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**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

**ELIAS MAKERE,**

)

**Petitioner,**

)

)

Case No. 18-0373

**vs.**

)

2017-01432

)

**ALLSTATE CORPORATION,**

)

**Respondent**

)

---

**PETITIONER'S MOTION FOR OFFICIAL RECOGNITION  
OF ESTABLISHED ATTORNEY FEES AND COSTS**

---

Petitioner, ELIAS MAKERE, on this 7<sup>th</sup> day of September 2018, respectfully moves this Court to recognize the DOAH's historically established attorney fees and costs.

**Key Points:**

- |                |                                                                          |
|----------------|--------------------------------------------------------------------------|
| A.) Precedence | The DOAH has previously granted similar Motions for Official Recognition |
| B.) Coincides  | This Motion coincides with <i>Petitioner's Proposed Hearing Dates</i>    |

**Table of Contents:**

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**Background:** The Petitioner is preparing a *Hearing Date Proposal*, a *Motion for Sanctions*, and more

**Problem:** The Petitioner's upcoming pleadings need historical evidence of attorney fees and costs

**Request:** The Court officially recognizes the attorney fees and costs that it previously deemed reasonable

---

#### §28-106.101 | FAC

*"This chapter shall apply in all proceedings in which the substantial interests of a party are determined by the agency and shall be construed to secure the just, speedy, and inexpensive determination"*

#### §120.569(2)(i) | Florida Statutes

*"When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material."*

#### §90.202 | Florida Statutes

*"A court may take judicial notice of the following matters...*

*...(5) Official actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States...*

*...(6) Records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States...*

*...(12) Facts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned."*

#### Legal Citations

- |                   |                    |
|-------------------|--------------------|
| • Rule 28-106.101 | - FAC              |
| • §120.569(2)(i)  | - Florida Statutes |
| • §90.202         | - Florida Statutes |

#### Precedence

- |                         |                      |
|-------------------------|----------------------|
| • DOAH Case No. 09-4637 | - Case Law (3/26/10) |
| • DOAH Case No. 12-2886 | - Case Law (9/26/12) |

The DOAH granted similar motions for official recognition

## **MOTION**

### **Established Fact**

- Fact 1: The DOAH established that \$185 was a reasonable hourly rate for an Orlando-based attorney  
see **Exhibit 301**
- Fact 2: The DOAH established that \$350 was a reasonable hourly rate for a Tallahassee-based attorney  
see **Exhibit 302**
- Fact 3: The DOAH established that \$300 was a reasonable hourly rate for a Tallahassee-based attorney  
see **Exhibit 303**
- Fact 4: The DOAH established that \$150 was a reasonable hourly rate for traveling  
see **Exhibit 303**
- Fact 5: The DOAH established that \$200 was a reasonable hourly rate for a Pensacola-based attorney  
see **Exhibit 304**
- Fact 6: The DOAH established that \$350 was a reasonable hourly rate for a Pensacola-based attorney  
see **Exhibit 305**
- Fact 7: The DOAH established that \$245 was a reasonable hourly rate for an Orlando-based paralegal  
see **Exhibit 305**
- Fact 8: The DOAH established that \$155 was a reasonable hourly rate for an Orlando-based paralegal  
see **Exhibit 305**
- Fact 9: The DOAH established that \$350 was a reasonable hourly rate for a Tallahassee-based attorney  
see **Exhibit 306**
- Fact 10: The DOAH established that \$325 was a reasonable hourly rate for a Bunnell-based attorney  
see **Exhibit 306**
- Fact 11: The DOAH established that \$150 was a reasonable hourly rate for a Bunnell-based paralegal  
see **Exhibit 306**

These facts come from publicly available cases on the DOAH website (ie capable of accurate and ready determination from verifiable sources; §90.202).

Please see the following page for a summary.

