FOURTH DIVISION
December 8, 2016

No. 1-15-3177

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CLAUDETTE GREENE, Petitioner-Appellant, v. ILLINOIS HUMAN RIGHTS COMMISSION; ILLINOIS DEPARTMENT OF HUMAN RIGHTS; and COOK COUNTY PUBLIC DEFENDER; Respondents-Appellees.	)	Appeal from the Order of the Illinois Human Rights Commission Charge No. 2011 E 036

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Commission's order dismissing discrimination complaint affirmed. Administrative Law Judge did not err in excluding evidence of transfers of other employees where those transfers occurred outside scope of relevant time period set in discovery, to which petitioner did not object. Nor was employer required to transfer petitioner to another division where there were no open positions in that division.

¶ 2 Petitioner Claudette Greene (Greene), an assistant public defender with respondent the Office of the Cook County Public Defender (Public Defender), appeals from an order of respondent the Illinois Human Rights Commission (Commission) dismissing her allegations of discrimination under the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.* (West 2010)).

Greene claimed that the Public Defender failed to make reasonable accommodations for her medical disability, asthma. Greene had requested that the Public Defender transfer her from the Juvenile Justice Division, where she served as a trial attorney for children and adolescents accused of crimes, to the Legal Resources Division, where she would work as an appellate and postconviction attorney, in order to limit her face-to-face contact with clients. After a hearing before an administrative law judge (ALJ), the Commission adopted the ALJ's recommended order dismissing the complaint of discrimination.

¶ 3 On appeal, Greene claims that the ALJ erred in excluding evidence of other assistant public defenders who had been transferred to the Legal Resources Division, and that the ALJ erred in concluding that the Public Defender's proposed accommodations were reasonable.

¶ 4 We disagree. The evidence of other transfers fell outside the scope of the relevant time period that the ALJ had set during discovery. And Greene takes no issue with the discovery order setting that time period. We also hold that the Commission did not err in dismissing Greene's complaint, where the only accommodation she would accept was a transfer to the Legal Resources Division, and the Public Defender had no duty to transfer Greene to a division with no open positions.

¶ 5 I. BACKGROUND

¶ 6 The Public Defender hired Greene in 1998. Assistant public defenders had grades based on their experience with the Public Defender, ranging from Grade I to Grade IV, Grade IV being the highest-paid. During the alleged period of discrimination, Greene was a Grade III assistant public defender working in the Juvenile Justice Division.

¶ 7 Beginning in 2010, Greene began to experience more serious asthma attacks and made numerous Family Medical Leave Act (FMLA) requests for brief leaves of absence to deal with her asthma attacks and hospitalizations.

¶ 8 On August 22, 2011, Greene sent a letter to Abishi Cunningham, the Public Defender for Cook County, formally seeking an accommodation for her asthma. Greene said that she had "a long-term documented history of asthma that [was] exacerbated by environmental conditions and stress." Greene said that, on November 18, 2010, she was hospitalized for three days.

¶ 9 After returning to work, she "became extremely ill *** with a respiratory infection" and eventually developed community-acquired pneumonia. Greene attributed her respiratory infection and pneumonia "to exposure to the large numbers of children and adolescents who come through the building, often from families with histories of abuse and neglect, including medical neglect, and a suppressed immune system due to prednisone," a steroid that she had been prescribed to treat her asthma.

¶ 10 Greene wrote that her asthma was "triggered by allergens, including mold, grasses and pollen; chemicals, including cleaning products, fumes, and paint; colds, upper and lower respiratory infections; heat and high humidity; and stress." She described several specific incidents that had triggered asthma attacks while she was working:

> "When I have been exposed to chemical compounds in paint used to paint the walls in the lobby of [the] Juvenile Justice Division this summer my asthma was triggered. When a carpet cleaner was used a couple of weeks ago in my office I was unable to use my office for nearly two weeks without doubling my nebulizer use. When [I was required] to go through 10 old office boxes for the warehouse, I suffered an asthma attack! When bleach was used to clean the parking lot elevator I had to exit because it causes my lungs to

> spasm and I couldn't breath [*sic*]. When a client's parents came in with the flu last winter, I got the flu because I am so frequently immune suppressed. It settled in my lungs and cause severe respiratory distress. On June 9, 2011, I was exposed to a client with active [tuberculosis] who stopped taking his medication."

