THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,[1]	)	OEA Matter No. 1601-0006-20AF22
	)	
v.	)	Date of Issuance: March 17, 2023
	)	
D.C. ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION, Agency	)	MONICA DOHNJI, Esq. Senior Administrative Judge
	)	

Roberto Alejandro, Esq., Employee Representative
Charles Tucker, Jr., Esq., Employee Representative
Connor Finch, Esq., Agency's Representative

ADDENDUM DECISION ON ATTORNEY FEES

INTRODUCTION AND PROCEDURAL HISTORY

On November 14, 2019, Employee filed a Petition for Appeal with the D.C. Office of Employee Appeals ("OEA" or "Office") contesting the D.C. Alcoholic Beverage Regulation Administration's ("ABRA" or "Agency") decision to terminate her from her position as a Licensing Specialist effective October 25, 2019. Employee was terminated for failure to meet established performance standards pursuant to District Personnel Manual ("DPM") § 1605.4(m). Agency filed its Answer to Employee's Petition for Appeal on December 13, 2019.

On March 11, 2021, I issued an Initial Decision ("ID"), reversing Agency's decision to terminate Employee. Agency appealed the ID to the OEA Board. On August 26, 2021, the OEA Board issued an Opinion and Order on Petition for Review ("O&O") denying Agency's Petition for Review. The O&O directed Agency to "reimburse Employee for all back pay and benefits lost as a result of the termination action for the period of October 15, 2019, to February 6, 2020."[2] Agency did not appeal the Board's decision.

On February 15, 2022, Employee's attorney files a Motion for Attorneys' Fees, Cost or related expenses.[3] Employee's attorney noted that Employee was the prevailing party and

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] *Employee v. D.C. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0006-20, Opinion and Order on Petition for Review (August 26, 2021).
[3] *See* Employee's Motion for Attorneys' Fees, Cost and Related Expenses (February 15, 2022).

attorney fees were warranted in the interest of justice. On March 1, 2022, the undersigned issued an Order requiring the parties to attend a virtual Conference on March 23, 2022. Subsequently, on March 8, 2022, Agency filed its Opposition to Employee's Fee Petition, asserting that the Employee's Attorney Fee Petition was untimely filed, did not establish that an award of attorney's fees is in the interest of justice and did not meet the burden of proof to establish that the requested amount was reasonable.[4] Following the scheduled Status Conference, this matter was held in abeyance so the parties could address a pending compliance matter.[5] Employee responded to Agency's Opposition to Fee Petition on April 1, 2022.[6] On October 13, 2022, following the resolution of the compliance issue, the undersigned convened a Status Conference for November 9, 2022. Thereafter, on November 22, 2022, Employee filed a Supplemental Motion for Attorney' Fees, Cost or Related Expenses. Thereafter, Agency filed an Opposition to Employee's Supplemental Motion for Attorneys' Fees, Cost or Related Expenses on January 6, 2023. The record is now closed.

JURISDICTION

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

ISSUES

1) Whether Employee is a prevailing party for the purpose of determining whether the award of attorney fees is warranted; and

2) If so, whether the payment of attorney fees is warranted in the interest of justice.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

D.C. Official Code §1-606.08 provides that an agency may be directed to pay reasonable attorney fees if the employee is the prevailing party and payment is "warranted in the interest of justice." *See also*, OEA Rule 634.1, 59 DCR 2129 (March 16, 2012). This award is an exception from the "American Rule" which requires each party to pay its own legal fees.[7] The goal, in awarding attorney fees, is to attract competent counsel to represent individuals in civil rights and other public interest cases, where it might be otherwise difficult to retain counsel.[8]

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[4] *See* Agency's Opposition to Employee's Fee Petition (March 8, 2022).
[5] Employee's attorney informed the undersigned during the March 23, 2022, Status Conference that Agency had not complied with the OEA Board's Order, dated August 26, 2021. The parties agreed that this matter be held in abeyance pending a resolution in the compliance issue. Thereafter, on May 17, 2022, Employee filed an official Motion for Contempt and Sanctions. On September 29, 2022, Employee's representative emailed the undersigned and opposing counsel, noting that "I am happy to report that my client [Employee] finally received her backpay check according to your order early yesterday morning…" Accordingly, on September 30, 2022, I issued an Addendum Decision on Compliance, dismissing Employee's request for compliance.
[6] *See* Employee's Response to Agency's Opposition to Employee's Fee Petition (April 1, 2022). *See also,* Amended Motion for Attorneys' Fees, Cost or Related Expenses (April 1, 2022).
[7] *See Huecker v. Milburn*, 538 F.2d, 1241, 1245.
[8] *Newman v. Piggie Park Enterprises, Inc.,* 390 U.S. 400 (1968).

