

Notice: This decision may be formally revised before it is published in the District of Columbia Register and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
EMPLOYEE <sup>1</sup> ,	)	
Employee	)	OEA Matter No. 1601-0057-20AF22
	)	
v.	)	Date of Issuance: December 6, 2022
	)	
D.C. DEPARTMENT OF PUBLIC	)	
WORKS,	)	
Agency	)	MICHELLE R. HARRIS, ESQ.
	)	Administrative Judge
_____	)	
Charles E. Walton, Esq., Employee Representative	)	
Bradford Seamon, Esq., Agency Representative	)	

**ADDENDUM DECISION ON ATTORNEY FEES**

**INTRODUCTION AND PROCEDURAL HISTORY**

On September 23, 2020, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Public Works’ (“Agency” or “DPW”) decision to suspend him from service for fifteen (15) days, effective August 7, 2020, through August 22, 2020, for Conduct Prejudicial to District Government. This matter was assigned to the undersigned Administrative Judge (“AJ”) on February 26, 2021. Following an Evidentiary Hearing and the submission of written closing arguments, on March 22, 2022, I issued an Initial Decision reversing Agency’s adverse action. On April 22, 2022, Agency filed a Petition for Review of the Initial Decision with the OEA Board. On June 30, 2022, the OEA Board issued its Opinion and Order (“O&O”), upholding the Initial Decision in this matter.<sup>2</sup> Agency did not appeal the O&O; thus, this decision became final. On July 29, 2022, Employee, by and through his counsel, filed a Motion for Attorney Fees in the amount of \$80,680.66. On August 3, 2022, I issued an Order requiring Agency to submit a response to Employee’s Motion by August 22, 2022. Agency filed its Opposition Motion as prescribed. Following a review of the submissions, I determined that supplemental information was required from Employee’s representative. Accordingly, On August 23, 2022, I issued an Order requiring Employee to provide a supplemental brief regarding the experience and education of the legal personnel referenced in the Motion for Attorney’s Fees. Employee’s

<sup>1</sup> Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.  
<sup>2</sup> *Employee v. Department of Public Works*, Opinion and Order, OEA Matter No. 1601-0057-20 (June 30, 2022).

response was due by September 1, 2022. Employee filed a Motion to Clarify the Record on September 1, 2022. The record is now closed.

### JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

### ISSUE

Whether the attorney fees requested are reasonable.

### FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

D.C. Official Code D.C. Official Code § 1-606.08 provides that an Administrative Judge “...may require payment by the agency of reasonable attorney fees if the appellant is the prevailing party and payment is warranted in the interest of justice.” Similarly, OEA Rule § 639.1, 6-B District of Columbia Municipal Regulations (“DCMR”) Ch. 600, et seq (December 27, 2021), provides that an employee shall be entitled to an award of reasonable attorney fees if: (1) he or she is a prevailing party; and (2) the award is warranted in the interest of justice. An employee is considered the “prevailing party,” if he or she received “all or significant part of the relief sought” as a result of the decision.

#### **Prevailing Party**

The Initial Decision issued on March 20, 2022, in this matter, reversed Agency’s action of suspending Employee from service for fifteen (15) days. Further, following a Petition for Review filed by Agency, the OEA Board issued an Opinion and Order on June 30, 2022, upholding the Initial Decision in this matter. Agency did not file an appeal of this decision, and as a result, the Initial decision became binding, and Employee was entitled to all relief as prescribed therein. Further, this Office has consistently held that “[f]or an employee to be a prevailing party, he must obtain all or a significant part of the relief sought.”<sup>3</sup> Additionally, Agency does not dispute that Employee is the prevailing party in this matter.<sup>4</sup> Accordingly, based on the record in this matter, I conclude that Employee is the prevailing party.

#### **Interest of Justice**

In *Allen v. United States Postal Service*, 2 M.S.P.R. 420 (1980), the Merit System Protection Board (MSPB), this Office’s federal counterpart, set out several circumstances to serve as “directional markers toward the ‘interest of justice’ (the “Allen Factors”)—a destination which, at best can only be approximate. *Id.* at 435. The circumstances to be considered are:

1. Where the agency engaged in a “prohibited personnel practice”.

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<sup>3</sup> *Alice Lee v. Metropolitan Police Department*, OEA Matter No 1601-0087-15AF18 (July 27, 2018) citing to *Zervas v D.C. Office of Personnel*, OEA Matter No 1601-0138-88AF92 (May 16, 1993). See also. *Hodnick v Federal Mediation and Conciliation Service*, 4 M.S.P.R. 371, 375 (1980).

<sup>4</sup> Agency’s Opposition to Employee’s Motion (August 22, 2022). Agency does not dispute that Employee is the prevailing party but argues that “[t]here is no presumption, however that attorney fees will be awarded when an employee is determined to be a prevailing party.”

2. Where the agency's action was "clearly without merit" or was "wholly unfounded", or the employee is "substantially innocent" of the charges brought by the agency.
3. Where the agency initiated the action against employee in "bad faith", including:
  - a. Where the agency's action was brought to "harass" the employee.
  - b. Where the agency's action was brought to "exert pressure on the employee to act in certain ways".
4. Where the agency committed a "gross procedural error" which "prolonged the proceeding" or "severely prejudiced the employee".
5. Where the agency "knew or should have known that it would not prevail on the merits", when it brought the proceeding, *Id.* at 434-35.