Orders Granting Attorney Fees/Costs

| # | Case Number | Date    | Calculated Total | Attorney's Rate | Other Rate                              | Docket Entries |
|---|-------------|---------|------------------|-----------------|-----------------------------------------|----------------|
| 1 | 03-1452     | 7/30/03 | \$2,528.56       | \$185           | -                                       | 19             |
| 2 | 04-2341     | 5/26/05 | \$30,345         | \$350           | -                                       | 42             |
| 3 | 05-1317     | 7/27/05 | \$15,304         | \$300           | \$150 <sup>a</sup>                      | 12             |
| 4 | 10-9412     | 4/13/11 | \$100            | \$200           | -                                       | 31             |
| 5 | 11-5473     | 4/10/12 | \$7,808          | \$350           | \$245 <sup>b</sup> , \$155 <sup>b</sup> | 29             |
| 6 | 16-5246     | 9/21/17 | \$56,394         | \$350           | -                                       | 166            |
| 7 | 16-5246     | 9/21/17 | \$12,494         | \$325           | \$150 <sup>b</sup>                      | 33             |

Please see **Exhibit 301** through **Exhibit 306** for details.<sup>a</sup> Hourly rate for travel<sup>b</sup> Hourly rate for paralegal

Pertinence

The Petitioner contends that this case has been far more expensive than usual ( $\approx \$357,093$ ).

These established attorney fees will feed the inputs for an expense analysis. The Petitioner will use that analysis in upcoming pleadings (Proposed Hearing Dates, Sanctions, etc.).

**CONFERRAL**

On September 7, 2018, the Petitioner asked the Respondent to recognize the established attorney fees and costs. Afterwards, he followed up with a phone call. After receiving no answer he asked the Respondent if it opposed this Motion.

The Respondent did not respond.

Nonetheless, the Petitioner believes the foregoing presents a sufficient and important reasons for recognition of established Attorney Fees and Costs.

**CONCLUSION**

WHEREFORE, the Petitioner respectfully requests that this Court grant the Petitioner's Motion for Official Recognition of Established Attorney Fees and Costs.

Dated this 7<sup>th</sup> day of September 2018.

Respectfully submitted,

**ELIAS MAKERE**

s/ Elias Makere

Pro Se

3709 San Pablo Rd. S # 701

Jacksonville, FL 32224

Tel: (904) 294-0026

E-mail: [justice.actuarial@gmail.com](mailto:justice.actuarial@gmail.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 7<sup>th</sup> day of September 2018, I electronically filed the foregoing with the Clerk of Courts by using the Florida Courts E-filing Portal which will send a notice of electronic filing to the following:

*Liebler, Gonzalez & Portuondo  
44 West Flagler Street  
Courthouse Tower 25<sup>th</sup> Floor  
Miami, FL 33130  
(respondent's lawyer)*

*on behalf of:  
Allstate Corporation  
2775 Sanders Road F5  
Northbrook, IL 60062  
(respondent)*

Tammy S. Barton, Agency Clerk  
Florida Commission on Human Relations  
Room 110  
4075 Esplanade Way  
Tallahassee, Florida 32399-7020  
(agency)

Elias Makere  
3709 San Pablo Rd. S #701  
Jacksonville, FL 32224  
(petitioner)

s/ Elias Makere

# EXHIBIT 301

Case No. 03-1452 | 7/30/03  
Interlocutory Order | Page 2  
Defendant's Affidavit (8/7/03)

Orlando, Florida, to Pensacola, Florida, to attend the scheduled deposition.

Pursuant to Rule 1.380(d), Florida Rules of Civil Procedure, Respondent requests attorney's fees and costs incurred in bringing the instant motion and to reimburse Respondent for the costs incurred by its attorney traveling to Pensacola for the deposition.

Upon consideration, it is

ORDERED:

Respondent's Motion to Dismiss is denied without prejudice. Respondent's Motion to Compel is granted. Respondent's request for attorney's fees and reimbursement of costs is granted.

Petitioner shall respond to Respondent's First Set of Interrogatories and First Request for Production of Documents within 14 days of the date of this Order. Petitioner shall cooperate with counsel for Respondent in rescheduling his deposition. Failure to appear at the rescheduled deposition or failure to timely respond to interrogatories or request for production of documents may result in entry of a recommended order of dismissal.

Respondent may file an affidavit of costs incurred for travel and lodging expenses for its attorney to attend Petitioner's previously-scheduled deposition and for reasonable

# FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

www.laborlawyers.com



FILED

03 AUG -7 AM 9:04

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

August 6, 2003

## Orlando

1250 Lincoln Plaza  
300 South Orange Avenue  
Orlando, FL 32801  
(407) 541-0888 Tel  
(407) 541-0887 Fax

Juan C. Lopez-Campillo, Esq.  
Direct Dial (407) 541-0884  
jlopez@laborlawyers.com

### VIA OVERNIGHT DELIVERY

Clerk of Division  
Administrative Hearings  
State of Florida Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-3060

03-1452 B.T.S.

