surveillance of their private telephone calls. Plaintiffs' eavesdropping claims were consolidated by this court on December 3, 2009, and Kirkland has moved separately for summary judgment on those claims. The court addresses that motion in a companion opinion issued contemporaneously with this one. To summarize the court's conclusions: Plaintiffs have failed to put forth any non-speculative evidence that Kirkland engaged in the alleged eavesdropping activities. Thus, to the extent that Plaintiffs' employment claims rely on or are intertwined with their allegations of illegal wire-trapping, their claims succumb to the same failure of proof.

BACKGROUND

Plaintiffs Bowden and Gagen assert their claims against Kirkland in separate cases, which are both before the [*4] court at this time. Because Plaintiffs' distinct employment claims rely on some overlapping facts, however, the court addresses them in a single opinion. In doing so, the court notes that Plaintiff Bowden, who appears *pro se*, has failed to respond to Defendant's motion for summary judgment or to its statement of undisputed material facts. Pursuant to *Local Rule 56.1*, a litigant seeking to oppose a motion for summary judgment must file a response to the movant's statement of facts and set forth any additional facts that require the denial of summary judgment. *LR 56.1(b)*; *Cichon v. Exelon Generation Co. LLC, 401 F.3d 803, 809 (7th Cir. 2005)*. Because Bowden has failed to abide by this rule, the facts set forth in Defendant's 56.1 Statement are deemed admitted by Bowden. The court relies on those facts and on its independent review of the record in analyzing Bowden's claims. Plaintiff Gagen has fully complied with the local rules. Bowden's factual admissions, therefore, do not prejudice or impact the court's analysis of Gagen's separate claim. The court recounts all of the facts in the light most favorable to Plaintiffs, as the non-movants.

I. Bowden's Employment History[2]

2 The record citation [*5] in this portion of the order refers to those materials submitted in connection with Defendant's motion for summary judgment in Bowden's case (No. 07 C 975).

Plaintiff Bowden began working as a legal secretary for Kirkland in December 1996. (Def. 56.1 Stat. at P 2.) As a legal secretary, Bowden's work was supervised by various Kirkland attorneys and by Donna Amos, Kirkland's Secretarial Services Manager. (*Id.* at P 9; Bowden Dep. 26-29.) In 2004, the firm created a new position called a Floor Practice Support Specialist ("FPSS") to provide technical assistance to Kirkland's attorneys and staff during the firm's transition from Word Perfect to Microsoft Word computer software. (Def. 56.1 Stat. at P 10.) Bowden applied for the position, passed the required skills tests, and was selected over another internal applicant to "pilot" the FPSS program. (*Id.* at P 11; Bowden Dep. at 30-32.) In the FPSS position, as Bowden understood it, she was to report directly to Amos rather than to any specific attorney. (Bowden Dep. at 32-34.) Bowden began working as an FPSS and reporting exclusively to Amos in September 2004. (Def. 56.1 Stat. at P 12.) In 2005, when Kirkland decided to extend the FPSS program [*6] and make it permanent, Amos altered the chain of command so that Bowden reported to Leigh Quinlisk, Kirkland's Document Services Coordinator. (*Id.*) Amos remained Quinlisk's direct manager. Though Bowden admitted that she initially sought the FPSS job of her own accord, she now believes her selection for the position was "the beginning of a plan [by Amos and Quinlisk] to probably get me fired ultimately at Kirkland." (*Id.* at 111.) Bowden bases her belief, in part, on Amos's decision to place Quinlisk in a supervisory role over Bowden. "I wasn't Donna [Amos] 's favorite," Bowden testified. "Leigh [Quinlisk] was the hatchet woman for Donna." (*Id.*)

Both Quinlisk and Amos are Caucasian. Bowden testified that she suspects Amos has a "race problem" because Amos's sister-in-law once told Bowden that Amos's family harbored racial prejudices. (Bowden Dep. at 101-05.) [3] According to Bowden, the sister-in-law stated that she had overheard Amos's brother use racial epithets. (*Id.* at 104.) Bowden admitted that she has never heard that Donna Amos herself made any racist comments, and speculates that Amos shares her family members' views but "learned that it wasn't politically correct [to make overtly [*7] racist remarks]." (*Id.* at 106.) Bowden also believes that Amos and Quinlisk used Bowden as a pawn to ensure the success of the FPSS program: "I believe they had a plan for me from beginning to end," Bowden testified. "They couldn't avoid putting me in the pilot. Hands down I was the choice. I had the familiarity with the lawyers . . . . I had the relationship with the lawyers, the camaraderie . . . They had confidence in my work . . . [Amos and Quinlisk] could use me, and [believed I would] make [the FPSS program] succeed, and I did." (Bowden Dep. at 117.)

3 Bowden testified that she works with Amos's sister-in-law in her current job at the law firm of Marshall, Gerstein, & Borun LLP. Apparently the

sister-in-law has, on occasion, discussed the racial attitudes of Amos's family with Bowden. The sister-in-law's statements are not admissible for their truth, but are presented to give the reader some context as to the basis for Bowden's beliefs.

A. Bowden Accuses Quinlisk of Discrimination

The central dispute culminating in Bowden's discrimination claim arose in 2005, when Amos assigned Quinlisk the task of coordinating the preparation of a "Best Practices Guide" (the "Guide") for the Document [*8] Services Department. The Guide was intended to contain sample documents from each of the firm's practice areas. Legal secretaries from each area were asked to submit sample documents, which the Document Services staff then reviewed for proper formatting and style and selected for use in the Guide. (Def. 56.1 Stat. at P 13.) Quinlisk initially chose Christine Rampich, a Caucasian FPSS with less experience than Bowden, to assist in compiling the Guide. (Id. at P 14; Quinlisk Dep. at. 471.) Quinlisk testified that the reason she asked Rampich to assist with the project was that Rampich worked over the weekends, when the pace of regular work was slow and there was more time to devote exclusively to the Guide. (*Id.* at 460-61.) Bowden suspects, however, that Rampich was given the favorable assignment because of her race. "[Rampich] was in on the assignment early on," Bowden testified. "I would have liked to have participated in it. I had been at the firm much longer than anyone in the department . . . . I was not involved in it until it had reached the final stages of the work and it was the mop-the-floors-and-clean-up-after-the-party work." (Bowden Dep. at 171.) In any event, there is no [*9] evidence that Rampich or any other employee who worked on the Guide received additional compensation or promotional opportunities as a result of their work. (Def. 56.1 Stat. at P 17; Bowden Dep. at 184.)

In June 2004, after a substantial portion of work on the Guide was already done, Quinlisk sent an e-mail to Bowden and the other members of the department to solicit assistance in completing the Guide. (Quinlisk Dep. at 464.) Bowden agreed to select and format a few documents for the Guide's litigation section. (Bowden Dep. at 136.) On August 15, 2005, Quinlisk sent Bowden an e-mail, updating Bowden on the status of the project and asking Bowden to format one remaining document. (Bowden Dep. at 141; Ex. 23 to Bowden's Dep.) Quinlisk's e-mail also contains the following paragraph, as an aside, near the end of the message: "Just so you know, the brief you selected with the TOA [table of authorities] was horrible. We found out that the version you had was not the one actually filed, but even the one that was filed was riddled with errors. They have been fixed and the document is now in good shape." (*Id.*) Bowden responded a few minutes later, saying: "Leigh, if you want to look at my 7/27/05 [*10] e-mail to you, you will see that the only brief I indicated was completed was the one including the points and authorities. The others either I had not found exemplars for or had found them but indicated they needed to be cleaned up . . . I selected the brief with the 'TOA' because it was exemplar; that is, [it] was a brief that contained a table of authorities." (*Id.*) Quinlisk wrote back to Bowden later the same day, stating: "I fully understand what your e[-]mail indicated. I was just letting you know that it was in horrible shape. I was under the impression that you found documents that were good examples and just needed some formatting." (*Id.*) Bowden again wrote back to Quinlisk and attempted to explain why, in her view, Quinlisk had misunderstood her earlier e-mail. Quinlisk appears to have accepted Bowden's explanation: "Not a problem," Quinlisk wrote in reply. "I see what you are saying about the Appellate Brief for Federal court . . . most of the documents were in pretty good shape, just needed some minor fixes. Not a big deal. . . ." (*Id.*)

Notwithstanding Quinlisk's assurances that the issue was "not a big deal," Bowden continued to express indignation over the next few days [*11] at what she perceived as unfair criticism of her work. On August 25, 2005, Bowden wrote another e-mail to Quinlisk, stating:

> Below is my 7/27/05 e-mail to you . . . which I had *occasion to review today* . . . Note bene, with respect to all itemized exemplars . . . that I stated: "all [were] *badly* in need of 'best practices' reformatting, by my cursory review." (Emphasis added)
>
> Therefore, your recent criticism of my *choice* of those exemplars because their formatting was "horrible" was unwarranted and unfair to say the least. [4]

(Bowden Dep. 141-44, Ex. 24 to Bowden Dep.) Quinlisk responded by e-mail, writing, in part: "The reality is that some of the documents that you chose for the samples were in horrible condition and I conveyed that to you. It was not a criticism, it was an update to let you know where the documents stood. I'd be happy to discuss further upon my return." (*Id.*) At the time, Quinlisk was away from the office on vacation. (Def. 56.1 Stat. at P 21.)

4 The court has produced the e-mail excerpt as it appears in the record. All emphasis and the parenthetical phrase "(Emphasis added)" itself appear in original e-mail from Bowden.

Bowden refused to let the matter drop. On September [*12] 3, 2005, Bowden sent another e-mail to Quinlisk, stating: "Leigh, we're apparently going in circles because the documented facts are being misapprehended, overlooked, or simply ignored . . . I'll rest with the record." (Ex. 25 to Bowden's Dep.) On September 4, 2005, Quinlisk attempted to defuse the matter, explaining, "I was not criticizing your work, I was giving you a status . . . I do not understand why this is an issue. I know that if I selected some documents and they did not turn out to be great documents, I would want to know. I would like to talk to you about this when I get back from vacation on the 12th." (Ex. 26 to Bowden Dep.) Quinlisk sent a copy of her September 4 e-mail to Donna Amos, an act Bowden believes was an attempt to intimidate or discipline her. (Bowden Dep. at P 168.)

The day before, however, on September 3, 2005, Bowden had herself forwarded a copy of the testy e-mail exchange to Kirkland's Human Resources Manager Cheryl Bane with the following message: "Cheryl, I really feel I'm being harassed by Leigh Quinlisk. She certainly has a disparate approach to her handling of people in her department . . . . I don't believe she's fair, and she appears to be uncomfortable [*13] dealing with African-Americans . . . . This latest communication from Leigh proves that she is incapable of objectivity in her dealings with me." (Ex. 29 to Bowden Dep.) At her deposition, Bowden testified that she believed Quinlisk's criticism was racially motivated because Quinlisk did not similarly criticize Rampich or other Caucasian employees for their work on the Guide. (Bowden Dep at 179.) "[Rampich] never was written up for selecting bad documents, for having the index wrong, or for anything to do with Best Practices," Bowden testified. (Bowden Dep. at 168.) Bowden admitted, however, that she did not know whether Quinlisk ever spoke to Rampich about any mistakes that Rampich may have made while working on the Guide. (Bowden Dep. at 177-78.)

On September 5, 2005, Bowden wrote yet another e-mail to Quinlisk, this time informing Quinlisk that the matter had been referred to Bane. (Ex. 3 to Deposition of Wendy Cartland, Kirkland's firm-wide HR Director.) Bowden sent copies of this e-mail to Bane and several senior administrators and attorneys, including members of Kirkland's executive committee. (*Id.*) The e-mail from Bowden reads: "Leigh, I'm not going to argue with you. I see where [*14] you're going with this. If you're going to set me up, you'll have to do it in public." (*Id.*) It goes on to list several former African-American employees of Kirkland who, Bowden asserted, had been victims of discrimination at Quinlisk's hands. In the e-mail, Bowden accused Quinlisk of treating her African-American subordinates "coldly and otherwise differently while overlooking blatant problems" with Caucasian subordinates. (*Id.*) Bowden further claimed that Quinlisk's "horrible" comment was made in retaliation for Bowden's (1) complaining that two Caucasian employees took excessive breaks to smoke cigarettes, (2) complaining about delays in receiving Bowden's FPSS skills test results, (3) complaining that the FPSS skills test scoring was unfair, and (4) refusing to "pilot" a particular kind of software that Quinlisk had requested. "I will not be your next victim," Bowden concluded. "Worrying about what your next attack will be creates unnecessary stress for me at work and has affected my ability to sleep at night." (*Id.*)

Following the receipt of Bowden's e-mail, Kirkland's Human Resources staff began an investigation into her allegations. (Def. 56.1 Stat. at P 28.) The HR staff reviewed [*15] personnel files for all current and former employees who had reported to Quinlisk, checked the termination and resignation records for departing Document Services and Secretarial staff, and independently evaluated the FPSS testing instruments that were the focus of Bowden's complaints. (*Id.* at P 29.) Kirkland's HR staff also interviewed Bowden, Amos, Quinlisk, Staff Recruiting Manager Mary McMahon, and Staff Recruiter Deb Johanson. (*Id.* at P 30.) On September 21, 2005, Kirkland's Chief Human Resources Officer Gary Beu met with Bowden for more than two hours to discuss her complaint. (Bowden Dep. at 266; Beu Dep. at 89-90.)

Beu testified that he felt that the e-mail exchange that had served as the catalyst for Bowden's complaint had been "a serious misunderstanding . . . particularly as it related to the development of this best practices guide and a selection of certain examples." (Beu Dep. at 92.) In Beu's estimation, there was some "misinterpretation of what was intended by the use of the word or reference to these exemplars being in horrible condition. And that it seemed to me that Ms. Bowden took considerable offense at what she perceived to be a criticism [of her work]." (*Id.* at 94.) [*16] Beu concluded that it would be beneficial for Bowden and Quinlisk to meet face-to-face to "talk through this issue regarding the best practices guide." (*Id.* at 93.) Beu suggested the meeting to Bowden, and Bowden indicated that she would be open to the possibility. (*Id.* at 103-04.) Beu advised Quinlisk that Bowden was willing to meet with her, and Quinlisk contacted Bowden to request a meeting. (Beu Dep. at 124-25; Bowden Dep. at 147-48.) Bowden did initially agree to the meeting, but later backed out and refused to speak with Quinlisk. "I felt that I would get in trouble," Bowden testified, "that something would be mischaracterized, and I didn't think it wise." (Bowden Dep. at 148.) In light of the continuing discord between the two women, Kirkland offered to transfer Bowden into a legal secretary position, in which she would no longer report to Quinlisk. According to Kirkland's

firm-wide HR Director, Wendy Cartland, the proposed transfer would not have resulted in a change in Bowden's compensation or employment status. (Cartland Dep. at 135-36.) Bowden declined the offer, however, and remained in the FPSS position reporting to Quinlisk.

B. Bowden Receives a "Final Warning"

During summer [*17] 2005, Bowden volunteered to assist with an out-of-town trial at the request of several attorneys. (Bowden Dep at 124-25.) The trial was in Denver, Colorado, and was scheduled to last several months. (Def.'s 56.1 Stat at P 43.) Dan Rooney, a Litigation Assistant on the trial team, e-mailed Amos in late August to say that the senior attorneys on the case had specifically requested Bowden's assistance and sought approval for Bowden to travel to Denver for the duration of the trial. (Ex. 15. To Bowden Dep.) On September 7, 2005, Amos wrote to Rooney, stating, "I don't foresee a problem with Tammi assisting." (*Id.*) Bowden reiterated her willingness to assist at the trial, and on September 21, 2005, Amos gave Bowden final approval to travel for the assignment. (Def.'s 56.1 Stat at P 43; Ex. 16 to Bowden Dep.)