Employee asserts that based upon the Initial Decision in this matter, that Agency violated *Allen Factor 2*. Employee avers that he "was innocent of the charges brought by agency."<sup>5</sup> Further, Employee argues that the Agency "did not provide evidence or show cause that the Employee ever even used the vacuum cleaner."<sup>6</sup> Agency asserts that Employee did not "argue that the suspension was "clearly without merit," "wholly unfounded," or that he was "substantially innocent" in accordance with the guidance in *Allen*."<sup>7</sup> Agency avers that in review of *Allen Factor 1*, that it did not engage in prohibited personnel practices. Regarding *Allen Factor 2*, Agency asserts that the "AJ did not find that the charges were wholly unfounded or clearly without merit. Rather, the AJ ultimately concluded that Agency did not meet its burden of proving that Employee actually used the vacuum." Agency further asserts that "there is a clear distinction between a finding that Agency did not meet its burden and a finding that Employee was substantially innocent."<sup>8</sup> Agency also asserts in relation to Allen Factors 3 and 4, respectively, that it did not act in bad faith, and did not commit any gross procedural errors. Agency further argues that it did not know, nor should it have known that it would not prevail on the merits. Agency avers that "at the time Agency effectuated Employee's suspension, Mr. Harrison, was available to testify about his observations of Employee's misconduct."<sup>9</sup> Agency asserts that based upon those considerations, "that it neither knew, nor should have known that it would not prevail given the evidence presented."

In the instant matter, I find that the basis of the Initial Decision reversing Agency's removal of Employee was due to Agency's violation of *Allen Factors 2 and 5*. Notwithstanding Agency's arguments, the record reflects that Agency pursued a suspension action where there was not sufficient evidence to sustain the charges. Further, it should be noted that during the course of this proceeding before OEA, Agency initiated an action to reduce the suspension from fifteen (15) days to nine (9) days, and believed that action would have precluded OEA's jurisdiction, since it was now a charge of a suspension of less than ten (10) days.<sup>10</sup> The undersigned finds that the evidence presented in the

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<sup>5</sup> Employee's Motion for Attorney Fees. (July 29, 2022). It should be noted that no page numbers were included in this Motion.

<sup>6</sup> *Id.*

<sup>7</sup> Agency's Opposition at Page 4 (August 22, 2022).

<sup>8</sup> *Id.* at Page 6.

<sup>9</sup> *Id.* at Page 7. It should be noted that Mr. Harrison was Employee's supervisor at the time contemporaneous to the adverse action and was responsible for its initiation. Harrison submitted an unnotarized affidavit regarding this conduct and this was relied upon in levying the charges against Employee. However, Mr. Harrison passed away before the proceedings at OEA.

<sup>10</sup> It should be noted that Agency's actions also caused the initial Evidentiary Hearing in the matter to be cancelled one (1) day prior to the scheduled date and resulted in the matter having to be rescheduled to another time.

record, along with Agency's own actions, reflect or should have reflected an acute awareness of the unlikelihood of prevailing on the merits. Thus, I find an award of attorney fees to be in the interest of justice.

Accordingly, I find that the requirements of both D.C. Official Code § 1-606.08 and OEA Rule 639.1<sup>11</sup> have been satisfied. The issue now hinges on the reasonable amount of attorney fees to be awarded. The D.C. Court of Appeals, in *Frazier v. Franklin Investment Company, Inc.*, 468 A.2d 1338(1983), held that the determination of the reasonableness of an award is within the sound discretion of the trial court. It reasoned that the trial court has a superior understanding of the litigation. Here, there undersigned administrative judge is the equivalent of the trial court.<sup>12</sup>

### REASONABLENESS OF ATTORNEY FEES

#### Hourly Rate

“Once the conclusion is reached that attorney fees should be awarded, the determination must be made on the amount of the award.”<sup>13</sup> The burden is on the fee applicant to produce satisfactory evidence that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, or reputation.<sup>14</sup> The best evidence of the prevailing hourly rate is ordinarily the hourly rate customarily charged in the community in which the attorney whose rate is in question practices.<sup>15</sup> OEA Rule 634.3 establishes that “an employee shall submit reasonable evidence or documentation to support the number of hours expended by the attorney on the appeal.” In Employee’s Motion for Attorney Fees, Employee’s counsel requested attorney fees in the amount of \$80,680.06 representing 89.0 hours of service based on the hourly rates of all attorneys that worked on this matter and \$66.26 in expenses.<sup>16</sup> Agency avers that the billing rates in Employee’s request are unreasonable and excessive. Further, Agency avers that Employee’s counsel failed to provide justification for these billing rates and that the nature of this cases was “extremely straightforward and simple.” Agency also asserts that “while it is true that attorneys practicing in the District of Columbia may sometimes rely on the Laffey Matrix to establish a starting point, courts have treated the Laffey Matrix as a reference rather than controlling standard.”<sup>17</sup> Agency further argues that “assessing this case in a vacuum, the Laffey Matrix is not an appropriate measure and the hourly rates must be decreased by a substantial amount.”

OEA’s Board has previously held that the Administrative Judges of this Office may consider the “Laffey Matrix” in determining the reasonableness of a claimed hourly rate. The *Laffey* Matrix, used to compute reasonable attorney fees in the Washington, D.C.-Baltimore Metropolitan Area, was initially proposed in *Laffey v. Northwest Airlines, Inc.*<sup>18</sup> It is an “x-y” matrix, with the x-axis being the years (from June 1 of year one to May 31 of year two, e.g., 2015-16, 2016-17) during which the legal

<sup>11</sup> 6-B District of Columbia Municipal Regulations (“DCMR”) Ch. 600, et seq (December 27, 2021)

<sup>12</sup> *Estate of Bryan Edwards v. District of Columbia Department of Youth and Rehabilitation Services*, Opinion and Order on Attorney’s Fees, OEA Matter No. 1601-0017-06AF10 (June 10, 2014).