Re: *Carlton L. Hartley vs. ChoicePoint Precision  
Marketing*  
FCHR Charge No: 23-00188 /

Dear Sir/Madam:

Enclosed please find an original of one copy of Respondent's Notice of Filing Affidavit in connection with the above-referenced matter. Once the document has been filed, please date-stamp the enclosed copy page and return same to the undersigned in the self-addressed, stamped envelope provided.

Should you have any questions regarding this request, please feel free to contact me or my assistant, Joann Harris. Thank you for your prompt attention to this matter.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'Juan C. Lopez-Campillo'.

Juan C. Lopez-Campillo  
For FISHER & PHILLIPS LLP

JCL/vmk

Enclosures

cc: Carlton L. Hartley (w/ encl.)

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FILED  
03 AUG -7 AM 9:04  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

CARLTON L. HARTLEY, SR.,

Petitioner,

vs.

CHOICEPOINT PRECISION MARKETING,

Respondent.

Case No. 03-1452  
23-00188

NOTICE OF FILING AFFIDAVIT

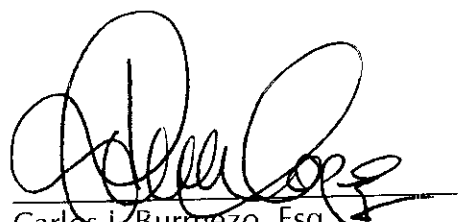
COMES NOW, Respondent, CHOICEPOINT PRECISION MARKETING ("ChoicePoint"), by and through its undersigned attorneys and pursuant to this Honorable Court's Order of July 30, 2003, and files the Affidavit of Juan Lopez-Campillo detailing the costs incurred by ChoicePoint in travel and lodging expenses for its attorney to attend Petitioner's previously-scheduled deposition, together with the attorneys' fees incurred by ChoicePoint in bringing the referenced Motion to Compel.

DATED this 6<sup>th</sup> day of August, 2003.

Respectfully submitted,

FISHER & PHILLIPS LLP  
1250 Lincoln Plaza  
300 South Orange Avenue  
Orlando, Florida 32801  
Telephone: (407) 541-0888  
Facsimile: (407) 541-0887

By:

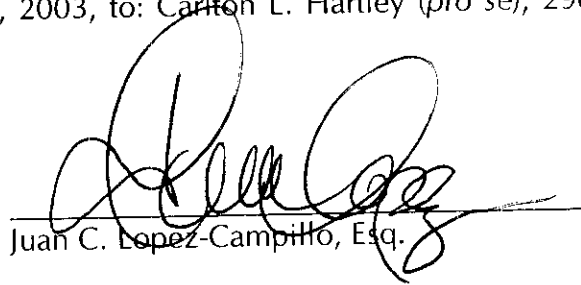
  
Carlos J. Burruezo, Esq.  
Florida Bar No. 843458

Juan C. Lopez-Campillo, Esq.  
Florida Bar No. 0139785

Attorneys for Respondent CHOICEPOINT  
PRECISION MARKETING

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via  
overnight mail, this 6<sup>th</sup> day of August, 2003, to: Carlton L. Hartley (*pro se*), 2903 East  
Johnson Avenue, Pensacola, FL 32514.

  
Juan C. Lopez-Campillo, Esq.

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FILED  
03 AUG -7 AM 9:04  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

CARLTON L. HARTLEY, SR.,

Petitioner,

vs.

CHOICEPOINT PRECISION MARKETING,

Respondent.

Case No. 03-1452

23-00188

AFFIDAVIT OF JUAN LOPEZ-CAMPILLO

STATE OF FLORIDA )

COUNTY OF ORANGE )

BEFORE ME, the undersigned authority, personally appeared JUAN LOPEZ-CAMPILLO, who, after first being duly sworn, deposes and states that he is an adult person, over eighteen (18) years of age, competent to testify as to the following matters regarding which he has personal knowledge and/or which he believes to be true:

1. My name is Juan Lopez-Campillo. I am an attorney in the Orlando office of Fisher & Phillips LLP, which represents the Respondent, ChoicePoint Precision Marketing, in the instant action. I am co-counsel on this case with Carlos J. Burruezo, Esq., also of Fisher & Phillips LLP.