Prevailing Party

As noted above, D.C. Official Code §1-606.08 provides that an agency may be directed to pay reasonable attorney fees if the employee is the prevailing party. OEA has previously relied on its ruling in *Zervas v. D.C. Office of Personnel,* OEA Matter No. 1602-0138-88AF92 (May 13, 1993) and the Merit Systems Protection Board's ("MSPB")[9] holding in *Hodnick v. Federal Mediation and Conciliation Service,* 4 M.S.P.R. 371, 375 (1980) which held that, "for an employee to be a prevailing party, he must obtain all or a significant part of the relief sought…" However, the decision in *Hodnick* was overruled by the MSPB in *Ray v. Department of Human and Health Services*, 64 M.S.P.R. 100 (1994). In *Ray*, the MSPB adopted the U.S. Supreme Court's holding in *Farrar v. Hobby*, 506 U.S. 103 (1992) in determining the prevailing party in the context of the Civil Service Reform Act of 1978. Pursuant to *Ray*, "… to qualify as a prevailing party, a … plaintiff must obtain at least some relief on the merits of his claim. The plaintiff must obtain an enforceable judgement against the defendant from whom fees are sought … or comparable relief through a consent decree or settlement." In addition, the District of Columbia Court of Appeals in *Settlemire v. D.C. Office of Employee Appeals*, 898 A.2d 902 (D.C. 2006), noted that, "[g]enerally speaking the term 'prevailing party' is understood to mean a party 'who had been awarded some relief by the court' (or other tribunal) …"[10]

In the instant matter, Agency did not appeal the OEA Board's August 26, 2021, Opinion and Order. As such, the OEA Board's O&O upholding the undersigned's ID reversing Agency's decision to remove Employee became the binding decision of this Office and Employee was entitled to all of the relief sought in her Petition for Appeal. Also, Agency did not oppose any of Employee's requests for compliance and Agency has complied with the OEA Board's O&O and the undersigned's ID. Therefore, it is undisputed that Employee is the "prevailing party" here.

Interest of Justice

Pursuant to D.C. Official Code 1-606.08 and OEA Rule 634, the award of attorney fees is discretionary and not mandatory in a successful OEA appeal. In order to be awarded attorney fees, the party must be the prevailing party, and the degree of her success must also be sizeable enough to render the payment of attorney fees reasonable in the 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. 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;

[9] MSPB is this Office's federal counterpart.
[10] *See also, Texas State Teachers Association v. Garland Independent School District,* 489 U.S. 782, 109 S.Ct. 1486, 103 L.Ed.2d 866 (1989) (holding that the prevailing party need only "succeed on any issue in the litigation which achieves some of the benefit he sought in bringing the action."

3. Whether 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. 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 current matter, Agency argues that Employee, is not entitled to an award of attorney's fees in the interest of justice because none of the categories discussed in *Allen* are present in the instant matter. Employee on the other hand asserts that Agency's action violated *Allen* factors 1, 3, 4, and 5. The undersigned finds that the basis of the ID reversing Agency's removal of Employee was due to Agency's violation of *Allen* Factor 5. Agency knew or should have known that it's action of terminating Employee would not prevail on the merits when it commenced this proceeding because. Agency was familiar with the PIP process, yet it violated that process by adding new cases to Employee's workload in the middle of the PIP. Additionally, Agency was aware of Employee's declining health and her request to retire, prior to commencing the current proceeding. Thus, I find an award of attorney fees to be in the interest of justice. Accordingly, I further find that the requirements of both D.C. Official Code § 1-606.08 and OEA Rule 634.1 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.[11] Here, the undersigned is the equivalent of the trial court.[12]

