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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
JOHN BARBUSIN JR.,)	
Employee)	OEA Matter No. 1601-0090-18AF21
)	
v.)	Date of Issuance: April 29, 2021
)	
D.C. DEPARTMENT OF GENERAL)	
SERVICES,)	
Agency)	MICHELLE R. HARRIS, ESQ.
)	Administrative Judge
)	

Ann-Kathryn So, Esq., Employee Representative
Harrison Richards, Esq., Employee Representative
C. Vaughn Adams, Esq., Agency Representative

SECOND ADDENDUM DECISION ON ATTORNEY FEES¹
INTRODUCTION AND PROCEDURAL HISTORY

On September 14, 2018, John Barbusin, Jr. (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of General Services’ (“Agency” or “DGS”) decision to terminate him from service, effective September 7, 2018. Employee was a Supervisory Special Police Officer at the time of his termination. Agency filed its Answer on October 17, 2018. This matter was assigned to the undersigned Administrative Judge (“AJ”) on December 5, 2018. Following an Evidentiary Hearing and the submission of written closing arguments, on January 15, 2020, I issued an Initial Decision reversing Agency’s removal action. Agency did not file an appeal; thus the Initial Decision became final. On March 20, 2020, Employee, by and through his counsel, filed a Motion for Attorney Fees and Expenses. Accordingly, on March 25, 2020, I issued an Order requiring Agency to submit a response to Employee’s Motion on or before April 13, 2020. On September 3, 2020, I issue an Addendum Decision on Attorney Fees, which awarded Employee’s attorneys \$93,343.01. On October 15, 2020, Employee, by and through his counsel filed a Petition for Enforcement citing that Agency had failed to comply with the relief provisions outlined in the January 15th Initial Decision and had not complied with the Addendum Decision on Attorney Fees. Accordingly, I issued an order on October 15, 2020, requiring Agency to respond on or before October 30, 2020. Agency responded and indicated therein that it had not received the Addendum Decision on Attorney Fees and was unaware of the ruling until Employee’s Petition was filed. Further, Agency indicated that it was working to resolve the compliance matters

¹ This decision was issued during the District of Columbia’s Covid-19 State of Emergency.

raised by Employee. As a result, I issued an Order scheduling a Status Conference. Following several subsequent status conferences and correspondence between the parties, Agency submitted the check for attorney fees on December 17, 2020, and Employee's counsel confirmed receipt. Further, following these conference and briefs submitted, I issued an Addendum Decision on Compliance on January 26, 2021, ordering Agency to comply with the Initial Decision. In that decision, I noted that since the attorney fees payment was received, that issue was resolved. On January 8, 2021, Employee's counsel filed a Motion to Submit for Supplemental Attorney Fees. I issued an Order on January 29, 2021, granting Employee's motion to file for supplemental attorney fees and provided Agency with a date to submit its response. Both parties submitted their briefs as prescribed. 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 § 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 634, 59 DCR 2129 (March 16, 2012) 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 January 15, 2020, in this matter, reversed Agency's action of removing Employee from service. 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. Thereafter, an Addendum Decision for Attorney Fees was issued on September 3, 2020. Following Employee's Petition for Enforcement for Compliance, an Addendum Decision on Compliance was issued on January 28, 2021. Agency avers that Employee is not a prevailing party in this matter. Agency asserts the following regarding the petition for enforcement/compliance:

"Petitioner's argument that "[t]he Agency took no action, nor made any attempt, to comply with this Office's Decision and Order until after the deadline for compliance had passed and Sgt. Barbusin had filed his Petition for Enforcement" is demonstrably and utterly false. Petitioner had been reinstated, was drawing a salary and DGS was already working on his backpay calculations throughout the summer of 2020. PSD had already scheduled Petitioner for medical exams at the PFC Clinic and had provided him other paperwork for his renewal. Further, Petitioner's reinstatement was not frustrated by the actions of DGS. Rather, DGS followed the regulations, instructions and practices of DCRA and SOMB in effect at the time that it sought to restore