2. On June 24, 2003, I traveled from Orlando, Florida to Pensacola, Florida, to take the scheduled and noticed deposition of Petitioner Carlton Hartley. Mr. Hartley did not appear for his deposition. I incurred the following costs in traveling to

Pensacola for Mr. Hartley's deposition:

|                      |                  |
|----------------------|------------------|
| Airfare              | \$ 485.50        |
| Rental Car           | \$ 76.50         |
| Gas for Rental       | \$ 5.00          |
| Insurance for Rental | \$ 3.00          |
| Travel Insurance     | \$ 9.97          |
| Hotel                | \$ 143.84        |
| Meals                | \$ 30.75         |
| Tips                 | \$ 5.00          |
| Parking              | \$ 30.00         |
| <b>Total</b>         | <b>\$ 789.56</b> |

3. Our firm spent 9.4 hours of attorney time in bringing the Motion to Dismiss/to Compel that was filed with the Court on July 17, 2003. The 9.4 hours of attorney time included conducting research in preparation for drafting the Motion; drafting, revising and finalizing the Motion; and conferring with Mr. Hartley regarding the relief sought in the Motion. The 9.4 hours of attorney time was billed at a rate of \$185.00 per hour. Thus, ChoicePoint incurred **\$1739.00** in attorneys' fees in bringing the Motion.

4. In sum, ChoicePoint incurred **\$2528.56** in travel and lodging expenses for its attorney to attend Petitioner's previously-scheduled deposition and in bringing the aforementioned Motion to Compel.

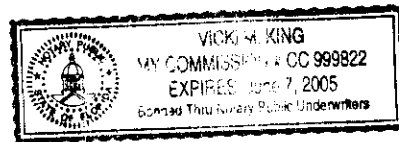
FURTHER AFFIANT SAYETH NAUGHT.

  
JUAN LOPEZ-CAMPILLO

SWORN TO AND SUBSCRIBED before me this 6th day of August 2003,  
by Juan Lopez-Campillo, who is ✓ personally known to me, or \_\_\_\_\_ who has  
produced \_\_\_\_\_ as identification.

VICKI M. KING  
NOTARY PUBLIC  
VICKI M. KING  
Printed Name

My Commission Expires:



# EXHIBIT 302

Case No. 04-2341 | 5/26/05

Final Order | Pages 6-10

until 2004 to promulgate a rule which addressed recounting votes when a touchscreen system is used.

8. Petitioners seek an award of attorneys' fees representing 98.80 hours at an hourly rate of \$350 per hour.

9. Petitioners were represented in the rule challenge by Jerry G. Traynham, who acted as lead counsel, and Ben R. Patterson, who assisted Mr. Traynham. Mr. Patterson and Mr. Traynham are partners in the law firm Patterson & Traynham.

10. Mr. Patterson has been practicing law in Florida since 1970. His practice concentrates on labor relations and the rights of employees. He has had numerous administrative and judicial hearings.

11. Mr. Traynham has practiced law in Florida for 29 years. A substantial portion of his practice has been before administrative tribunals, including the Division of Administrative Hearings.

12. The law firm of Patterson & Traynham billed the time for Mr. Patterson and Mr. Traynham at the rate of \$350 per hour for fee-paying casual clients, not represented on a contingent fee basis. This rate is reasonable based on their experience and skills. The hourly rates in the Tallahassee, North Florida market for attorneys with similar skills, experience, and reputations ranges from \$275 to \$400 per hour.

13. Petitioners submitted time records reflecting the time spent by Mr. Patterson and Mr. Traynham relating to the rule challenge. Petitioners should not receive attorneys' fees for some of the time set forth in the time records.

14. On August 25, 2004, half an hour was billed for "drafting notice of voluntary dismissal for client unable to appear at hearing." Since the client dismissed its petition, it is not a prevailing party and cannot recover fees.

15. The time entered after the Final Order was issued, 11.6 hours, is not related to the administrative proceeding and should not be allowed. Subtracting this time, along with the time for drafting a voluntary dismissal, from the total time brings the amount of hours reasonably expended in bringing the rule challenge to 86.7.

16. There was no evidence presented to demonstrate that the lodestar should be increased or decreased, and Petitioners do not claim that the lodestar should be increased.

#### CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.595(3), Fla. Stat. (2004).

18. Subsection 120.595(3), Florida Statutes (2004), provides:

If the court or administrative law judge declares a rule or portion of a rule invalid pursuant to s. 120.56(3), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that its actions were substantially justified or special circumstances exist which would make the award unjust. An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency. . . . No award of attorney's fees as provided by this subsection shall exceed \$15,000.

