

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
) OEA Matter No. 1601-0158-00A08
CHANNAVAJJAL M. PRASAD)
Employee) Date of Issuance: March 13, 2009
)
v.)
) Joseph E. Lim, Esq.
COMMISSION ON) Senior Administrative Judge
MENTAL HEALTH SERVICES)
Agency)
_____)
Frank McDougald, Esq., Agency Representative
E. John Steren, Esq., Employee Representative

ADDENDUM DECISION ON ATTORNEY FEES

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 22, 2000, Employee appealed from Agency's final decision terminating him for fraud and inexcusable absence without leave. Specifically, Employee, a Medical Officer (Psychiatry) at St. Elizabeth's Hospital, was accused of failing to show up for work on January 26, 2000, and for backdating and falsifying a patient's record.

I held conferences on September 25, 2002, and June 18, 2003, after denying Agency's motion to dismiss for lack of jurisdiction. A hearing was held on August 27, 2003. On October 15, 2003, I issued an Initial Decision (ID) in which I found that Agency failed to meet its burden of establishing cause for taking adverse action and therefore ordered Agency to reinstate Employee to his position of record with all back pay and benefits due him.

Agency filed a petition for review. On September 19, 2006, the Board issued an Opinion and Order on Petition for Review (O&O) affirming the ID. On October 16, 2006, Agency filed a petition for review of the O&O with the Superior Court of the District of Columbia.

On October 23, 2006, Employee, through his attorney, submitted a Motion for Attorney Fees and Costs in the amount of \$134,683.90. On November 7, 2006, Agency submitted its opposition to Employee's motion. On November 15, 2006, I issued an Addendum Decision on Attorney Fees wherein I held that the fee petition was premature, as Employee was not yet the prevailing party.

On November 5, 2008, the Superior Court for the District of Columbia affirmed my ID. Agency declined to appeal, and the decision became final thirty days later on. On November 19,

2008, Employee filed a motion for award of attorney fees, pursuant to OEA Rule 635.1.¹ Agency filed its opposition to the motion on January 12, 2009. In its response, Agency did not question the legality of Employee's fee petition, only its specifics. The record is closed.

JURISDICTION

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

ISSUE

Whether the attorney fee requested is reasonable.

ENTITLEMENT OF EMPLOYEE TO ATTORNEY FEES

D.C. Official Code § 1-606.08 provides that “[An Administrative Judge of this Office] 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.” *See also* OEA Rule 635.1, *supra* at n.1

1. Prevailing Party

“[F]or an employee to be a prevailing party, he must obtain all or a significant part of the relief sought. . . .” *Zervas v. D.C. Office of Personnel*, OEA Matter No. 1602-0138-88AF92 (May 14, 1993), __ D.C. Reg. __ (). *See also Hodnick v. Federal Mediation and Conciliation Service*, 4 M.S.P.R. 371, 375 (1980). Employee filed an appeal seeking reinstatement to his position and recovery of all benefits lost due to Agency's termination of his employment. After Employee prevailed in Agency's appeal to the D.C. Superior Court, Agency could no longer deny that Employee was in fact the prevailing party. Based on the record of this case, I conclude that Employee is a prevailing party.

2. 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”;
2. Where the agency's action was “clearly without merit” or was

¹ OEA Rule 635.1, 46 D.C. Reg. 9320 (1999). Reads as follows: “An employee shall be entitled to an award of reasonable attorney fees, if: (a) He or she is a prevailing party; and (b) The award is warranted in the interest of justice.”

“wholly unfounded”, or the employee is “substantially innocent” of the charges brought by the agency;

3. Where the agency initiated the action against the 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.

This matter began on January 26, 2000, when Agency accused Employee of failing to show up for work on January 26, 2000 and for backdating and falsifying a patient’s record. After an adversarial hearing where both parties presented their evidence, I found that Agency produced absolutely no evidence to show that Employee was guilty of any wrongdoing.

In spite of this, Agency persisted in filing two appeals of the I.D. All this served to delay justice for Employee. Additionally, Agency has not argued that attorney fees are not warranted in the interest of justice. I therefore conclude that Agency’s delay in effecting the relief to which Employee was entitled is a manifestation of Allen Factors #2 and #5, above. Therefore, I further conclude that an award of reasonable attorney fees is warranted in the interest of justice.