Petitioner's commission and Petitioner's own refusal to submit to any medical exam. It was not until February 22, 2021, that DGS was informed by DCRA *for the first time* that it would permit Petitioner to obtain his commission this one time without undergoing a medical exam."² Further, Agency avers that with regard to the initial attorney fee petition that the Agency did not even know an award had been issued until the Petition for Enforcement had been filed. Therefore, there was no issue of non-compliance. The issue was *lack of notice*. Once the Agency received notice of the fee award (as an attachment to the Petition to Enforce), it worked diligently to obtain payment of the award through the District's notoriously bureaucratic procedures for payment of judgments, which, like backpay awards, require the approval of outside agencies, in this case the Office of the Chief Financial Officer."³

Employee asserts that he is the prevailing party in this matter. Employee avers that:

“an employee is considered the prevailing party, if he received “all or significant part of the relief sought” as a result of a decision. *Alice Lee v. Metropolitan Police Department*, OEA Matter No. 1601-0087-14A18, *Addendum Decision on Attorney Fees* (July 27, 2018). Sgt. Barbusin was the prevailing party on his Petition for Enforcement, because the Agency failed to comply with this Office's Decision and Order at the time, he filed his Petition (and still fails to do so as of the filing of this pleading). In his Petition, Sgt. Barbusin requested that the Agency be ordered to immediately and fully comply with this Office's January 15, 2020 Decision and Order. More specifically, Sgt. Barbusin requested that the Agency be ordered to reinstate him as if he were renewing his commission and restore his back pay and benefits. This is precisely what this Office ordered in the January 28, 2021 Addendum Decision on Compliance.”⁴

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.”⁵ Because the compliance/enforcement and attorney fee issues were a part of the relief provided following the undersigned's reversal of this matter, I find that Employee remains a prevailing party and is entitled to all relief accorded in the Initial Decision. The compliance matters arose following the failure of Agency to meet and provide the relief prescribed in the January 15, 2020 Initial Decision and the September 2, 2020 Addendum Decision on Attorney Fees. While Agency asserts it did not have notice⁶ of the Attorney Fee Decision until the Petition for Enforcement was filed, I find that it did not change Agency's responsibility to adhere to that Order. Employee was the prevailing party, but at the time of the filing of the Petition for Enforcement, he had not received all the relief sought and required by the Initial Decision or the Addendum Decision on Attorney Fees. Accordingly, I find that for the purposes of considering Employee's request for supplemental fees in this matter, that Employee still retains his position as the prevailing party in this matter.

² Agency's Opposition at Page 6 (March 5, 2021).

³ *Id.*

⁴ Employee's Motion for Supplemental Attorney Fees and Costs (February 12, 2021).

⁵ *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).

⁶ Agency asserted that during the Covid-19 Operational Status that there was no one in the office to retrieve mailings, which was why it had no notice of the Addendum Decision on Attorney Fees.

Interest of Justice

In *Allen v. United States Postal Service*, 2 M.S.P.R. 420 (1980), the Merit Systems 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. Whether the agency engaged in a "prohibited personnel practice";
2. Whether 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. Whether the agency initiated the action against employee in "bad faith", including:
 - a. Whether the agency's action was brought to "harass" the employee;
 - b. Whether the agency's action was brought to "exert pressure on the employee to act in certain ways";
4. Whether the agency committed a "gross procedural error" which "prolonged the proceeding" or "severely prejudiced the employee";
5. Whether the agency "knew or should have known that it would not prevail on the merits", when it brought the proceeding, *Id.* at 434-35.

In the instant matter, I held in the January 15, 2020 Initial Decision that the reversal of Agency's removal of Employee was due to Agency's violation of *Allen* Factors 2 and 5. Agency pursued a removal action of Employee, despite an independent hearing officer's recommendation that there was not sufficient evidence to sustain the charges. Further, witness testimony during the Evidentiary Hearing held before the undersigned, revealed Agency's knowledge regarding the charges and that Employee had not committed the actions for which he was charged.⁷ Thus, I find an award of supplemental attorney fees to be in the interest of justice for the instant matter.

Accordingly, I found that the requirements of both D.C. Official Code §1-606.08 and OEA Rule 634.1 had been satisfied. The issue now hinges on the reasonable amount of supplemental 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, the undersigned administrative judge is the equivalent of the trial court.⁸

⁷ See. Agency's Opposition to Employee's Motion at Pages 2-3 (April 14, 2020). Agency cited that it objected to Employee's notion that its adverse action was arbitrary and not supported. Further, Agency indicated that Captain Preston's testimony during the evidentiary hearing was not consistent with what she indicated in her written proposed removal of Employee. Additionally, Agency notes that Captain Preston was terminated from Agency and suggests that could have impacted her testimony.