<sup>13</sup> *Thomas Pierre v. District of Columbia Public Schools*, OEA Matter No. 1601-0186-12AF17, *Addendum Decision on Attorney Fees* (September 18, 2017).

<sup>14</sup> *Blum v. Stenson*, 465 U.S. 886 (1984).

<sup>15</sup> *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516 (D.C. Cir. 1988).

<sup>16</sup> Employee’s Motion for Attorney Fees (July 29, 2022). See attachment – Time Entries. The undersigned notes that there were no page numbers included in this Motion.

<sup>17</sup> Agency’s Opposition at Page 10. Citing to *Elec. Transaction Sys. Corp.*

<sup>18</sup> 572 F.Supp. 354 (D.D.C. 1983), aff’d in part, rev’d in part on other grounds, 746 F.2d 4 (D.C. Cir. 1984), cert. denied, 472 U.S. 1021 (1985).

services were performed; and the y-axis being the attorney's years of experience. The axes are cross-referenced, yielding a figure that is a reasonable hourly rate. The Laffey Matrix calculates reasonable attorney fees based on the amount of work experience the attorney has and the year that the work was performed. Imputing the applicable year allows for the rise in the costs of living to be factored into the equation. The matrix, which includes rates for paralegals and law clerks, is updated annually by the Civil Division of the United States Attorney's Office for the District of Columbia.<sup>19</sup> It should be noted that the above-referenced "Laffey Matrix" which is updated by the United States Attorney's Office for the District of Columbia is referred to as the "USAO Attorney Fees Matrix ("USAO Matrix")"<sup>20</sup>. This is of note because the "Laffey Matrix" and the USAO Matrix are representative of different hourly rates. Further, the USAO adopted this matrix in 2015, and has referred to it as such since that time. Employee's counsel noted in its submission that it relied upon what would have been cited as the USAO Matrix, however the hourly rates submitted align with the Laffey Matrix. There have been cases regarding disputes between the use of the Laffey Matrix and the USAO Matrix.<sup>21</sup>

This noted, this Office has consistently relied upon the USAO Matrix in consideration of the award for attorney fees. While it has been referred to as the "Laffey Matrix" the undersigned notes that name is now representative of a different scale, albeit similar considerations regarding attorney's experience, reasonableness of hours and the nature of the proceeding are considered by both matrices. However, the USAO Matrix "has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia (USAO) to evaluate request for attorney's fees in civil cases in District of Columbia Courts."<sup>22</sup> The USAO matrix cites that the data is based upon a survey conducted in the D.C. metropolitan area.<sup>23</sup> Further, the USAO Matrix was utilized by the USAO through 2021. It should be noted now that USAO has now adopted what it names the "Fitzpatrick Matrix."<sup>24</sup> The Fitzpatrick Matrix was adopted in 2022 to address the issues/conflicts found in previous matters regarding the use of the Laffey Matrix versus the USAO Matrix. However, it should be noted that this

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<sup>19</sup> The updates are based on the change in the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year.

<sup>20</sup> In 2015, the USAO revised its method for determining rates and adopted those through 2021. See. <https://www.justice.gov/file/1461316/download>

<sup>21</sup> See. *DL v District of Columbia*, 924 F.3d 585 (2019); *Theresa James v District of Columbia*, 302 F. Supp. 3d 21 (D.D.C. 2018); and *U.F. v District of Columbia*, Civil Action No – 19-2164 (BAH) (D.D.C. 2020).

<sup>22</sup> See. <https://www.justice.gov/file/1461316/download> – USAO Matrix Explanatory Note 1.

<sup>23</sup> *Id.* at Note 2.

"A reasonable fee" is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases. See, e.g., *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). Consistent with that definition, the hourly rates in the above matrix were calculated from average hourly rates reported in 2011 survey data for the D.C. metropolitan area, which rates were adjusted for inflation with the Producer Price Index-Office of Lawyers (PPI-OL) index. The survey data comes from ALM Legal Intelligence's 2010 & 2011 Survey of Law Firm Economics. The PPI-OL index is available at <http://www.bls.gov/ppi>. On that page, under "PPI Databases," and "Industry Data (Producer Price Index - PPI)," select either "one screen" or "multi-screen" and in the resulting window use "industry code" 541110 for "Offices of Lawyers" and "product code" 541110541110 for "Offices of Lawyers." The average hourly rates from the 2011 survey data are multiplied by the PPI-OL index for May in the year of the update, divided by 176.6, which is the PPI-OL index for January 2011, the month of the survey data, and then rounding to the nearest whole dollar (up if remainder is 50¢ or more)."

<sup>24</sup> See. <https://www.justice.gov/usao-dc/page/file/1189846/download> – Fitzpatrick Explanatory Note 1

This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared to assist with resolving requests for attorney's fees in complex civil cases in District of Columbia federal courts handled by the Civil Division of the United States Attorney's Office for the District of Columbia. It has been developed to provide "a reliable assessment of fees charged for complex federal litigation in the District [of Columbia]," as the United States Court of Appeals for the District of Columbia Circuit urged. *DL v. District of Columbia*, 924 F.3d 585, 595 (D.C. Cir. 2019). The matrix has not been adopted by the Department of Justice generally for use outside the District of Columbia, nor has it been adopted by other Department of Justice components.

matrix has not yet been adopted for use outside the District of Columbia. That stated, the undersigned would note that in consideration of the nature of this matter before this Office, that the USAO Matrix/Fitzpatrick Matrix rates would more closely align with OEA's previous attorney fee award determinations.