Reasonableness of Attorney Fee

In *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the U.S. Supreme Court held that, the most critical factor in determining the reasonableness of an attorney's fee award is the degree of success obtained, since a requested fee based on the hours expended on the litigation as a whole may be deemed excessive if a plaintiff achieves only partial or limited success. In cases where a party is only partially successful, the trial court must exercise its discretion to determine what amount of fees, if any, should be awarded.[13] In the instant matter, Employee was fully successful in her appeal against Agency, and she is entitled to attorney fees. Once the conclusion is reached that attorney fees should be awarded, the determination must be made on the amount of the award. 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

[11] Citing *Hensley v. Eckerhart*, 461 U.S. 424, 103 S. Ct. 1993, 1941 (1983).
[12] *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).
[13] *Fleming v. Carroll Publ'g Co*., 581 A.2d 1219 (D.C. 1990).

reasonably comparable skill, experience, or reputation.[14] 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.[15] 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."

Here, in Employee's Motion for Attorneys' Fees, Cost, or related Expenses, Mr. Tucker requested attorney fees in the amount of $131,437.50, which represent a total of 181.75 hours of service at a rate of $850/hour for himself (a total of 131.25 hours); $375/hour for 'RP'- Rodney Patrick (a total of five (5) hours); $200/hour for his Paralegal (a total of three and a half (3.5) hours); and $500/hour for 'RA' – Roberto Alejandro (a total of 34.5 hours).

Additionally, Employee filed a Supplemental Motion for Attorneys' Fees, Cost or Related Expenses, adjusting its total fees amount to $150,225.00 and the total number of hours to 200.25 hours of service. This included an additional nine and a half (9.5) hours for Mr. Tucker; One (1) hour for the Paralegal; two and a half (2.5) hours for RA; and two (2) hours for 'MB' – Megan Betts at an hourly rate of $ 400.

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*.[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]

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."[18] The USAO Matrix was utilized by the USAO through 2021, and it has now adopted what it names the "Fitzpatrick Matrix."[19] The

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[14] *Blum v. Stenson*, 465 U.S. 886 (1984).
[15] *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516 (D.C. Cir. 1988).
[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] *See*. https://www.justice.gov/file/1461316/download – USAO Matrix Explanatory Note 1.
[19] *See*. https://www.justice.gov/usao-dc/page/file/1189846/download – Fitzpatrick Explanatory Note 1:

Fitzpatrick Matrix was adopted in 2022 to address the issues/conflicts found in previous matters regarding the use of the Laffey Matrix versus the USAO Matrix. However, it should be noted that this matrix has not yet been adopted for use outside the District of Columbia.

Further, it should be noted that Courts have "treated…the *Laffey* Matrix as a reference rather than a controlling standard."[20] "There is no concrete, uniform formula for fixing the hourly rates that are awarded in employment disputes (federal or local)."[21] The purpose of the *Laffey* Matrix is to provide a "short-cut compilation of market rates for a certain type of litigation."[22] 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.[23] 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."[24] Courts have increased or decreased the hourly rates depending on the characteristics of the case and the qualification of counsel.[25] In addition, "[t]he novelty [and] complexity of the issues" should be "fully reflected" in the determination of the fee award.[26] As a result, the undersigned will review this matter based upon the considerations of reasonableness as described above.

Hourly Rate

Charles Tucker, Esq.

Here, the record highlights that Mr. Tucker has over 24 years of experience practicing law. Counsel notes that Mr. Tucker is the Managing Partner at Tucker Moore Group LLC and the Cochran Firm. He also proffers that Mr. Tucker graduated from Law School in 1999, and has been practicing law since 2001; and he has worked in the Brooklyn District Attorney's Office, as a Senior Trial Attorney and worked as the Assistant Attorney General in the District of Columbia, earning over 98% victory rate on cases he defended.[27] However, Mr. Tucker did not

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> 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.