⁸ *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).

REASONABLENESS OF ATTORNEY FEESHourly Rate

“Once the conclusion is reached that attorney fees should be awarded, the determination must be made on the amount of the award.”⁹ 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.¹⁰ 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.¹¹ 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 Supplemental Fees, Hannon Law Group, LLP, requests attorney fees in the amount of **\$68,949.48**, which represents **179.1 hours** of service based on the hourly rates of all attorneys and paralegals that worked on this matter.¹² The rates/times for which compensation is requested include¹³:

Task	Total Hours Expended	Individual Hours Expended
Original Attorney Fee Motion (Reply to Agency Brief) Filed 4//21/2020	23.1	Hurst – 19.1 So – 3.6 Fawcett .4
Petition for Enforcement Filed 10/15/2020	32.1	Richards – 23.4 So – 8.1 Wolfe (paralegal) - .6
Motion for Leave to File Reply – Filed 11/16/2020	6.5	Richards – 4.2 So – 2.3
Reply to Agency Response re: Commission Reinstatement- Filed 11/27/2020	24.4	Richards – 13.2 So -8.1 Scanlan (paralegal) -.6 and 2.5
Supplemental Brief re: SPOs Commission Expiration and Renewal Filed 12/18/2020	5.7	Richards – 5.2 So - .5
Joint Supplemental Brief on Back Pay and 457(b) Plan – Filed 12/30/2020	2.3	So – 1.4 Richards - .9
Motion for Leave to File for Supplemental Attorney Fees – Filed 1/8/2021	3.2	Richards – 2.9 So - .3
Conferences	10.4	Richards – 4.6 So – 5.8
Review of Decisions and Orders	12.4	Richards – 6.5 So – 5.6 Hurst - .3
Client Communications	15.2	Richards – 4 So – 8.6 Hurst – 2.6
Motion for Supplemental Attorney Fees filed February 12, 2021	43.8	Richards – 36.9 So – 3.6 Wolfe (paralegal) – 3.3
*Expenses (incl. Legal research/Westlaw)	\$152.88	

⁹ *Thomas Pierre v. District of Columbia Public Schools*, OEA Matter No. 1601-0186-12AF17, *Addendum Decision on Attorney Fees* (September 18, 2017).

¹⁰ *Blum v. Stenson*, 465 U.S. 886 (1984).

¹¹ *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516 (D.C. Cir. 1988).

¹² Employee’s Motion for Supplemental Attorney Fees at page 31 (February 12, 2021).

¹³ *Id.* at pages 33-37

OEA's Board has determined 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.*¹⁴ 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 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.¹⁵

Courts have "treated...the *Laffey Matrix* as a reference rather than a controlling standard."¹⁶ "There is no concrete, uniform formula for fixing the hourly rates that are awarded in employment disputes (federal or local)."¹⁷ The purpose of the *Laffey Matrix* is to provide a "short-cut compilation of market rates for a certain type of litigation."¹⁸ 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.¹⁹ When utilizing the *Laffey Matrix* as a guide, courts will "first determin[e] the so-called loadstar—the number of hours reasonably expended by counsel multiplied by a reasonable hourly rate."²⁰ Courts have increased or decreased the hourly rates depending on the characteristics of the case and the qualification of counsel.²¹ In addition, "[t]he novelty [and] complexity of the issues" should be "fully reflected" in the determination of the fee award.²² In his request, Employee asserts that the attorney fees and cost for which compensation is sought is in the total amount of **\$68, 949.48**.²³

The primary attorneys in the instant matter were Ann-Kathryn So and Harrison E Richards. Employee avers that Ms. So was one of the primary attorneys working on this case from May 2020 to date. Employee asserts that "Ms. So assisted with drafting the Petition for Enforcement, the Motion for Leave to File a Reply to Agency's Opposition, the Reply to Agency's Response Regarding Commission and Reinstatement, and Supplemental Brief on the Issue of SPOs Commission Expiration and Renewals." Further, Employee notes that Ms. So "also appeared in proceedings in this Office on behalf of Sgt. Barbusin."²⁴ Additionally, it is noted that "Ms. So earned her B.B.A. from the George Washington University and her Juris Doctor from The Catholic University of America, Columbus School of Law in 2007. Ms. So joined the HANNON LAW GROUP, LLP, as a Law Clerk in May

¹⁴ 572 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).