Further, it is important to note that Courts have "treated...the *Laffey* Matrix as a reference rather than a controlling standard."<sup>25</sup> "There is no concrete, uniform formula for fixing the hourly rates that are awarded in employment disputes (federal or local)."<sup>26</sup> The purpose of the *Laffey* Matrix is to provide a "short-cut compilation of market rates for a certain type of litigation."<sup>27</sup> Determining a reasonable hourly rate requires a showing of at least three elements: 1) the attorneys' billing practices; 2) the attorneys' experience, skill, and reputation; and 3) the prevailing rates in the relevant community.<sup>28</sup> When utilizing the *Laffey* Matrix as a guide, courts will "first determine[e] the so-called loadstar—the number of hours reasonably expended by counsel multiplied by a reasonable hourly rate."<sup>29</sup> Courts have increased or decreased the hourly rates depending on the characteristics of the case and the qualification of counsel.<sup>30</sup> In addition, "[t]he novelty [and] complexity of the issues" should be "fully reflected" in the determination of the fee award.<sup>31</sup> As a result, the undersigned will review this matter based upon the considerations of reasonableness as described above.

In the instant matter, Agency does not contest that Employee was the prevailing party, though it argues that it is not a presumption that a prevailing party receive an award of attorney fees. Further, Agency does not *per se* oppose the *Laffey* Matrix as cited in Employee's Motion in the assessment of fees in this matter, but cites that the rates are exorbitant, and as such, *Laffey* is not an appropriate rate consideration. Further, Agency asserts that the fees requested are unreasonable, the hours billed are also excessive and that the billing documentation in this matter was insufficient, and as such, the fees should be significantly reduced. In consideration of this matter, the undersigned finds that the USAO Matrix would have been the more appropriate basis for which Employee's counsel should have assessed rates in this matter. That noted, the undersigned finds that an award of attorney fees in this matter is warranted. However, for the reasons that will be explained below, that award should be significantly reduced in this matter.

The primary attorneys (as noted by Employee's Motion) in the instant matter were Charles E. Walton ("CEW") and James K. Davis ("JKD"). It should be noted that this Office has no record of an entry of appearance for attorney James K. Davis. Employee also asserts that these attorneys were "supported by attorneys Hon. Michael McGoings, Sr., and Nathaniel Bacchus III."<sup>32</sup> Employee is requesting that Attorneys Charles E. Walton ("Walton") and James K. Davis ("Davis") be compensated at an hourly rate of \$919.00 for services rendered from June 1, 2021, through May 31, 2022, and \$914.00 for services rendered through June 1, 2020, to May 31, 2021. This request is based on the

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<sup>25</sup> *Elec. Transaction Sys. Corp. v. Prodigy Partners Ltd., Inc.*, CIV. A 08-1610 (RWR, 2009 WL 3273920 (D.D.C. Oct. 9, 2009).

<sup>26</sup> *Ross v. Ofc. of Employee Appeals*, 2010 CA 3142 (MPA) (December 31, 2014).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 4 (quoting *Covington v. District of Columbia*, 313 U.S. App. D.C. 16, 18, 57 F.3d 1101, 1103 (D.C. Cir. 1995); See also *Lively v. Flexible Packaging Ass'n*, 930 A.2d 984, 988 (D.C. 2007).

<sup>29</sup> *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 823 A.2d 513, 530 (D.C. 2003) (quoting *Hampton Courts Tenants Ass'n v. District of Columbia Rental Housings. Comm'n*, 599 A.2d 1113, 1115 (D.C. 1991).

<sup>30</sup> See *Elec. Transaction Sys. Corp.*, *supra*.

<sup>31</sup> *Ross v. Ofc. of Employee Appeals*, 2010 CA 3142 (MPA) (December 31, 2014) (quoting *Pennsylvania v. Del Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986)).

<sup>32</sup> Employee's Motion to Clarify the Record (September 1, 2022). Employee also noted that the attorneys were supported by business analyst, Kenneth Jones.

“Laffey Matrix”.<sup>33</sup> Employee asserts that Walton and Davis have both “practiced before both state and federal court for more than 20 years and their practice has focused on labor and employment and civil matters.”<sup>34</sup>

### **Number of Hours Expended**

OEA’s determination of whether an Employee’s attorney fee request is reasonable is also based upon consideration of the number hours reasonably expended on the litigation as multiplied by the reasonable hourly rate.<sup>35</sup> While it is not necessary to know the “exact number of minutes spent or precise activity to which each hour was devoted, the fee application must contain sufficient detail to permit an informed appraisal of the merits of the application.”<sup>36</sup> The number of hours reasonably expended is calculated by determining the total number of hours and subtracting nonproductive, duplicative and excessive hours. In the instant matter, Employee requests attorney fees in the amount of \$80,680.66 for 89 hours expended in this matter. Agency asserts that if fees are awarded, that the amount should be significantly reduced as the fees are excessive and Employee’s counsel has failed to establish that the hours claimed were necessary. Further, Agency avers that this was not a complex legal matter and was straightforward in nature, thus not necessitating the fees claimed.