She also noted that the stress caused by two floods in her home had caused her asthma to flare up.

¶ 11 Greene requested "a transfer to a worksite where client contact will be minimized for the near future to limit [her] exposure to factors that [were] triggers to the life-threatening asthma attacks [she had] been experiencing."

¶ 12 On September 8, 2011, Greene sent a memorandum to Cunningham summarizing her "skills, accomplishments and expertise," in an effort "to facilitate a reasonable discussion of accommodation." Greene noted that, as an undergraduate, she took several math and science courses and "found the scientific aspect of criminal cases to be quite interesting." She said that she found topics such as ballistics analysis, fingerprint analysis, and DNA to be "rather simple." She also highlighted her writing ability by recounting her experiences during law school and in practice. Greene concluded, "Given my education, training, and experience, I believe I could be useful to the Office in either your Legal Resources Division or your Forensic Science Division."

¶ 13 Greene attached a letter dated September 1, 2011 from her pulmonologist, Dr. Sarah Alderman, which said that Greene's asthma had become difficult to control and that her immune system was "frequently compromised due to the large amounts of prednisone necessary to keep her breathing." Alderman indicated that, due to the prednisone prescribed to Greene, Greene was "especially susceptible to contagious diseases carried by jail, detention center, and prison

populations such as MRSA, tuberculosis, Hepatitis C, community acquired pneumonia and strep."

¶ 14 Alderman suggested that Greene "work in a location where there is very limited jail or prison client contact but where her legal skills could be used until she has been weaned from immune suppressing prednisone entirely for a substantial period of time and remains symptom free." Alternatively, Alderman said that, "if she must be routinely exposed to *** clients, Ms. Greene should wear a respiratory mask *** any time she is in contact with clients or their parents who are suffering from colds, coughs, or flu symptoms."

¶ 15 On September 12, 2011, Christopher Garcia, the Public Defender's legal counsel, acknowledged receiving Greene's August 22 request for an accommodation. Garcia said that her request offered him "very little *** to evaluate your current level of functionality." Garcia said that he lacked "current, objective medical information upon which to base a safe decision concerning what may constitute safe environmental and stress levels."

¶ 16 Garcia requested that Greene provide him with Dr. Alderman's latest "findings" that would help him to make an appropriate accommodation. He noted that he may have questions for Alderman about the specific "environmental and occupational stressors that can cause you physical symptoms." Garcia indicated that he wanted to "continu[e] this dialogue with [Greene] and com[e] up with an accommodation that is reasonable."

¶ 17 On September 23, 2011, Greene sent an email to Garcia reiterating her request for an accommodation. She said that, due to her suppressed immune system, she was "trying to limit client contact until [she was] stronger." Garcia replied to the email on September 26, 2011, asking to speak with Greene sometime after 1 p.m. Greene replied a few hours later, asking if Garcia wanted her to call him or to meet him in the juvenile court building. About an hour and a

half later, Garcia replied, asking Greene if she was available at 4 p.m. for a "quick discussion" and asking where he could reach her.

¶ 18 The next email in this exchange came from Greene on October 4, 2011. Greene said that, on September 26, she waited in her office for Garcia until 5 p.m. but did not receive a response from him. She noted that Garcia had not acknowledged receiving her September 8 memo or the letter from Dr. Alderman attached to it. She noted that she was still on steroids and antibiotics and was "not feeling well."

¶ 19 On October 11, 2011, Greene met with Mary Farmar, the Public Defender's chief of staff, and one of her deputies, Jeff Howard. Farmar told Greene that there were no available positions in the Legal Resources Division and that the Legal Resources Division only accepted long-term transfers because the postconviction cases it handled often took years to resolve. Greene responded that she would permanently transfer to the Legal Resources Division, but Farmar reiterated that there were no open positions.

¶ 20 Farmar offered Greene three options for accommodations. First, Greene could transfer to either the Skokie or Rolling Meadows courthouses and accept a demotion to a Grade II position. Second, Greene could take an unpaid, six-month leave of absence. Third, Greene could wear a respiratory mask while at work. On October 17, 2011, Greene emailed Howard, rejecting the first two options.

¶ 21 On March 22, 2012, Greene filed a discrimination charge with the Illinois Department of Human Rights (IDHR) alleging that the Public Defender had failed to reasonably accommodate her asthma. IDHR filed a complaint against the Public Defender on Greene's behalf on February 6, 2013.