The next day, four days before the trial team was set to depart for Denver, Bowden sent Rooney an e-mail advising him that "due to an unexpected and unresolved employment matter, I feel that it is in my best interest to remain behind until it is concluded. Sorry that this affects the team." (Bowden Dep. At 130; Ex. 17 to Bowden Dep.) Rooney responded with surprise and consternation: "Please [*18] let me know ASAP when I could expect you to come out. I have no idea what your situation is but I can't have anything negatively impact what we are trying to do for the client." (*Id.*) Bowden then withdrew entirely from her commitment to travel for the trial. The "employment matter" to which Bowden was referring is apparently her complaint against Quinlisk, and her decision to withdraw from the trial team was unilateral. Bowden admitted that she did not seek advance approval from any supervisor or manager before announcing her withdrawal. (Bowden Dep. at 130-131.) According to Bowden, her offer to assist the trial constituted "a voluntary assignment" that was outside of her regular job duties. (*Id.*) Thus, Bowden reasoned, no approval was necessary before she withdrew her offer of help. (*Id.*) Cartland and Beu confirmed that traveling to support cases is indeed voluntary under Kirkland's policies for support staff. (Beu Dep. at 153-54; Cartland Dep. at 213.) Both Cartland and Beu testified, however, that once a staff member volunteers to travel and to assume trial support responsibilities, such an offer becomes a binding commitment, which employees are expected to fulfill as they would [*19] any other assignment. (Beu Dep. at 154; Cartland Dep. at 213.)

On September 27, 2005, Cartland and Bane issued Bowden a "Final Warning" letter, citing Bowden's "insubordinate refusal to accept a delegated assignment--including [her] unilateral decision not to support a trial team in an out-of-town case" and her "unjustified refusal to discuss on-going work matters with [her] supervisor." (Def. 56.1 Stat. at P 50; Cartland Dep. at 208; Ex 11 to Cartland Dep.) The "refusal to discuss" language is apparently a reference to Bowden's refusal to meet with Quinlisk to resolve the lingering issues regarding the Best Practices Guide. The warning letter further stated that Bowden's actions were "insolent and counter-productive and [would] not be tolerated" and informed Bowden that she risked "further discipline up to and including termination" if she failed to follow her supervisor's directions and firm policies in the future. (Ex. 11 to Cartland Dep.) Bowden admits that she did not suffer any changes to her compensation, title, or job function as a result of the final warning. (Bowden Dep. at 153.) She testified that she received salary increases and merit bonuses as scheduled for both 2005 and [*20] 2006, and she also earned the highest-possible mark on her internal job performance rating: "outstanding." (Bowden Dep. at 151-53.) In Bowden's employee evaluation for the period of October 2004 to September 2005, Quinlisk herself wrote, "[t]he quality of Tammi's work product can only be described as exceptional. . . ." (Ex. 28 to Bowden Dep.) Quinlisk observed, however, that "Tammi needs to accept constructive criticism in the manner in which it is intended (as a catalyst for development) and not personalize it . . . . During this review period, Tammi and I have struggled with communication between us." (*Id.*) The copy of the evaluation in the record is undated.

On October 6, 2005, Cartland sent an internal memorandum to Beu, reporting the results of Kirkland's investigation into Bowden's discrimination complaint. (Cartland Dep. at 134; Ex. 7 to Cartland Dep.) According to the report, the firm found no evidence that Quinlisk was "less than fair or professional" with her subordinates and "that there [was] no evidence of unfair treatment or harassment." (*Id.*) Beu discussed these conclusions with Bowden on October 14, 2005. Bowden believes that Kirkland's investigation into her allegations [*21] was inadequate because the firm's HR staff did not interview other African-American employees who worked under Amos and Quinlisk. (Bowden Dep. at 268.)

C. Bowden is Treated "Coldly" at Work

Bowden speculates that, after September 2005, she lost out on desirable work assignments and other opportunities as a result of continued discrimination and in retaliation for her internal complaint. (Bowden Dep. at 153.) For example, she claims that she was not given the

same opportunities as Caucasian employees to perform hiring or recruiting functions (such as administering the FPSS test), to conduct internal training sessions, or to serve as "acting-supervisor" on days when Quinlisk was out of the office. [5] Bowden also claims that she was not given the opportunity to attend outside training on Power Point, Excel, Microsoft Office, and other software. [6] Bowden speculates that Caucasian employees were given preference in these areas. As support for this speculation, she notes that Caucasian employees frequently met with Quinlisk privately in her office and appeared to enjoy good personal relationships with Quinlisk. (*Id.* at 202-04.) Bowden admits, however, that she does not know what Quinlisk and [*22] other employees discussed at such meetings. (Bowden Dep. at 218.) She also admits that Quinlisk never refused to meet privately with her. (*Id.*) Bowden admits, further, that she never asked anyone for the opportunities that she now claims she was denied. (*Id.* at 202-04; 254-55.) She does not know whether other employees made such requests, nor is she aware whether any of the opportunities she claims to have been denied resulted in additional compensation or promotion opportunities. (Bowden Dep. at 200-02.) Bowden also complains that she was given unduly large work assignments, but she admits that the she voluntarily assumed these substantial projects and that she was given assistance from other members of her department when she requested it. (Def. 56.1 Stat. at P 72; Bowden Dep. at 223-29.)

5 In addition, Bowden contends that Kirkland's failure to hire her friend Faye Grey, who is also African-American, was an act of discrimination. Grey has advanced her own discrimination claim, which the court addresses in a separate order. As the court explains in that order, Grey failed a standard screening test for the position that she sought. Bowden admits that she has no special insight into [*23] Kirkland's hiring decisions and no knowledge as to why Kirkland might have hired other applicants in lieu of Grey. (Bowden Dep at 214-16.) The court concludes that Kirkland's failure to hire Grey does not bolster Bowden's claims.

6 There is no indication in the record when any of these training sessions or other hypothetical opportunities actually occurred.

Finally, Bowden asserts that, beginning in October 2005, her Caucasian co-workers were "unfriendly" and "nasty" to her, but she was unable to describe specific statements or incidents because the mistreatment was "subtle." (Bowden Dep. at 232.) At least one African-American co-worker was also "kind of cold" to Bowden. (*Id.*) When asked whether this cold treatment affected her ability to perform in her job, Bowden testified: "I worked at a high level so I was able still to perform, but was I at the top of my game so to speak--no." (*Id.* at 237.) Bowden further testified that she was never the subject of any threats or racial slurs. (*Id.* at 278.)

D. Bowden Quits her Job

On October 5, 2005, Bowden filed a charge of race discrimination against Kirkland with the Equal Employment Opportunity Commission ("EEOC"). On November 20, 2006, the EEOC [*24] completed its investigation and reported that it was "unable to conclude that the information obtained [by the commission] establishe[d] violations of the statutes." (EEOC Letter, Ex. 2 to Compl.) Bowden remained employed at Kirkland until February 2007. During that time, she never complained internally of harassment or discrimination because, she testified, she did not "feel welcome" to file further complaints. (Bowden Dep. at 277.) On February 16, 2007, Bowden sent the firm a letter asserting that she believed she had been constructively discharged and stating that she would no longer be reporting to work at the firm. (Bowden Dep. 296-98.) As the immediate reason for her resignation, Bowden cited her belief that the firm was secretly eavesdropping on her private telephone calls. "I just couldn't take walking in the place any longer," Bowden testified. "My cell phone had been intercepted. They had committed a crime against me. I wasn't going to wait for them to ratchet that crime up." (*Id.* at 298.) It is undisputed that no Kirkland manager ever told Bowden that she was terminated. (*Id.* at 297.) Nor did Bowden receive any formal reprimands or discipline between the 2005 final warning [*25] and her resignation. (Def. 56.1 Stat. at 61.)

At the time that she sent the February 2007 letter ending her employment, Bowden had been on intermittent leave--usually for a few days or a week at a time--for approximately six weeks to help care for her father. (Def.'s 56.1 Stat. at P 63; Bowden Dep. at 422-24; Amos Dep. at 525.) Bowden admitted that she began seeking other employment in December 2006, about two months before she actually left Kirkland. (Bowden Dep. at 401-02, 408-10; Ex. 34 to Bowden Dep. at 11-12.) She received an offer of employment from her current employer, the Chicago law firm of Marshall, Gerstein, & Borun LLP, in either January or February 2006, just prior to informing Kirkland that she no longer intended to report for work. (Bowden Dep. at 24-25.) Bowden filed this lawsuit on February 20, 2007.

II. Gagen's Employment History[7]

7 The record citation in this portion of the opinion refers to those materials submitted in

connection with Defendant's motion for summary judgment in Gagen's case (No. 07 C 979).

Plaintiff Nancy Gagen was a Technical Document Specialist at Kirkland from March 2002 until March 2006. (Pl.'s 56.1 Resp. at P 2.) In that position, Gagen reported to [*26] Amos and Quinlisk. (*Id.* at P 13.) Bowden's mass e-mail of September 5, 2005--which accused Quinlisk of race discrimination--also mentioned Gagen as one of several employees whom Quinlisk had supposedly harassed:

> You apparently have a problem with older workers whom you have not personally hired/recruited. Hence Carol Johnson . . . suffered under you and so has Nancy Gagen . . . . You've attempted to alter your rude manner of speaking to others, but I know in the past and in your early dealings with Nancy Gagen that you've insulted her on a number of occasions, only to have to apologize later.

(Ex. 3 to Cartland Dep.) Despite Bowden's mention of Gagen in the complaint e-mail, Gagen was never subsequently interviewed by anyone in Kirkland's HR Department. (Gagen Decl. at P 5.)

Gagen, who is Caucasian, contends that she encouraged Bowden to send the mass e-mail and to file her subsequent EEOC charge. According to Gagen, Bowden "did not know where to go and how to report within the Kirkland environment" so Gagen "helped" her. (*Id.* at P 16-17.) The help Gagen provided involved urging Bowden to contact a lawyer, encouraging Bowden to file the EEOC charge, and agreeing with Bowden in private conversations [*27] that "African-American employees did not fare well with Quinlisk." (Pl.'s 56.1 Resp. at P 30; Gagen Dep. at 129-32, 139-40.) The EEOC charge itself does not mention Gagen; the charge lists no witnesses or comparable employees, and Gagen never informed Kirkland that she was involved in Bowden's complaint. (Pl.'s 56.1 Resp. at P 27-29.) Thus, Cartland and Amos testified, no manager at Kirkland was ever aware that Gagen knew of or assisted Bowden's complaint or EEOC charge in any way. (Cartland Dep. 418-24; Amos Dep. 329-30.) Gagen challenges this testimony and insists that Kirkland was aware of her encouragement to Bowden because the firm secretly eavesdropped on her private telephone communications. For the reasons explained in the companion opinion issued today, however, there is no non-speculative evidence to support Gagen's conjecture that the firm eavesdropped on her phone calls.

A. Gagen Reports Rampich

Beginning in summer 2005, Gagen asserts, she began being "hazed" by Rampich and a few other co-workers who Gagen perceived to be favorites of Quinlisk. (Gagen Dep. at 115.) Gagen described the "hazing" this way: "It was looks, smirks. [Rampich] would go into Quinlisk's office. They [*28] would talk. . . . They would look at you when you'd come in. You'd get out to walk to maybe go get a cup of coffee or something, and she'd look at you and smirk at Quinlisk and stare right back at you like, huh, I'm in on the in crowd, baby." (*Id.* at 115-16.) Rampich was a Technical Document Specialist with no supervisory responsibility or authority over Gagen, and Quinlisk testified that she did not encourage Rampich or anyone else to display a negative attitude toward Gagen. (Pl.'s 56.1 Resp. at P P 19, 42.) It does not appear that Rampich herself was deposed in connection with this matter.

On December 23, 2005, Gagen received a telephone call from her friend and co-worker Bonnie McDuffie, who told Gagen that she had overheard Rampich making derogatory comments about Gagen's work on a specific assignment. (Pl.'s Resp. at P 17.) According to Gagen, she had been forced to leave her desk the previous evening to attend a meeting and had routed that particular assignment to another secretary. (Gagen Dep. 108-10.) Rampich was apparently deriding the fact that Gagen had not finished the job herself. Following this call from McDuffie, Gagen immediately sent an e-mail to Quinlisk and Bane [*29] reporting "the derogatory comments made by [Rampich] against my name." (Pl.'s Resp. at P 18; Ex. 9 to Gagen Dep.) Though the e-mail does not identify any specific comment, it goes on to state: "I do not want Chris Rampich discussing me in a derogatory manner in front of others. It is unprofessional. . . . The other concern I have with this situation is that you [Quinlisk] and [Rampich] do not have the normal supervisor's 'arm's length' relationship. . . . I am making a formal complaint about the working environment." (Ex. 9 to Gagen's Dep.) Quinlisk responded to Gagen by e-mail later that day, writing: "Thank you for bringing this to my attention. . . . This type of behavior by all involved is inappropriate." (Ex. 35 to Quinlisk Dep.) In reply, Gagen wrote: "I do think a hostile work environment has existed . . . . Document Services has had many ups and downs with staffing[,] but [in the] past[,] staff members . . . were always respectful and cordial to each other. Chris Rampich and [other employees] have exhibited a distinct negative bias against Bonnie McDuffie and myself." (*Id.*) Gagen then went on to describe several incidents of what she deemed Rampich's lack of professionalism.

In [*30] response to Gagen's complaints, Bane called a department meeting in January 2006, at which she emphasized the need for everyone involved to work together as a team. (Pl.'s Resp. at P 21.) Quinlisk, Ram-

pich, Gagen, and several other Kirkland staff members attended this meeting. Bane also asked the individuals present to identify one change that they most wished to see in their working conditions. Gagen testified that she responded to this question by suggesting that the firm hire a third shift of document specialists because she no longer wanted to work late into the night to complete assignments. (Gagen Dep. at 104-05.) At no time during this meeting did Gagen raise concerns about race discrimination or retaliation. (Pl.'s 56.1 Resp. at P 22.) Gagen does not know whether any subsequent action was taken with respect to Quinlisk or Rampich following the meeting. (*Id.* at P 23.) Gagen believes that Bane should have held a confidential meeting with her to further discuss her complaint, but there is no evidence that Gagen ever explicitly sought or requested such a meeting.

B. Gagen Receives Onerous Work Assignments

Following the department meeting, Gagen claims, she began receiving "extraordinarily [*31] huge" work assignments from Quinlisk. (Pl.'s 56.1 Stat. at P 49.) For example, on January 24, 2006, Gagen was assigned to convert 800 pages of a document from Word Perfect to Microsoft Word in the course of one evening, and Quinlisk failed to line up assistance for Gagen. (Gagen Dep. at 106.) Gagen admits, however, that after she requested help that evening from another supervisor, she was assigned two assistants and ultimately succeeded in completing the job in a timely fashion. (*Id.*) Though Gagen was occasionally required to stay late to finish large assignments, she was always compensated for her overtime work and she was never disciplined in any way for failing to complete an assignment. (Pl.'s Resp. at P 51.)