I have reviewed the total 89.0 hours claimed, as well as Agency’s objections, and find that the number of hours expended were excessive for the degree of difficulty and the amount of legal service time required in the instant matter. I base this finding on the comparison of the professional services provided by other similarly experienced counsel who have appeared before this Office and the degree of legal complexity involved in the issues presented. This Office has consistently held that requests for attorney fees should be reasonable in nature and not excessive or duplicative. The instant matter was an adverse action of a 15-day suspension. While an Evidentiary Hearing was held in this matter due to an issue of material fact regarding whether Employee engaged in the action for which he was charged, the undersigned finds that it was an otherwise straightforward matter. There were no complex legal arguments made by either party. OEA has held that the award of attorney fees can be reduced if a determination has been made that the fees were excessive.<sup>37</sup> Further, I do not believe that the rates charged (\$914/hour or \$919/hour) were reasonable in this matter. I find that the appropriate consideration for fees in this matter, are those represented in the USAO and Fitzpatrick matrices. The applicable annual fees for attorneys with 31+ years’ experience in 2020-2021, was \$665/hr. As was previously noted, the USAO, adopted the Fitzpatrick Matrix for 2022. Attorney Walton indicated that he completed law school in 1991. Attorney Davis completed law school in 1984. However, Attorney Davis’s involvement with this matter, as listed in the billing invoice, was for eight (8) entries. That noted, and for the reasons outlined below, I find that any award of fees must be reduced. Further, I find that due to the simple nature of this matter, that a reasonable rate of consideration of fees in this matter for all applicable years to be the \$665/per hour, as noted in the USAO Matrix for 2020-2021. The undersigned notes that the USAO Fitzpatrick matrix rates for 2021 (after May 31) and 2022 were \$728

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<sup>33</sup> See. [www.laffeymatrix.com/see.html](http://www.laffeymatrix.com/see.html) The prevailing rate for June 1, 2020 – May 31, 2021 -\$914/hr.; The rate for June 1, 2021 – May 31, 2022 - \$919/hr.

<sup>34</sup> Employee’s Motion for Attorney Fees (July 29, 2022).

<sup>35</sup> *Lee v. Metropolitan Police Department*, OEA Matter No 1601-0087-15AF18 (July 27, 2018) citing to *Copeland v Marshall*, 641 F.2d 880 (D.C. Cir. 1980). See also *Hensley v Eckerhart*, 461 U.S. 424 (1983) and *National Association of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319 (D.C. Cir 1982).

<sup>36</sup> *Id.* *Copeland supra*.

<sup>37</sup> See. *Winfred L Stanley, Reginald L. Smith Sr., & John C. Daniels v. Metropolitan Police Department*, OEA Matter Nos. J-0075-98A08R10, J-0074-98A08R10, J-0081-A08R10, Corrected Decision on Attorney Fees on Remand, (June 1, 2011). Here, the Administrative Judge reduced rates between 50% and up to 60% for excessive and duplicative hours (pages 7-10).

or \$752, respectively. However, upon consideration of the relatively simplistic nature of this matter, that it was only a 15-day suspension; and due to the deficiencies and lack of detail and consistency provided in the request for fees, I find that the rates as in this matter are unreasonable. Thus, I conclude that all billing entries requested for the fee award in this matter will be considered at the previously mentioned USAO Matrix rate of \$665/hr.<sup>38</sup>

### *Billing Entries*

Employee submitted a three (3) page invoice of the billing entries in this matter. Agency argues that this submission was “dated after services were rendered, which is disfavored.” Additionally, Agency asserts that “many of the line items indicate that Counsel is seeking compensation for hours exceeding what would be reasonably necessary to perform such services.”<sup>39</sup> To support these assertions, Agency proffers the following<sup>40</sup>:

1. Between February 3, 2021, and February 5, 2021, Employee was billed a total of seven hours (and \$6,398.00) for Counsel drafting a 5-page Confidential Settlement Statement.
2. Employee was billed one hour (\$914.00) for “document preparation of the OEA designation form on March 17, 2021. This form merely requires the name of the Appellant, the name and personal contact information of the attorney and signatures.
3. Between March 22, 2021, and March 24, 2021, Employee was billed a total of nine hours (\$8,226.00) for Counsel preparing Employee’s Pre-Hearing Statement and Attending the prehearing conference. Employee’s prehearing statement was less than six pages, 4.5 pages of which were copied and pasted from Employee’s Confidential Statement....
4. Between April 21, 2021, and April 26, 2021, Employee was billed four hours (\$3,656.00) for drafting a motion for subpoenas. The motion was submitted on April 21, 2021. Therefore, it could not have been drafted in part on April 26, 2021. Further, the motion was essentially a 1-page document that requested three items...
5. Employee was erroneously billed three hours (\$2,757.00) on November 10, 2021, for an evidentiary hearing that did not occur. The evidentiary hearing was converted to a status conference with a duration of less than half an hour.
6. Employee was also billed .9 hours (\$827.00) on November 22, 2021, for document prep and response to statuses. However, there is no record of Employee ever filing any sort of response around that time.
7. Employee was billed a totally of 27.2 hours (\$24, 996.80) for time researching and drafting Employee’s Answer. Given that this case did not involve any complex legal issues, the formatting errors discussed *supra*, and the fact that Counsel has over twenty years’

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<sup>38</sup> See. *Robert Johnson. District of Columbia Office of Employee Appeals, v District of Columbia Fire and Emergency Medical Services Department*, No. 19-CV-275, (District of Columbia Court of Appeals - September 6, 2022). Here, the Court of Appeals found that “superficial billing entries furnished in support of a fee request are not sufficiently detailed to permit the [court] to make an independent determination whether or not the hours claimed are justified.” The Court of Appeals agreed with the AJ that “repeated one-line entries such as ‘research and writing for appellate brief’ did not come close to providing the explanation of whether the hours spent researching and writing were justified.” citing to *Hampton Court Tenants Ass’n*, 599 A.2d at 1117; see also *Role Models Am., Inc. v Brownlee*, 353 F.3d 962, 971 (D.C. Cir. 2004) See also. *Elec. Transaction Sys. Corp. v. Prodigy Partners Ltd., Inc.*, CIV. A 08-1610 (RWR, 2009 WL 3273920 (D.D.C. Oct. 9, 2009). Courts have “treated...the *Laffey* Matrix as a reference rather than a controlling standard.”<sup>38</sup> “There is no concrete, uniform formula for fixing the hourly rates that are awarded in employment disputes (federal or local

<sup>39</sup> Agency Opposition at page 11.