¹⁵ 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.

¹⁶ *Elec. Transaction Sys. Corp. v. Prodigy Partners Ltd., Inc.*, CIV. A 08-1610 (RWR, 2009 WL 3273920 (D.D.C. Oct. 9, 2009).

¹⁷ *Ross v. Ofc. of Employee Appeals*, 2010 CA 3142 (MPA) (December 31, 2014).

¹⁸ *Id.*

¹⁹ *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).

²⁰ *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).

²¹ See *Elec. Transaction Sys. Corp.*, *supra*.

²² *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)).

²³ Employee's Motion for Supplemental Attorney Fees at page 38 (February 12, 2021)

²⁴ Employee's Motion for Supplemental Attorney Fees at pages 28-31 (February 12, 2021).

2006, and became an Associate in December 2007.” Accordingly, it is requested that Ms. So be compensated at an **hourly rate of \$532.00** for services rendered from May 2020 to date.

Harrison E. Richards was the other primary attorney in this matter. Employee avers that Mr. Richards has practiced law for more than one year and seeks **an hourly rate of \$333** for his work. Mr. Richards “earned his B.A. from Roanoke College in 2016 and his Juris Doctor from The Catholic University of America, Columbus School of Law in 2019. Mr. Richards joined the HANNON LAW GROUP, LLP in 2020, and his practice is focused on representing the law enforcement community in labor and employment matters.”²⁵ Employee asserts that “Richards assisted with drafting the Petition for Enforcement, the Motion for Leave to File a Reply to Agency’s Opposition, the Reply to Agency’s Response Regarding Commission and Reinstatement, and Supplemental Brief on the Issue of SPOs Commission Expiration and Renewals. He also attended the Status Conferences held.”²⁶

The other attorneys in this matter, Talon R Hurst, worked on this matter until his departure from HANNON LAW GROUP in May 2020; and Erik H. Fawcett, expended less than one (1) hour of time.²⁷ Employee is requesting that Hurst be compensated at **an hourly rate of 365.00** for services rendered through May 2020. Employee asserts that Hurst was an associate at Hannon Law Group since 2016, until his departure in May 2020. Hurst earned his Juris Doctor in 2014 and is licensed in Maryland, New Jersey and the District of Columbia. Employee avers that Hurst appeared during the Evidentiary Hearing in this matter, attended prehearing conferences, and was responsible for extensive legal research, filing briefs, and conducted depositions. Further, Employee avers that Hurst worked on the original Attorney Fees matter in drafting a Reply Motion/Brief to Agency’s Opposition Motion/Brief. Erik H. Fawcett expended less than one (1) hour in this matter and Employee seeks for Fawcett to be compensated at **an hourly rate of \$353.00**²⁸ for services rendered. Employee provides that Fawcett “received his B.A. from Rollins College in 2003 and received his Juris Doctor from the Catholic University of America, Columbus School of Law in 2016. Prior to joining the HANNON LAW GROUP, LLP, as an Associate in 2019, Mr. Fawcett served as a judicial law clerk at the D.C. Superior Court and worked for a law firm in Bowie, Maryland.”²⁹

While Agency contests that Employee was the prevailing party, based on the reasoning provided above, I find that Employee is the prevailing party in that the petition for enforcement is compliance matter and is an extension of the basis of this matter. Agency does not oppose the *Laffey* matrix or USAO rates relied upon in the assessment of fees in this matter. Rather, Agency makes other assertions regarding billing practices (including duplicative or non-legal work etc.) and the hours documented claimed in this matter. Accordingly, I find that the rates submitted by Employee in this matter are consistent with the *Laffey* matrix/USAO³⁰ and are appropriate in the assessment of fees in this matter.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at page 27.

²⁹ *Id.* at page 31.