C. Gagen is Dismissed for Disclosing Confidential Information

In March 2006, Quinlisk received an e-mail from former Kirkland employee Lynn Tilton, who was then working at the competing Chicago law firm of Vedder Price. The e-mail states that Tilton had received "an unusual phone call yesterday from Nancy Gagen." (Quinlisk Dep. 360-61; Ex. 30 to Quinlisk Dep.) [8] In the ensuing e-mail exchange, Tilton reported that Gagen had told her that Kirkland was "clamping down" on its [*32] employees and that Quinlisk's shoddy work would no longer go unnoticed. (Quinlisk Dep. 361-62; Ex. 31 to Quinlisk Dep.) According to Tilton, Gagen also predicted that Amos "would soon be stripped of many responsibilities until she is no longer needed." (*Id.*) Gagen admits that she spoke with Tilton the day before Tilton sent the e-mail, but she denies ever conveying the specific information that Tilton recounts. (Gagen Dep. 212-13.) According to Gagen, it was Tilton who initiated the conversation about Quinlisk and Amos: "[Tilton] talked about how she felt hate directed towards her by Donna [Amos]. . . . I said that's just Donna. . . . I told her all the [rotating secretaries] didn't like Donna because Donna had a very harsh side to her." (*Id.* at 82-83.) Gagen denies that she ever told Tilton about any changes in Kirkland's policies or the specific criticisms that Tilton recounted. That information, Gagen testified, "was completely absolutely never discussed in any way, shape[,] or means with Lynn Tilton." (*Id.* at 213.) Gagen now believes that the Tilton e-mail was a setup, engineered by Quinlisk, to create a pretext for Gagen's termination. She speculates that the information Tilton [*33] wrote in the e-mail was relayed to her by someone else who had eavesdropped on Gagen's private telephone conversations with Bowden. Beyond Gagen's conjecture, however, there is no evidence that Quinlisk and Tilton conspired to frame Gagen or that anyone ever eavesdropped on Gagen's telephone calls.

> 8 The contents and circumstances of this exchange were recounted by Quinlisk. So far as the court is aware, Tilton herself was not deposed in connection with this lawsuit.

After relaying Gagen's complaints about Amos and Quinlisk, Tilton's e-mail explained Tilton's reason for corresponding with Quinlisk: "I don't have anything against Nancy but cannot understand why she would want to communicate these types of issues to anyone especially someone outside the K&E firm. Having a number of years in management, I would hope that should someone take such actions against me, that somehow I be made aware." (Ex. 31 to Quinlisk Dep.) Quinlisk immediately forwarded Tilton's e-mail to Amos. Amos testified that she saw no reason to doubt the veracity of the e-mail and that she deemed termination to be an appropriate sanction for Gagen's discussing internal personnel matters and making derogatory remarks [*34] about her supervisors in a conversation with an employee at another law firm. (Amos. Dep. at 305, 318-21.) At Amos's behest, Kirkland fired Gagen on March 13, 2006, citing, as its reason, Gagen's disclosure of confidential information. (Def. 56.1 Stat. at P 38.) At a meeting with Bane and Quinlisk present, Amos informed Gagen that her employment was terminated. (Pl.'s Resp. at P 40.) Gagen responded by accusing Amos of firing her in retaliation for Bowden's EEOC charge. Bane and Amos told Gagen they did not know what she was talking about. (Pl.'s Resp. at P 41; Amos Dep. 315-16.) Quinlisk said nothing.

On March 24, 2006, two weeks after her termination, Gagen filed her own charge with the EEOC, asserting that she was fired in retaliation for aiding Bowden (Pl.'s Resp. at P 42.) In November 2006, the EEOC

closed its investigation, stating that it was "unable to conclude" that the evidence in Gagen's case established an act of retaliation. (Pl.'s Resp. at P 43.) Gagen filed her lawsuit against Kirkland on February 20, 2007.

DISCUSSION

I. Legal Standard on Summary Judgment

The primary purpose of summary judgment is to isolate and dispose of factually unsupported claims. *Albiero v. City of Kankakee, 246 F.3d 927, 932 (7th Cir. 2001)*. [*35] On summary judgment, the evidence of the non-movant is to be believed, and all justified inferences are to be drawn in her favor. *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)*. Summary judgment is proper only if the pleadings, the discovery and disclosure materials on file, and the affidavits, if any, show that there is no genuine issue as to any material fact such that the movant is entitled to judgment as a matter of law. *FED.R.CIV.P. 56(c)*; *Celotex v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)*. In order to avoid summary judgment, the non-movant must come forward with specific facts showing a genuine issue for trial and produce sufficient evidence to permit a jury to return a verdict in her favor. *Argyropoulos v. City of Alton, 539 F.3d 724, 732 (2008)*; *Karazanos v. Navistar Intern. Transp. Corp., 948 F.2d 332, 337 (1991)* ("[A] plaintiff's speculation in not a sufficient defense to a summary judgment motion.") A mere scintilla of evidence in support of the non-movant is insufficient, as the evidence must create more than a metaphysical doubt as to the material facts. *Liberty Lobby, 477 U.S. at 252*; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)*.

II. Bowden's Title VII and Section 1981 [*36] Claims

As the court reads Bowden's complaint, Bowden claims that she was subject to a hostile work environment and discrimination on account of her race in violation of Title VII and *Section 1981*. She also claims that she was retaliated against for reporting these violations both internally and to the EEOC, culminating in what she describes as "constructive discharge" from Kirkland's employment. The court addresses each of Bowden's claims in turn.

A. Hostile Work Environment

In order for her hostile work environment claim to survive summary judgment, Bowden must present evidence that she was harassed because of her race and that the complained-of harassment was "severe or pervasive enough to create an objectively hostile or abusive work environment." *Ford v. Minteq Shapes and Services, Inc., 587 F.3d 845, 847 (7th Cir. 2009)* (citing *Harris v. Forklift Sys., Inc., 510 U.S. 17, 21, 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993)*). Whether Bowden's work environment was objectively hostile depends on several factors that may include the frequency of the discriminatory conduct; its severity; whether it was physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interfered with Bowden's work [*37] performance. *Harris, 510 U.S. at 21*. In order for the work environment "to amount to a change in the terms and conditions of employment," the circumstances "must be extreme." *Faragher v. City of Boca Raton, 524 U.S. 775, 788, 118 S. Ct. 2275, 141 L. Ed. 2d 662 (1998)*. The standards for judging hostility are not intended to impose a "general civility code" upon employers; rather, they act to filter out complaints that merely allege "the ordinary tribulations of the workplace." *Id.* (quoting *Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 80, 118 S. Ct. 998, 140 L. Ed. 2d 201 (1998)*; and B. Lindemann & D. Kadue, SEXUAL HARASSMENT IN EMPLOYMENT LAW 175 (1992)).

The conduct complained of by Bowden does not satisfy this high standard. Bowden admits that she was never subjected to racial slurs or physical threats. Her second-hand account that members of Amos's family (but not Amos herself) once made racially derogatory remarks (assuming it is admissible at all) has no bearing on her claims, and the handful of other unfair acts and critical statements that she attributes to Kirkland are all examples of "those petty slights or minor annoyances that often take place at work." *Burlington Northern & Santa Fe Ry. Co. v. White, 548 U.S. 53, 68, 126 S. Ct. 2405, 165 L. Ed. 2d 345 (2006)*. At most, [*38] Bowden claims that she was (1) occasionally given unfavorable work assignments in lieu of other projects/opportunities that she would have preferred, (2) unfairly criticized by her superiors, and (3) treated coldly by her co-workers. She herself testified, however, that these actions did not prevent her from discharging her duties at a high level. As explained below, the circumstances of which she complains are not sufficiently severe or pervasive to support a hostile work environment claim.

First, the court addresses Bowden's assertion that she was given unfavorable and unduly arduous work assignments and passed over for desirable duties, such as spearheading the Best Practices Guide, administering training tests, and performing other hiring or training functions. Bowden herself testified that she in fact requested the difficult assignments that she now complains of, and the undisputed evidence is that Bowden was given assistance with time-consuming projects when she requested it. She was never disciplined for any failure to

complete her projects in a timely fashion. Bowden also admits that she did not request those projects or assignments for which she claims to have been passed over. [*39] Given these admissions, the only available inference is that Bowden received those work assignments which she sought and did not receive those work assignments which she did not seek. Such a pattern does not reflect a work environment that could be characterized as objectively hostile.

Nor does the rest of Bowden's evidence, alone or in aggregate, support such a characterization. Bowden contends that Amos and Quinlisk singled her out for criticism while overlooking the unprofessional conduct of her Caucasian colleagues. Specifically, she asserts that Quinlisk unfairly characterized her work on the Best Practices Guide as "horrible." [9] Even assuming that such isolated criticisms were unfair and unwarranted, however, they were not sufficiently serious to create a hostile work environment. *See, e.g., Patton v. Indianapolis Pub. Sch. Bd., 276 F.3d 334, 339 (7th Cir. 2002)* (allegations that supervisor was "rude, abrupt, and arrogant" and subjected employee to "stern and severe criticism" were not sufficiently severe or pervasive to support hostile environment claim); *Whigum v. Keller Crescent Co., 260 Fed.Appx. 910, 914 (7th Cir. 2008)* (a mere "handful" of "unprofessional" remarks and criticisms [*40] from a supervisor were insufficient to establish hostile work environment.) In this case, Bowden has not even demonstrated that Quinlisk's various remarks were unprofessional, let alone severe, pervasive, or racially-motivated. In fact, the record demonstrates that Kirkland's evaluation of Bowden's work was, by and large, complimentary. Bowden was given raises, bonuses, and favorable evaluations throughout the relevant time period, and Quinlisk herself characterized Bowden's work as "exceptional." Quinlisk even rapidly backed off her isolated criticism of Bowden's performance on the Best Practices Guide, referring to her statement as merely an "update" and "not a big deal." The subsequent escalation of the exchange appears to have been driven by Bowden's overreaction to an innocuous critique.

> 9 In fact, as the court reads the record, Quinlisk simply noted that one of the exemplars Bowden had selected for inclusion in the Guide was in "horrible" shape, in that it contained several errors.

Nor are the generally unfriendly attitudes and behaviors of Bowden's co-workers sufficient to establish a hostile environment. Receiving the cold shoulder from one's colleagues may be the paradigmatic [*41] example of a "petty slight" that does not rise to the level of objective hostility. In addition, there is no evidence that the behavior of Bowden's co-workers was either condoned by her superiors or racially motivated. The fact that other Kirkland employees--Caucasian employees among them--enjoyed better relationships with one another and their supervisors does not support the inference that Bowden was singled out for hostility because of her race. Bowden testified that she was treated coldly by African-American and Caucasian co-workers alike (Bowden Dep. at 232), and there is no evidence that any Kirkland employee ever made reference to Bowden's race or her complaints as the basis of their criticism, exclusion, or general feelings about Bowden. *See McKenzie v. Milwaukee County, 381 F.3d 619, 624 (7th Cir. 2004)* (behavior that is "standoffish," "unfriendly," and "unapproachable" is insufficient to establish an objectively hostile work environment). Under the circumstances, Bowden has not shown that strained relationships with her co-workers or her superiors were attributable to racial animus or retaliation for her complaints. Instead, Bowden's evidence tends to support the conclusion [*42] that, assuming she was mistreated by her co-workers, such treatment was likely motivated by the type of mundane personal resentments that are common to the workplace; such personal antipathies are not actionable under Title VII.

B. Bowden's Evidence Under the "Indirect Method" of Proof

Next, the court analyzes Bowden's claims under the "indirect" or "burden-shifting" method of proof. Because Bowden does not present direct evidence of discrimination or retaliation, she must attempt to establish her *prima facie* case under the indirect method outlined in *McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)*. To establish a *prima facie* case for discrimination, Bowden must prove that (1) she is a member of a protected class; (2) her job performance met her employer's legitimate expectations; (3) she was subject to a materially adverse employment action; and (4) the employer treated similarly situated employees outside the protected class more favorably. *Ballance v. City of Springfield, 424 F.3d 614, 617 (7th Cir. 2005)*. Bowden must "more or less" prove the same four elements to establish her retaliation claim. *Dear v. Shinseki, 578 F.3d 605, 611 (7th Cir. 2009)*. The only difference is that [*43] the first element of the retaliation claim calls on Bowden to prove that she engaged in a statutorily protected activity, and the last element requires evidence that similarly situated employees who did not engage in that protected activity were treated more favorably. *Id.* (citing *Sitar v. Ind. Dept. of Transp., 344 F.3d 720, 728 (7th Cir. 2003))*.

Bowden complains of a number of incidents that occurred between 2004 and 2006, both before and after she filed her EEOC charge and internal complaint, and

she does not neatly delineate which of these acts were motivated by discrimination and which were motivated by retaliation. The acts she complains of, however, satisfy neither the "materially adverse" standard applicable under a discrimination analysis nor the retaliation standard, which examines whether the acts were capable of "dissuad[ing] a reasonable worker from making or supporting a charge of discrimination." *Burlington Northern, 548 U.S. at 68.* To be materially adverse, an employment action must be "more than 'a mere inconvenience or an alteration in job responsibilities.'" *Oest v. Ill. Dept. of Corr., 240 F.3d 605, 612 (7th Cir 2001).* "An employee's unhappiness with her employer's [*44] conduct or decision is insufficient to support a claim under Title VII." *De la Rama v. Illinois Dept. of Human Services, 541 F.3d 681, 686 (7th Cir. 2008)* (citing *Traylor v. Brown, 295 F.3d 783, 788 (7th Cir.2002)).* Rather, the employee must be able to show a quantitative or qualitative change in the terms or conditions of employment, such as "a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities or other indices that might be unique to a particular situation." *Id.* (quoting *Oest, 240 F.3d at 612-13*); *Haywood v. Lucent Technologies, Inc., 323 F.3d 524, 532 (7th Cir. 2003).* As already stated, to constitute retaliation an action must be such that it would have dissuaded a reasonable employee from asserting or supporting a claim of discrimination. *Burlington Northern, 548 U.S. at 68.* A change to job function or reassignment that does not affect "pay or promotion opportunities lacks this potential to dissuade and thus is not actionable." *Washington v. Illinois Dept. of Revenue, 420 F.3d 658, 662 (7th Cir. 2005).*

Bowden's gripes about the work projects she [*45] was assigned or not assigned do not implicate a material change in the terms or conditions of her employment. *See Lapka v. Chertoff, 517 F.3d 974, 979 (7th Cir. 2008)* (changes in workload or assignments did not significantly alter job responsibilities); *Fane v. Locke Reynolds, LLP, 480 F.3d 534, 539 (7th Cir 2007)* ("[H]arder work assignments do not constitute an adverse employment action."). Bowden offers no evidence other than her own conjecture that the training and other responsibilities she claims to have been denied somehow impaired her opportunities for advancement or professional development. *See Traylor, 295 F.3d at 789* (failure to assign an employee additional duties was not materially adverse where the employee suffered no loss in title or job responsibility and the employment consequences of the assigned duties were merely speculative). And Bowden herself admits that she never requested or otherwise sought out such additional opportunities.

