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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
EMPLOYEE, ¹)	
Employee)	OEA Matter No. 1601-0001-20AF23
)	
v.)	Date of Issuance: June 15, 2023
)	
D.C. DEPARTMENT OF EMPLOYMENT)	
SERVICES,)	
Agency)	MICHELLE R. HARRIS, ESQ.
)	Senior Administrative Judge
_____)	
Tamara L. Slater, Esq., Employee Representative)	
Tonya A. Robinson, Esq., Agency Representative)	

ADDENDUM DECISION ON ATTORNEY FEES

INTRODUCTION AND PROCEDURAL HISTORY

On October 10, 2019, (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Department of Employment Services’ (“DOES” or “Agency”) decision to terminate him from service effective September 18, 2019. This matter was initially assigned to Administrative Judge (“AJ”) Arien Cannon (“AJ Cannon”) and was later assigned to the undersigned on September 8, 2022. On January 3, 2023, I issued an Initial Decision (“ID”) reversing Agency’s adverse action. Agency did not file an appeal; thus, this decision became final 35 days following the issuance of the ID. On March 9, 2023, Employee, by and through his counsel, filed a Petition for Attorney Fees in the amount of \$58,036.10 and litigation costs of \$1,139.32. On March 15, 2023, I issued an Order requiring Agency to submit a response to Employee’s Motion by March 29, 2023. Agency filed its Opposition to the Fee Petition on March 27, 2023. On June 2, 2023, I issued an Order requiring supplemental information be provided from Employee’s counsel by or before June 9, 2023. Employee’s counsel submitted the supplemental information in accordance with the prescribed deadline. The record is now closed.

JURISDICTION

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

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

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 January 3, 2023, in this matter, reversed Agency’s action of terminating 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. 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.”² Further, Agency does not dispute that Employee is the prevailing party in this matter.³ 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”.
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”.

² *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).

³ Agency’s Opposition (March 27, 2023). Agency does not dispute that Employee is the prevailing party but argues that its actions were not taken in bad faith or without merit.

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 does not specifically enumerate an *Allen* Factor, but asserts that the “interest of justice warrants a fee award because the employee was “substantially innocent” of the charges brought by Agency, the removal was clearly without merit or wholly unfounded, the removal action was effected in bad faith, and/or the Agency knew or should have known that it would not prevail on the merits when it removed Employee.⁴ It should be noted, that the undersigned has noted that Employee’s assertions, match to the above-cited *Allen Factors 2, 3 and 4*. To support these assertions, Employee contends that “OEA found that the Agency failed to prove that the Employee’s actions violated the D.C. Human Rights Act (DCHRA), and that the Agency’s purported evidence was speculative.”⁵ Further, Employee cites that “Agency claimed to rely upon the opinion of the independent Hearing Officer, but then removed the employee on an entirely different basis than the one presented to and considered by the Hearing Officer.”⁶ That noted, Employee cites that the Hearing Officer specifically determined that the charges under the DCHRA “did not warrant adverse action, and yet that was the [A]gency’s basis for removing employee.”⁷

Agency avers that its actions were not taken in bad faith or without merit. Agency contends that “a finding that Employee should not have been terminated from employment does not equate to a finding of bad faith or that the actions taken by DOES were without merit.”⁸

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 termination that was unsupported by the record. This is of note given the recommendations noted in the Hearing Officer’s report, and Agency’s change of charges following that report, which was referenced by the undersigned in the Initial Decision. Accordingly, I find that the evidence presented in the record, along with Agency’s own actions, reflects 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.

As a result, I find that the requirements of both D.C. Official Code § 1-606.08 and OEA Rule 639.1⁹ 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.¹⁰

⁴ Employee’ Fee Petition at Page 2 (March 9, 2023).

⁵ *Id.*

⁶ *Id.* at Pages 2-3.

⁷ *Id.* at Page 3. Employee also cited that he was kept on administrative leave for 10 months during the investigation of his removal, even though it was only supposed to last 90 days.

⁸ Agency’s Opposition at Page 1 (March 27, 2023). Agency also avers that “even though Employee was on administrative leave for 10 months, Employee received full pay and accrued all benefits.” The undersigned finds this to be irrelevant to the consideration of attorney fees.

