



**Katz Friedman**  
Eagle • Eisenstein • Johnson • Bareck

Protecting the Rights of Working People Since 1954

Katz, Friedman, Eagle, Eisenstein, Johnson & Bareck, P.C.

77 W. Washington Street  
20th Floor  
Chicago, IL 60602-2904

Telephone: 312-263-6330  
Fax: 312-372-5555  
Toll Free in Illinois: 800-444-1525  
National Toll Free: 888-626-5556  
Website: [www.kfeej.com](http://www.kfeej.com)

## **Illinois Federal Court holds that Racial Harassment not Severe or Pervasive; No Constructive Discharge**

**Posted:** June 10th, 2011

On June 9, 2011, the Seventh Circuit Court of Appeals, a Court whose decisions are binding on the federal district courts in Illinois, affirmed a district court decision in the employer's favor. Nurses, working for a private jail, alleged that the jail created a hostile environment based on race discrimination. They also alleged that they were constructively discharged based on the severity of the [racial harassment](#).

Although the Court accepted that the nurses subjectively believed that they had been harassed, it held that a reasonable person would not have concluded that the occurrences constituted a hostile environment. The alleged harassment included reassigning African-American nurses to another shift, co-workers wearing T-shirts with the confederate flag on them, referring to a patient's name as "black ass coal" and a remark about monkeys on the jail's intercom as well as a book on the desk of the Administrator making references to monkeys in the workplace.

The Court stated that these allegations were too infrequent and not sufficient to create a hostile environment. In particular, the Court went into a detailed analysis why the book's references were not descriptions of African-Americans. Finally, the Court rejected the nurse's constructive discharge claims because they could not establish a hostile environment and the burden of establishing a constructive discharge is heavier for claimants to meet.

### **Significance of Decision:**

Courts in Illinois are reminded that relatively minor acts of unlawful discrimination will not create a hostile environment. Also, employees are cautioned that if they resign from a position, courts are generally unwilling to find that the unlawful harassment is so severe that a reasonable employee would feel compelled to resign. As a practical matter, when an employee alleges constructive discharge she must prove the underlying unlawful discrimination *and* constructive discharge.

The case is *Ellis v. CCA of Tennessee*, 10-2768 (7<sup>th</sup> Cir. June 9, 2011).