Nor does the mere fact that Bowden was criticized by her superiors, even if unfairly, constitute a materially adverse action. Negative evaluations or criticisms that do not result in tangible job consequences are not actionable under Title [*46] VII. *Whittaker v. Northern Illinois University, 424 F.3d 640, 648 (7th Cir. 2005).* This is partly because "while one might argue that 'each oral or written reprimand brought [the plaintiff] closer to termination[,][s]uch a course was not an inevitable consequence of every reprimand . . .; [rather,] job-related criticism can prompt an employee to improve her performance and thus lead to a new and more constructive employment relationship." *Id.* (quoting *Oest, 240 F.3d at 613.*) Even the "Final Warning," the lone formal disciplinary notice that Bowden received, resulted in no tangible job consequences. At most, the warning required that Bowden abide strictly by Kirkland's rules. As Bowden testified, the only negative consequence that she suffered as a result of the warning was that she lost the "freedom . . . to come in a minute late or two minutes late or have attendance issues" without worrying that she might be terminated. (Bowden Dep. at 150.) The "freedom" of an employee to fall short of her employer's legitimate attendance and performance expectations is not an interest protected by Title VII. Bowden's worries aside, there is no dispute that she suffered no further adverse consequences [*47] as a result of the warning. She received multiple pay raises, bonuses, and favorable performance ratings, and continued to work at Kirkland without a disciplinary infraction for almost another year and a half. Moreover, Bowden filed her EEOC charge nine days *after* she received the final warning, demonstrating that the warning did not dissuade her from engaging in further statutorily protected activity. Under the circumstances, the court concludes that the final warning can not be considered a materially adverse employment action, nor would it have deterred a reasonable person from engaging in protected activity.

C. Bowden's "Constructive Discharge"

The lone occurrence that could potentially rise to the level of a material change in Bowden's employment status is her resignation in February 2007. Bowden's complaint claims that she was constructively discharged from her position at Kirkland. The evidence defeats this claim, as well. In a constructive discharge, the employee is not fired but resigns because the working conditions have made remaining with the employer simply intolerable. *McPherson v. City of Waukegan, 379 F.3d 430, 440 (7th Cir 2004)* (citing *Lindale v. Tokheim Corp., 145 F.3d 953, 955 (7th Cir. 1998)).* [*48] In order to establish that she was constructively discharged, Bowden must demonstrate both that a hostile work environment existed and that the abusive working environment was so intolerable that her resignation was an appropriate and rea-

sonable response. *Pennsylvania State Police v. Suders, 542 U.S. 129, 147, 124 S. Ct. 2342, 159 L. Ed. 2d 204 (2004).* "[W]orking conditions for constructive discharge must be even more egregious than the high standard for hostile work environment because . . . an employee is expected to remain employed while seeking redress." *McPherson, 379 F.3d at 440* (citing *Robinson v. Sappington, 351 F.3d 317, 336 (7th Cir. 2003)).* As stated in Section A, Bowden has not established that she was subjected to a hostile work environment. Thus, her claim of constructive discharge must also fail. Bowden has produced no evidence to demonstrate that the conditions of her employment were intolerable. [10] She remained in her position for more than a year after filing her EEOC charge, during which time she received raises, bonuses, and praise for her work. She did not complain of any further problems with Quinlisk or Amos. At the time that Bowden tendered her resignation, she had been applying and interviewing [*49] for jobs with Kirkland's competitors for two months and had recently received an offer of comparable employment at another law firm. Under the circumstances, Bowden has failed to establish that her departure from Kirkland was the result of constructive discharge. *See Herron v. DaimlerChrysler Corp., 388 F.3d 293, 303 (7th Cir. 2004)* (employee who left employer several months after filing an EEOC charge and after having secured a comparable job elsewhere had failed to demonstrate an intolerable work environment.)

> 10 As the court explains in its companion opinion, Bowden's central contention--that she was forced to resign as a response to Kirkland's supposed eavesdropping on her private telephone conversations--lacks any evidentiary support. There is no non-speculative evidence that such eavesdropping ever occurred.

III. Gagen's Retaliation Claim

Title VII protects employees from retaliation for "complaining about the types of discrimination that it prohibits." *Miller v. American Family Mut. Ins. Co., 203 F.3d 997, 1007 (7th Cir. 2000).* Nancy Gagen's invocation of this protection presents a hodgepodge of work-related complaints, many of which are not materially adverse employment actions and [*50] which bear no clear relationship to any statutorily protected activity. Like Bowden, Gagen has failed to establish the necessary elements of her claim.

A. Statutorily Protected Activity

To begin, it is unclear what statutorily protected activity Gagen contends was the catalyst for the alleged retaliation. Gagen points first to her complaint that Rampich "discuss[ed Gagen] in a derogatory manner in front of others." While that complaint states that Gagen believed she had been subjected to "a hostile work environment," it goes on to explain that the "hostility" Gagen is referring to involves only an interpersonal dispute between Gagen and a few Caucasian colleagues. The complaint makes no reference to Bowden, to race discrimination, to harassment based on race, or to anything else that appears to fall within the purview of Title VII discrimination. The firm responded to Gagen's complaint by holding a department meeting to emphasize the importance of teamwork and cordiality in the workplace. Neither at that meeting nor in any subsequent complaint did Gagen ever raise concerns about racial discrimination or retaliation. Gagen's complaint that Rampich badmouthed her does not amount to statutorily [*51] protected activity that can sustain a retaliation claim. Merely complaining in general terms about harassment, without identifying a connection to a protected class or providing facts sufficient to create that inference, is insufficient to support a retaliation claim under Title VII. *See Tomanovich v. City of Indianapolis, 457 F.3d 656, 663 (7th Cir 2006).*

In the alternative, Gagen claims that her support for Bowden serves as the basis of her retaliation claim. Gagen did not file any complaints on Bowden's behalf, however, and Bowden's own internal complaints and EEOC charges do not suggest Gagen's assistance or endorsement. To the extent Gagen contends that her mere affiliation with Bowden constitutes statutorily protected activity, her claim fails as a matter of law. Providing spiritual guidance or friendship to a complaining co-worker is not protected activity. *Drake v. Minnesota Min. & Mfg. Co., 134 F.3d 878, 886 (7th Cir. 1998).* Gagen, however, asserts that her participation in the complaints was more comprehensive than mere affiliation or the provision of spiritual guidance. She claims that she (1) consulted with Bowden in private and agreed that racial discrimination was a problem [*52] at Kirkland, (2) initially instructed Bowden to contact a lawyer, (3) urged Bowden to file EEOC charges, and (4) compiled materials that Bowden ultimately presented to the EEOC. The language of Title VII extends protection from discrimination to all who "participate" or "assist" in opposing prohibited discrimination. *See, e.g., Eichman v. Indiana State University Bd. of Trustees, 597 F.2d 1104, 1107 (7th Cir. 1979).* Viewing the evidence in the light most favorable to Gagen, the court infers that Gagen did indeed *assist* Bowden's charge. That conclusion is of no assistance here, however, because, as discussed below, Gagen has no non-speculative evidence that the assistance she provided to Bowden was causally related to any subsequent acts of alleged retaliation.

B. The Lack of a Causal Relationship

Beginning in summer 2005, Gagen asserts, she was consistently harassed by Rampich and a handful of her other co-workers. This harassment predates Bowden's complaint and EEOC charge by months, and so it could not have been a product of retaliation. In addition, the "harassment," which Gagen admits involved little more than the occasional smirk or dirty look, was neither severe nor pervasive. [*53] Gagen did ultimately lose her job, but she cannot show that Kirkland fired her because she assisted Bowden in filing her complaints. Most importantly, there is no evidence from which a trier of fact could infer that anyone at Kirkland had knowledge of Gagen's assistance to Bowden. Gagen testified that she did not reveal to anyone at Kirkland that she had assisted Bowden's complaints until after she had been terminated. No one on Kirkland's staff ever questioned Gagen in connection with Bowden's complaints, and nothing in the substance of those complaints hints at Gagen's involvement. Gagen speculates that the firm must have learned of her participation by eavesdropping on her private telephone conversations with Bowden, but there is no basis in fact to support this contention. Plaintiffs have not met their evidentiary burden to show that Kirkland was even technically capable of eavesdropping on telephone calls.

Because Gagen presents no non-speculative evidence that Kirkland was even aware of her participation in the protected activity, she cannot demonstrate a causal nexus between the protected activity and her termination. "[A]n employer cannot retaliate when it is unaware of any [*54] complaints." *Sitar, 344 F.3d at 727* (quoting *Miller, 203 F.3d at 1008*); *Salas v. Wisconsin Dept. of Corrections, 493 F.3d 913, 925 (7th Cir. 2007)* (plaintiff failed to prove causal nexus for retaliation where he presented no evidence that his employer knew of his protected activities). Gagen was fired in March 2006, more than six months after she claims that she engaged in protected activity by assisting Bowden. Such a substantial time lapse is inconsistent with any causal connection between the protected activity and the adverse employment action. *See Masupha v. Mineta, 551 F.Supp.2d 730, 742 (N.D.Ill. 2008)* (collecting cases). Kirkland gave a facially valid reason for its dismissal of Gagen: there was credible evidence--in the form of Tilton's e-mail--that Gagen revealed internal personnel information and discussed her personal dislike for her bosses with an employee of another law firm. Gagen's speculation that this evidence was somehow a ruse or a setup orchestrated as a pretext to support her termination finds no support in the record. Gagen's claim fails as a matter of law.

CONCLUSION

Defendant's motions for summary judgment against Bowden [D.E. 203 in Case No. 07 C 975] and Gagen [*55] [D.E. 127 in Case No. 07 C 979] are granted.

Dated: September 2, 2010

/s/ Rebecca R. Pallmeyer

REBECCA R. PALLMEYER

United States District Judge

THOMAS SEBASTIAN, Plaintiff, v. CITY OF CHICAGO, DAN ALLEN, CHRIS KOZICKI, and STAN-LEE KADERBEK, Defendants.

Case No. 05 C 2077

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

2008 U.S. Dist. LEXIS 60570

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For Stan-Lee Kaderbek, Chris Kozicki, Defendants: Timothy L. Swabb, LEAD ATTORNEY, City of Chicago, Law Department, Corporation Counsel, Chicago, IL; Kenneth Charles Robling, City of Chicago, Law Department, Chicago, IL; Marcela D Sanchez, City of Chicago, Chicago, IL.

For Dan Allen, Defendant: James Francis Botana, LEAD ATTORNEY, Laura Katherine Kendall, Jackson Lewis LLP, Chicago, IL; Patrick D Daly, LEAD ATTORNEY, Corporation Counsel's Office, Chicago, IL.

JUDGES: Hon. Virginia M. Kendall, Judge.

OPINION BY: Virginia M. Kendall

OPINION

MEMORANDUM OPINION AND ORDER

Plaintiff Thomas Sebastian ("Sebastian" or "Plaintiff") filed suit against Defendants City of Chicago (the "City"), Dan Allen ("Allen"), Chris Kozicki ("Kozicki"), and Stan-Lee Kaderbek ("Kaderbek") (collectively "Defendants") under *Title VII of the Civil Rights Act of 1964* ("*Title VII*"), [*2] *42 U.S.C. § 1983* ("*§ 1983*"), and *745 ILCS 10/9-102*. Sebastian alleges that: (1) the City discriminated against him on the basis of his national origin and race in violation of *Title VII*; (2) the City retaliated against him in violation of *Title VII*; and (3) Defendants failed to promote him in violation of the *First Amendment* and *§ 1983*. Sebastian seeks indemnification from the City on the *§ 1983* claim pursuant to *745 ILCS 10/9-102*. All Defendants moved for summary judgment on all claims. For the reasons set forth below, Defendant Allen's Motion For Summary Judgment is granted with respect to Counts I and II and denied with respect to Count III. The City Defendants' Motion For Summary Judgment is granted with respect to Counts II and III and denied with respect to Counts I and IV. Finally, Sebastian's Motion to Strike portions of Defendants' reply pleadings is granted in part and denied in part consistent with this Opinion.

STATEMENT OF UNDISPUTED FACTS

Sebastian is an electrical sign inspector for the City's Electrical Bureau (the "EB Department") of the Department of Buildings (the "Department"), where he has worked since 1987. [1] (Pl. Resp. 56.1 P 5.) Sebastian [*3] claims that he was qualified to be promoted to the position of a supervising electrical inspector and that he was passed over by other politically connected candidates due to his race, national origin, and because he was not politically active. Sebastian earned a Supervising Electrician's license in 1985, is a member of the International Brotherhood of Electrical Workers ("IBEW"), Lo-

cal 134, and has over thirty years of experience in the electrical industry. (Allen Resp. 56.1 PP 1-2; City Defs. Resp. 56.1 PP 1-2; Pl. Resp. 56.1 P 5.)

1 Citations to "Plaintiff's Response to Defendant's Local Rule 56.1(a)(3) Statement" have been abbreviated to "Pl. 56.1 Resp." Citations to the exhibits supporting "Plaintiff's Sur-response in Opposition to Defendants' Motions For Summary Judgment" have been abbreviated to "Pl. Sur-response, Ex." Citations to "Defendant Allen's Objections and Responses to Plaintiff's 56.1(b)(3)(B) Statement of Facts" have been abbreviated to "Allen 56.1 Resp." Finally, citations to "City Defendants' Objections and Responses to Plaintiff's 56.1(b)(3)(B) Statement of Facts" have been abbreviated to "City Defs. 56.1 Resp."

The Court notes with considerable displeasure that the [*4] parties have failed to comply with *L.R. 56.1*. That rule allows a party opposing summary judgment to file a statement of undisputed material facts consisting of "short numbered paragraphs." Ignoring that obligation, Sebastian has filed a statement of undisputed material facts that contains numerous lengthy paragraphs that one cannot characterize as "short." To be sure, over one-third of the 91 numbered paragraphs contained in Sebastian's Local Rule 56.1(b)(3)(B) statement violate the "short numbered paragraphs" limitation. Making matters worse, several statements within the paragraphs misrepresent the facts and either contain no citation to the record or an incorrect citation to the record. Sebastian's submission violates not only the letter, but also the spirit of *Local Rule 56.1*. While not as egregious, Defendants have also failed to comply with *L.R. 56.1*. For instance, both Allen and the City Defendants include several numbered paragraphs that exceed the "short paragraph" restriction. In addition, Allen and City Defendants have admitted and/or denied certain statements, but then improperly included additional facts and arguments in their response paragraphs. The City Defendants (and [*5] Allen at times) have also included a general authenticity objection in response to several of Sebastian's citations to the record without properly explaining or supporting the objections.

The Court granted several requests for extensions to discovery and briefing schedules. Nevertheless, the parties failed to use this additional time to sort through non-issues and present only material facts to the Court, or properly draft and format their filings. Instead, the parties abused the Court's generosity by forcing the Court to wade through convoluted, noncompliant *Local Rule 56.1* submissions on the eve of trial.

Nonconformity with the Local Rules and the standing orders of the Court is not without consequence. *Green v. Harrah's Illinois Corp., No. 03 C 2203, 2004 U.S. Dist. LEXIS 7569, at *8 (N.D. Ill. Apr. 29, 2004)* (refusing to consider statements of fact in excess of the number permitted by *Local Rule 56.1*). The Seventh Circuit has "repeatedly held that a district court is entitled to expect strict compliance with *Rule 56.1*." *Ammons v. Aramark Uniform Servs., Inc., 368 F.3d 809, 817 (7th Cir. 2004)* (citing *Bordelon v. Chicago School Reform Bd. of Trustees, 233 F.3d 524, 527 (7th Cir. 2000)*). [*6] "A district court does not abuse its discretion when, in imposing a penalty for a litigant's non-compliance with *Local Rule 56.1*, the court chooses to ignore and not consider the additional facts that a litigant has proposed." *Cichon v. Exelon Generation Co., L.L.C., 401 F.3d 803, 809-10 (7th Cir. 2005)*. Accordingly, this Court will not consider portions of the parties' submissions that do not contain proper support from the parties' citations to the record. In addition, the Court denies Defendants' general authenticity objections to the extent that they failed to properly develop such arguments. Finally, the Court strikes any additional facts or arguments improperly included in their response paragraphs or summary judgment memoranda. Consistent with this conclusion, the Court will not consider any arguments that rely upon the excluded evidence.