¶ 22 On August 13, 2012, Dr. Alderman sent a letter to Cunningham emphasizing the continued severity of Greene's asthma and her suppressed immune system due to prednisone treatments. Alderman wrote, "I remain concerned that Ms. Greene is being exposed to a population that is particularly threatening to her health and well-being. Children and adolescents, particularly those in detention settings, as well as adult inmate population [*sic*], are known carries of contagious diseases." Alderman said that her continued treatment of Greene's asthma "reinforced" her opinion that Greene "should work in a location where there is limited jail or prison client contact."

¶ 23 On August 17, 2012, Alderman sent Cunningham another letter "clarifying what work restrictions [she] was recommending for *** Greene." Alderman reiterated that limited client contact was necessary and wrote, "An example of such limited contact would be that as expressed in the letter to you that Ms. Greene showed to me regarding responsibilities in the Legal Resources Division." It was Alderman's understanding that the "primary difference" between work in the Juvenile Justice Division and the Legal Resources Division was "the amount of client contact." Alderman wrote that, from what Greene had told her about the Legal Resources Division, Greene could function as an attorney with limited client contact.

¶ 24 After Greene filed her complaint, a position opened up in the Legal Resources Division, and Greene applied for it. On May 7, 2013, the Public Defender granted Greene's application for a transfer to the Legal Resources Division. Her transfer became effective July 15, 2013.

¶ 25 Before the hearing on Greene's complaint began, the administrative law judge (ALJ) entered an order on Greene's motion to compel discovery. Greene requested information on other employee transfers in the Public Defender's office. The ALJ ordered the Public Defender to produce "documents from March 2009 through March 2012[ ] relating to any of its attorneys

who formally requested a transfer, which included the Legal Resources Division or Forensic Science Division."

¶ 26 The parties were also required to prepare a prehearing memorandum, listing the parties' planned witnesses and exhibits. The order on the memorandum stated, "The opposing party shall state which of the exhibits are objected to and the basis for the objection. Unlisted objections are waived. There is no right to 'reserve' objections."

¶ 27 The parties' prehearing memorandum listed 91 exhibits. The Public Defender objected to three of those exhibits that dealt with a separate charge that Greene had brought with the Cook County Commission on Human Rights. The Public Defender raised "relevance, hearsay, [and] foundation" objections to those exhibits.

¶ 28 Among the agreed facts listed in the prehearing memorandum was information about two other assistant public defenders who had been transferred. The first, Ingrid Gill, had been temporarily transferred to the Legal Resources Division because her family had been threatened. The second, Jeff Walker, had been transferred because "he had an inappropriate interaction with a Judge." The memorandum did not say to what division Walker had been transferred.

¶ 29 The parties also filed motions *in limine*. The ALJ granted the Public Defender's motion *in limine* to exclude any expert opinion by Dr. Alderman but ruled that she could testify as an occurrence witness.

¶ 30 At the first day of the hearing, the Public Defender asked that the ALJ prohibit Gill and Walker, the other assistant public defenders who had been transferred, from testifying because their transfers occurred prior to 2009, which was outside the time limit imposed in the ALJ's discovery order. The ALJ denied the request to totally exclude their testimony but ruled that they could not refer to any transfers occurring before 2009. But the ALJ said that the uncontested

facts about their transfers listed in the prehearing memorandum were admissible because the Public Defender had stipulated to them.

¶ 31 Greene's counsel made an offer of proof as to three other assistant public defenders who had been transferred to the Legal Resources Division. In 2013, Aiescha Gray, a Grade III assistant public defender working in the Felony Trial Division, received a six-month transfer to the Legal Resources Division for a "non-life-threatening medical issue" that lasted only nine months. In 2008, Walker, a Grade III assistant public defender, was transferred to the Legal Resources Division because he had an "inappropriate interaction" with a judge at the courthouse in Bridgeview. In 2005, Gill, a Grade III public defender, received a temporary assignment to the Legal Resources Division after her family had been threatened.

¶ 32 Farmar testified that she and Howard came up with the three accommodations offered to Greene. When they devised the three accommodation options she presented to Greene, she was trying to accommodate both Greene's asthma and her compromised immune system because she was unclear if Greene's disability was asthma or a suppressed immune system. Farmar acknowledged that Greene was requesting a transfer to a division that would reduce the amount of client contact she had.