³⁰ USAO Attorney Fee’s Matrix 2015-2020 (<https://www.justice.gov/usao-dc/page/file/1189846/download>) applicable rates/years: **Years (Hourly Rate for June 1 – May 31, based on change in PPL-OL since January 2011):**

Experience	2019-20	2020-2021
31+years	637	665
21-30 years	595	621
16-20 years	566	591

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 of hours reasonably expended on the litigation as multiplied by the reasonable hourly rate.³¹ 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."³² The number of hours reasonably expended is calculated by determining the total number of hours and subtracting nonproductive, duplicative and excessive hours.³³

Agency asserts that if fees are awarded, the amount should be reduced from **\$68,949.48** to **\$45,732.75**. Agency argues that counsel in this matter applied "block-billing" and filed claims for work done on a reply motion to the original petition for attorney fees. Further, Agency asserts that fees include claims for non-legal and routine administrative tasks. Agency also argues that Employee filed for "fees on fees" in his assessment of what is owed.³⁴

"Fees on Fees"/ Supplemental Motion for Attorney Fees

Employee requested to be compensated for "43.8 hours preparing the instant Motion for Supplemental Attorney Fees. This includes researching relevant case law and rules on motions for attorney's fees, reviewing attorney's fees and expenses, and drafting the instant Motion. Mr. Richards spent 36.9 hours, Ms. So spent 3.6 hours, and Ms. Wolfe spent 3.3 hours on the Motion (emphasis added)."³⁵ Agency asserts that Employee's request to be compensated for fees associated with the preparation of the instant Motion for Attorney Fees and Costs should be at a reduced rate. Agency does not dispute the *Laffey* matrix rates but asserts that the rate should be reduced. Agency avers that courts in this jurisdiction have held that "fee petitions are inherently less complicated than the underlying litigation and so courts have awarded those "fees on fees" at fifty percent (50%) of the normal rate."³⁶ As a result, Agency asserts that the **43.8 hours and the total cost of \$14, 637.30**³⁷ preparing the instant Motion for Supplemental Attorney should be reduced. (*It should be noted that the undersigned has determined that Agency's calculations reflect a calculation error with the application of the rates.*)

11-15 years	510	532
8-10 years	433	452
6-7 years	372	388
4-5 years	365	380
2-3 years	353	369
Less than 2 years	391	333
Paralegals & Law Clerks	173	180

³¹ *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).

³² *Id.* *Copeland supra*.

³³ *Id.*

³⁴ *Alice Lee v Metropolitan Police Department supra.* citing to *Henderson v. District of Columbia*, 493 A.2d 982 (D.C. 1985)

³⁵ Employees Motion for Supplemental Attorney Fees at Page 38 (February 12, 2021).

³⁶ Agency's Opposition Motion at Page 10 (March 5, 2021). citing to *Garvin v. District of Columbia*, 910 F.Supp.2d 135 (D.D.C. 2012); *Wright v. District of Columbia*, 883 F.Supp.2d 132, 133-134 (D.D. C. 2012); *Means v. District of Columbia*, 999 F.Supp.2d 128, 130-31 (D.D.C. 2013); *F.S. v. District of Columbia*, 307 F.R.D. 28, 29 (D.D.C. 2014).

³⁷ It appears that the reduced amount presented by Agency reflects an incorrect calculation of the *Laffey* rate for Attorney Ann-Kathryn So. The calculations as denoted in this decision by the undersigned reflect the *Laffey* matrix rates with the hours that were claimed by Employee's counsel.

Agency avers that “because this work is less complicated than the underlying litigation, it should be awarded at a 50% reduction to be compensated in the amount of **\$7,318.65**.”³⁸

I have reviewed the total 43.8 hours claimed, as well as Agency’s objections, and find that the amount of hours expended were excessive for the degree of difficulty and the amount of legal service time required in the instant matter. This Office has consistently held that requests for attorney fees should be reasonable in nature and not excessive or duplicative. In the instant matter, the undersigned finds the billing and costs associated with the Supplemental Motion for Attorney fees to be excessive. The Supplemental Motion submitted was 38 pages long, including 14 pages that were a recital of the procedural history and background in this matter. Further, the Supplemental Motion also included 36 exhibits, the majority of which were PDF copies documents that were already in the record pertaining to this matter, including the undersigned’s decisions and orders in this matter.