During his tenure with the EB Department, Sebastian held responsibility in several EB functions: field wiring inspections, electrical plan examination, court case team inspections, and electrical sign inspections. (Allen Resp. 56.1 P 3; City Defs. Resp. 56.1 P 3.) One of his previous supervisors, Rochester Bailey ("Bailey"), described Sebastian [*7] as: (1) an excellent inspector; (2) a specialist of the EB Department's switchboards and switchgears work; (3) excellent with the task of load calculations; (4) very knowledgeable with regard to the Electrical Code (the "Code"); and (5) one who was prompt, stayed late to finish jobs, and never refused assignments. [2] (Allen Resp. 56.1 P 4; City Defs. Resp. 56.1 P 4; Pl. 56.1 Resp., Ex. 4, Bailey Dep. 41-42, 69-70, 76-78, 130, 163.) In 1991 and 2004, Chief Electrical Inspector Timothy Cullerton ("Cullerton") and Deputy Commissioner Milt Patterson ("Patterson"), respectively, commended Sebastian for "consistently excellent" performance and a "high degree of professionalism." (Allen Resp. 56.1 P 3; City Defs. Resp. 56.1 P 3; Pl. 56.1 Resp.

Ex. 1, Bid Application.) In 1994, Sebastian received a Commissioner's Special Service Award. (Allen Resp. 56.1 P 3; City Defs. Resp. 56.1 P 3.)

> 2 Throughout Sebastian's 56.1(b)(3)(B) Statement of Facts and his Response to Defendant's Local Rule 56.1(a)(3) Statement, Sebastian cites to the testimony of individuals without laying the proper foundation to establish that the individuals had the requisite personal or firsthand knowledge. *See Fed. R. Evid. 602.* [*8] To the extent that Sebastian has failed to comply with *Fed. R. Civ. P. 56(e)* and *Fed. R. Evid. 602*, such statements will not be considered by the Court. Additionally, the Court notes that Sebastian also attempts to support his statements of facts and/or denials with several conclusory assertions made by himself and others, without supporting the assertions with specific facts. Such conclusory opinions are also insufficient to create a genuine issue of material fact and, therefore, will also be disregarded by the Court. *See Burks v. Wisconsin Dept. of Trans., 464 F.3d 744, 752 (7th Cir. 2006).*

Stan-Lee Kaderbek

Kaderbek is a civil engineer who served as the Deputy Commissioner/Chief Engineer of the City's Department of Transportation Bureau of Bridges and Transit from 1993 through 2003. (Pl. Resp. 56.1 P 70.) In August 2003, Kaderbek joined the City's Department of Transportation as the First Deputy Commissioner. In June 2004, he became the Commissioner of the Department of Buildings, where he was charged with the enforcement of the City's Building Code. (*Id.*) Kaderbek resigned as Commissioner in 2005. (Allen Resp. 56.1 P 9; City Defs. Resp. 56.1 P 9.) In 1996, Kaderbek volunteered to do political [*9] work. (Allen Resp. 56.1 P 10; City Defs. Resp. 56.1 P 10.) Kaderbek explained that he was interested in volunteering because, in predisciplinary hearings, employees would use the their political work as an excuse for inadequate performance. (Allen Resp. 56.1 P 10; City Defs. Resp. 56.1 P 10; Pl. 56.1 Resp., Ex. 20, 103-04.) Kaderbek thought it would help him to respond to employees because he could "look them straight in the face and say, you know what, I do it too and I still do my job." (Pl. 56.1 Resp., Ex. 20, 103-04.)

Chris Kozicki

Kozicki began his career as an assistant to family friend, 11th Ward Alderman Patrick Huels ("Huels"). (Allen Resp. 56.1 P 8; City Defs. Resp. 56.1 P 8; Pl. 56.1 Resp. Ex. 15, 20-22.) Kozicki worked as a volunteer for the 11th Ward Democratic organization and ultimately became a political coordinator for the 11th Ward where he organized and directed political volunteers. (Allen Resp. 56.1 P 8; City Defs. Resp. 56.1 P 8.) In 1993, Kozicki was appointed to work for Mayor Daley's brother, John Daley, who then recommended him to Mayor Daley's Chief of Staff for a position as assistant commissioner/project manager for the Department. (Allen Resp. 56.1 P 8; [*10] City Defs. Resp. 56.1 P 8.) Kozicki was appointed to an Assistant Commissioner position with the Department in 1995, appointed to a Deputy Commissioner position in the Department in 1997, and appointed to a Managing Deputy Commissioner in the Department of Buildings in 2003. (Pl. Resp. 56.1 P 71; Allen Resp. 56.1 P 8; City Defs. Resp. 56.1 P 8.) As a Managing Deputy Commissioner under Kaderbek, Kozicki had the daily responsibility of ensuring the performance of inspections. (Pl. Resp. 56.1 P 71.) In 2006, Kozicki became a Deputy Commissioner in the City's Department of Planning and Development. (*Id.*)

Dan Allen

Allen is the Chief Electrical Inspector of the EB Department and began working in the EB Department in 1980. [3] (Pl. Resp. 56.1 P 4.) Prior to joining the EB Department, he had never been employed as a paid mechanic electrician. (Allen Resp. 56.1 P 5; City Defs. Resp. 56.1 P 5; Pl. 56.1 Resp., Ex. 8, Allen Dep. 21-26.) Allen subsequently applied for and was promoted to supervising electrical inspector in 2000 and to his current position in October 2003. (Pl. Resp. 56.1 P 4.)

> 3 At the time of Allen's hiring, his brother-in-law, Cullerton, held the Chief Electrical Inspector position. [*11] (Allen Resp. 56.1 P 5; City Defs. Resp. 56.1 P 5; Pl. 56.1 Resp. Ex. 10, Allen Dep. 60.)

Allen is the brother of 38th Ward Alderman Thomas Allen ("Alderman Allen"). (Allen Resp. 56.1 P 5; City Defs. Resp. 56.1 P 5; Pl. 56.1 Resp. 7; Pl. 56.1 Resp. Ex. 10, Allen Dep. 60.) From 1994 to the present, Sebastian and his wife have received mailings at their home from "Citizens for Tom Allen," an organization that raises money for Alderman Allen's political campaigns. (Pl. Resp. 56.1 PP 6-7; Allen Resp. 56.1 P 7; City Defs. Resp. 56.1 P 7; Pl. 56.1 Resp. Ex. 12, Sebastian Dep. 24-38, 44-47, 221-23.) From 1994 through 2002, Sebastian donated to "Citizens for Tom Allen." (Pl. Resp. 56.1 P 7; Allen Resp. 56.1 P 7; City Defs. Resp. 56.1 P 7.) When Sebastian first donated in 1994, he and Dan Allen were electrical inspectors in the EB Department. (Pl. Resp. 56.1 P 7.)

Sebastian stated that Allen first asked him to provide political contributions to Alderman Allen's political campaigns in 1994 and that Sebastian continued to do so until 2003. [4] (Allen Resp. 56.1 P 7; City Defs. Resp. 56.1

P 7; Pl. 56.1 Resp. Ex. 12, Sebastian Dep. 24.) Sebastian further testified that, in 2001, one year after Allen [*12] became a supervising electrical inspector, Allen told him that his 2001 contribution to Alderman Allen's campaign was insufficient. (Allen Resp. 56.1 P 7; City Defs. Resp. 56.1 P 7; Pl. 56.1 Resp. Ex. 12, Sebastian Dep. 37-38.) As a result, Sebastian made a second contribution. (Allen Resp. 56.1 P 7; City Defs. Resp. 56.1 P 7; Pl. 56.1 Resp. Ex. 12, Sebastian Dep. 37-38.) In 2002, Sebastian donated to Alderman Allen's campaign and told Allen that he did not want to make any more political contributions to the campaign. (Allen Resp. 56.1 P 7; City Defs. Resp. 56.1 P 7; Pl. 56.1 Resp. Ex. 12, Sebastian Dep. 43-45.) According to Sebastian only, Allen then told Sebastian he was a "cheap Indian." (Allen Resp. 56.1 P 7; City Defs. Resp. 56.1 P 7; Pl. 56.1 Resp. Ex. 12, Sebastian Dep. 43-45.) Allen denies the conversation and maintains that he never solicited political contributions from Sebastian or any other City employee. (Allen Resp. 56.1 P 7; City Defs. Resp. 56.1 P 7; City Defs. 56.1 Resp., Allen Aff. P 4.)

> 4 Allen and the City Defendants argue that Sebastian's testimony regarding Allen's alleged political solicitations and statements directly contradicts his prior statements and, therefore, [*13] should be disregarded or stricken. Having considered the cited testimony in the context of Sebastian's prior statements, the Court concludes that Sebastian's testimony does not directly contradict his prior statements and create a "sham" issue of fact; rather, Sebastian's statements create an issue of credibility that is best left to the trier of fact. *See Flannery v. Recording Indus. Ass'n of Am., 354 F.3d 632, 638-40 (7th Cir. 2004).*

2004 Supervising Electrical Inspector Promotion

According to Kozicki, the Department used the following procedure to fill openings within the EB Department in 2004: (1) bid notices listing the minimum qualifications for the job were posted; (2) interested applicants bid on the job by submitting the required materials to the personnel department; (3) the personnel department determined if a particular candidate was qualified; (4) the Department obtained a list of qualified applicants; (5) the Department configured an interview panel; (6) the interview panel conducted the interviews; (7) the commissioner approved the recommended individuals; (8) the list went back to personnel; and (9) the final hires were sent to main personnel. (Allen Resp. 56.1 P 11; [*14] City Defs. Resp. 56.1 P 11; Pl. 56.1 Resp., Ex. 15, Kozicki Dep. 182; Pl. 56.1 Resp., Ex. 20, Kaderbek Dep. 58-59; Allen 56.1 Resp., Ex. I, Kaderbek Dep. 70-75.) In addition, Kaderbek, as Commissioner of the Department, signed a form certifying that, to the best of his understanding, political considerations did not play a role in the hiring decision. (Allen Resp. 56.1 P 11; City Defs. Resp. 56.1 P 11; Pl. 56.1 Resp., Ex. 21, Shakman Referral List/Certification.) Kaderbek retained final decision-making authority for employment decisions made within the Department. (Allen Resp. 56.1 P 11; City Defs. Resp. 56.1 P 11.) He was not, however, authorized to set policies or procedures regarding the hiring and/or firing of City employees and had no role in determining who would be interviewed, which candidates were eligible for interview, or how candidates were evaluated. (Pl. Resp. 56.1 P 81.) The City's Department of Human Resources was responsible for establishing hiring-related policies and procedures. (*Id.*)

In 2004, the EB Department posted three openings for supervising electrical inspectors. (Pl. Resp. 56.1 P 9.) The minimum qualifications for the position included: (1) successful completion [*15] of an approved electrician apprentice training program supplemented by two years of journeyman experience, including one year of electrical inspection experience; (2) considerable knowledge of the laws, codes, and ordinances governing electrical installations; (3) considerable knowledge of the Code. (Pl. Resp. 56.1 P 72.) Duties for the position included: (1) supervising and coordinating work assignments of electrical inspectors to ensure compliance with the building code; (2) supervising the inspection of electrical installation; (3) supervising the issuance of certain notices; (4) meeting with inspectors, contractors, and the public to interpret building code requirements; (5) conducting field inspections to check quality of work; (6) reviewing daily inspection reports; and (7) maintaining records and preparing reports. (*Id.*) Additionally, when the employment decision was governed by IBEW Collective Bargaining Agreement (the "CBA"), section 14.8 of the CBA required the City to "select the most qualified applicant" and, when "applicants [we]re equally qualified," to "select the most senior employee." (Allen Resp. 56.1 P 12; City Defs. Resp. 56.1 P 12; Pl. 56.1 Resp., Ex. 22, CBA.)

At [*16] some point after the positions became available, former Building Department Commissioner Norma Reyes appointed John Hammersmith ("Hammersmith") to serve as an Acting Supervisor until the EB Department supervisor positions were permanently filled. (Allen Resp. 56.1 P 14; City Defs. Resp. 56.1 P 14.) Sebastian believed that Mike Reynolds ("Reynolds") acted and served unofficially as an Acting Supervisor during the EB Department's supervisor hiring sequence. [5] (Allen Resp. 56.1 P 14; City Defs. Resp. 56.1 P 14; Pl. 56.1 Resp., Ex. 2, Sebastian Dep. 108-13.)

> 5 The parties also dispute whether Hammersmith and Reynolds made comments indicating

that they would be promoted to the permanent supervisor position and whether Hammersmith claimed that the vacant position was his "spot" and that he was "supposed to get" the position. (Allen Resp. 56.1 P 14; City Defs. Resp. 56.1 P 14; Pl. 56.1 Resp., Ex. 25, Gibbons Dep. 108-10; Pl. 56.1 Resp., Ex. 5, Simmons Dep. 63; Pl. 56.1 Resp., Ex. 12, Sebastian Dep. 108-09; City Defs. 56.1 Resp., Ex. M, Hammersmith Dep. P 6; City Defs. 56.1 Resp., Ex. N, Reynolds Dep. P 6.)

Sebastian, for the first time since he began working for the EB Department, applied for [*17] the supervising electrical inspector position by submitting an application. (Pl. Resp. 56.1 P 10; Allen Resp. 56.1 P 12; City Defs. Resp. 56.1 P 13.) After submitting his application, Sebastian met with Allen to inform him that he had applied for the position (the "May 2004 conversation"). (Allen Resp. 56.1 P 15; City Defs. Resp. 56.1 P 15.) The parties dispute what occurred during the meeting. According to Sebastian, Sebastian met with Allen to provide him with his credentials for the promotion. (Allen Resp. 56.1 P 15; City Defs. Resp. 56.1 P 15; Pl. 56.1 Resp., Ex. 2, Sebastian Dep. 10-11, 46-49.) The first time Sebastian was deposed, he testified that, after he informed Allen of his qualifications, Allen told him, "Tom, you are Indian. You will never get promoted." (Pl. 56.1 Resp., Ex. 2, Sebastian Dep. 10-11, 48.) Subsequently, the fourth time he was deposed, Sebastian testified that, Allen told him, "'Tom, you are Indian. You're never going to get promoted because you are not politically involved.'" (City. 56.1, Ex. I, Sebastian Dep. 693-94.)

Allen denies that he met with Sebastian to discuss Sebastian's qualifications and denies that he ever told Sebastian that Sebastian's national [*18] origin or political activity would impact his ability to obtain the promotion. According to Allen, Sebastian came to him, informed him that he was applying for the promotion, and told him that Patterson had told Sebastian that Sebastian was going to be promoted. (Allen Resp. 56.1 P 15; City Defs. Resp. 56.1 P 15; Pl. 56.1 Resp., Ex. 8, 190-94.) Sebastian then laid cancelled checks on Allen's desk and made comments regarding how he had contributed to political funds. (Allen Resp. 56.1 P 15; City Defs. Resp. 56.1 P 15; Pl. 56.1 Resp., Ex. 8, Allen Dep. 190-94.) Allen said that he told Sebastian to pick up the checks, displaying the checks was inappropriate, and that "none of [that] ha[d] anything to do with" who would be promoted. (Allen Resp. 56.1 P 15; City Defs. Resp. 56.1 P 15; Pl. 56.1 Resp., Ex. 8, 190-94.)