¶ 33 Farmar testified that the proposed transfers to Skokie and Rolling Meadows would have put Greene in contact with fewer children and incarcerated people, noting that Greene "claimed that her exposure to children and adolescents was a trigger and that being exposed to the jail population was a trigger." Farmar acknowledged that Greene would have been demoted to Grade II if she accepted one of those transfers. Farmar said that "[t]here were no Grade [III] openings."

¶ 34 Farmar said that, if she had accepted the demotion to Grade II, Greene would have had to "go through the regular Union process" for returning to Grade III. In other words, she would not

automatically return to her Grade III position once her asthma improved; she would have to bid on the position. But, Farmar said, it was possible that Greene could make more money as a Grade II attorney than as a Grade III attorney, depending on how high she was promoted within the grade. Farmar said that the lowest Grade III attorneys made less than the highest Grade II attorneys. Farmar said that she offered to place Greene at the highest-earning Grade II level.

¶ 35 Farmar also offered Greene the transfers to Skokie or Rolling Meadows because they would have been closer to Dr. Alderman's office. Farmar noted that Greene had complained about having to take time off to travel to see Alderman. Farmar said that the court calls at Skokie and Rolling Meadows were earlier, so Greene could have finished her duties earlier in the day, leaving her with more time to go see Alderman.

¶ 36 Farmar explained her second proposed accommodation—a six-month leave of absence—as addressing Dr. Alderman's concern that Greene was returning to work too quickly after she had severe asthma attacks. Farmar said that the Public Defender would not have paid Greene during the leave of absence but that she could have gone "to the Cook County Pension Board [to] get disability."

¶ 37 Farmar testified that "[t]here was no opening or vacancy in [the Legal Resources Division]" at the time of Greene's request. Farmar did not know if Greene would have been transferred to the Legal Resources Division if there had been an opening.

¶ 38 Farmar testified that a transfer to the Legal Resources Division would not have limited Greene's exposure to her asthma triggers. She said that the Legal Resources Division was located at the county building at 69 West Washington Street in Chicago, where there had once been a major fire. Farmar said that, after the fire, the offices were "treated *** with toxins to get rid of the smell of the smoke." She said that she frequently had to leave her office at 69 West

Washington because the chemicals were so strong they would make her sick. And, Farmar noted, Greene had complained about how old, dusty files affected her asthma. Farmar testified that some of the cases in the Legal Resources Division were 27 years old and would involved "large dusty files." Finally, she noted that a position in the Legal Resources Division would still require Greene to visit prisons, so she would not be totally eliminating her exposure to incarcerated clients.

¶ 39 Farmar testified that the Forensic Science Division was also located at 69 West Washington.

¶ 40 Farmar acknowledged that Greene never said that she could not meet with any clients. She testified that a position in the Legal Resources Division could have limited the amount of face-to-face client contact Greene had. Farmar also acknowledged that one of Dr. Alderman's letters only mentioned limiting Greene's exposure to clients, not limiting Greene's exposure to certain buildings.

¶ 41 Farmar testified that she did not speak to any outside doctors about Greene's request for an accommodation; Farmar "relied upon Ms. Greene's doctor." Farmar believed that Greene suffered from asthma as she and her doctor described.

¶ 42 Farmar resigned from the Public Defender on June 28, 2012.

¶ 43 Mark Solock testified that he took over as the chief of staff for the Public Defender after Farmar left. Solock testified that a transfer out of the Juvenile Justice Division would have reduced the amount of contact Greene had with children and adolescents. He said that attorneys in the Legal Resources Division had less face-to-face contact with their clients than attorneys in the Juvenile Justice Division.

¶ 44 Christopher Garcia testified that he was legal counsel for the Public Defender when Greene made her accommodation request. Garcia acknowledged that Greene had requested a position with less client contact but said that he was concerned that a transfer to the Legal Resources Division would not have addressed all of the triggers of Greene's asthma. Garcia testified that the Public Defender's offices at the juvenile court were the newest offices available; he said that they "were nicer and they were a lot cleaner than 69 West [Washington]." He also did not believe that a transfer to the Legal Resources Division would have solved Greene's problems, because she still would have to visit clients in prison. He noted that not all clients of the Juvenile Justice Division were incarcerated. Garcia acknowledged that he had no medical background or training.