19. Petitioners were successful in having Florida Administrative Code Rule 1S-2.031(7) determined to be invalid pursuant to Subsection 120.56(3), Florida Statutes (2004). Thus, the issue is whether the Department's promulgation of the rule was substantially justified or whether special circumstances exist which would make the award unjust. The Department has the burden to demonstrate whether the promulgation of the rule was substantially justified or whether special circumstances exist which would make the award unjust. Department of Insurance v. Florida Bankers Association, 764 So. 2d 660 (Fla. 1st DCA 2000).

20. The term "substantially justified" appears in other statutes governing attorneys' fees, such as the Florida Equal Access to Justice Act and the Federal Equal Access to Justice Act. In Helmy v. Department of Business and Professional Regulation, 707 So. 2d 366, 368 (Fla. 1st DCA 1998), the First

District Court of Appeal found that the substantially justified standard as used in Section 57.111, Florida Statutes, the Florida Equal Access to Justice Act, fell "somewhere between the no justiciable issue standard of section 57.105, Florida Statutes (1991), and an automatic award of fees to a prevailing party." The Supreme Court discussed the substantially justified standard contained in the Federal Equal Access to Justice Act in Pierce v. Underwood, 487 U.S. 522 (1988).

We are of the view, therefore, that as between the commonly used connotations of the word "substantially," the one most naturally conveyed by the phrase before us here is not "justified to a high degree," but rather "justified in substance or in the main"--that is, justified to a degree that could satisfy a reasonable person. That is no different from the "reasonable basis both in law and fact" formulation adopted by the Ninth Circuit and the vast majority of other Courts of Appeals that have addressed this issue. . . . To be "substantially justified" means, of course, more than merely undeserving of sanctions for frivolousness; that is assuredly not the standard for Government litigation of which a reasonable person would approve.

21. The Department was not substantially justified in promulgating the rule which prohibited recounting of overvotes and undervotes when a DRE voting system is used. There was no solid basis in law or fact to support the rule.

22. The rule directly conflicts with Section 102.166, Florida Statutes (2004), which requires manual recounts of

overvotes and undervotes when the margin of victory is one-quarter of a percent or less or when there is a proper and timely request for a manual recount. The legislature made no distinction between voting systems using paper ballots and voting systems using touchscreens when requiring manual recounts. In the 2004 legislative session, SB 3004 was introduced containing language which would essentially prohibit manual recounts for touchscreen voting systems. The conference committee substitute legislation rejected this language, leaving the provisions requiring manual recounts intact.

23. The DRE systems certified by the Department for use in Florida do not contain the mechanisms to do a manual recount. However, this does not mean that such machines are incapable of providing for manual recounts. DRE systems do exist which allow manual recounts through paper trails.

24. As discussed in the Findings of Fact, no special circumstances exist which would make an award of attorneys' fees unjust.

25. Petitioners incurred reasonable attorneys' fees in the amount of \$30,345, which represents 86.7 hours at an hourly rate of \$350. Section 120.593, Florida Statutes (2004), limits recovery of attorneys' fees to \$15,000. Thus, Petitioners are entitled to recover \$15,000 in attorneys' fees.

# EXHIBIT 303

Case No. 05-1317 | 7/27/05  
Final Order | Page 3

Petitioner's attorney spent a total of 53 hours on this case, which include 46 hours for legal services and seven hours for travel. The hours multiplied by the reasonable rate results in a total of \$14,850.00 for attorney's fees. The Commission's direct costs total \$453.70, which include the travel costs of Petitioner's attorney and investigator to attend the hearing and the court reporter's fee.

6. The time spent on this case by the Petitioner's attorney was reviewed by an outside expert. The expert has found the time to be reasonable and has recommended a reasonable hourly rate, arrived at independently of the Commission and its attorneys and without direction by Petitioner, based on the nature, novelty and complexity of the case, and the expertise of the Petitioner's attorney in federal and Florida administrative and anti-discrimination law. The expert opined that a rate of \$300.00 per hour legal services and \$150.00 per hour for travel was reasonable.