On May 23, 2004, [6] Sebastian sent a letter regarding his application to Kaderbek, copying Mayor Richard Daley, Sheila O'Grady (identified as Mayor Daley's Chief of Staff), and Alderman Bernard Stone (identified as "Building Committee Chairman"). (Pl. Resp. 56.1 P 10.) In the letter, Sebastian identified himself as a candidate for the promotion, detailed his qualifications, and [*19] provided copies of his resume, work commendations, electrical licenses, and credentials. (Allen Resp. 56.1 P 17; City Defs. Resp. 56.1 P 17; Pl. 56.1 Resp., Ex. 27, May 5, 2004 Letter.)

6 In Sebastian's combined response to Defendants' statements of fact, Sebastian admits that he sent the letter on May 23, 2004. In support of this assertion, Defendants cite to Sebastian Deposition Exhibit 31, which is a letter dated May 3, 2004, and to testimony from Sebastian in which he confirms that he sent the letter on or about May 23, 2004. (Pl. Resp. 56.1 P 10; Allen 56.1, Ex. D, Sebastian Dep. Exs., Ex. 31.) In Allen's and the City Defendants' respective responses to Sebastian's statement of additional facts, Sebastian states and Defendants admit that Sebastian wrote a letter to Kaderbek on May 3, 2004 and ultimately sent it to Kaderbek and others. (Allen Resp. 56.1 P 17; City Defs. Resp. 56.1 P 17.) In support of this statement, Sebastian cites to a letter that is identical to Sebastian Deposition Exhibit 31. (Pl. 56.1 Resp. 27.) Thus, consistent with Sebastian's testimony, the Court assumes the letter was sent on or about May 23, 2004.

The Interviews

The City determined that fifteen of the applicants, [*20] including Sebastian, Hammersmith, and Reynolds, were eligible for the interview. (Allen Resp. 56.1 PP 13, 28; City Defs. Resp. 56.1 PP 13, 28.) Kaderbek did not participate in the interview process; instead he delegated the interviews to Kozicki and other bureau chiefs. (Pl. Resp. 56.1 P 80; Allen Resp. 56.1 P 18; City Defs. Resp. 56.1 P 18; Pl. 56.1 Resp., Ex. 20, Kaderbek Dep. 34.) On the evening of July 26, 2004, Kozicki called Allen and informed Allen that he would be participating in the interviews alongside Kozicki. (Pl. Resp. 56.1 PP 11-12.)

Kaderbek expected Kozicki to use a standard written list of questions for all of the interviews to ensure that the interviews remained impartial. (Allen Resp. 56.1 P 18; City Defs. Resp. 56.1 P 18; Pl. Resp. 56.1, Ex. 20, Kaderbek Dep. 43-47.) At Kozicki's request, Allen prepared a list of eight questions to test the applicants' technical knowledge of the Code and a "quick template" that listed brief answers to the questions (the "Code questions"). (Pl. Resp. 56.1 P 11; Allen Resp. 56.1 P 19; City Defs. Resp. 56.1 P 19.) Allen based the answers on the template solely on his personal knowledge of the Code. (Allen Resp. 56. 1 P 19; City Defs. [*21] Resp. 56.1 P 19.) The interviews took place on July 27, 2004 and Au-

gust 3, 2004. (Pl. Resp. 56.1 P 12.) Kozicki and Allen conducted the July 27th interviews, while Kozicki and Kevin Bush ("Bush"), then a Deputy Commissioner in the EB Department, conducted the August 3rd interviews. (*Id.*) Allen was the only individual on any of the interview panels who had electrical experience or knowledge of the Code. (Def. Allen 56.1 Resp. P 21; City Defs. 56.1 Resp. P 21.) As a result, Kozicki relied on Allen and Bush and asked them how the candidates performed to determine whether the applicants answered the Code questions correctly. (Def. Allen 56.1 Resp. P 21; City Defs. 56.1 Resp. P 21; Pl. Ex. 15, Kozicki Dep. 198-201, 209.)

Sebastian was one of eleven candidates interviewed by Kozicki and Allen on July 27. (Pl. Resp. 56.1 PP 12, 15.) Kozicki first asked each candidate a series of non-technical questions relating to the candidate's qualifications, ideas, and opinions about the Department. (Pl. 56.1 Resp. P 14.) The parties dispute some details regarding the interviews, such as the length of time of each interview, whether the applicants were given the Code questions to review, and whether Kozicki [*22] and Allen took notes during all of the interviews. (Allen 56.1 Resp. PP 22, 24-25; City Defs. 56.1 Resp. PP 22, 24-25.) They dispute whether Allen asked Sebastian all eight Code questions, whether he asked Sebastian different technical questions as compared to other candidates, and whether he and Kozicki took notes regarding Sebastian's answers. (Def. Allen 56.1 Resp. PP 24-25; City Defs. 56.1 Resp. PP 24-25; Sebastian Dep. 57-66, 103-06; Allen 56.1 Resp., Ex. H, Interview Evaluations; Ex. J, George Dep. 23-33.) Sebastian believes that Allen asked him different questions than those included on the Code questions list. (Def. Allen 56.1 Resp. P 25; City Defs. 56.1 Resp. P 25; Sebastian Dep. 103-06.) Allen told Kozicki that Sebastian provided incorrect answers to a few of the Code questions. (Allen Resp. 56.1 P 27; City Defs. Resp. 56.1 P 27.) Kozicki and Allen did not ask Sebastian any questions regarding his political activities or lack thereof during the interview. (Pl. Resp. 56.1 P 79.)

Kozicki formulated his own opinions and then held a meeting with Bush and Allen during which the three men discussed their opinions and came to a conclusion as to who the best candidates were. (Def. [*23] Allen Resp. 56.1 P 26; Def. City Defs. Resp. 56.1 P 26; Pl. 56.1 Ex. 15, Kozicki Dep. 194-96, 247-52.) Kozicki then rated the candidates. (Pl. 56.1 Ex. 15, Kozicki Dep. 194-96, 247-52.) Allen denies that he attended the meeting. (Pl. 56.1 Resp. P 16.) Allen says that he completed his score sheets immediately after they completed the interviews on July 27, 2004 and never met with Kozicki, Kaderbek or Bush regarding the scoring. (*Id.*)

The three interviewers used standardized forms to rate the candidates for the supervisor position on a scale of one through five in the following four categories: (1) training; (2) experience; (3) communication skills; and (4) technical knowledge. (Pl. Resp. 56.1 P 13.) Each category was to be equally weighted. (Pl. Resp. 56.1 P 13; City Defs. Resp. 56.1 P 18; Allen 56.1, Ex. H.) While the interviewers for the 2004 supervisor promotions could have looked at "anything" when evaluating the candidates, they did not review the candidates' applications or disciplinary histories. (City Defs. 56.1 Resp. P 26; Allen 56.1 Resp. P 26.)

Of the eleven candidates interviewed on July 27, 2004, Allen evaluated Sebastian at an overall average score of 2.75, which placed [*24] Sebastian eleventh out of the eleven candidates interviewed on that date. (Pl. 56.1 Resp. P 15.) Kozicki evaluated Sebastian at an overall average score of 3.25, placing him at a tie for eighth out of the eleven people interviewed on July 27, 2004 and tenth out of the fifteen total candidates. (*Id.*) Bush did not interview Sebastian or any of the three successful candidates. (Pl. Resp. 56.1 P 18.) Ultimately, when the scores were tallied and averaged, Sebastian tied with three other candidates for the lowest average score of 3.0. (*Id.*)

Allen and Kozicki had each ranked the three successful candidates - Reynolds, Hammersmith, and Keith Hall ("Hall") - as first, second, and third. (Def. Allen Resp. 56.1 P 28; Def. City Defs. Resp. 56.1 P 28; Pl. 56.1 Resp. P 18.) The three individuals received the three highest scores and, ultimately, the promotion. (Def. Allen Resp. 56.1 P 28; Def. City Defs. Resp. 56.1 P 28.) While Kozicki, Allen, and Bush gave different technical ability scores for more than half of the unsuccessful candidates, Kozicki and Allen both gave Hammersmith, Reynolds, and Hall perfect "5" ratings for technical knowledge. (Allen Resp. 56.1 P 27; City Defs. Resp. 56.1 P 27; [*25] Allen 56.1 Resp., Ex. H.) Allen gave Sebastian a score of "2" on the technical knowledge portion. (Allen Resp. 56.1 P 27; City Defs. Resp. 56.1 P 27; Allen 56.1 Resp., Ex. H.)

Kaderbek approved the 2004 promotions, relying on the recommendations of the individuals who interviewed the candidates. (Pl. 56.1 Resp. P 80.) Typically, Kaderbek would review the documents in the packet as well as the numerical ratings and identify the three candidates with the highest average scores. (Pl. Resp. 56.1 P 17; Allen 56.1 Resp., Ex. I, Kaderbek Dep. 70-73.) Kaderbek would then sign, date, and send a referral list and final employment decision form to Mary Ann Ciaravino [7] ("Ciaravino"). (Pl. Resp. 56.1 P 17; Allen 56.1 Resp., Ex. I, Kaderbek Dep. 70-85.) Upon receipt of this form, Ciaravino would generate letters informing the candidates whether or not they had been selected. (Allen

56.1 Resp., Ex. I, Kaderbek Dep. 78-79.) On or about August 19, Kozicki gave Ciaravino a document that listed the numerical scoring results from the July 27 and August 3 interviews. (Allen Resp. 56.1 P 28; City Defs. Resp. 56.1 P 28.) The referral list and final employment decision form that Kaderbek gave to Ciaravino [*26] also noted a date of August 19, 2004 next to Kaderbek's signature. (Allen 56.1 Resp., Ex. I, Kaderbek Dep. 85-86, Kaderbek Dep. Ex. 5.) While Kaderbek speculated that he gave the referral list and final employment decision form to Ciaravino on August 19, 2004, he also testified that the date did not appear to be in his handwriting and he had no reason - one way or another - to doubt the accuracy of the date. (Allen 56.1 Resp., Ex. I, Kaderbek Dep. 85-86, Kaderbek Dep. Ex. 5; City Defs. 56.1 Resp, Ex. T, Kaderbek Dep. 223-25.) However, the letters notifying Hammersmith, Hall, and Reynolds that they received the supervisor promotion, which were signed by Kaderbek, are dated August 18, 2004. (Allen Resp. 56.1 P 28; City Defs. Resp. 56.1 P 28; Pl. 56.1 Resp., Ex. 33, Supervisor Promotion Letters.) Ciaravino asserted her *Fifth Amendment* right when asked whether "the letters, advising Mr. Reynolds, Hammersmith and Hall that they were getting the job, went out a day before Mr. Kozicki ever gave you the scores and the results from the interviews for these jobs isn't that right?" (Allen 56.1 Resp. P 29; City Defs. 56.1 Resp. P 29.) Allen had no communication with Ciaravino regarding the 2004 [*27] supervisor promotions. (Pl. 56.1 Resp. P 16.)

> 7 The parties dispute whether Ciaravino occupied the role of Director of Personnel or Director of Administration for the Department. (City Defs. 56.1 Resp. P 30; Allen 56.1 Resp. P 30.) In their *Rule 26(a)(1)(A)* disclosure, the City Defendants initially identified Ciaravino as an individual who likely possessed "knowledge regarding the procedures followed in filling open positions, including those sought by Sebastian." (City Defs. 56.1 Resp. P 30; Allen 56.1 Resp. P 30.) Allen subsequently adopted this disclosure by reference. (City Defs. 56.1 Resp. P 30; Allen 56.1 Resp. P 30.) At her deposition, Ciaravino asserted her *Fifth Amendment* right against self incrimination and refused to answer any substantive questions posed to her about the procedures followed in filling open positions within the Department and the specific promotion decisions at issue in the current action. (City Defs. 56.1 Resp. P 30; Allen 56.1 Resp. P 30.) Ciaravino was granted immunity to testify in the *United States v. Sorich* criminal trial. (City Defs. 56.1 Resp. P 30; Allen 56.1 Resp. P 30.)

Defendants' Scoring Explanations

In his deposition, Kozicki explained that he [*28] sought someone with knowledge of the Code who could "handle themselves well on their feet," handle pressure and stress, communicate well with the inspectors, and "get things done" in a "very high stressed environment" and "a difficult job." (Pl. Resp. 56.1 P 73.) He did not look at any of the candidates' discipline files. (*Id.*) Kozicki said that Sebastian "did a very poor job in the interview" and answered questions poorly. (Pl. Resp. 56.1 P 74.) Kozicki knew that Sebastian was a sign inspector and believed that "the perception in the [D]epartment" was that sign inspectors were not considered to be as "good" as general electrical inspectors. (*Id.*) In contrast, Kozicki testified that, among other things: (1) Hall interviewed well; (2) Kozicki believed that Hammersmith was a hard worker, Hammersmith was familiar with all of the aspects of the departments because he had worked in three different bureaus, and others within the Department thought well of him; and (3) Reynolds "[g]ave an excellent interview," "handled himself well," used examples well during the interview, had years of experience in management, and had done an excellent job in the Certificate of Occupancy unit. (Pl. Resp. [*29] 56.1 P 75.)

Allen stated that he rated each candidate in terms of training, experience, communication skills, and technical knowledge. (Pl. Resp. 56.1 P 76.) He took into account the responsiveness and quality of each candidate's responses to the non-technical questions and the accuracy of their responses to the technical questions. (*Id.*) Because the successful candidates would be reporting directly to him, he was mindful of each candidate's ideas about improving the Department and ability to efficiently lead and manage the inspectors. (*Id.*) Allen stated that Sebastian answered some of the technical questions incorrectly and did not "respond directly and fully to several technical questions" or provide concrete examples of his experiences with and ideas for the Department, although he was specifically asked to do so. (Pl. Resp. 56.1 P 77.)

In contrast, Allen stated that Hammersmith, Reynolds, and Hall performed better than Sebastian during their respective interviews. (Pl. Resp. 56.1 P 78.) According to Allen, the other candidates interacted with the interviewers and conveyed their ideas for the Department. (*Id.*) Based on their performance, Allen believed that Hammersmith, Hall, and [*30] Reynolds would be better able to understand Department operations on a larger scale and to manage other employees, as compared to Sebastian. (*Id.*)

The Promoted Individuals

Shortly before his promotion, Hammersmith worked as an electrical inspector in the Certificate of Occupancy

team task force. [8] (Allen 56.1 Resp. P 31; City Defs. 56.1 Resp. P 31.) In either the late 1970's or early 1980's, Hammersmith took, but did not pass, the Supervising Electrician's License Code exam. (Allen 56.1 Resp. P 31; City Defs. 56.1 Resp. P 31; City Defs. 56.1 Resp., Ex. B, Hammersmith Dep. 131.) Hammersmith has not attempted to obtain a license because he believes it is a "conflict of interest" to hold the license and work for the EB Department. (City Defs. 56.1 Resp., Ex. B, Hammersmith Dep. 131.)

8 In his statement of additional facts, Sebastian asserts that Hammersmith "did not work in the more complicated plan review function nor sign inspections." (City Def. 56.1 Resp. P 31; Allen 56.1 Resp. P 31.) In support of this statement, Sebastian cites to Hammersmith's 2004 bid application as well as Sebastian's own belief regarding Hammersmith's prior experience. (*Id.*) Neither source properly supports his [*31] assertion. Hammersmith's bid application provides no indication that Hammersmith had not previously performed these tasks. (Pl. 56.1 Resp., Ex. 37, Hammersmith Bid Application.) Further, Sebastian has failed to lay the proper foundation to establish that he had the requisite personal or firsthand knowledge. *See Fed. R. Evid. 602.* Thus, the Court will not consider this assertion, or any other fact based on similarly deficient evidence, for the purposes of summary judgment.