REASONABLENESS OF ATTORNEY FEES

The party seeking an award of attorney fees bears the burden of proving that the requested fees are reasonable. *Joyce v. Department of the Air Force*, 74 M.S.P.R. 112 (1997). Counsel’s submission was detailed and included the specifics of the services provided on Employee’s behalf. Employee requested an award of \$165,967.38 in attorney fees for services performed from May 1, 2000 through November 6, 2008. Agency argued that the fee request is unjustified; that the fee petition includes work done before other tribunals and that Employee has not met his burden of proving that he is entitled to his fee request.

A. Hourly Rate

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

The reasonableness of a fee request may be assessed by considering two objective variables, those being the customary billing rate of the attorney and the number of hours reasonably devoted to the case. *Casali v. Department of Treasury*, 81 M.S.P.R. 347 (1999). An attorney's customary billing rate may be established by showing the hourly rate at which the attorney actually billed other clients for similar work during the period for which the attorney fees are requested, or, if the attorney has insufficient billings to establish a customary billing rate, then by affidavits from other attorneys in the community with similar experience stating their rate for similar clients. *Id.* at 352.

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

The OEA Board has determined that the Administrative Judges of this Office may consider the so-called "Laffey Matrix" in determining the reasonableness of a claimed hourly rate.² 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.*, 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).

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., 92-93, 93-94, etc.) 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 matrix also contains rates for paralegals and law clerks. The first time period found on the matrix is 1980-81. It is updated yearly by the Civil Division of the United States Attorney's Office for the District of Columbia, 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.

The following discussion will focus on the reasonableness of the requested rates *vis a vis* the Laffey Matrix. Employee used the services of several lawyers in the law firm of Ober, Kaler, Grimes & Shriver.

Agency objects to the number of attorneys that Employee utilized, which in this case is five attorneys. In instances where multiple attorneys are used, the fee petitioner bears the burden of explaining how the use of multiple attorneys benefited the case. *Santella v. Special Counsel, I.R.S.*, 86 M.S.P.R. 48 (2000). Agency argues that because Employee failed to justify the use of so many attorneys, the hours of attorneys Sean Foster, Carol McCarthy, and James Sheets, should not be

² A copy of the Laffey Matrix, complete through June 1, 1994 - May 31, 2008, is attached to this addendum decision.

considered.

In *Santella v. Special Counsel, I.R.S., ibid.*, counsel for attorney fee petitioners satisfied the burden of explaining how use of five attorneys benefited the case by explaining that three associates were used for certain tasks because they had a lower hourly rate than the two lead attorneys. Although Employee was represented by five different counsels who are employed by the same law firm, there is no indication of any impermissible double billing by Employee's counsel. Here in Employee's attorney time sheets, it is evident that the use of associates helped in reducing the hourly rates.

In addition, Agency cites no case law, statute, rule or regulation that would prohibit Employee from utilizing the services of more than one attorney. Indeed, this Office has awarded attorney fees for multiple attorneys. See *Oliver v. D.C. Public Schools*, OEA Matter No. 1601-0005-04 AF 07 (April 26, 2007), __ D.C. Reg. __ ().

Employee backs up his hourly rate request with a statement of when the attorney was admitted to the Bar as well as affidavits from Attorneys Vincent and Steren enumerating their legal education and experience. The affidavits show that Vincent has more than 20 years of legal experience while Steren has around 16 years.

Employee is asking that Attorney Paul Vincent be compensated at hourly rate of \$260.00 and \$275.00 for services rendered in 2000; \$275.00 and \$300.00 for services rendered in 2001; \$300.00 for services rendered in 2002, \$325.00 for services rendered in 2003; \$350.00 for services rendered in 2004; \$410.00 for services rendered in 2006; and \$425.00 for services rendered in 2007.

According to the Laffey Matrix, a reasonable hourly rate for an attorney with more than 20 years experience is \$444.00 and \$468.00 for legal services performed in 2000; \$468.00 and \$487.00 for services rendered in 2001; \$522.00 for services rendered in 2002, \$549.00 for services rendered in 2003; \$574.00 for services rendered in 2004; \$598.00 for services rendered in 2006; and \$614.00 for services rendered in 2007.³ Since Attorney Vincent's requested hourly rates are significantly below those figures, I conclude that it is reasonable.