[20] *Elec. Transaction Sys. Corp. v. Prodigy Partners Ltd*., Inc., CIV. A 08-1610 (RWR, 2009 WL 3273920 (D.D.C. Oct. 9, 2009).
[21] *Ross v. Ofc. of Employee Appeals*, 2010 CA 3142 (MPA) (December 31, 2014).
[22] *Id*.
[23] *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).
[24] *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 Hous. Comm'n*, 599 A.2d 1113, 1115 (D.C. 1991).
[25] *See Elec. Transaction Sys. Corp*., supra.
[26] *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).
[27] Employee's Response to Agency's Opposition to Employee's Fee Petition (April 1, 2022).

provide this Office with his resume and any documentation evincing his years of experience, and skills as an attorney. Additionally, Mr. Tucker did not provide this Office with the fees charged by similarly situated attorneys. Moreover, a review of the retainer agreement between Mr. Tucker and the current Employee does not reveal a specific hourly rate. Instead, the agreement between Mr. Tucker and Employee provides that "[y]ou are entitled to be charged *reasonable fees and expenses* and to have your lawyer explain before or within a reasonable time after commencement of the representation how the fees and expenses will be computed and the manner and frequency of billing."[28] (Emphasis added). According to the *Laffey* Matrix, a reasonable hourly rate for an attorney with 20+ years of experience is $899 in the year 2019-2020; $914 in the year 2020-2021; $919 in the year 2021-2022; and $997 in the year 2022-2023. Under the "Fitzpatrick Matrix", a reasonable hourly rate for an attorney with 20 years of experience is $637 for 2019; $673 per hour for an attorney with 21 years of experience in 2020; and $684 per hour for an attorney with 22 years of experience in 2021.

Agency cited to a September 28, 2022, decision, wherein, Mr. Tucker was the attorney of record.[29] Agency argued that the AJ in this matter reduced the rate awarded to Mr. Tucker from the requested $850.00 per hour to $450.00 per hour. Agency also cited to fee petition filed by Mr. Tucker on May 24, 2022, before the United States District Court for the District of Maryland, wherein, Mr. Tucker requested attorneys' fees in the amount of $475.00 per hour for his services and $275.00 per hour for the services of Megan Betts, the attorney who drafted the Supplemental Fee Petition.[30]

In *Employee v. D.C. Department of Employment Services*, Mr. Tucker had a retainer agreement whereby, he specified an hourly rate of $450. However, during the attorney's fees proceeding, Mr. Tucker deviated from the negotiated hourly rate of $450, and request an hourly rate of $850. The AJ in *Employee v. D.C. Department of Employment Services* noted that "[i]t is unclear how Mr. Tucker derived his $850 hourly rate despite the retainer agreement attached with his motion providing the following rates: $450 per hour for named principals…" This case is similar to *Employee v. D.C. Department of Employment Services*, in that, the current Employee also had a retainer agreement. However, unlike in the case of *Employee v. D.C. Department of Employment Services*, here, Mr. Tucker failed to include a specific hourly rate in the retainer agreement with Employee. The retainer agreement simply noted that Employee will be charged at a reasonable rate. This gives the undersigned pause as a "reasonable hourly rate" could be any amount named by an attorney, notwithstanding considerations of actual "reasonableness". Based on the retainer agreement between the Tucker Law Group and the employee in *Employee v. D.C. Department of Employment Services,* and Mr. Tucker's Fee Petition filed in 2022, in Maryland, it can reasonably be assumed that the hourly rate based on Mr. Tucker's billing practices ranges from $450 to $475. Consequently, I will perform an analysis based on Mr. Tucker's billing practice of **$475** per hour and not the $850 hourly rate provided in the invoice he submitted with the attorney fees motion.

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[28] *See* Employee's Motion for Attorneys Fees, Cost or Related Expenses, *supra*, at What to Expect From Working With Us, no. 4.
[29] *Employee v. D.C. Department of Employment Services*, OEA Matter No. 1601-0012-14AF22 (Sept. 28, 2022).
[30] *Quintin Gray v. AMKO Auto of Waldorf Inc*., Case No.: 8:22-cv-00286-GLS (May 24, 2022). *See also* Agency's Opposition to Employee's Supplemental Motion for Attorneys Fees, Costs or Related Expenses, *supra*.

Roberto Alejandro, Esq.