Additionally, as a request for Supplemental Fees, I find that the degree of difficulty is inherently less than the underlying adjudication and should not require the amount of time as would be needed for the adjudication. 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. Furthermore, the undersigned notes that the Original Motion for Attorney Fees filed at OEA on March 20, 2020, reflected an expenditure of 19.1 hours for the preparation of that Motion. Thus, it stands to reason that a subsequent Motion for Supplemental Attorney Fees would not require as much legal service time as an initial Motion for attorney fees, as this is a supplemental request incidental to compliance and enforcement matters.

While this Office has held that an award of fees can include the fees associated with the preparation of the fee motion,³⁹ this Office has also held that awards can be reduced if a determination has been made that the fees were excessive.⁴⁰ Accordingly, I find that the rates should be reduced by fifty percent (50%) as related to the claim for the Motion for Supplemental Attorney Fees. Accordingly, I find that the hours should be reduced from 43.8 hours to 21.9 hours. This would reduce Mr. Richard’s hours from 36.9 hours (\$333/hour -\$12,287.70) to 18.45 hours (\$6,143.85); Ms. So is reduced from 3.6 hours (\$532/hour – \$1915.20) to 1.8 hours (\$957.60); and the paralegal, Ms. Wolfe, is reduced from 3.3 hours (\$180/hour -\$594) to 1.65 hours (\$297). Thus, I find the amount should be reduced **from \$14,796.90 (43.8 hours) to \$7,398.45 (21.9 hours)** for the fees associated with the preparation of the Supplemental Motion for Attorney Fees.

Billing Entries/Non-Legal Work/Routine Administrative Tasks

Agency asserts that the fee petition contains numerous “technical deficiencies, such as lack of billing discretion, billing legal rates for non-legal work, excessive and unwarranted claims for fees on fees, etc. Further, Agency asserts that the petition also includes costs for routine business and administrative tasks. Specifically, Agency asserts that “[Employee’s]’s counsel’s bills are replete with

³⁸ Agency’s Opposition Motion at Pages 10-11 (March 5, 2021). Agency notes that costs for Mr. Richards totaled \$12,287.70, costs for Ms. So were \$1,755.60, and costs for Ms. Wolfe were \$594. Again, the undersigned notes that this calculation appears to reflect an incorrect of the rates for Ms. So.

³⁹ See. *Fogle v. District of Columbia Public Schools*, OEA Matter No. 2401-0123-04-A-09, Initial Decision-Awarding of Attorneys Fees and Costs (Mar. 21, 2011). Here, OEA awarded fees at the applicable *Laffey* rates, including the work performed preparing the motion for attorney fees and costs (see page 14-15).

⁴⁰ 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).

examples of billing for non-legal, routine administrative tasks that require no legal acumen or skill and should not be compensated at *Laffey Rates*, if at all, as they are routine costs of doing business that are not quantifiable as legal work.”⁴¹ Additionally, Agency avers that “there are numerous entries of this nature, the fee petition should be reduced by 10% to reflect this failure to exercise reasonable billing judgement. As a result of these problems, the District requests that \$6895.00 be deleted from the total requested to reflect a 10% reduction of [Employee]’s fee request of 68,949.48 to account for the persistent impropriety of the records and for the failure to exercise appropriate and reasonable billing judgment. *See, e.g., Role Models*, 353 F.23 at 971; *In re InPhonic, Inc.*, 674 F. Supp. 2d at 289 (award reduced by 5% because of block billing); *DL v. District of Columbia*, 256 F.R.D. 239, 246 (D.D.C. 2009) (award reduced by 10% because of block billing).”⁴² To support its position Agency provided the following of what it asserts should not be compensated (referencing Employee’s exhibits):

- “181 Uploaded a copy of the revised version of motion for leave to reply to Agency’s memorandum in opposition of petition for enforcement into clients folder on box”
- “201 Uploaded copy of the revised motion for leave to file reply for resubmission to clients folder on box”
- “140 Calendared virtual status conference for clients petition for enforcement”
- “131 Forward banking and tax ID information to opposing counsel for issuance of fee petition.”
- “129 Forward correspondence with J. Barbusin and case decision to HER for awareness.”
- “72 Uploaded revised draft of petition for enforcement into clients folder on box”
- “59 Corresponded with AKS regarding estimated completion of petition for enforcement”
- “39 Talked with AKS about petition for enforcement and sending her a rough draft to review and edit by the end of the day”
- “373 Verify status hearing logistics.”
- “454 Emailed OEA Judge a copy of the joint supplemental brief regarding calculation of clients backpay and 457b plan deductions”