Employee is also asking that Attorney E. John Steren be compensated at hourly rate of \$240.00 and \$275.00 for services rendered in 2000; \$275.00 for services rendered from 2001 through 2004; \$275.00 and \$325.00 for services rendered in 2005, \$325.00 for services rendered from 2006 through 2008.

According to the Laffey Matrix, a reasonable hourly rate for an attorney with between 11 and 19 years experience is \$369.00 and \$388.00 for legal services performed in 2000; \$388.00 to \$456.00 for services rendered from 2001 through 2004; \$476.00 and \$497 for services rendered in

³ Where Attorney is asking for a single rate in a certain year, then the lower hourly rate from the Laffey Matrix is cited.

2005; \$497.00 to \$536.00 for services rendered from 2006 through 2008. Since Attorney Steren's requested hourly rates are significantly below those figures, I conclude that it is reasonable.

Employee is asking that Attorney Sean E. Foster be compensated at the hourly rate of \$120.00 for services rendered in 2001; \$135.00 and \$145.00 for services rendered in 2002; and \$145.00 for services rendered in 2003. According to Employee's fee petition, Foster was admitted to the Bar of the District of Columbia in 2002.

Because Foster was not yet an attorney in 2001, he cannot be paid attorney fees for 2001. He is, however, entitled to be paid law clerk fees for 2001 based on the Laffey Matrix, which is \$110 per hour for work performed after June 1, 2001. His legal work done after his bar admission will be awarded attorney fees. According to the Laffey Matrix, a reasonable hourly rate for an attorney with between 1 and 3 years experience is \$203.00 and \$217.00 for legal services performed in 2002; \$217.00 and \$228.00 for services rendered from in 2003. Since Attorney Foster's requested hourly rates are significantly below those figures, I conclude that it is reasonable.

Employee is asking that Attorney James Sheets be compensated at hourly rate of \$185.00 for services rendered in 2003. According to Employee's fee petition, Sheets was admitted to the Bar of the District of Columbia in 2001.

According to the Laffey Matrix, a reasonable hourly rate for an attorney with between one and three years experience is \$217.00 and \$228.00 for legal services performed in 2003. Since Attorney Sheets's requested hourly rates are significantly below those figures, I conclude that it is reasonable.

Employee is asking that Attorney Carol McCarthy be compensated at the hourly rate of \$295.00 for services rendered in 2000. According to Employee's fee petition, McCarthy was admitted to the Bar of the District of Columbia in 1988. However, despite being given another chance to supply more information on McCarthy's legal education and experience, Employee failed to meet his burden of proof justifying the requested hourly rate.

The OEA Board has held that the failure to provide adequate factual support for attorney's hourly rate does not warrant a denial of fees. "The total denial of fees is a stringent sanction which is only justified in extraordinary circumstances." OEA Matter No. 1601-0018-86AF87, p. 4 (June 15, 1988), D.C. Reg.(). The presiding official is required to make a reasoned determination of a reasonable hourly rate. Thus I have little choice but to award attorney fees to McCarthy based on the safe assumption that she has at least a year of legal work experience.

According to the Laffey Matrix, a reasonable hourly rate for an attorney with between one and three years experience is \$185.00 and \$195.00 for legal services performed in 2000. Thus I reduce Attorney McCarthy's requested hourly rates to match the hourly rates indicated in the Laffey Matrix.

In addition, Employee requests that his paralegals be compensated at the hourly rate of \$65.00 and \$85.00 for services rendered in 2000; \$65.00 for services rendered in 2001; \$85.00 and \$90.00 for services rendered in 2002; and \$90.00 for services rendered in 2003.

According to the Laffey Matrix, a reasonable hourly rate for a paralegal is \$101.00 and \$106.00 for legal services performed in 2000; \$106.00 and \$110 for services rendered in 2001; \$110.00 and \$118.00 for services rendered in 2002; and \$118.00 and \$124.00 for services rendered in 2003. Since the paralegals's requested hourly rates are significantly below those figures, I conclude that it is reasonable.

B. Number of hours expended

Employee's counsel lists the hours and the type of work performed by month and year. Agency registers its opposition to the amounts claimed by listing each specific date and its basis for its objection. While the Agency did not deny that Employee was entitled to some attorney's fees for time expended incidental to this matter, Agency challenged whether the number of claimed hours of legal service time was excessive. Agency also objects to awarding attorney fees for work performed before forums other than the OEA, i.e., the Superior Court of the District of Columbia and state medical licensing boards.