The Tucker Moore Group charged Employee an hourly rate of $500 for Mr. Alejandro's services, noting that Mr. Alejandro graduated from the University of Connecticut School of Law in 2007.[31] Moreover, Mr. Alejandro did not provide his resume and any documentation evincing his years of experience, and skills as an attorney. The Undersigned therefore finds that Mr. Alejandro has not provided sufficient evidence to support the hourly rate requested based on his years of experience in the legal field. Additionally, the retainer agreement between Employee and the Tucker Moore Group as submitted to this Office is vague, as it does not reference a specific hourly rate or directs the undersigned and Employee to a specific rate matrix or chart. Instead, it simply provided that Employee will be charged a reasonable hourly rate. A reasonable hour rate could be based on the market rate, the firm's billing practices, the "Fitzpatrick Matrix" or the *Laffey* Matrix. Because the record is void of any documentation demonstrating Mr. Alejandro's legal experience, the undersigned will rely on the Tucker Moore Group's billing practices. As noted above, the AJ in *Employee v. D.C. Department of Employment Services*, noted that the retainer agreement between the parties specified the following rates: $450 per hour for named principals; $275 per hour for associates and other principals; and $150 per hour for law clerks and paralegals.

Additionally, Mr. Tucker's invoice submitted to the United State District Court for the District of Maryland in *Quintin Gray v. AMKO Auto of Waldorf Inc*., provided for an hourly rate of $475 for the principal and an hourly rate of $275 for the associates. There is nothing in the record to prove that Mr. Alejandro is a principal at the Tucker Moore Law Group. Consequently, here, Mr. Alejandro will be classified as an associate and the undersigned will perform an analysis based on the hourly rate of **$275**, consistent with the Tucker Moore Law Group's billing practices.

Megan Betts, Esq.

The Tucker Moore Group charged Employee an hourly rate of $400 for Ms. Betts' services, asserting that Ms. Betts has three (3) years of experience practicing law. The Tucker Moore Group did not provide did not provide Ms. Betts' resume and any documentation evincing her years of experience, and skills as an attorney. The Undersigned therefore finds that Ms. Betts has not provided sufficient evidence to support the hourly rate requested based on her years of experience in the legal field. And because the retainer agreement in this matter is vague, and the fact that the record is void of any evidence asserting that Ms. Betts is a principal at Tucker Moore Group, Ms. Betts will be considered an associate. Accordingly, the undersigned will perform an analysis based on the hourly rate of **$275**, consistent with the Tucker Moore Law Group's billing practice in *Employee v. D.C. Department of Employment Services, and Quintin Gray v. AMKO Auto of Waldorf Inc*.

[31] *See*, Employee's Response to Agency's Opposition to Fee Petition, supra, at pg. 8. Mr. Alejandro stated in Employee's Supplemental Motion for Attorneys Fees, Cost or Related Expenses, *supra*, that he has over 20 years of experience. However, 2007 to 2022 is fifteen (15) years of experience practicing law, and not 20 years of experience as stated in the Supplemental Motion.

Rodney Patrick, Esq.

The Tucker Moore Group charged Employee an hourly rate of $375 per hour, for work he did under the supervision of Mr. Tucker. Employee notes that Mr. Patrick graduated from Samford University, Cumberland School of Law in 2018. The Tucker Moore Group did not provide did not provide Mr. Patrick's resume and any documentation evincing his years of experience, and skills as an attorney. The Undersigned therefore finds that Mr. Patrick has not provided sufficient evidence to support the hourly rate requested based on his years of experience in the legal field. And because the retainer agreement in this matter is vague, and the fact that the record is void of any evidence asserting that Mr. Patrick is a principal at Tucker Moore Group, Mr. Patrick will be considered an associate. Thus, the undersigned will perform an analysis based on the hourly rate of **$275**, consistent with the Tucker Moore Law Group's billing practice in *Employee v. D.C. Department of Employment Services, and Quintin Gray v. AMKO Auto of Waldorf Inc*.

Paralegal

The Tucker Moore Group charged Employee an hourly rate of $200 for the Paralegal's services. Bases on the Tucker Moore Group's billing practices, the undersigned finds that a reasonable hourly rate for the Paralegal is **$150**.

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.[32] While is it 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.[33] The number of hours reasonably expended is calculated by determining the total number of hours and subtracting nonproductive, duplicative and excessive hours. In the instant matter, Employee requests attorney fees in the amount of $150,225 for 200.25 hours expended in this matter.