⁹ 6-B District of Columbia Municipal Regulations (“DCMR”) Ch. 600, et seq (December 27, 2021)

¹⁰ *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 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.”¹¹ 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.¹² 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.¹³ OEA Rule 639.3¹⁴ 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 Fee Petition, Employee’s counsel requested attorney fees in the amount of \$58,036.10. This amount includes \$54,026.10, for 156.7 hours of work expended by attorneys and support staff, as well as \$1,510 in fees paid to Reimer Law PLLC and \$2500 in fees paid to Dhali PLLC. Employee also cites that its fee request is reasonable based upon consideration of the “USAO Fitzpatrick Matrix rates, though he could request the comparable or higher Laffey Matrix rates, which are commensurate with prevailing rates for comparable attorneys in the Washington D.C. area.”¹⁵

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.*¹⁶ 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.¹⁷ 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”)¹⁸.” 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

¹¹ *Thomas Pierre v. District of Columbia Public Schools*, OEA Matter No. 1601-0186-12AF17, *Addendum Decision on Attorney Fees* (September 18, 2017).

¹² *Blum v. Stenson*, 465 U.S. 886 (1984).

¹³ *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516 (D.C. Cir. 1988).

¹⁴ OEA Rule 639.3, 6-B DCMR Ch. 600 (December 27, 2021)

¹⁵ Employee’s Fee Petition at Page 5. (March 9, 2023).

¹⁶ 572 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).

¹⁷ 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.

¹⁸ In 2015, the USAO revised its method for determining rates and adopted those through 2021. See. <https://www.justice.gov/file/1461316/download>

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.¹⁹

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.”²⁰ The USAO matrix cites that the data for this matrix a survey in the D.C. metropolitan area.²¹ 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.”²² The Fitzpatrick Matrix was adopted versus the USAO Matrix. However, it should be noted that this matrix has not been adopted for use outside the District of Columbia. That stated, given that Employee’s counsel has presented that the fee request is based upon the USAO Fitzpatrick Matrix, that is what will be relied upon in determining the fee award in this matter. Further, the undersigned would note that in consideration of the nature of this matter before this Office, that the USAO Fitzpatrick Matrix rates would more closely align with OEA’s previous attorney fee award determinations.

It is also is important to note that Courts have “treated...the *Laffey* Matrix as a reference rather than a controlling standard.”²³ “There is no concrete, uniform formula for fixing the hourly rates that are awarded in employment disputes (federal or local).”²⁴ The purpose of the Laffey Matrix is to provide a “short-cut compilation of market rates for a certain type of litigation.”²⁵ 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

¹⁹ 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).

²⁰ See. <https://www.justice.gov/file/1461316/download> – USAO Matrix Explanatory Note 1.

²¹ *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).”

²² 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.

²³ *Elec. Transaction Sys. Corp. v. Prodigy Partners Ltd., Inc.*, CIV. A 08-1610 (RWR, 2009 WL 3273920 (D.D.C. Oct. 9, 2009).

²⁴ *Ross v. Ofc. of Employee Appeals*, 2010 CA 3142 (MPA) (December 31, 2014).

²⁵ *Id.*

community.²⁶ 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.”²⁷ Courts have increased or decreased the hourly rates depending on the characteristics of the case and the qualification of counsel.²⁸ In addition, “[t]he novelty [and] complexity of the issues” should be “fully reflected” in the determination of the fee award.²⁹ As a result, the undersigned will review this matter based upon the considerations of reasonableness as described above, but in the context and considerations of the USAO Fitzpatrick Matrix.³⁰

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 USAO Fitzpatrick Matrix as cited in Employee’s Motion in the assessment of fees in this matter but cites that a fee award “does not include the litigation costs or the costs of process server or other professional services to file documents with the OEA and the fees for discovery, including deposition costs should be excluded.”³¹ Further, Agency asserts that award should not include “time spent by non-attorneys on the case and the costs for support staff Shea Holman, Emma Halbert and Sandra Valiente should be excluded.”³² Agency also contends that Employee’s matter has not been “fully resolved because Counsel for Employee, while still representing the Employee before this Honorable Tribunal, has informed DOES that the acquisition and submission of the required documents to calculate backpay owed to Employee, is a process which they will not be involved.” Agency asserts that if mediation or hearings are held in that matter, it is unclear (to Agency) whether Counsel for Employee will provide representation. It should be noted that the aforementioned assertion Agency makes regarding the representation in a backpay matter – which is under a different case matter before this tribunal for compliance- has now been determined to be moot. Employee’s counsel is not providing any representation for the compliance and has explicitly noted that to the undersigned via communications regarding that matter.

²⁶ *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).