As was previously noted, OEA has held that reasonable expense incurred in the service of Employee can be reimbursed. In *Fogle v. District of Columbia Public Schools*,⁴³ OEA held that costs could be reimbursed for matters such as case management and legal research. The undersigned notes that while the above-mentioned entries provided do appear to align more closely with routine administrative tasks; it appears these tasks were related specifically to actions pertaining to the legal issues in this matter. Accordingly, I find that Employee’s requests in this regard are reasonable and should not be denied.

⁴¹ Agency’s Opposition Motion at Page 9 (March 5, 2021).

⁴² *Id.* at Page 10.

⁴³ *Fogle v. District of Columbia Public Schools*, OEA Matter No. 2401-0123-04-A-09, Initial Decision-Awarding of Attorneys Fees and Costs (Mar. 21, 2011). Here, OEA awarded fees at the applicable *Laffey rates*, including the work performed preparing the motion for attorney fees and costs (see page 14-15).

Original Motion for Attorney Fees

Employee's Motion for Supplemental Attorney fees also seeks compensation for work performed on a Reply Brief that was prepared for the previous petition for attorney fees, of which an addendum decision was issued on September 3, 2020. Employee avers that counsel expended 23.1 hours on this matter (Talon Hurst 19.1 hours; Ann-Kathryn So 3.6 hours; and Erik Fawcett .4 hours). To support this request, Employee asserts that "additional hours in connection with the original Motion for Attorney Fees that were not included in the original fee awarded. This included case strategy and development, reviewing the Agency's Opposition to the Motion and supporting materials, researching and reviewing pertinent rules and regulations, preparing and submitting a Reply to the Agency's Opposition, communicating with [Employee] and agency officials."⁴⁴

Agency asserts that Employee should not be compensated for work completed on the previous motion for attorney fees. Specifically, Agency argues that Employee's counsel's preparation of the Reply to Agency's Opposition Brief should not be compensated because it amounts to "fees on fees billing."⁴⁵ Agency argues that the amount of "\$8,850.20 (23.1 hours—19.0 for Talon Hurst (\$6,935) and 3.6 hours for Ms. So (\$1915.20) and .4 for Mr. Fawcett (no billing rate listed))"⁴⁶ should be denied. Agency asserts that "[t]his reflects an outrageous lack of billing discretion preparing [Employee]'s Motion for Attorneys' Fees and should be rejected out of hand as a cost of doing business. In effect, [Employee] wants to charge for its time responding to the Agency's response to a motion that he filed. The fee request should be denied because Agency was required by OEA Rules to respond to the original motion for fees and should not be further penalized by the fact it was required to follow the rules of this court. Petitioner is simply piling fees upon fees upon fees without justification."⁴⁷

Employee avers that the "attorneys spent 23.1 hours representing Sgt. Barbusin additional hours in connection with the original Motion for Attorney Fees that were not included in the original fee awarded. This included case strategy and development, reviewing the Agency's Opposition to the Motion and supporting materials, researching and reviewing pertinent rules and regulations, preparing and submitting a Reply to the Agency's Opposition, communicating with Sgt. Barbusin and agency officials, and reviewing this Office's Decisions and Orders."⁴⁸

The undersigned finds that Employee's request regarding fees accrued for the Reply Brief for the previous Motion for Attorney Fees to be an untimely request. The original Motion for Attorney Fees was filed on March 20, 2020. Agency filed its response (as required) on April 14, 2020. Employee filed for leave to submit a Reply on April 21, 2020, no opposition was noted, so the request was granted. On September 3, 2020, an Addendum Decision on Attorney Fees and Costs was issued wherein all requested fees in the amount of \$93,343.02 was awarded. On October 15, 2020, Employee by and through his counsel, filed a Petition for Enforcement citing Agency had not complied with the orders in the Initial Decision or the Addendum Decision on Attorney Fees. Following several status

⁴⁴ Employee's Motion for Supplemental Attorney Fees at page 33 (February 12, 2021).