7. Respondent did not challenge the affidavit of Petitioner's or the expert's opinion. The amount of hours and costs reflected in the affidavit are reasonable for this type of case. Likewise, the hourly fees for such litigation are reasonable for this type of case and the long experience of

# EXHIBIT 304

Case No. 10-9412 | 4/13/11

Movant's Affidavit (3/28/11)

Interlocutory Order

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

|                               |   |                   |
|-------------------------------|---|-------------------|
| SHANDA F. LOWERY,             | ) |                   |
|                               | ) |                   |
| Petitioner,                   | ) | Case No.10-009412 |
|                               | ) |                   |
| vs.                           | ) |                   |
|                               | ) |                   |
| ESCAMBIA COUNTY SCHOOL BOARD, | ) |                   |
|                               | ) |                   |
| Respondent.                   | ) |                   |
|                               | ) |                   |

---

**REQUEST FOR ATTORNEY'S FEES**

In the order of the Administrative Law Judge of March 21, 2011, the Respondent was awarded attorney's fees in connection with the hearing. The Respondent's counsel was directed to submit any time and/or fees claimed. Undersigned counsel expended .50 of one hour in preparation for and completion of the motion hearing. At least .20 was expended in preparing the motion that generated the hearing due to Shanda Lowery's failure to cooperate with scheduling of depositions. A total of .50 with a claimed rate of \$200.00 per hour the Respondent requests the award of attorney's fees in the amount of \$100.00.

Respectfully submitted,

/s/ Joseph L. Hammons  
JOSEPH L. HAMMONS  
FBN: 218979  
The Hammons Law Firm, P.A.  
17 W. Cervantes Street  
Pensacola, FL 32501  
Attorney for Respondent

\* \* \*

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to Shandra F. Lowery, 502 East

Jordan Street., Pensacola, FL 32503, by U.S. Mail on 28<sup>th</sup> March, 2011.

/s/ Joseph L. Hammons

JOSEPH L. HAMMONS

FBN: 218979

The Hammons Law Firm, P.A.

17 W. Cervantes Street

Pensacola, FL 32501

(850) 434-1068

Attorney for Respondent

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

|                               |   |                  |
|-------------------------------|---|------------------|
| SHANDA F. LOWERY,             | ) |                  |
|                               | ) |                  |
| Petitioner,                   | ) |                  |
|                               | ) |                  |
| vs.                           | ) | Case No. 10-9412 |
|                               | ) |                  |
| ESCAMBIA COUNTY SCHOOL BOARD, | ) |                  |
|                               | ) |                  |
| Respondent.                   | ) |                  |
| _____                         | ) |                  |

ORDER GRANTING ATTORNEY'S FEES

This cause came before the undersigned based upon Respondent's Request for Attorney's Fees, filed on March 28, 2011. The undersigned being fully advised in its premises, it is

ORDERED that the motion is granted and Respondent is awarded \$100.00 in attorney's fees and costs payable by Petitioner Shanda Lowery.

DONE AND ORDERED this 13th day of April, 2011, in Tallahassee, Leon County, Florida.



\_\_\_\_\_  
DIANE CLEAVINGER  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 13th day of April, 2011.

COPIES FURNISHED:

Denise Crawford, Agency Clerk  
Florida Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, Florida 32301

Donna Sessions Waters, Esquire  
Escambia County School Board  
215 West Garden Street  
Pensacola, Florida 32502-5728

Shanda F. Lowery  
502 East Jordan Street  
Pensacola, Florida 32503

Joseph L. Hammons, Esquire  
The Hammons Law Firm, P.A.  
17 West Cervantes Street  
Pensacola, Florida 32501-3125

# EXHIBIT 305

Case No. 11-5473 | 4/10/12

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

|                             |   |                  |
|-----------------------------|---|------------------|
| KOREY REDMOND,              | ) |                  |
|                             | ) |                  |
| Petitioner,                 | ) |                  |
|                             | ) |                  |
| vs.                         | ) | Case No. 11-5473 |
|                             | ) |                  |
| THE HARTFORD FIRE INSURANCE | ) |                  |
| COMPANY,                    | ) |                  |
|                             | ) |                  |
| Respondent.                 | ) |                  |
| _____                       | ) |                  |

ORDER AWARDING RESPONDENT ATTORNEYS' FEES AND COSTS

This cause came before the undersigned on the Recommended Order of Dismissal and Order Granting Respondent Attorneys' Fees and Costs entered on March 13, 2012. The Recommended Order awarded Respondent reasonable attorneys' fees and costs based on the Petitioner's failure to participate in discovery. The undersigned retained jurisdiction to determine the amount of reasonable attorneys' fees and costs expended in the effort to obtain the discovery.