<sup>40</sup> *Id.* at Pages 11 – 13 (August 22, 2022).

experience, 27.2 hours to research and draft Employee's Answer was unreasonably excessive.<sup>41</sup>

8. Counsel seeks .5hours (\$459.00) of compensation for a June 17, 2022, client conference concerning "retaliation." However, this conference took place after the conclusion of all proceedings in this matter and the issue of retaliation was not litigated before AJ Harris or the OEA Board.

Employee's Motion included the following billing entries:

Date	EE	Activity	Description	Rate	Hours	Line Total
01/21/2021	CEW	Client Conference	Discussed client's matter, potential defense and strategy	\$914.00	2.0	\$1,828.00
01/22/2021	JKD	File Review	reviewed documents; scanned unitized documents to pdf; uploaded records to electronic file mgmt. system	\$914.00	1.5	\$1,371.00
01/26/2021	CEW	Hearing	Prep for mediation with EOA	\$914.00	0.5	\$457.00
02/03/2021	CEW	Client Conference	Conference with client in office to discuss case and team discussion. Will prepare confidential statement.	\$914.00	1.0	\$914.00
02/03/2021	JKD	Client Conference	meeting with client; downloaded email re Friday's mediation	\$914.00	1.0	\$914.00
02/03/2021	CEW	Document Review	Review Client's documents to prepare for the upcoming arbitration and draft a settlement demand letter.	\$914.00	2.0	\$1,828.00
02/04/2021	CEW	Document Preparation	Prepared the Confidential Settlement Proposal that has to be submitted on Feb.5, 2021.	\$914.00	3.0	\$2,742.00
02/05/2021	CEW	Document Preparation	Prepared the final draft of the Confidential Settlement Statement for the OEA submission.	\$914.00	2.0	\$1,828.00
02/05/2021	CEW	Hearing	Preparation pre and post mediation. Mediation with Mr. Dews.	\$914.00	5.0	\$4,570.00
03/17/2021	CEW	Document Preparation	OEA forms- designation for representation	\$914.00	1.0	\$914.00
03/22/2021	JKD	Document Preparation	Prepared Employee's Pre-Hearing Statement; phone calls with John Dews and CEW; emailed final draft to Judge Harris	\$914.00	4.0	\$3,656.00
03/24/2021	CEW	Hearing	Preparation for hearing and Prehearing Conference	\$914.00	5.0	\$4,570.00
03/25/2021	CEW	Case Preparation	Reviewed and discussed: Order Convening Evidentiary Hearing March 25 2021	\$914.00	0.2	\$182.80
04/21/2021	JKD	Document Preparation	confer w/ Baccus; prepare motion to request subpoenas, emails w/ Michelle Harris or OHA	\$914.00	2.0	\$1,828.00
04/26/2021	CEW	Administrative Data Input	Discuss planning scheduling dates and draft motion to request subpoenas	\$914.00	2.0	\$1,828.00
04/29/2021	CEW	Client Conference	Advising Client of upcoming status hearing/trial	\$914.00	0.5	\$457.00
05/03/2021	CEW	Hearing	Prep and Status conference	\$914.00	0.5	\$457.00

<sup>41</sup> Agency Opposition at Page 10 – Agency avers that while Employee's counsel submitted a 28 page document to Answer the Petition for Review, that Employee's counsel "includes lengthy quotes from AJ Harris' ID without properly condensing them to single space...[a]dditionally page twenty seven contains only a few lines and the rest of the pages are blank" Thus, Agency averred that appropriate formatting would've reduced the length of this document, and notes that "pages sixteen through twenty-six is largely redundant repeating the same arguments previously articulated."