This Office's determination of whether Employee's attorney fees request is reasonable is based upon a consideration of the number of hours reasonably expended on the litigation, multiplied by a reasonable hourly rate. *Copeland v. Marshall*, 641 F.2d 880 (D.C. Cir. 1980). *See also Hensley v. Eckerhart*, 461 U.S. 424 (1983); *National Association of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319 (D.C. Cir. 1982). 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. *Copeland, supra*. The number of hours reasonably expended is calculated by determining the total number of hours and *subtracting nonproductive, duplicative, and excessive hours*. [emphasis added] *Henderson v. District of Columbia*, 493 A.2d 982 (D.C. 1985).

I have reviewed the hours claimed, as well as Agency's objections to some of them, and have determined that some of the hours expended were excessive for the degree of difficulty and the amount of legal service time required in the instant matter. I base this determination in significant part upon my comparison of the professional services provided to other clients that counsel of similar experience has represented in this Office against the same Agency, frequently using very similar pleadings, making the same or nearly identical legal arguments which, although ultimately successful for each of their clients, were not unique. I also base my findings on the degree of legal complexity involved in the issues presented; as well as on my own years of experience as a plaintiff's attorney.

I also note that attorneys with more experience command a higher hourly rate on the reasonable assumption that they expend less time on their tasks as they gain experience and

knowledge. Thus where the hours asked for seem excessive in light of the higher hourly rates allowed, I reduce those hours accordingly.

Based on the reasonable assumption that Agency has no objection to the parts of the fee petition it does not specifically mention, I will therefore deal only with the items highlighted by Agency.

Attorney Hours Incurred from May 1, 2000 through September 22, 2000 (date of filing appeal.)

Agency asserts that Employee is not entitled to Attorney Fees for any work performed before September 1, 2000, the effective date of his removal, on the grounds that doing so would establish the precedent that an attorney is entitled to attorney fees whenever he or she performs tasks related to a contemplated or proposed disciplinary action by an agency, and that entitlement would not depend upon whether a disciplinary action was actually taken.

Agency's argument is misplaced here. D.C. Official Code § 1-606.08, the statutory authority which authorizes the payment of attorney fees, authorizes the award of attorney fees **only** if Employee is the prevailing party. (Emphasis added.) Thus, a contemplated disciplinary action will not result in the award of attorney fees unless said disciplinary action was actually carried out.

Agency states that Employee filed his appeal with the OEA on September 22, 2000. The parties first appeared before the Administrative Judge on September 25, 2002, pursuant to the Order of the Administrative Judge scheduling a pre-hearing conference for that date. Prior to the issuance of the Order, neither party had been directed by the Administrative Judge to perform any task related to the case. Yet Employee requests an award of fees in the amount of \$48,436.504 for work performed during this period, September 1, 2000 through September 25, 2002. Agency argues that this is excessive, but does not elaborate. Absent an explanation, it is hard for me to fathom Agency's basis for its objection.

I have reviewed the hours claimed between the period, September 1, 2000 through September 25, 2002, and have determined that most of the hours expended were not excessive for the degree of difficulty and the amount of legal service time required in the instant matter. Again, I base this determination in significant part upon my comparison of the professional services provided by other similarly experienced counsel who have appeared before the Office as well as my previous experience as a trial attorney.

5/1/2000 – 5/31/2000

Attorney Paul Vincent: 5.5 hours approved.

Attorney E. John Steren: 20.6 hours approved.

6/1/2000 – 9/22/2000 (date of filing Employee's appeal)

Attorney Paul Vincent: 21.7 hours approved, but 0.6 hour on May 19, 2000 is disapproved as duplicative.

Attorney E. John Steren: 76.7 hours approved.

Attorney Carol McCarthy: 7.4 hours approved.

Agoo: 3.5 hours disallowed. Charging \$65 per hour labor for someone to pick up or drop off documents is exorbitant.

Attorney Hours Incurred from September 25, 2000 through May 31, 2001

Agency noted that a review of the billing statements clearly shows that during the period November 28, 2000 through May 22, 2001, a significant number of hours were devoted to matters related to state licensing medical boards. Agency argues that Employee can not be awarded fees for work related to those boards, a matter not covered under this Office's (OEA) jurisdiction.