¶ 45 Garcia said that he never received additional information about Greene's asthma as he had requested. Garcia testified that the Public Defender could not afford to hire an outside doctor to assess Greene's asthma. In October 2011, Garcia went on medical leave, so he left Greene's request to Farmar.

¶ 46 Cunningham, the Public Defender for Cook County since 2009, testified that he made the final decision to deny Greene's initial request for a transfer to the Legal Resources Division or the Forensic Science Division. Cunningham did not consult any physicians or conduct any research before making his decision; he usually delegated requests for accommodations to Garcia or Farmar. Cunningham testified that he approved Greene's application for a transfer to the Legal Resources Division in 2013.

¶ 47 Cunningham testified that the Legal Resources Division involved less client contact that the Juvenile Justice Division but that the Legal Resources Division still involved some client contact. An assistant public defender in the Legal Resources Division would be expected to talk

to witnesses, clients, and clients' family members. He acknowledged that no assistant public defender position would involve absolutely no client contact.

¶ 48 Cunningham also testified that the Legal Resources Division was "not a division that you go to on a short-term basis" because that division handles postconviction cases, which could take years to resolve. He said that environmental factors like dust, dirt, cleaning solutions, paint, and carpet cleaners would still be an issue in the Legal Resources Division. Cunningham remembered one instance where someone had been transferred to the Legal Resources Division temporarily.

¶ 49 Lester Finkle, the chief of the Legal Resources Division since 2009, testified that attorneys in the Legal Resources Division handled appeals, postconviction cases, and motions to withdraw guilty pleas. He said that attorneys handling appeals were required to have contact with their clients. Some attorneys met with their clients in prison while others just spoke with their clients over the phone. Finkle said that a postconviction case would require more face-to-face contact with a client.

¶ 50 Finkle recalled one instance where an attorney had been transferred to the Legal Resources Division even though an opening in that division had not been posted. He identified Aiescha Gray as that attorney.

¶ 51 Finkle acknowledged that Greene worked for the Legal Resources Division at the time of the hearing. He testified that, as best he knew, there was nothing about Greene's qualifications that would have prevented her from working for the Legal Resources Division at the time she requested her accommodation.

¶ 52 Dr. Alderman testified that she specialized in pulmonary care and sleep medicine. Alderman described Greene's asthma as "quite severe," noting that she had trouble breathing and

"constant wheezing." Alderman testified that Greene's asthma attacks were potentially life-threatening. Alderman testified that asthma is incurable; it is only "potentially treatable."

¶ 53 Alderman testified that she requested that the Public Defender accommodate Greene by having her "avoid contact with people who might have infectious illnesses." Alderman recommended that Greene be transferred to the Legal Resources Division based on what Greene had told her about the Legal Resources Division; specifically, that that division involved less client contact.

¶ 54 Alderman said that stress can trigger an asthma attack and that Greene's work environment "could have *** contributed" to her asthma problems. But Alderman did not know if Greene's work environment was the primary cause of her asthma attacks. Alderman acknowledged that, in completing FMLA certifications for Greene, she listed dust, mold, paint, cleaning products, perfumes, colognes, mold, and pollen as things that could exacerbate Greene's asthma.

¶ 55 Greene testified that she worked for various trial divisions in the Public Defender before transferring to the Legal Resources Division in 2013. She said that all of the trial divisions required face-to-face contact with her clients, witnesses, and her clients' family members; it would have been "impossible" to do her job without face-to-face contact. She testified that, in the Juvenile Justice Division, she had face-to-face contact with her clients five days per week, one to three hours per day. She would confer with her clients before court calls in small interview rooms outside the courtrooms.

¶ 56 Greene said that, once she transferred to the Legal Resources Division, she "rarely" had client contact. She said that her clients' families "sometimes" showed up to court and that she occasionally had to visit her clients in prison. She testified that she had only traveled to one

prison since she began working at the Legal Resources Division and had only met with her clients' families five times. Her supervisors had not told her that she was not making enough face-to-face contact with her clients. Greene testified that, since she had transferred to the Legal Resources Division, she had not been hospitalized for her asthma.