05/11/2021	MH	Administrative Data Input	Updating case calendar	\$50.00	0.1	\$5.00
05/20/2021	CEW	Call to client	Call the client the update Client on case	\$914.00	0.3	\$274.20
06/08/2021	CEW	Adverse Party	Communication with opposing counsel and Judge about status conference and settlement	\$919.00	0.3	\$229.75
06/16/2021	CEW	Adverse Party	Communication with adverse party about status conference and settlement	\$919.00	0.3	\$229.75
06/16/2021	CEW	Client Conference	Phone call with John W. Dews, Jr.	\$919.00	0.3	\$229.75
06/21/2021	CEW	Case Status Review	Case update- file administration, calendaring upcoming hearing dates	\$919.00	0.1	\$91.90
06/21/2021	JKD	File Review	reviewed CEW email and retrieved emails pertaining to client	\$919.00	0.3	\$229.75
06/25/2021	CEW	Hearing	Status Hearing with court	\$919.00	0.5	\$459.50
07/08/2021	CEW	Communications	Drafting email reply to OC's 6125, 717 request for discovery narrowing	\$919.00	0.5	\$459.50
07/21/2021	CEW	Case Preparation	Team meeting to discuss order Calendar and scheduling updates per AJ Harris 7115 Order	\$919.00	0.3	\$275.70
07/27/2021	JKD	Case Preparation	Hearing Preparation	\$919.00	2.0	\$1,838.00
08/19/2021	CEW	Hearing	Prehearing conference	\$919.00	0.1	\$91.90
08/23/2021	JKD	Document Review	Review Order Convening Evidentiary Hearing; enter new deadlines in electronic case mgmt. system; review and upload records to electronic case mgmt. system	\$919.00	0.4	\$367.60
11/09/2021	CEW	Client Conference	Meeting to discuss upcoming employment case	\$919.00	1.0	\$919.00
11/10/2021	CEW	Hearing	OEA Evidentiary Hearing	\$919.00	3.0	\$2,757.00
11/22/2021	CEW	Contact the Office Employee Appeal	Document and Prep for Response to include Statuses.	\$919.00	0.9	\$827.10
11/23/2021	CEW	Case Preparation	Case preparation	\$919.00	5.0	\$4,595.00
11/24/2021	CEW	Client Conference	Review document and with the client and have him sign documents	\$919.00	1.0	\$919.00
12/14/2021	CEW	Hearing	Hearing prep and hearing on vacuum and hearing matter	\$919.00	5.2	\$4,778.80
02/14/2022	JKD	Filing Documents	Researched, draft and file closing argument	\$919.00	5.0	\$4,595.00
03/22/2022	CEW	Review	Initial Decision	\$919.00	0.3	\$229.75
04/22/2022	CEW	Review	Review Agency Appeal and started researching a response to the appeal	\$919.00	5.0	\$4,595.00
04/25/2022	CEW	Document Preparation	Research and started Draft response to OEA Petition for appeal	\$919.00	5.0	\$4,595.00
04/28/2022	CEW	Document Preparation	Draft and editing answer to agency petition	\$919.00	6.2	\$5,697.80
05/02/2022	CEW	Document Preparation	Dratting response to OEA? Petition for appeal	\$919.00	6.5	\$5,973.50
05/25/2022	CEW	Document Preparation	Final edit and review to response	\$919.00	4.5	\$4,135.50
06/17/2022	CEW	Client Conference	Retaliation	\$919.00	0.5	\$459.50
07/02/2022	KJ	Document Preparation	Met with client to begin to collect information needed for an estimate of damages	\$150.00	1.2	\$180.00

07/26/2022	CEW	Review	Review BOEA order denying agency petition for review	\$919.00	0.3	\$229.75
EXPENSES						
02/14/2022	MH	UPS	Bradford Seamon Jr., Esq. Assistant Attorney General Personnel and Labor Relations Section Office of the Attorney General 400 6th Street, NW, 9th Floor Washington, DC 20001 Office of Employee Appeals, 955 L'Enfant Plaza, SW, Suite 2500, Washington, DC 20024 Tracking# 1Z4F4Y131360116909 Tracking# 1Z4F4Y131360114250	\$66.26	1.0	\$66.26

Upon review of the billing entries included with Employee's Motion, the undersigned finds that many of the entries are not detailed, and or listed in a manner inconsistent with the measures of reasonableness upon which this Office has relied.<sup>42</sup> Further, there are assessments for fees which seem unnecessary and redundant, particularly noting that the attorneys of record each have over 30 years' experience in these matters. As previously outlined, OEA has held that "although it is not necessary to know the exact number of minutes spent nor the precise activity to which each hour was devoted, the fee application must contain sufficient detail to permit an informed appraisal of the merits of the application."<sup>43</sup> I find in this matter that Employee's counsel has failed to provide sufficient and detailed information to support the expenditure of 89.0 hours in this matter. In review of the arguments made by Agency regarding specific billing entries, the undersigned agrees with Agency's assertions regarding the unreasonableness of some of those entries. Of particular note, the undersigned finds that the erroneous charge of three hours (3) for an Evidentiary Hearing on November 10, 2021, should be wholly denied. An Evidentiary Hearing was not held in this matter on November 10, 2021. Rather the undersigned held a virtual status hearing that lasted approximately half an hour. There are other vague descriptions of "case preparation" wherein Employee was billed 5.0 hours (\$4,595.00) without any detail or explanation to what warranted that expenditure of hours. Similarly, an entry for "retaliation" dated June 17, 2022, without any explanation or other description was billed to Employee at .5 hours (\$495.00).

In consideration of the fee request in whole, the undersigned finds that the billing entries are not sufficient to support the award of fees as requested. Further, given that this matter involved a 15-day suspension, I find that the request of \$80,680.66 in attorney fees based on the requested hourly rates of \$914 and \$919 an hour, to be disproportionately high in consideration of the relatively simplistic arguments presented in this matter. Furthermore, in consideration of the years of experience noted for the attorneys in this request in comparison with similarly experienced attorneys practicing before this Office, I find that many of the hours expended in this matter were unwarranted for attorneys with this level of expertise. The undersigned would also note that counsel had to be ordered to submit documentation detailing the education and experience claimed because it was not included in the initial Motion requesting attorney fees. Further, there is no record of entry of representation of attorney Davis

<sup>42</sup> See. *Robert Johnson. District of Columbia Office of Employee Appeals, v District of Columbia Fire and Emergency Medical Services Department*, No. 19-CV-275, (District of Columbia Court of Appeals - September 6, 2022). Here, the Court of Appeals found that "superficial billing entries furnished in support of a fee request are not sufficiently detailed to permit the [court] to make an independent determination whether or not the hours claimed are justified." The Court of Appeals agreed with the AJ that "repeated one-line entries such as 'research and writing for appellate brief' did not come close to providing the necessary explanation of whether the hours spent researching and writing were justified." citing to *Hampton Court Tenants Ass'n*, 599 A.2d at 1117; see also *Role Models Am., Inc. v Brownlee*, 353 F.3d 962, 971 (D.C. Cir. 2004)

<sup>43</sup> *Alice Lee v. Metropolitan Police Department Supra* citing to *Copeland v Marshall*, 641 F.2d 880 (D.C. Cir. 1980). See also *Hensley v Eckerhart*, 461 U.S. 424 (1983) and *National Association of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319 (D.C. Cir 1982).