Agency's point is well taken. In *Jenkins v. D.C. Public Schools*,⁶ this Office ruled that absent any statutory provision expressly granting such authority, this Office has no jurisdiction over the granting of attorney fees for work done before any court or tribunal other than this Office. Additionally, an attorney with more than five years experience should have done his legal research and should know better than to ask attorney fees for work performed in other tribunals.

While some of the fees related to work before state licensing medical boards are identifiable, some are not. In submitting his fee petition, Employee has the duty to provide sufficiently detailed information about hours logged and work done. "Casual after-the-fact estimates of time expended on a case are insufficient to support an award of attorneys' fees. Attorneys who anticipate making a fee application must maintain contemporaneous, complete and standardized time records which accurately reflect the work done by each attorney."⁷ Since it is Employee's burden of proof to clearly identify such fees, any such fees not clearly identified as relating to this Office were appropriately excluded from any consideration of being awarded.

Agency also argues that the billing statements show that the work was redundant, with attorneys performing essentially the same tasks. For instance, the billing statements show entries between May 15, 2001, and May 21, 2001, related to discovery for both attorneys Steren and Vincent.⁸ This is a legitimate point and thus those duplicative hours are also disallowed.

Lastly, Agency argues that the fee request should be slashed by 75%. Because Agency did

⁵ No information was provided regarding Agoo.

⁶ OEA Matter No. J-0050-91AF92, *Opinion and Order* issued March 18, 1994, __D.C. Reg.__ ().

⁷ *National Association of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319 at 1327 (1982).

⁸ In its response to the fee petition, Agency states duplicative work by Foster and Steren. However, the billing records show that the work was done by Foster and Vincent. Thus, I conclude that Agency meant Steren, not Vincent.

not provide a basis for such a drastic measure, this argument is disregarded.

9/25/00-5/31/01

Attorney Paul Vincent: 3.9 hours approved. 0.4 hours disapproved because part of its explanation was redacted. 5.4 hours disapproved because these dealt with work done before medical boards. Also, 0.9 hours for discovery is disapproved as duplicative of Steren's work.

Attorney E. John Steren: 23 hours approved. 23.5 hours disapproved because these dealt with work done before medical boards.

Attorney Carol McCarthy: 1 hour disapproved because these dealt with work done before medical boards.

Attorney Hours Incurred from June 1, 2001 through May 31, 2002

Agency argues that a review of the billing statements shows that many of the tasks performed during that period were unnecessary, e.g., (1) 12/4/01 – "Search of National Practitioners Data Bank," (2) 11/16/01 – "Research DC case law re: writs of mandamus and the DC administrative procedures act," and (3) 11/2/01 – "Investigate possible avenues for court action, discuss with J. Steren." I agree and those hours as identified are disapproved.

6/1/01-5/31/02

Attorney Paul Vincent: 3.4 hours approved. 0.7 hours disapproved.

Attorney E. John Steren: 17.2 hours approved. 0.2 hours disapproved because the explanation was redacted.

Attorney Sean E. Foster: 60.2 hours approved. 8.8 hours disapproved because of the above objections or because the explanations were redacted.

Attorney Hours Incurred from June 1, 2002 through May 31, 2003

Agency points out that the prehearing conference occurred on September 25, 2002, and the evidentiary hearing was conducted on August 27, 2003. Agency asserts that while the attorneys for Employee performed tasks during that period, which included filing an opposition to Agency's motion to dismiss for lack of jurisdiction and preparing for the evidentiary hearing, a review of the billing statement shows that some of the billings are excessive and most likely due to the number of attorneys involved in the case. Accordingly, Agency would request that the excessive amount of \$34,387.00 be reduced by at least 50%. Again, Agency fails to specify which charges are excessive and why those particular charges are excessive.

6/1/02-5/31/03

Attorney Paul Vincent: 8.1 hours approved.

Attorney E. John Steren: 29.1 hours approved. 19.6 hours disapproved because the work was either duplicative, excessive for the work involved, or pertained to work before a medical licensing board.

Attorney Sean E. Foster: 40.1 hours approved. 22.8 hours disapproved because either the work

details were redacted, excessive for the work involved, or pertained to work regarding a receivership or a medical board, matters not covered under this Office.

Attorney James Sheets: 1.2 hours approved. 1.7 hours disapproved because the work details were redacted.

Paralegal Sayer: 1.5 hours approved.