¶ 57 Greene testified that, at the time she requested her accommodation, she knew that the Legal Resources Division would require less client contact because she had read descriptions of the work in job postings and spoke with attorneys who worked there. She said she was also aware of the job duties in the Forensic Science Division.

¶ 58 Greene said that, if she had accepted the transfer to Skokie or Rolling Meadows, she would have lost $12,000 to $14,000 per year. She did not accept that accommodation because it would not have reduced her client contact. Greene testified that she did not accept the six months of unpaid leave option because she could not afford it. And Greene testified that she did not want to wear a respiratory mask while meeting with clients because it would negatively affect her rapport with her clients. She tried wearing a respiratory mask once but had to take it off because her clients could not understand what she was saying.

¶ 59 Greene did not remember whether anyone told her she could not transfer to the Legal Resources Division or the Forensic Science Division because there were no openings in those divisions. She recalled Howard telling her that an assignment to the Legal Resources Division could not be temporary.

¶ 60 In a 17-page recommended order and decision, the ALJ recommended that Greene's complaint be dismissed with prejudice. The ALJ found that Greene had proved that she had a disability, asthma, and had established a *prima facie* case of discrimination. The ALJ also found

that Greene had provided the Public Defender with appropriate notice of her request for an accommodation.

¶ 61 But the ALJ found that Greene had not established that the Public Defender refused to offer her a reasonable accommodation. The ALJ noted that the Public Defender was not necessarily required to accede to Greene's request for a transfer, that some of the asthma triggers she cited may have been present even in the Legal Resources or Forensic Science Divisions, and that Greene had not shown there were openings in either division at the time. The ALJ found that the Public Defender's "reasons for not granting [Greene's] request were rationally based on [Greene's] own safety and the lack of openings" and that the Public Defender "participated in a good faith interaction and proposed its own potentially effective alternative accommodations." The ALJ found that Greene had "stopped the process by merely repeating her demand and not interacting with [the Public Defender] or its suggested alternatives." The ALJ noted that he had not considered the evidence of similarly-situated employees that Greene attempted to present at the hearing.

¶ 62 The Commission adopted the ALJ's recommended decision and order and declined further review of Greene's complaint. Greene appealed that order pursuant to Illinois Supreme Court Rule 335(a) (eff. Feb. 1, 1994). See 775 ILCS 5/8-111(B)(1) (West 2014) (providing for direct appeal to appellate court from final order of Commission).

¶ 63 II. ANALYSIS

¶ 64 A. Greene's Brief

¶ 65 Before reaching the merits of Greene's appeal, we must address the Commission's claim that we should strike Greene's opening brief and deem her arguments forfeited for failing to comply with Illinois Supreme Court Rule 341(h) (eff. Jan. 1, 2016). The Commission argues that

Greene's statement of facts "is unwieldy and argumentative throughout" and that Greene "frequently fails to provide necessary citation to the record and citation to authority in her argument." In her reply brief, Greene responds that her opening brief "complies with the rules" and that "[a]ny 'fact' not cited to the record is clearly a 'fact' from the other facts."

¶ 66 We agree with the Commission that much of Greene's statement of facts is confusing and argumentative. And we remind Greene that Illinois Supreme Court Rule 341(h)(6) (eff. Jan. 1, 2016) requires that a brief contain a statement of facts with "the facts necessary to an understanding of the case, stated *accurately and fairly* without argument or comment." (Emphasis added.) But the statement of facts is not so incomprehensible or argumentative that we cannot discern the crucial facts of the case.

¶ 67 To the extent that Greene's arguments are unsupported by citation to the record or to authority, we will deem those arguments to be forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Eskew v. Burlington Northern and Santa Fe Ry. Co.*, 2011 IL App (1st) 093450, ¶ 61 (claims unsupported by citation to authority or record are forfeited). But Greene's brief is not so wholly lacking support that her entire brief should be stricken. We deny the Commission's request to strike Greene's brief.

¶ 68 We now turn to the substance of Greene's appeal.

¶ 69 B. Exclusion of Evidence of Other Transfers

¶ 70 Greene first claims that the ALJ erred in failing to consider the evidence of other assistant public defenders who had received temporary transfers to the Legal Resources Division. Greene notes that the Public Defender conceded that Gill and Walker had been transferred in the prehearing memorandum prepared by both parties. Thus, Greene claims, the Public Defender's

stipulation to these facts was conclusive and the ALJ erred by not considering all of the evidence before it.