Hammersmith grew up in "the same area" as Allen's family. (Allen 56.1 Resp. P 32; City Defs. 56.1 Resp. P 32; Pl. 56.1 Resp., Ex. 24, Hammersmith Dep. 88-89; City Defs. 56.1 Resp., Ex. M, Hammersmith Dep. P 4.) Hammersmith met Alderman Allen for the first time at a party some time between 2004 and 2006. (Allen 56.1 Resp. P 32; City Defs. 56.1 Resp. P 32; Pl. 56.1 Resp., Ex. 24, Hammersmith Dep. 88-89.) Hammersmith has a long history of performing political work for Alderman Allen's campaigns, Allen's former alderman father-in-law, and certain candidates endorsed by the Local 134 electrician's union. (Allen 56.1 Resp. P 32; City Defs. 56.1 Resp. P 32; Pl. 56.1 Resp., Ex. 24, Hammersmith Dep. 8-16, 88-92.) Hammersmith [*32] has signed petitions, contributed money, put campaign signs on his lawn, walked in parades, and walked picket lines. (Allen 56.1 Resp. P 32; City Defs. 56.1 Resp. P 32.) With respect to Alderman Allen specifically, Hammersmith has passed out literature, signed petitions, worked the polls, and gone door to door. (Allen 56.1 Resp. P 32; City Defs. 56.1 Resp. P 32; Pl. Ex. 24, Hammersmith Dep. 87- 91.)

Reynolds joined the City in 2000 and worked in the Certificate of Occupancy unit until shortly before his promotion. (Allen 56.1 Resp. P 33; City Defs. 56.1 Resp. P 33.) Reynolds grew up in the same neighborhood as State Representative Kevin Joyce, son of Jeremiah Joyce, and has known him since the 1970's. (Allen 56.1 Resp. P 34; City Defs. 56.1 Resp. P 34; Pl. 56.1 Resp., Ex. 30, Reynolds Dep. 261-62.) According to Sebastian, Jeremiah Joyce works as a political strategist for Mayor Daley. (Pl. 56.1 Resp., Ex. 12, Sebastian Dep. 52.) Reynolds began his political activity in 2002. (Allen 56.1 Resp. P 34; City Defs. 56.1 Resp. P 34.) In Fall 2005, Reynolds became a precinct captain for the 19th Ward. (Allen 56.1 Resp. P 34; City Defs. 56.1 Resp. P 34; Pl. 56.1 Resp., Ex. 30, Reynolds Dep. [*33] 270.) Reynolds was responsible for "get[ting] the vote out" in his precinct and working for the candidates endorsed by the 19th Ward. (Allen 56.1 Resp. P 34; City Defs. 56.1 Resp. P 34; Pl. 56.1 Resp., Ex. 30, Reynolds Dep. 263, 286.) In 2006, Reynolds coordinated the South Side Irish parade. (Allen 56.1 Resp. P 34; City Defs. 56.1 Resp. P 34.)

Hall is an ordained associate minister at the Apostolic Faith Church in Chicago. (Allen 56.1 Resp. P 35; City Defs. 56.1 Resp. P 35; Pl. 56.1 Resp., Hall Dep. 270.) Hall testified that there have been a few occasions when elected officials have been in attendance at the church. (Allen 56.1 Resp. P 35; City Defs. 56.1 Resp. P 35; Pl. 56.1 Resp., Hall Dep. 270-72.) Specifically, Hall recalled that State Senator Barack Obama attended a church service "a number of years ago" (before becoming a senator), as did Alderwoman Dorothy Tillman at some point. (Allen 56.1 Resp. P 35; City Defs. 56.1 Resp. P 35; Pl. 56.1 Resp., Hall Dep. 270-72; Allen 56.1, Ex. JJ 406-07.) In addition, while a number of Local 134 electricians (fewer than ten) have attended his church, Hall is not aware of any Department employees who have been in attendance. (Allen 56.1 Resp. [*34] P 35; City Defs. 56.1 Resp. P 35; Pl. 56.1 Resp., Hall Dep. 316-17.) In the mid-90's, Hall volunteered to do some political work, which included knocking on doors and handing out flyers, for a candidate named "Lightfoot." (Allen 56.1 Resp. P 35; City Defs. 56.1 Resp. P 35; Pl. 56.1 Resp., Hall Dep. 262, 264.) Hall took the Supervising Electrician's License Code exam on one occasion, but did not pass. (Allen 56.1 Resp. P 37; City Defs. 56.1 Resp. P 37; Pl. 56.1 Resp., Ex. 3, Hall Dep. 344-45.)

Sebastian previously provided Hall with a training (lasting no more than one day) regarding sign inspections. (Allen 56.1 Resp. P 38; City Defs. 56.1 Resp. P 38; Pl. 56.1 Resp., Ex. 2, Sebastian Dep. 160-61.) Sebastian also claims that he trained Hammersmith, Reynolds, and Allen; the City denies this. (Allen 56.1 Resp. P 38; City Defs. 56.1 Resp. P 38; Pl. 56.1 Resp., Ex.4, Bailey Dep. 90-92; City Defs. 56.1 Resp., Ex. J, Allen Dep. 100; City Defs. 56.1 Resp., Ex. M, Hammersmith Aff. P 12; City Defs. 56.1 Resp., Ex. N, Reynolds Aff. P 9.)

Sebastian's EEOC Charge and Subsequent Events

On August 24, 2004, Sebastian was notified that he did not receive the supervising electrical inspector position. [*35] (Pl. 56.1 Resp. P 21; Allen 56.1, Ex. E, Sebastian Dep. Ex. 37.) Two days later, on August 26, he sent a letter to Michael Fitzgerald ("Fitzgerald"), identified as a business manager for IBEW, requesting to file a grievance and alleging that he had been discriminated against on account of his national origin because he had not been promoted. (Pl. 56.1 Resp. P 22; Allen 56.1, Ex. E, Sebastian Dep. Ex. 38.) Sebastian copied Michael Nugent ("Nugent") (identified as an IBEW business agent) and Gary Parks ("Parks") (identified as an IBEW union steward) on the letter. (Pl. 56.1 Resp. P 22; Allen 56.1, Ex. E, Sebastian Dep. Ex. 38.)

On August 30, 2004, Sebastian sent a letter to Kaderbek - with copies to Mayor Richard Daley, Sheila O'Grady, Gene Lee ("Lee") (identified as Mayor Daley's Deputy Chief of Staff), Alderman Bernard Stone (identified as Buildings Committee Chairman), Ciaravino, and the IBEW - alleging that he had not been promoted because he was Asian American. (Pl. 56.1 Resp. P 23; Allen 56.1, Ex. E, Sebastian Dep. Ex. 39.) In response, Lee contacted and subsequently met with Sebastian. (Pl. 56.1 Resp. P 24.) During the meeting, the two discussed Sebastian's qualifications and Sebastian [*36] voiced his concerns that he had been discriminated against on account of his national origin. (Pl. 56.1 Resp. P 24; Allen 56.1, Ex. A, Sebastian Dep. 118-22.)

On September 8, 2004, Sebastian informed Allen that he planned to file a union grievance regarding his failure to be promoted. (Pl. 56.1 Resp. P 22.) Allen encouraged him to do so. (*Id.*) With Parks's assistance, Sebastian prepared a formal union grievance, which he filed on September 10, 2004. (*Id.*) After the grievance was processed and denied, the union declined its option under the CBA to pursue arbitration. (*Id.*)

Alleged Retaliation

On September 17, 2004, Sebastian filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), alleging that he had been denied a promotion on the basis of his race (Asian) and national origin (Indian) ("EEOC charge"). (Pl. 56.1 Resp. P 25.) Sebastian claims that, subsequent to the EEOC charge and as a result of this charge (as well as his April 2005 lawsuit), the City engaged in a number of retaliatory acts. The following is a timeline of the events that occurred subsequent to the filing of his EEOC charge, placing the alleged retaliatory acts in the context of the EEOC [*37] investigation as well as the progression of his lawsuit.

On September 29, 2004, Scott Loeff ("Loeff"), the City's Assistant Commissioner of Labor Relations, sent the EEOC charge to Kozicki via email and copied Kaderbek. (City Defs. 56.1 Resp. P 71; Allen 56.1 Resp. P 71; (Pl. 56.1 Resp. P 45; Pl. 56.1 Resp., Ex. 51, Kozicki Sept. 29, 2004 Email; City Defs. 56.1 Resp., Ex. FF, Loeff Aff. P 3.) Nine days later, on October 8, 2004, Allen assigned Sebastian to work on the strategic task force ("STF") for the first time. [9] (City Defs. 56.1 Resp. P 71; Allen 56.1 Resp. P 71; Pl. 56.1 Resp. P 35.) STF was one of several projects in which electrical and other types of inspectors in the Department were assigned as a team to complete field inspections of different classes of buildings. (Pl. 56.1 Resp. P 34.) The teams often went to dangerous areas in the City and, when necessary, were accompanied by armed police officers. (City Defs. 56.1 Resp. P 72; Allen 56.1 Resp. P 72.) While some electrical inspectors considered STF work safer than solo field inspections because they worked with a team and police escorts, others considered the work dangerous and a punishment. (City Defs. 56.1 Resp. P 72; [*38] Allen 56.1 Resp. P 72; Pl. 56.1 Resp., Ex. 5, Simmons Dep. 188-89; Pl. 56.1 Resp., Ex. 52, Browning Dep. 28-29; City Defs. 56.1 Resp., Ex. AA, Simmons Dep. 86-87; City Defs. 56.1 Resp., Ex. G, Cunningham Aff. P 11, Gallagher Aff. P 12, Podbielski Aff. P 12.)

9 In their respective responses to Sebastian's statement of additional facts, Allen and the City Defendants deny that this was Sebastian's first STF assignment. Defendants affirmatively assert that Sebastian previously worked "court case team inspection[s]" at an unspecified time and that this type of inspection is a function of STF. (City Defs. 56.1 Resp. P 71; Allen 56.1 Resp. P 71.) In support of the latter assertion, Defendants cite to the deposition of Steven Browning ("Browning"), in which Browning explained that, in an unspecified time frame, STF had a "court team." (City Defs. 56.1 Resp., Ex. CC, Browning Dep. 77.) Defendants provide no evidence to support the proposition that the "court case team inspection" performed by Sebastian was performed in conjunction with the "court team" that the STF maintained during the unspecified time frame discussed by Browning. Thus, the Court deems this fact admitted for the purposes of [*39] summary judgment. *See L.R. 56.1.*

On January 12, 2005, EEOC investigator Joshua George ("George") conducted a phone interview with Sebastian regarding the EEOC charge. (Pl. 56.1 Resp. PP 26-28; Allen 56.1, Ex. J, George Dep. 21-33.) During the interview, Sebastian admitted to giving certain answers contained in Allen's notes. (Pl. 56.1 Resp. P 28; Allen 56.1, Ex. J, George Dep. 21-33.)

On April 8, 2005, Sebastian filed his original complaint in the United States District Court for the Northern District of Illinois, alleging race and national origin discrimination [10] (the "First Complaint"). (Pl. 56.1 Resp. P 30.)

10 This case was originally assigned to another district court judge, but was transferred to this Court as part of its Initial Calendar.

Over two months later, on June 15, 2005, Sebastian attended a prediscipliinary hearing with Nugent, Loeff, Hall, and Allen regarding Sebastian's failure to report to work on June 10, 2005, a day he was assigned to work STF ("June 2005 prediscipliinary hearing"). (Pl. 56.1 Resp. P 45.) Because Sebastian produced evidence that he had visited a doctor on June 10, Loeff determined that no violation of City policy had been established. (*Id.*) Sebastian [*40] did not receive a reprimand or other sanction as a result of the incident. (*Id.*)

On July 1, 2005, the last work day preceding the Independence Day holiday in 2005, Sebastian worked a "skeleton crew" shift from 2:00 p.m. to 3:30 p.m. (City Defs. 56.1 Resp. P 82; Allen 56.1 Resp. P 82; Pl. 56.1 Resp. 46.) The "skeleton crew" is a group of employees that remains at work for approximately one to one and one-half hours (to finish a normal work day) when the City grants early dismissal to a majority of the employees on days preceding major holidays. (Pl. 56.1 Resp. P 46.) Sebastian claims he was assigned to work the shift by Allen; Allen claims he volunteered. (City Defs. 56.1 Resp. P 82; Allen 56.1 Resp. P 82; City Defs. Ex. V, Reynolds Dep. 218-19; Pl. 56.1 Resp., Ex. 12, 126-30.) Non-supervisory EB Department inspectors Cheryl Palombizio ("Palombizio"), Dan Lynch, and Tom Podbielski worked the skeleton crew shift on the preceding Christmas Eve 2003, New Year's Eve 2003, and July 4, 2004, respectively. [11] (Pl. 56.1 Resp. P 46.)

11 In his 56.1(b)(3)(B) Statement of Facts, Sebastian submits that he was the only non-supervisory employee assigned to work the skeleton crew since Allen became Chief [*41] Electrical Inspector. (City Defs. 56.1 Resp. P 82; Allen Defs. 56.1 Resp. P 82.) This proposition is not supported by Sebastian's citation to the record, which indicates that three non-supervisory employees were assigned to "skeleton crew" from the time Allen became Chief Electrical Inspector in October 2003. Thus, the Court will not consider this statement. *See L.R. 56.1.*

According to the Department's general rules, sign inspectors are permitted to spend only one day each week in the Department's offices and must spend the remaining four days in the field conducting inspections. (Pl. 56.1 Resp. P 48.) At some point in October 2005, Hammersmith approached Sebastian and instructed Sebastian to leave the office to begin his field work. (Pl. 56.1 Resp. P 49.) Sebastian told Hammersmith that he needed another thirty minutes to complete his paperwork, which Hammersmith permitted. (*Id.*)

In late 2005 or early 2006, Sebastian attended an informal meeting with Bush, Hall, and Allen regarding an incident in which Hall had informed Sebastian that Sebastian was assigned to STF the following day and Sebastian responded that he could not work STF because he was taking a sick day for a doctor's appointment. [*42] (Pl. 56.1 Resp. P 52.) Sebastian did not submit a sick time request slip for the doctor's appointment prior to advising Hall that he could not work STF because he was taking the day off. (*Id.*) No discipline resulted from the incident. (*Id.*)

At some point in 2006, Hall approached Sebastian when Sebastian was in the office for his second day in one week and instructed Sebastian to report to work in the field. (Pl. 56.1 Resp. P 50.) When Sebastian told Hall that he had paperwork to complete, Hall allowed him to stay in the office with the understanding that the day would be Sebastian's last office day for the week. (*Id.*.)