Attorney Hours Incurred from June 1, 2003 through May 31, 2007

Agency states that after the Initial Decision was issued on October 15, 2003, it filed a timely Petition for Review (PFR), and that an opposition to the PFR was filed by Employee on December 23, 2003. A decision denying the PFR was issued on September 19, 2006. The attorney fees incurred as of the evidentiary hearing were \$111,665.50, and with the last billing for this matter that occurred on September 29, 2006, total billings amounted to \$133,726.50. Thus, additional attorney fees in the amount of \$23,061.00 (\$133,726.50 - \$111,665.50) were incurred following the evidentiary hearing although the only substantive pleading prepared during that period by the attorneys was an opposition to Agency's PFR.

Agency notes that included in the \$23,061.00 amount is \$6,143.00 which was incurred **after** the opposition to the PFR had been submitted.⁹ Agency states that clearly, this amount is excessive and unnecessary and should be disallowed. The remaining amount, \$16,918.00 (\$23,061 - \$6143.00) should be reduced by 75%. Exactly how Agency came up with the 75% reduction was not explained and thus such blanket pronouncements are disregarded.

Agency has complained about Employee's attorney fees. My review of the file in this Matter leads me to conclude that Agency has only itself to blame. Agency should have cut its losses when it realized or should have realized that going to the hearing, it had no evidence whatsoever that Employee did anything wrong. Yet it persisted on trying the case and then appealing it all the way to the D.C. Superior Court. With its enormous advantage of having the government's resources of power and money at its hand, agency counsel's responsibility extends not just to the Agency which he or she serves, but also to the people of the District. Agency counsel's goal should be justice, not to win at any cost.

In prosecuting its case against an accused employee, agency counsel steps into the shoes of a prosecutor. To be a prosecutor requires commitment to absolute integrity and fair play; to candor and fairness in dealing with adversaries and the courts; to careful preparation, not making any assumption or leaving anything to chance; and to never proceed in any case until convinced of the guilt of the accused or the correctness of one's position. To be a prosecutor demands unusual personal qualities of promptness; dependability; thoughtfulness; decency; personal courage and conviction.

⁹Total billing at the time the opposition to the PFR was filed was \$123,809.50 (see 12/23/03 entry), and the total billing around the time the decision denying the PFR was issued was \$129,952.50 (see 9/21/06 entry). The difference in the two amounts is \$6,143.00.

6/1/03-5/31/04

Attorney Paul Vincent: 16.8 hours approved. 5.3 hours disapproved because the time was either duplicative or excessive for the work involved.

Attorney E. John Steren: 54.1 hours approved. 21.8 hours disapproved because the work was either duplicative, excessive for the work involved, or had details redacted.

Attorney Sean E. Foster: 17.4 hours approved. 12 hours disapproved because either the work details were redacted, duplicative or excessive for the work involved.

Paralegal Grossman: 2.8 hours approved.

6/1/04-5/31/05

Attorney E. John Steren: 1 hour approved. 1.3 hours disapproved because the time was excessive for the work involved, or had details redacted.

6/1/05-5/31/06

Attorney Paul Vincent: 0.3 hour approved. 0.7 hours disapproved because the time was excessive for the work involved.

Attorney E. John Steren: 2.8 hours approved. 1.5 hours disapproved because the work was either duplicative, excessive for the work involved, or had details redacted.

Charnoff: 1.5 hours disapproved because the fee petition contains no information regarding his qualifications or why he commands a \$235/hour rate.

6/1/06-5/31/07

Attorney Paul Vincent: 3.3 hours approved. 2.7 hours disapproved because the work was either duplicative or excessive for the work involved, or involved work before the Superior Court. In addition, he commands a higher hourly rate on the presumption of his experience and expertise. Thus, his need to consult with a high priced person such as Charnoff about whom no information is provided is disapproved.

Attorney E. John Steren: 18 hours approved. 64.3 hours disapproved because the work was either duplicative, excessive for the work involved, or involved work before the Superior Court.

Charnoff: 6.4 hours disapproved because the fee petition contains no information regarding his qualifications or if he is even an attorney.

6/1/07-5/31/08

Attorney Paul Vincent: 0.3 hours disapproved because the work was for the Superior Court.

Attorney E. John Steren: 4.1 hours disapproved because the work was for the Superior Court.

6/1/08-11/6/08

Attorney E. John Steren: 3 hours disapproved because the work was for the Superior Court.

SUMMATION

To summarize, I find that the following hours and rates for attorney fees are substantiated.