¶ 71 Greene compares the stipulations in the prehearing memorandum to judicial admissions, a comparison that the Commission itself has adopted. See, *e.g.*, *Dowell*, Ill. Hum. Rts. Comm'n Op. 1986SN0281 (Nov. 18, 1992) (looking to case law on judicial admissions in interpreting whether stipulation in prehearing memorandum was binding).

¶ 72 Judicial admissions are formal admissions in the pleadings that withdraw a fact from issue and dispense with the need for proof of the fact. *Serrano v. Rotman*, 406 Ill. App. 3d 900, 907 (2011). But a trial court may still exclude evidence on an issue that has been judicially admitted because the evidence is not relevant to the issues in the case, the evidence is superfluous and confusing, or "the other party may not necessarily be entitled to the additional dramatic force of the evidence." *Id.* A trial court has discretion in deciding whether to admit evidence of a judicially admitted fact. *Id.*; see also *Kindred v. Human Rights Comm'n*, 180 Ill. App. 3d 766, 769 (1989) (ALJ's evidentiary ruling subject to abuse-of-discretion standard). A court abuses its discretion when its ruling is arbitrary or fanciful, or where no reasonable person would adopt the trial court's view. *Payne v. Hall*, 2013 IL App (1st) 113519, ¶ 10.

¶ 73 In this case, the ALJ limited the relevant time period of the hearing to March 2009 through March 2012 based on the last alleged discrimination date of October 11, 2011. Based on that timeframe, the ALJ found the evidence of Gill and Walker's transfers to be irrelevant, as they occurred outside the scope of the hearing. Greene offers no explanation for why the ALJ's time limitation was arbitrary or unreasonable, nor do we see any. Because Greene makes no argument that the ALJ erred in setting the three-year time limit, she has forfeited any such claim.

See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Owens v. Department of Human Rights*, 403 Ill. App. 3d 899, 917-18 (2010) (arguments not raised on appeal are forfeited).

¶ 74 Greene briefly argues that exhibits 88 and 89, exhibits dealing with the Gill and Walker transfers, were admissible because they were relevant, not hearsay, and supported by adequate foundation. But Greene's argument on this point lacks any supporting authority whatsoever. She has thus forfeited it. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Eskew*, 2011 IL App (1st) 093450, ¶ 61 (claims unsupported by citation to authority or record are forfeited).

¶ 75 In sum, even if the Public Defender judicially admitted the facts regarding Gill and Walker's transfers, the ALJ did not act arbitrarily or unreasonably in excluding evidence of those transfers.

¶ 76 C. Reasonable Accommodations

¶ 77 Greene also argues that the ALJ erred in concluding that the Public Defender had made reasonable efforts to accommodate her.

¶ 78 An employer must make reasonable accommodation of the known physical and mental limitations of an otherwise qualified employee unless such an accommodation would be prohibitively expensive or would unduly disrupt the employer's business. 56 Ill. Adm. Code 2500.40(a) (2009). The employee bears the burden of asserting the duty to accommodate, requesting the accommodation, and showing that accommodation was necessary for adequate job performance. *Illinois Department of Corrections v. Illinois Human Rights Comm'n*, 298 Ill. App. 3d 536, 541 (1998).

¶ 79 At the outset, we note Greene's entire case was premised on the notion that the Public Defender was required to transfer her from her position as a trial attorney in the Juvenile Justice Division to a position as an appellate and postconviction attorney in the Legal Resources

Division. But an employer need not transfer an employee to another position in order to accommodate his or her disability where there are no open positions.

¶ 80 For example, in *Fitzpatrick v. Human Rights Comm'n*, 267 Ill. App. 3d 386, 387-88 (1994), the employee, a welder who suffered from a sleeping disorder, requested to be transferred from the third shift to the first shift. The court noted that the employer had no duty to transfer the employee because the burden of transferring her to a different shift could be disruptive by requiring the employer to "bump[ ] other employees." *Id.* at 392.