I have reviewed the total 200.25 hours claimed, as well as Agency's objections, and find that the number of hours expended were excessive for the degree of difficulty. This finding is based on the comparison of the professional services provided by other similarly experienced counsel who have appeared before this Office and the degree of legal complexity involved in the issues presented. This Office has consistently held that requests for attorney fees should be reasonable in nature and not excessive or duplicative. While an Evidentiary Hearing was held in this matter due to an issue of material fact regarding whether Employee engaged in the action for which she was charged, the undersigned finds that it was an otherwise straightforward matter.

[32] *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).
[33] *Id. Copeland supra.*

There were no complex legal arguments made by either party. OEA has held that the award of attorney fees can be reduced if a determination has been made that the fees were excessive.[34]

Billing Entries

Employee submitted two (2) billing invoices - one with the initial fee petition wherein, Employee billed a total of 181 hours and the second invoice with the supplemental fee petition, which incorporated the first invoice, with a combined total of 200.25 hours. Agency argues that the hours worked grossly exceed what is reasonable. Agency further notes that Employee's pleadings were poorly structured, often unsupported by citation to relevant law, at times illogical, and replete with basic errors. Additionally, Agency asserts that many of the line items indicate that Counsel is seeking compensation for hours exceeding what would be reasonably necessary to perform such services. Agency proffers the following:[35]

1. Counsel requests $11,900.00 to file an appeal to OEA despite the fact OEA publishes a simple appeal form. Agency notes that fourteen (14) hours of work was unnecessary and unreasonable for the task. Agency states that there is no advantage to departing from the form created by OEA to file an appeal, and counsel should not be rewarded for billing extraordinary amounts to do simple tasks.

2. Counsel requests $13,600.00 in fees for sixteen (16) hours of work for Employee's Brief. Agency notes that this request is unreasonable because the submission was unstructured, replete with basic grammatical errors, and confusing.

3. Counsel seeks attorneys' fees for services extraneous to the OEA matter and for services unrelated to Employee's OEA appeal. Agency explains that Employee seeks compensation for nineteen (19) hours of work performed before Employee was removed, including eight (8) hours of work performed before Agency even proposed Employee's removal.

4. Counsel requests $7,600.00 for his response to the proposed action; and seeks compensation for six and a half (6.5) hours of services performed on November 11, 2021, related to advice on retirement and benefit elections. Agency states that these services neither related to the OEA proceeding nor were performed before the deadline to file a request for fees to the OEA.

5. Employee requests over $14,725 for filing a six-page opposition to summary disposition that was poorly written and did not even cite to the controlling law.

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[34] *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).

[35] Agency's Opposition to Employee's Fee Petition, *supra*. See also Agency's Opposition to Employee's Supplemental Motion for Attorneys Fees, Costs or Related Expenses, *supra*.

6. Counsel requests an additional $18,788.00 in attorneys' fees for work he either neglected to include in his Fee Petition or earned after he filed the Fee Petition.

7. Counsel requests at least $212.50 for each of numerous emails he sent Agency regarding the status of Employee's backpay.

8. Counsel requests $5,100.00 (six hours) to draft the 3-page Fee Petition that clearly was largely copied and pasted from other filings (it relied on the 2012 OEA rules and an irrelevant federal regulation, not the relevant law in effect at the time the Fee Petition was filed).

9. Counsel request $1,700.00 to provide Employee tax advice regarding her retirement benefits.

10. Agency asserts that based on the paralegal rate of $200 an hour, Employee requests $100 in fees for notarizing the document. Such a fee, however, is twenty times higher than what may be charged, citing to l7 DCMR $ 2406.2 (notary publics may not charge more than $5.00 per notarial act).

11. Agency avers that on January 5, 2021, the paralegal billed for an hour to review a one-page order stating the transcript was available and providing the due date for closing arguments, and then communicate that with the client. On the same day, an attorney billed a quarter hour to do the exact same task. It does not take an hour to review a simple scheduling order, enter that order into a calendar, and notify the client of the order.

Upon review of the billing entries included with Employee's Motions, the undersigned finds that there are assessments for fees which seem unnecessary, particularly noting that the attorneys of record each have at least fifteen (15) years' experience in these matters. As previously outlined, OEA has held that "although it is not necessary to know the exact number of minutes spent nor the precise activity to which each hour was devoted, the fee application must contain sufficient detail to permit an informed appraisal of the merits of the application."[36] Here, in review of the arguments made by Agency regarding specific billing entries, the undersigned agrees with Agency's assertions regarding the unreasonableness of some of those entries. Of particular note, the undersigned finds that Counsel billed Employee for services unrelated to Employee's OEA appeal. Specifically, Counsel billed Employee for work performed prior to filing Employee's appeal with OEA on November 14, 2021.