(JKD) in this matter. Additionally, as was previously noted, the undersigned finds that the rate for fees in this matter should be considered at \$665/hour. Further, because of deficiencies in billing, lack of detail or redundant/unreasonable entries the following fee requests are denied or reduced:

- a. **Reduced by 50% - 02/03/2021-** CEW – “Review client’s documents...prepare for arbitration and settlement demand letter.” OEA does not have arbitration. **Reduced from 2.0 hours to 1.0 hours.**
- b. **Reduced by 50% - 02/04/2021** – CEW – Document preparation – “prepared final draft of confidential settlement statement that has to be submitted on Feb 5, 2021.” – Three (3) hours is an unreasonable expenditure of time for this. Reduced from 3.0 hours to 1.5. hours.
- c. **Reduced by 50% – 02/05/2021** - CEW – “Prepared final draft of Confidential Statement for OEA submission.” This is a redundant billing entry and should not have required an additional two (2) hours when 5.0 hours had already been expended and charged in prior days. **Reduced from 2.0 hours to 1.0 hours.**
- d. **Denied: 03/17/2021** – CEW – “Document Preparation – OEA Forms- designation for representation.” This form is available on the OEA website and merely requires the entry of name, phone number, address, email and signature. The undersigned finds it unreasonable for this fee to have been assessed for one (1) hour.
- e. **Reduced by 50% - 03/22/2021-** JKD – “prepared Employee’s Prehearing Statement; phone calls with [Employee] and CEW; emailed final draft to Judge Harris. **Reduced from 4.0 hours – 2.0 hours.**
- f. **Reduced by 50% - 03/24/2021** – CEW - “Preparation for hearing and Prehearing conference.” This entry lacks any detail with regard to “preparation” and the prehearing statement was drafted by Attorney Davis. **Reduced from 5.0 hours to 2.5 hours.**
- g. **Reduced by 50% - 04/21/20210** – JKD – “Document preparation” Prepare motion to request subpoena etc. – **Reduced from 2.0 hours to 1.0 hour.**
- h. **Denied – 04/26/2021-** CEW – “Administrative Data Input” – “Discuss planning scheduling dates and draft motion to request subpoenas. Attorney Walton filed this motion on April 21, 2021. Further, it was previously entered that Attorney Davis had “prepared motion” to request subpoenas.
- i. **Denied -11/10/2021** – CEW – “OEA Evidentiary Hearing” – 3.0 hours. – The Evidentiary Hearing previously scheduled for 11/10/2021 was cancelled on 11/9/2021.
- j. **Reduced by 50%- 11/23/2021** -CEW - “Case Preparation” 5.0 hours. Entry lacks any detail regarding what actions warranted fees to be charged for 5.0 hours. **Reduced from 5.0 hours to 2.5 hours**
- k. **Reduced by 50% - 02/14/2022** – JKD – “Researched, draft and file closing argument.” 5.0 hours. For attorneys with more than 30 years’ experience, and based upon the nature of the

closing arguments, the undersigned finds that this was an unreasonable expenditure of time. **Reduced from 5.0 hours to 2.5 hours.**

- l. Denied – 04/25/2022** – CEW “Research and start draft to [sic] OES Petition for Appeal.” 5.0 hours. On 04/22/2022, CEW previously billed 5 hours for “review agency appeal and start researching [sic] a response to the appeal”. I find the subsequent charge of another 5.0 hours to be unreasonable and redundant.
- m. Reduced by 50% - 04/28/2022** – CEW – “Draft and editing answer to agency petition.” The expenditure of time for this is unreasonable. **Reduced from 6.2 hours to 3.1. hours.**
- n. Denied – 05/2/2022** – CEW “drafting responses to [sic] OES Petition for appeal.” 6.5 hours. Attorney Walton charge 6.2 hours on 04/28/2022 for “draft and editing answer to agency petition.” Wherefore I find the 05/02/2022 charge to be redundant and unreasonable under the circumstances.
- o. Reduced by 50% - 05/25/2022 – CEW** – “Final edit and review to response” – Charged 4.5 hours. There is no explanation regarding the expenditure of time and fees charged for an attorney with 30+ years’ experience. Further, these same “editing” charges were previously assessed. **Reduced from 4.5 hours to 2.25 hours.**
- p. Denied -06/17/2022 – CEW** – “Retaliation” – There is no substantive explanation for this entry whatsoever and it occurred after the matter was closed.

Thus, while I find an award of attorney fees is warranted since Employee prevailed in this matter, as noted above, I find that the award must be significantly reduced. Further, I find that the request for attorney fees in the amount of \$80,680.66 and the hourly rates presented in this matter to be wholly unreasonable and must be reduced. This reduction is based upon the aforementioned reasons regarding the insufficient billing details, and the excessive/unreasonable and redundant expenditure of times conveyed in the billing fee invoice. Accordingly, based upon the rate of \$665/hr. and the denial or reduction of fees/hours requested, the undersigned finds that an award of **\$33,933.51** is the appropriate fee award for this matter.

#### ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency pay, within thirty (30) days from the date on which this addendum decision becomes final, **\$33, 933.51 (Thirty-three-thousand-nine-hundred-thirty-three dollars and fifty-one cents)** in attorney fees.

FOR THE OFFICE:

**/s/ Michelle R. Harris**  
Michelle R. Harris, Esq.  
Administrative Judge