²⁷ *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).

²⁸ See *Elec. Transaction Sys. Corp.*, *supra*.

²⁹ *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).

³⁰ USAO Fitzpatrick Matrix <https://www.justice.gov/usao-dc/page/file/1189846/download>:

Experience	2020	2021
22	680	684
20	665	671
12	590	594
11	578	582
8	541	545
7	528	532
6	514	518
3	471	474
Paralegal/Law Clerks	199	200

³¹ Agency Opposition at Page 2. (March 27, 2023).

³² *Id.* Agency further asserts that “while Shea Holman is identified as a Law Clerk, there is no explanation of her qualifications to perform the work that it set forth in the filing. Emma Halbert and Sandra Valiente are not specifically identified as to position with the law firm in the filing other than to indicated that their time was billed as a Paralegal/Law Clerk. Similarly, there is no indication of their qualifications to perform the work that it set forth in the filing.”

The request for this award is in the amount of \$54, 026.10, for 156.7 hours of work and fees expended by attorneys and support staff of Alan Lescht and Associates, P.C.³³ The instant fee petition also requests reimbursement for litigation costs in the amount of \$1,139.32. Additionally, the Petition seeks reimbursement for legal fees incurred by Employee when he retained representation in 2018 and 2019 from Dhali PLLC., (November 2018 - \$2500); and Reimer Law PLLC (\$1510 – citing that the attorney moved from Dhali firm to Reimer Law).³⁴ Thus, this represents the total request of \$58,036.10 in attorney fees and \$1,139.32 in litigation costs.

The primary attorneys in the instant matter were noted as attorneys with the law firm of Alan Lescht & Associates, P.C. Those attorneys included: Tamara Salter, Christina Quashie, Laura Nagel, Katherine Lease, Timothy Belknap and Ellen Renaud.³⁵ Additionally, the fee petition submitted request for fees by support staff, including Shel Holman (Law Clerk), Emma Halbert and Sandra Valiente who were all billed at a paralegal rate. Following, an Order for Supplemental Information which required Employee to provide details regarding the job titles of Shea Holman, Emma Halbert and Sandra Valiente; Employee’s counsel cited that: “Shea Holman was an Associate Attorney. She had just graduated from law school and her admission to a state bar was pending. Therefore, for purposes of billing and this fee petition, she was a Law Clerk. Emma Halbert was Litigation Paralegal and was responsible for a range of litigation support duties. Sandra Valiente was the Paralegal Manager and provides paralegal support for cases when the primary paralegal is unavailable.”³⁶

³³ Employee’s Fee Petition at Page 3. (March 9, 2023).

³⁴ *Id.* at Page. 6.

³⁵ Employee’s Fee Petition at Exhibit 5. The years of experience noted for each attorney are as follows:

Tamara Slater, Esq. (Senior Counsel)	Graduated from Law School in 2015 and was barred in 2015. Hourly Billing rates: 2020 -\$500; 2021 -\$518; 2022 - \$532; 2023- \$545
Christina Quashie, Esq. (Senior Counsel)	Graduated from Law school in 2013 and was barred in 2013. Hourly Billing Rates: 2020 - \$528
Timothy Belknap, Esq. (Senior Counsel)	Graduated from law school in 2011 and was barred in 2011. Hourly Billing rates: 2022 - \$582; 2023 - \$594
Laura Nagel, Esq. (Shareholder)	Graduated from law school in 2001 and was barred in 2001. Hourly billing rate: 2021 -\$671; 2022- \$677; 2023- \$684
Ellen Renaud, Esq. (Shareholder)	Graduated from law school in 2001 and was barred in 2001. Hourly billing rate: 2021-\$670
Shea Holman, Emma Halbert, Sandra Valiente (Law Clerk & Paralegals)	Paralegals: Hourly billing rate: \$200

³⁶ Employee’s Supplemental Information for Employee’s Fee Petition (June 2, 2023).