5/1/2000 – 5/31/2000

Attorney Paul Vincent: 5.5 hours x \$260.00 = \$1430.00.
Attorney E. John Steren: 20.6 hours x \$240.00 = \$4944.00
Sub-total \$6374.00

6/1/2000 – 9/22/2000 (date of filing Employee's appeal)

Attorney Paul Vincent: 21.7 hours x. \$275.00 = \$5967.50
Attorney E. John Steren: 76.7 hours x \$275.00 = \$21092.50
Attorney Carol McCarthy: 7.4 hours x \$195.00 = \$1443.00
Sub-total \$28503.00

9/25/00-5/31/01

Attorney Paul Vincent: 3.9 hours x. \$275.00 = \$1072.50
Attorney E. John Steren: 23 hours x \$275.00 = \$6325.00.
Sub-total \$7397.50

6/1/01-5/31/02

Attorney Paul Vincent: 3.4 hours x. \$300.00 = \$1020.00
Attorney E. John Steren: 17.2 hours x \$275.00 = \$4730.00
Attorney Sean E. Foster: 60.2 hours x \$110.00 = \$6622.00
Sub-total \$12372.00

6/1/02-5/31/03

Attorney Paul Vincent: 8.1 hours x. \$325.00 = \$2632.50
Attorney E. John Steren: 29.1 hours x \$275.00 = \$8002.50
Attorney Sean E. Foster: 40.1 hours x \$135.00 = \$5413.50
Attorney James Sheets: 1.2 hours x \$185.00 = \$ 222.00
Paralegal Sayer: 1.5 hours x \$90.00 = \$ 135.00
Sub-total \$16405.50

6/1/03-5/31/04

Attorney Paul Vincent: 16.8 hours x \$350.00 = \$5880.00
Attorney E. John Steren: 54.1 hours x \$275.00 = \$14877.50
Attorney Sean E. Foster: 17.4 hours x \$145.00 = \$2523.00
Paralegal Grossman: 2.8 hours x \$90.00 = \$ 252.00
Sub-total \$23532.50

6/1/04-5/31/05

Attorney E. John Steren: 1 hour x \$275.00 = \$275.00

6/1/05-5/31/06

Attorney Paul Vincent: 0.3 hour x \$410.00 = \$123.00

Attorney E. John Steren: 2.8 hours x \$325.00 = \$910.00
 Sub-total \$1033.00

6/1/06-5/31/07

Attorney Paul Vincent: 3.3 hours x \$425.00 = \$1402.50
 Attorney E. John Steren: 18 hours x \$325.00 = \$5850.00
 Sub-total \$7252.50

Total attorney and paralegal fees = \$139,045.50

Employee also request \$2826.90 in costs itemized as follows: \$470.90 duplicating costs, \$83.97 postage, \$12.63 long distance telephone, \$13.78 local telephone, \$173.91 facsimile charges, \$1789.12 computer assisted legal research, \$140.24 couriers, \$25.00 filing fees, \$11.32 transcripts, \$93.00 local transportation, and \$14.45 meals.

Based upon my examination of the billing statements, I have determined that some of the charges were impermissibly incurred for work before the medical board and are thus deducted.

\$470.90 duplicating costs less \$46.69 = \$424.21 duplicating costs

\$83.97 postage less \$10.86 = \$73.11

\$173.91 facsimile charges less \$17.80 = \$156.11

\$1789.12 computer assisted legal research less \$118.00 = \$1671.12

The filing fees and transcripts are disallowed as these were for the Superior Court since this Office does not charge fees for filing or for transcripts. The meals are likewise disallowed as all work is done locally in D.C.

Thus, the approved legal costs are as follows: \$424.21 duplicating costs, \$73.11 postage, \$12.63 long distance telephone, \$13.78 local telephone, \$156.11 facsimile charges, \$1671.12 computer assisted legal research, \$140.24 couriers, \$93.00 local transportation, for a total of \$2584.20.

In conclusion, I therefore find that Employee is entitled to the reduced grand total of allowable attorney fees of \$139,045.50 and legal costs of \$2584.20 for a total attorney fee award of \$141,629.70.

ORDER

It is hereby ORDERED that Agency pay Employee, within thirty (30) days from the date on which this addendum decision becomes final, \$141,629.70 in attorney fees and costs.

FOR THE OFFICE:

 JOSEPH E. LIM, Esq.
 Senior Administrative Judge