The Recommended Order directed Respondent's counsel to provide information supporting the amount claimed by Respondent, and directed the Petitioner to file any response within seven days of the Respondent's filing. On March 19, 2012, the Respondent filed an affidavit setting out the hourly rate, number of hours expended, and the costs in attempting to obtain discovery from the Petitioner. The Respondent's affidavit set out \$9,565.36 as reasonable attorneys' fees and costs. To date, Petitioner has not filed any response.

The law is clear that an award of attorneys' fees must be supported by substantial competent evidence. Tutor Time Merger, Corp., v. McCabe, 763 So. 2d 505, 506 (Fla. 4th DCA 2000). Consequently, a trial court must set forth specific findings as to the hourly rate, number of hours reasonably expended and the appropriateness of reduction or enhancement factors. Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985), modified 555 So. 2d 828 (Fla. 1986).

Turning to the affidavit in the instant case and reviewing the case file, the undersigned has determined that a reasonable award of attorneys fees of \$7,009.00, and costs of \$799.36. This determination is based on the foregoing facts. First, the undersigned in consideration of the Respondent's affidavit finds that the hourly rate for Mr. Lopez-Campillo (JCLC) of \$350.00 an hour is reasonable; the hourly rate for Ms. DeBono (JAD) of \$245.00 an hour is reasonable; and the hourly rate for Ms. Zagorski (SZ) of \$155.00 an hour is reasonable.

Next, in reviewing the reasonable number of hours expended, the undersigned reviewed the time entries provided by Respondent's counsel. Based upon the description of the time entries and review of the case filings, the undersigned has determined to disallow some of the claimed time. For the purpose of clarity, the undersigned will identify the specific time entry by date, the reason for disallowing the time. The initials of the attorneys and paralegal are used to identify the individual.

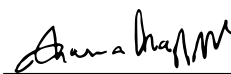
| Date     | Attorney/Paralegal | Hours | Reason for finding hours unreasonable                       |
|----------|--------------------|-------|-------------------------------------------------------------|
| 12/02/11 | SZ                 | 0.8   | Duplication of time between JAD and SZ.                     |
| 12/5/11  | SZ                 | 0.3   | Duplication of time between JCLC and SZ.                    |
| 12/13/11 | JAD                | 0.20  | Communication with Petitioner repetitive from day before.   |
| 01/06/12 | SZ                 | 1.70  | Time excessive in light of entry 1.80 earlier on same date. |
| 01/10/12 | JAD                | .30   | Communication with judge chambers is secretarial, not legal |

|                                            |      |      |                                                             |
|--------------------------------------------|------|------|-------------------------------------------------------------|
| 01/13/12                                   | SZ   | .10  | Communication with judge chambers is secretarial, not legal |
| 1/31/12                                    | JAD  | .90  | Duplicative of time spent preparing motion                  |
| 2/6/12;<br>2/13/12;<br>2/14/12;<br>3/13/12 | JAD  | .70  | Non-legal work                                              |
| 02/29/12                                   | JCLC | 1.50 | excessive                                                   |

Based on the foregoing, the undersigned finds that reasonable amount of time expended in attempting to obtain discovery in defense of the case is 27.50 hours. The number of hours of each attorney and paralegal are as follows: 4.1 hours for Mr. Lopez-Campillo; 21.60 hours for Ms. DeBono; and 1.8 hours for Ms. Zagorski. Using the established hourly rates and the hours, the undersigned finds the reasonable amount of attorneys' fees is \$7009.00. Further, based on the affidavit the reasonable costs are \$799.36.

Therefore, it is Ordered and adjudged that the Respondent is awarded reasonable attorneys' fees in the amount of \$7009.00, and costs of \$799.36, against the Petitioner, Mr. Korey Redmond, for a total award of \$7808.36.

DONE AND ORDERED this 10th day of April, 2012, in Tallahassee, Leon County, Florida.



THOMAS P. CRAPPS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 10th day of April, 2012.

COPIES FURNISHED:

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# EXHIBIT 306

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### Attorneys' Fees and Costs

37. Upon receipt and review of the complaints filed against Ericksen and others in late 2014, Flagler County informed its liability insurance carrier and requested that counsel experienced in ethics and elections law be retained to defend against those complaints. At the specific request of the County, Mark Herron of the Messer Caparello law firm was retained to defend these complaints. Mr. Herron is an experienced lawyer whose practice focuses almost exclusively on ethics and elections related matters.