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.³⁷ 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."³⁸ 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, the request for this award is in the amount of \$58,036.10. This amount includes \$54,026.10, for 156.7 hours of work expended by attorneys and support staff, as well as \$1,510 in fees paid to Reimer Law PLLC and \$2500 in fees paid to Dhali PLLC.³⁹ Agency asserts that if fees are awarded that the amount does not include costs for time spent by non-attorneys on the case, to include the fees assessed for Shea Holman, Emma Halbert and Sandra Valiente.⁴⁰ Agency avers that Holman was noted as a law clerk and that Halbert and Valiente were only identified in billing paralegal/law clerk. Further, Agency argues that the fee award should not provide "for the award of litigation costs and the costs of the process server or other professional services to file documents with the OEA and the fees for discovery, including deposition costs should be excluded."⁴¹

Upon review of the billing entries included with Employee's Motion, the undersigned finds that the entries are detailed and listed in a manner consistent with the measures of reasonableness upon which this Office has relied.⁴² 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."⁴³ Accordingly, I find that Employee's fee petition includes detailed time entries that are consistent with the services provided. Additionally, the undersigned notes that counsel for Employee did not include fees for which it determined were either: 1) redundant or that 2) were not contemporaneously assessed with the instant matter. Further, I find Employee's consideration of fees in accordance with the USAO Fitzpatrick Matrix to be a fair and reasonable accounting of the services provided by its attorney and paralegal staff. As previously noted, fees for paralegals and law clerks are specifically enumerated in that matrix and Employee's billing entries for those persons are in accordance with that guidance. Additionally, I find that despite the fact that the USAO Fitzpatrick Matrix rates currently do not list rates beyond 2021; Employee's fee petition appropriately utilized the correct rates based on the assessment of an additional year of experience.⁴⁴

³⁷ *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).

³⁸ *Id. Copeland supra*.

³⁹ Employee's Fee Petition at Page 3 (March 9, 2023).

⁴⁰ Agency's Opposition at Page 2.

⁴¹ *Id.*

⁴² Employee's Fee Petition at Exhibit 1. (March 9, 2023).

⁴³ *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).

⁴⁴ The undersigned notes that for all attorneys listed, the Petition appropriately assessed fees based on the year of experience was noted in the 2021 scale. For instance, Tamara Slater's fees in 2020 were \$500 based on 5 years' experience; in 2021, the fee for 6 years' experience was \$518. Accordingly, for 2022 the fee for 7years experience was \$532 etc. I find that the fees presented for all attorneys followed this same schematic, and that this was an appropriate assessment of fees under the USAO Matrix.

Moreover, OEA has held that reasonable litigation expenses incurred in the services of Employee can be reimbursed. In *Robert Fogle v. District of Columbia Public Schools*,⁴⁵ OEA held that consistent with the Office's ruling in *Spriggs v. District of Columbia School*⁴⁶, that costs can be reimbursed for matters such as case management and legal research.

This noted, the undersigned finds that Employee's request for fees incurred by Dhali PLLC in the amount of \$2500, and Reimer Law PLLC in the amount of \$1500, cannot be awarded by OEA as that representation preceded the filing of Employee's Petition at OEA. As a result, the undersigned cannot award fees for services that are outside the scope of the OEA process. Employee filed his Petition for Appeal on October 10, 2019. The fee petition cites that Employee that he retained Dhali PLLC in November 2018, and Reimer Law, PLLC in September 2019.⁴⁷ The services for which reimbursement are sought from both Dhali PLLC and Reimer Law PLLC, precedes the date of the filing of the appeal at OEA. Further, there is no representation that services were provided from either of those entities following the filing of the Petition for Appeal, and it is noted that Alan Lescht and Associates, P.C. was retained on or around January 1, 2020.⁴⁸ As a result, I find that the request for reimbursement in the amounts **\$2500 to Dhali PLLC., and \$1510 to Reimer Law PLLC., are DENIED.**

Accordingly, for the aforementioned reasons, I find that the request for attorney fees in this matter is reasonable. I further find that Employee's counsel documented with clarity and enumerated all costs and fees appropriately. As a result, I find it appropriate to award attorney fees to Alan Lescht and Associates, P.C. for 156.7 hours of legal services provided in this matter between January 2020 and January 2023 (per applicable *USAO Fitzpatrick Matrix* rates and documented expenses) in the amount of **\$54,026.10 and litigation costs in the amount of \$1,139.32**. Accordingly, I find that the total amount of fees to be awarded is **\$55,165.42**.

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, **\$55,165.42 (Fifty-five-thousand-one-hundred sixty-five dollars and forty-two cents)** in attorney fees and costs.

FOR THE OFFICE:

—

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

⁴⁵ OEA Matter No. 2401-0123-04 (March 22, 2011)

⁴⁶ OEA Matter No. 2401-0124-03 (December 6, 2004).

⁴⁷ Employee's Fee Petition at Page 6. (March 9, 2023).

⁴⁸ *Id.* at Exhibit 5.