A. Counsel charged Employee:

(1) four (4) hours for "Grievance filed against ABRA in regard to 5 day suspension" on January 5, 2019;

[36] *Alice Lee v. Metropolitan Police Department Supra* citing to *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).

(2) one (1) hour for "Meeting with client and CT to go over case status and gather information" on January 14, 2019;

(3) One (1) hour for "CT Review Response from ABRA with client in regard to" on February 4, 2019;

(4) One (1) hour for "CT Spoke with client in regards to Notice of Proposed Advance Action: Removal dated July 31, 2019" on August 2, 2019;

(5) Nine (9) hours for "CT Written Response to Notice of Proposed Action" on August 13, 2019;

(6) One (1) hour for "RP communicated with Judge Thomas to get information on how to submit her response but the Judge had no record of her case, but" on August 13, 2019; (6) one (1) hour for "CT Meeting with client in regards to MOLC Review and recommendation sent but Judge Thomas" on September 5, 2019;

(7) Half (0.5) an hour for "CT Communication with Attorney Moosally in regards a sixteen day (16) continuance until Monday, September 30 to issue my final decision" on September 12, 2019; and (8) half an hour (0.5) for "CT Meeting with client in regards to Final Agency Decision:" on October 16, 2019.

The undersigned fines that these entries totaled 19 hours of work performed prior to the filing of the Petition for Appeal at OEA, and some of the entries were for issues unrelated to the current adverse action. Consequently, these 19 hours are hereby **DENIED**.

B. Reduced - 11/15/2019 - CT – "CT Drafted and file Appeal to this Final Decision to remove: communicated to client regarding same." – Counsel used the OEA Petition for appeal form which is a simple form that was specifically designed so that *pro se* litigant would be able to complete with little or no difficulties. Consequently, I find that fourteen (14) hours is an unreasonable expenditure of time for this task, especially given Counsel's level of experience. **Reduced from 14 hours to two (2) hours.**

C. Reduced by 50% - 01/05/2021 – Paralegal – "Paralegal communicated with client re Order received." – One (1) hour is an unreasonable expenditure of time for this, especially since Mr. Tucker had also communicated the content of the Order to Employee on the same day. **Reduced from 1.0 hour to .5 hour**.

D. Denied – 11/11/2021 - CT – "CT conducted additional legal research re retirement v civ. Ret. Pay." – Denied - This appears to be for Employee's retirement selection.

Thus, while I find an award of attorney fees is warranted since Employee prevailed in this matter, as noted above, I find that the award must be significantly reduced. Further, I find that the request for attorney fees in the amount of $150,225 and the hourly rates presented in this matter to be wholly unreasonable and must be reduced. This reduction is based upon the

aforementioned reasons regarding the insufficient billing details, and the excessive/unreasonable expenditure of times conveyed in the billing fee invoice. Accordingly, based upon the following rates and hours:

1. Mr. Tucker - $475/hour for a total of 116.25 hours, for a total amount of $55,218.75.
2. Mr. Alejandro - $275/hour for a total of 36.5 hours, for a total amount of $10,037.50.
3. Mr. Patrick - $275/hour for a total of four (4) hours, for a total amount of $1,100.
4. Ms. Betts - $275/hour for a total of two (2) hours, for a total amount of $550.
5. Paralegal - $150/hour for a total of four (4) hours, for a total amount of $600.

Based on the above, the undersigned finds that a total award amount of sixty-seven thousand, five hundred and six and twenty-five cents (**$67,506.25)** is the appropriate fee award for this matter. In conclusion, I find that Employee is the prevailing party in this matter and in the interest of justice, she is entitled to the award of reasonable attorney fees.

ORDER

It is hereby ORDERED that Agency pay, within thirty (30) days from the date on which this addendum decision becomes final, **$67,506.25 to the Tucker Moore Group** in attorney fees and costs.

FOR THE OFFICE:

/s/ *Monica N. Dohnji*
MONICA DOHNJI, Esq.
Senior Administrative Judge