⁴⁵ Agency's Opposition Motion at page 11 (March 5, 2021).

⁴⁶ The undersigned again notes that Agency has listed the incorrect time entries and has possibly attributed the wrong *Laffey* rates in its calculation of this fee request. Further, Employee's Motion for Supplemental Attorney Fees at page 27, reflects the billing for Eric Fawcett to be at a rate of \$353/hr.

⁴⁷ *Id.*

⁴⁸ Employee's Motion for Supplemental Attorney Fees at page 33-34 (February 12, 2021).

conferences and email correspondence, Agency paid the \$93,343.02 and Hannon Law Group confirmed receipt of that check on December 17, 2020.

Upon review of the record, I find that the request for fees associated with the original Motion for Attorney fees is untimely. I find that it would have been appropriate for a supplemental request for these fees to have been made contemporaneously with the associated Motion. There was no mention of any outstanding fees in the Petition for Enforcement nor were there any other subsequent filing made in closer proximity to the time in which the fees were accrued or the filing of the original Motion for Attorney Fees. OEA Rules provide that request for attorney fees should be made within (30) days of date that the initial decision becomes final. *See* OEA Rule 634.2. Further, this Office has held that "[c]asual after-the-fact estimates of time expended on a case are insufficient to support an award of attorneys' fees...[a]ttorneys who anticipate making a fee application must maintain contemporaneous, complete and standardized time records which accurately reflect the work done by each attorney."⁴⁹ Employee's original Motion for Attorney Fees was filed in accordance with the deadlines prescribed by OEA Rules. As an extension of that time frame, I find that any fees accrued with the work attributed to that Motion should have been sent in a time frame more closely aligned with that original request. As a result, I find that based on the applicable rates for the attorneys and the 23.1 hours expended, (**Mr. Hurst -19.1 hours - \$365/hour - \$6,971.50; Ms. So 3.6 hours - \$532/hour - \$1,915.20; and Mr. Fawcett 0.4 hours - \$353/hour – \$141.20 = \$9,027.90**), that fees associated with this claim should be denied and subtracted from the fee award. Accordingly, I find that this request for fees (**23.1 hours - \$9,027.90**) for the Reply Brief on the Original Motion for Attorney Fees is untimely and is denied in whole. The undersigned notes that the Agency's calculation of \$8,850.20, appears to have incorrectly attributed the appropriate *Laffey* rates to the appropriate attorneys.⁵⁰

For the aforementioned reasons, I find that the overall request for supplemental attorney fees in this matter are reasonable, with the exceptions noted below. I further find that Employee's counsel documented with clarity and enumerated all costs and fees. However, I do find that the request for fees for 23.1 hours expended for work performed on the Reply Brief related to original Motion for Attorney Fees should be denied, as the request is untimely. Additionally, I find that the expenditure of 43.8 hours on the instant Motion for Supplemental Attorney Fees is excessive and should be reduced by fifty percent (50%). As a result, I find it appropriate to **reduce the award for supplemental attorney fees from 179.1 hours to 134.1 hours. The 134.1 hours reflects Employee's supplemental fee request of 179.1 hours minus 23.1 hours (\$9,027.90); and minus 21.9 hours (\$7,398.45)** of legal services provided in this matter (per applicable *Laffey* rates and documented expenses). Accordingly, I find that the attorney fees and costs request should be reduced from the requested amount of **\$68,949.48** to the amount of **\$52, 523.13**.

⁴⁹ *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 at Page 9) citing to *National Association of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319 at 1327 (1982).

⁵⁰ Agency also noted that a rate was not listed for Erik Fawcett. However, notes that a rate was listed on page 27 of Employee's Motion. Further, it was also reflected in Exhibit 36 page 19. *See*. Employee's Motion for Supplemental Attorney Fees at, Page 27 and also Exhibit 36, page 19 (February 12, 2021).

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, **\$52,523.13** (**Fifty-Two thousand, Five Hundred-Twenty-three dollars and Thirteen cents**) in supplemental attorney fees.

FOR THE OFFICE:

Michelle R. Harris, Esq.
Administrative Judge