¶ 81 We may also look to federal courts for guidance in deciding whether an employer's accommodations were reasonable. See, *e.g.*, *Owens*, 356 Ill. App. 3d at 54. And federal law supports the position this court took in *Fitzpatrick*. Under the federal Americans with Disabilities Act, employers are not obligated "to 'bump' other employees or create new positions" in order to accommodate a disabled employee. *Gile v. United Airlines, Inc.*, 213 F.3d 365, 374 (7th Cir. 2000); see also 42 U.S.C. § 12111(9) (2012) (defining "reasonable accommodation" as potentially including "reassignment to a *vacant* position" (emphasis added)); *Duvall v. Georgia-Pacific Consumer Products, L.P.*, 607 F.3d 1255, 1261 (10th Cir. 2010) ("[T]he job to which a disabled employee seeks reassignment must *** be vacant").

¶ 82 In this case, it was undisputed that there were no open positions in the Legal Resources Division. We cannot possibly see how the Public Defender failed to make reasonable accommodations when it had no duty to make the only accommodation that Greene ever requested. The Public Defender had no obligation to simply remove employees currently working in those divisions to accommodate Greene.

¶ 83 Similarly, Greene failed to carry her burden of showing that a transfer to the Forensic Science Division was necessary to her adequate job performance. She presented no evidence

regarding the amount of client contact in that division or the availability of any positions in that division. In fact, she appeared to largely abandon her request to transfer to the Forensic Science Division at the hearing, focusing only on the Legal Resources Division. The only evidence presented regarding the Forensic Science Division showed that it was housed in the building at 69 West Washington, which had several of the environmental triggers that caused Greene problems in the Juvenile Justice Division.

¶ 84 Greene argues that the Public Defender's proposed accommodations were unreasonable because they either involved a demotion or the use of a mask that interfered with the attorney-client relationship. But Greene ignores the ALJ's findings that Greene failed to work with the Public Defender in reaching a reasonable accommodation.

¶ 85 It is an employee's duty to "cooperate in any *** discussion and evaluation aimed at determining the possible or feasible accommodations." 56 Ill. Adm. Code 2500.40(c) (2009). The record shows that Greene requested a transfer to the Legal Resources Division, that the Public Defender offered her three alternative accommodations due to the lack of open positions in that division, that Greene rejected those alternatives, and that Greene made no further effort to reach a compromise. Instead, she remained steadfast in her insistence that she be transferred to the Legal Resources Division, even though there were no openings in that position. When a position did open, Greene applied for it, and the Public Defender granted her transfer request. Under these facts, the ALJ's finding that Greene failed to cooperate with the Public Defender is not against the manifest weight of the evidence.

¶ 86 Greene also argues that, because the Public Defender presented no evidence from any medical experts, the only evidence regarding an accommodation was Dr. Alderman's opinion

that Greene could work safely in the Legal Resources Division. Greene posits that, in the absence of any contradictory evidence, the ALJ had to accept Alderman's recommendation.

¶ 87 Greene cites no authority for her proposition that an ALJ must accept whatever recommendations for accommodations an employee's doctor makes, or for the notion that an employer must present expert testimony to support its case. To the contrary, it is well-established that a trier of fact—in this case, the ALJ—is not required to accept an expert's opinion. *Zavala v. Powermatic, Inc.*, 167 Ill. 2d 542, 545 (1995); *Merchants National Bank of Aurora v. Elgin, J. & E. Ry. Co.*, 49 Ill. 2d 118, 122 (1971); see also 775 ILCS 5/8A-102(G)(3) (West 2014) ("The testimony taken at the hearing [before the ALJ] is subject to the same rules of evidence that apply in courts of this State in civil cases.").

¶ 88 And the record supports the ALJ's decision not to adopt Alderman's recommendation as the only possible reasonable accommodation. Alderman was an expert in the medical field; she was not an expert on the details of work performed in the Legal Resources Division. Alderman herself admitted that she made that recommendation based solely on the description of the position given to her by Greene, who had already requested to be transferred to the Legal Resources Division. Alderman never spoke to anyone at the Public Defender's office to determine whether the amount of client contact in the Legal Resources Division—including contact with incarcerated individuals—would be acceptable to Greene's asthma. Nor did Alderman's recommendation address the concerns that many of the same environmental factors that triggered Greene's asthma (*e.g.*, cleaning products, dust) would be present at the Legal Resources Division. Thus, the ALJ did not err in not accepting Alderman's recommendation.

¶ 89 III. CONCLUSION

¶ 90 For the reasons stated, we affirm the Commission's judgment.

¶ 91 Affirmed.