38. Mr. Herron was retained by Flagler County on the understanding that the Messer Caparello firm would be compensated by the County's liability insurance carrier at a rate of \$180 per hour and that the County would make up the difference between the \$180 per hour that the insurance carrier was willing to pay and the reasonable hourly rate.

39. The rate of \$180 per hour paid by the County's liability insurance carrier to the Messer Caparello firm is an unreasonably low hourly rate for an experienced practitioner in ethics and election matters. Expert testimony adduced at the hearing indicated that a reasonable hourly rate would range from \$250 to \$450 per hour. Accordingly, a reasonable hourly rate to compensate the Messer Caparello firm in this proceeding is \$350 per hour.

40. The total hours spent on this case by Messer Caparello attorneys is reasonable. The billable hourly records of the Messer Caparello law firm through May 14, 2017, indicate that a total of 103.39 hours were spent in defending the underlying complaint filed with the Commission and in seeking costs and fees in this proceeding.

41. The record remained open for submission of Messer Caparello costs and attorneys' fees records after May 14, 2017, through the date of submission of the Proposed Recommended Order. These additional records of the Messer Caparello law firm indicate that a total of 49.93 hours were spent in seeking costs and fees for that defense at the formal hearing and in preparing the Proposed Recommended Order.

42. The total hours spent by the Messer Caparello law firm in defense of the Complaint against Petitioner, and in seeking costs and fees for that defense, is 153.32. The total hours spent on this case by the Messer Caparello law firm is reasonable.

43. Costs of \$1,814.12 incurred by the Messer Caparello law firm through May 14, 2017, are reasonable. Costs of \$957.44 incurred by the Messer Caparello law firm after May 14, 2017, are reasonable.

44. The total hours spent on this case by the Flagler County Attorney's Office is reasonable. Time records of the

Flagler County Attorney's Office through May 15, 2017, indicate that a total of 12.40 hours for attorney time were spent in assisting in the defense of the underlying complaint with the Commission and in seeking costs and fees in this proceeding. Time records of the Flagler County Attorney's Office through May 15, 2017, indicate that a total of 24.75 hours for paralegal time were spent in assisting in the defense of the underlying complaint filed with the Commission and in seeking costs and fees in this proceeding.

45. The record remained open for submission of costs and attorneys' fees records after May 15, 2017, through the date of submission of the Proposed Recommended Order. These additional records of the Flagler County Attorney's Office indicate that a total of 6.60 hours of attorney time, and that a total of 14.30 hours of paralegal time were spent in seeking costs and fees for that defense at the formal hearing in this cause and in preparation and submission of the Proposed Recommended Order.

46. Costs of \$168.93 incurred by the Flagler County Attorney's Office through May 15, 2017, are reasonable. Costs of \$292.99 incurred by the Flagler County Attorney's Office after May 15, 2017, are reasonable.

47. A reasonable hourly rate for the time of Flagler County Attorney in connection with this matter is \$325 per hour.

48. A reasonable hourly rate for the time of the paralegal in the Flagler County Attorney's Office in connection with this matter is \$150 per hour.

49. Based on the findings herein, Ericksen has established that he incurred: (i) reasonable costs in the amount of \$2,731.69, and reasonable attorneys' fees in the amount of \$53,662.00 for the services of the Messer Caparello law firm in defending against the underlying complaint filed with the Commission and in seeking costs and fees in this proceeding; and (ii) reasonable costs in the amount of \$461.92 and attorneys' fees in the amount of \$12,032.50 for the services of the Flagler County Attorney's Office in defending against the underlying complaint filed with the Commission and in seeking costs and fees in this proceeding.

#### CONCLUSIONS OF LAW

50. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. See §§ 120.569 and 120.57(1), Fla. Stat.

51. Section 112.313(7) provides for an award of attorney's fees and costs in the following circumstances:

falsity of her allegations when she failed to review the public records which would have indicated that her allegations were false. Finally, the false statements in her complaint were material to violations of the Ethics Code, in that they formed the basis for the Commission's investigation of the complaint.

63. Ericksen is entitled to a total award of \$56,393.69 in costs and attorneys' fees in connection with legal services provided by Messer Caparello in this matter.

64. Ericksen is entitled to a total award of costs and attorneys' fees in the amount of \$12,494.42 in connection with legal services provided the by Flagler County Attorney's Office in this matter.

#### RECOMMENDATION

Based on the forgoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Commission enter a final order granting Ericksen's Petition for Costs and Attorneys' Fees relating to Complaint 14-230 in the total amount of \$68,888.11.

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