From October 2004 until April 2006, Sebastian, as well as other electrical inspectors, were periodically assigned to work STF on several occasions. (Pl. 56.1 Resp. P 36.) At some point during the interim, Sebastian complained to Allen that sign inspectors with less seniority should be assigned to work STF. (*Id.*) As a result, Allen assigned two less-senior sign inspectors - Bernard Simmons and Glenn Ford - to work on STF in rotation with Sebastian. (*Id.*)

On January 10, 2006 at 9:05 a.m., Allen directed Hall to assign Sebastian to STF that day because the permanently assigned [*43] STF inspector was unavailable to work. (City Defs. 56.1 Resp. P 73; Allen 56.1 Resp. P 73.) Approximately two months later, on March 7, 2006, Allen sent an email to EB supervisors requesting that they select an inspector to work STF the following day. (City Defs. 56.1 Resp. P 74; Allen 56.1 Resp. P 74.) Sebastian was selected and the parties dispute how he was selected. (City Defs. 56.1 Resp. P 74; Allen 56.1 Resp. P 74; Allen 56.1 Resp., Ex. B, Sebastian Dep. 164; City Defs. 56.1 Resp., Ex. B, Allen Aff. P 8.)

On March 22, 2006, this Court granted Sebastian leave to file an amended complaint in which he alleged, for the first time, that the City retaliated against him in violation of *Title VII* by, among other things, assigning him to STF. (City Defs. 56.1 Resp. P 75; Allen 56.1 Resp. P 75.) On April 7, 2006, Allen issued a memorandum in which he first announced that the EB would rotate inspectors to perform STF inspections. (City Defs.

56.1 Resp. P 75; Allen 56.1 Resp. P 75.) According to the rotating schedule, inspectors from all bureaus and assignments in the Department would work STF in two-week shifts. (Pl. 56.1 Resp. P 37.) Sebastian admitted that, from the time that he complained [*44] to Allen about the lack of less-senior inspectors assigned to STF through April 2006, Allen rotated sign inspectors, but not other inspectors, on the STF assignment. [12] (City Defs. 56.1 Resp. P 75; Allen 56.1 Resp. P 75; Allen 56.1 Resp., Ex. B, Sebastian Dep. 148-52.)

12 In his 56.1(b)(3)(B) Statement of Facts, Sebastian submits that, "[n]o electrical inspector who interviewed for the supervisor position - excluding Martin Willis who was permanently assigned to STF - was assigned to work more STF inspections than Sebastian." (City Defs. 56.1 Resp. P 76; Allen 56.1 Resp. P 76.) In support of this statement, Sebastian cites to his own affidavit, in which he states that he has reviewed the EB Department STF time sheets produced by the City as well as his time sheets. (Pl. 56.1 Resp., Ex. 76, Sebastian Aff. P 1.) Attached to affidavit as "Exhibit A" is a chart, presumably created by Sebastian, that allegedly lists the number of STF days worked by all of the 2004 supervisor candidates, as reflected in the time sheets produced by the City. (Pl. 56.1 Resp., Ex. 76, Sebastian Aff. P 2, Ex. A.) Sebastian has failed to lay a proper foundation as to the admissibility of the documents upon which [*45] the chart is allegedly based or to show that the summary is accurate. *See Judson Atkinson Candies, Inc. v. Latini-Hohberger Dhimantec, Nos. 07-1660, 07-2116, 529 F.3d 371, 2008 U.S. App. LEXIS 11771, at *21 (7th Cir. June 3, 2008) (quoting United States v. Briscoe, 896 F.2d 1476, 1495 (7th Cir. 1990))* ("The admission of a summary under *Fed. R. Evid. 1006* requires 'a proper foundation as to the admissibility of the material that is summarized and . . . [a showing] that the summary is accurate.'").

On April 14, 2006, Sebastian filed a First Amended Complaint, alleging race and national origin discrimination, retaliation, and violation of Sebastian's *First Amendment* right to freedom of association. (Pl. 56.1 Resp. P 31; First Am. Compl.)

In November 2006, Sebastian requested to change an office day from Friday to Thursday. (Pl. 56.1 Resp. P 50.) While Hall refused his request, he allowed Sebastian to take compensatory time off from work on the Friday at issue. (*Id.*)

For the purposes of assigning sign inspections, the Department divides the area within the City limits into thirty-nine districts. (Pl. 56.1 Resp. P 60.) Each sign inspector in the Department covers several districts. (*Id.*) In late 2006 or [*46] early 2007, Hall advised Sebastian to cover a new district because Palombizio began performing sign inspections in District 4, a district that both Sebastian and Palombizio had covered in the past. (*Id.*)

On or about February 15, 2007, Tom Ryan, a supervisor in the Department, shouted at Sebastian and told Sebastian as well as EB Department inspector Don Gibson ("Gibson") that they should not discuss "personal matters" during work time. (Pl. 56.1 Resp. P 65.)

On February 22, 2007, Sebastian attended an informal meeting with Hall and Allen, where he received a verbal warning regarding the length of time it took for him to respond to a February 5, 2007 call on his mobile work phone. (Pl. 56.1 Resp. P 61.) The parties dispute whether Hall had the authority to issue this verbal warning. (City Defs. 56.1 Resp. P 79; Allen 56.1 Resp. P 79.) Nevertheless, Allen, rather than Hall, gave the verbal warning. (City Defs. 56.1 Resp. P 79; Allen 56.1 Resp. P 79.) On February 23, 2007, Sebastian wrote a letter to Allen, copying several others, regarding the verbal warning. (Pl. 56.1 Resp. P 61.) In the letter, Sebastian asked Allen to obtain the phone records regarding the timing of when Sebastian received [*47] and responded to Hall's calls. [13] (City Defs. 56.1 Resp. P 78; Allen 56.1 Resp. P 78; Pl. 56.1 Resp., Ex. 61, Sebastian Feb. 23, 2007 Letter.) Sebastian did not lose any compensation, assignments, or employment opportunities as a result of this incident or the verbal warning. (Pl. 56.1 Resp. P 61.)

13 Sebastian further maintains that Allen never asked Hall to verify the timing, nor did he obtain the phone records. Sebastian fails to support this proposition with a citation to the record and, therefore, the Court will not consider the statement. The Court further notes that, in their respective responses to Sebastian's statement of facts, Defendants denied that Allen never asked Hall to substantiate the timing and, citing to affidavits by Allen and Loeff, affirmatively stated that Allen forwarded Sebastian's request to Loeff, who subsequently obtained the phone records and confirmed Sebastian's delayed response. (City Defs. 56.1 Resp. P 79; Allen 56.1 Resp. P 79.) Sebastian then countered with arguments as to why Loeff's investigation provides further evidence of retaliation (namely, a statement from Sebastian's attorney during Loeff's deposition that Defendants never produced any such [*48] phone records). (Pl. Sur-response Mem. 13-14.) In light of the Court's conclusion not to consider Sebastian's unsupported assertion that Hall did not fulfill Sebastian's request for verification and

resulting failure to create a dispute of fact, the Court need not and will not consider the additional extrinsic evidence submitted by the parties in support of their respective positions.

On the afternoon of March 15, 2007, Hall received an emergency call regarding a dangerous sign flapping from a high rise (the "March 15, 2007 incident"). (Pl. 56.1 Resp. P 62.) Hall called Sebastian, who was in the field, and asked him to investigate the sign immediately. [14] (*Id.*) According to Hammersmith, in an emergency situation, they "may" pull the inspector closest to the area to respond. (City Defs. 56.1 Resp. P 80; Allen 56.1 Resp. P 80; Pl. 56.1 Resp., Ex. 24, Hammersmith Dep. 75.) Sebastian went to the scene, communicated with Hall over his radio, left the scene, and clocked out at approximately 3:47 p.m. (Pl. 56.1 Resp. P 62.) Seeking further information regarding the state of the emergency situation, Hall called Sebastian at approximately 5:00 p.m. (*Id.*) The next morning, Hall requested that [*49] Sebastian prepare a report regarding the emergency situation. (Pl. 56.1 Resp. P 63.) After Sebastian prepared the report, Allen called Sebastian to a meeting with Bush and Hall, where he was questioned regarding details not contained in the report. (Pl. 56.1 Resp. P 63; Allen 56.1 Resp., Ex. C, Sebastian Dep. 337-38.) On March 19, 2007, Sebastian wrote a letter regarding the March 15, 2007 incident [15] to Jamia McDonald, the acting Commissioner of the Department, copying several others. (Pl. 56.1 Resp. P 63.)

14 In his 56.1(b)(3)(B) Statement of Facts, Sebastian submits that, when Hall dispatched Sebastian to the emergency, there were at least five other inspectors who were positioned closer than Sebastian to the scene of the emergency and could have attend the emergency. (City Defs. 56.1 Resp. P 80; Allen 56.1 Resp. P 80.) In support of this proposition, Sebastian cites to his own affidavit, in which he states that he reviewed the time sheets for March 15, 2007 and arrived at this conclusion. (Pl. 56.1 Resp., Ex. 75, Sebastian Aff. P 3.) While Sebastian also includes a copy of the five electrical inspectors' time sheets as an exhibit to the affidavit, his testimony is based entirely [*50] upon hearsay rather than his own personal knowledge. Because Sebastian has failed to lay a proper foundation to establish the admissibility of the documents relied upon, the Court strikes this statement.

15 The parties do not include any additional details regarding the March 15, 2007 incident in their *Local Rule 56.1* submissions. As such, the Court will limit its analysis with respect to the incident to the facts above.

On April 27, 2007, Sebastian requested two days of educational leave in May to attend a seminar. (Pl. 56.1 Resp. P 56; City Defs. 56.1 Resp. P 89; Allen 56.1 Resp. P 89.) Allen forwarded the request to Bush, who did not approve the request. (City Defs. 56.1 Resp. P 89; Allen 56.1 Resp. P 89.) Bush subsequently told Allen that he did so because Sebastian had previously failed to attend an event after receiving educational leave for the event. [16] (Pl. 56.1 Resp. P 56.)

16 In his 56.1(b)(3)(B) Statement of Facts, Sebastian states that after Bush disapproved Sebastian's leave request, "Allen . . . signed the form indicating that he had purportedly approved the request." (City Defs. 56.1 Resp. P 89; Allen 56.1 Resp. P 89.) In support of his proposition, Sebastian cites to two [*51] similar education leave request forms, one purportedly signed by Allen (and not Bush) approving the request and a second purportedly signed by Bush (and not Allen) disapproving the request. (Pl. 56.1 Resp., Ex. 69.) The record is unclear, however, as to when Allen signed the former request form. Allen testified that he probably submitted a request form to Bush and could not think of a reason why Bush would have generated a copy without Allen's signature. (City Defs. 56.1 Resp., Ex. J, Allen Dep. 332, 334, 336-39.)

On July 17, 2007, Sebastian attended a disciplinary hearing regarding the March 15, 2007 incident where he relayed his account of the events at issue to Allen, Hall, Loeff, Nugent, and "Marlene Hopkins," whom Sebastian identified as "the new deputy commissioner." (Pl. 56.1 Resp. P 64.) Approximately three weeks later, Loeff gave Sebastian an oral reprimand regarding the incident, but Sebastian refused to acknowledge receipt. (*Id.*) Sebastian has not alleged that he lost pay, has been suspended, or suffered any tangible employment effect from this oral reprimand. (*Id.*)

In August 2007, when Sebastian, Hall, and Reynolds, requested permission to attend an electrical inspectors [*52] convention, Allen e-mailed the request to the acting Commissioner for approval, noting, among other things, that the program was an "excellent training forum." (Allen 56.1 Resp. P 90; City Defs. 56.1 Resp. P 90.)

That same month, Allen also assigned Sebastian to work District 17 (the Loop area), which, according to Sebastian, was so disorganized that Sebastian spent seven days in the office organizing and updating the paperwork. (City Defs. 56.1 Resp. P 83; Allen 56.1 Resp. P 83; Pl. 56.1 Resp., Ex. 63, Sebastian August 27, 2007 Correspondence; Allen 56.1 Resp., Ex. C, Sebastian Dep. 307-08, 321.)

Sebastian believes that he was denied opportunities to work overtime for generator testings on Saturdays in 2007 and that Parks and the union "probably" conspired to deprive him of the overtime. (Pl. 56.1 Resp. P 58.) This belief is founded upon four or five conversations between Department employees regarding Saturday overtime that Sebastian overheard. [17] (*Id.*) In 2007, Sebastian worked generator testing overtime on one occasion, was offered other types of overtime, and turned down certain overtime opportunities. (Pl. 56.1 Resp. PP 58-59.) Sebastian has never complained to anyone at the City [*53] regarding the overtime. (*Id.*)

17 Sebastian also submits that he was denied overtime in 2006. Specifically, Sebastian asserts that the only "substantive" overtime work is generator testing and that he was never offered generator testing overtime in 2006. (City Defs. 56.1 Resp. P 77; Allen 56.1 Resp. P 77.) In support of the first proposition, Sebastian cites to a document that seemingly lists emergency generator overtime performed by certain individuals in 2006. (Pl. 56.1 Resp., Ex 58, Overtime Reimbursement.) He fails, however, to establish a proper foundation for the document, provide any explanation regarding the information contained therein, or elaborate on how this document supports his proposition that the only "substantive" overtime was generator testing. In support of the latter proposition, Sebastian cites to a document entitled "Overtime Inspections," but again, fails to lay a proper foundation or provide any explanation in support of his statement. The Court further notes that, while Sebastian initially cites to the document in support of his allegation regarding overtime, he later attacks the reliability of the information contained therein in his sur-response. (Pl. Sur-response [*54] Mem. 13-14.) This argument, however, is moot as Sebastian has ultimately failed to cite to any evidence in support of his proposition that he was never offered overtime in 2006. Thus, because these statements are not supported by Sebastian's citations to the record, the Court will not consider these statements. *See L.R. 56.1.*

On three occasions in 2007, Sebastian had difficulty reaching Hall when he phoned in to advise Hall that he was sick. (Pl. 56.1 Resp. P 67.) In all three instances, Sebastian received the sick leave he sought. (*Id.*)

Miscellaneous Alleged Retaliatory Acts

[18]

18 In his statement of additional facts, Sebastian submits that Sebastian's doctor attempted to call and speak with Sebastian at work, but "was told that he could not speak to Sebastian nor could he leave a message for him." (Allen 56.1 Resp. P 88; City Defs. 56.1 Resp. P 88.) Because this statement relies upon inadmissible hearsay and Sebastian has not laid a proper foundation to establish an exception to hearsay rules, the Court will not consider this statement. *See Bombard v. Fort Wayne Newspapers, Inc., 92 F.3d 560, 562 (7th Cir. 1996)* ("[A] party may not rely upon inadmissible hearsay . . . to oppose a motion [*55] for summary judgment.").

In addition to the events outlined above, Sebastian believes the following occurrences constitute retaliatory acts:

. he believes that, beginning in 2004, he has been followed and chased by unidentified people, but has not identified what connection these people have to Allen or the City. (Pl. 56.1 Resp. P 39.)

. Since October 2004 he has been required to fill out paperwork to request vacation time and to provide medical documentation for sick time, but does not know if other City employees have had to follow the same procedures. (Pl. 56.1 Resp. P 40.)

. On several occasions in 2005, Hall told Sebastian that he did not have any office supplies for Sebastian when Sebastian asked for supplies, including Wite-Out, stationary material, or a pencil. (Pl. 56.1 Resp. P 44.) Sebastian did not speak with anyone else about office supplies or ask anyone else where he might find them. (*Id.*)

. Sebastian unsuccessfully requested business cards from Hall in 2005 and again in 2006; Hall gave EB Department inspector Gibson business cards. (Pl. 56.1 Resp. P 54.) Sebastian is not aware of any other sign inspectors who have received business cards. (*Id.*)

. At an unspecified point in [*56] 2005, unidentified supervisors in the Department of Buildings invited other inspectors, but not Sebastian, to a seminar conducted by "Weldy/Lamont Associates, Inc." (Pl. 56.1 Resp. P 47.)