



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Vincent Fiscella, Jr.,
Township of Belleville, Department of
Public Works

Court Remand

CSC Docket No. 2018-1674

ISSUED: APRIL 2, 2018 (SLK)

The Superior Court of New Jersey, Appellate Division (Appellate Division), as indicated in the attached orders dated November 30, 2017 and December 29, 2017, has remanded the matters of Vincent Fiscella, Jr.'s (Fiscella) penalty and award of counsel fees from the Township of Belleville (Belleville) to the Civil Service Commission (Commission).

By way of background, Fiscella was removed on charges of insubordination and other sufficient cause. Specifically, Belleville asserted that Fiscella was working in another position at the voting polls while out on sick leave and that he failed to attend a scheduled Workers' Compensation appointment. Fiscella appealed his removal to the Commission, which transmitted the matter to the Office of Administrative Law (OAL) for a hearing as a contested case. In its final decision, the Commission modified the removal to an official written reprimand and awarded back pay and counsel fees in the amount of 50 percent of services. *See In the Matter of Vincent Fiscella, Jr.* (CSC, decided December 16, 2015). Thereafter, Fiscella requested reconsideration seeking additional counsel fees. The Commission denied his request for additional counsel fees as the award was only for fees incurred related to the proceedings at the OAL and the proceedings at the departmental level. *See In the Matter of Vincent Fiscella, Jr.* (CSC, decided October 19, 2016).¹ Subsequently, Belleville appealed the Commission's October 19, 2016 decision to the Appellate Division complaining that the 50 percent reduction in the counsel fee

¹ It is noted that the Commission did not calculate the actual amount of counsel fees due as no information regarding the original amounts requested was provided by Fiscella.

award was not sufficient due to the “unreasonably high” attorney bills received from Fiscella’s attorney. On November 30, 2017, at the Commission’s request, the Appellate Division ordered that Belleville’s appeal be remanded to the Commission. The Appellate Division indicated that it did not retain jurisdiction in Belleville’s matter. Additionally, Fiscella appealed the Commission’s October 19, 2016 determination to the Appellate Division regarding the penalty and the 50 percent award of counsel fees. On December 29, 2017, at the Commission’s request, the Appellate Division ordered that Fiscella’s appeal be remanded to the Commission. The Appellate Division retained jurisdiction over Fiscella’s matter.

In the instant matter, Fiscella, represented by Brian J. Aloia, Esq., requests that he be awarded \$96,682.55 from Belleville, which he states is 50 percent of the attorney’s fees and 100 percent of costs. Fiscella is requesting that the award be based on a partner hourly rate of \$400 for Aloia and an associate rate of \$150 per hour. Fiscella indicates that the amount of time that his attorneys spent in this case was reasonable based on Belleville’s thorough prosecution. Fiscella submits a certification from Aloia, which indicates that he is the sole equity partner for his firm and has been a partner in law firms concentrating on Labor and Employment Law since 1999. Aloia certifies that he spent 363.2 hours on this matter and asserts that his hourly rate of \$400 is a reasonable rate based on fees customarily charged in this area of law. In support of Aloia’s hourly rate, three attorneys from other firms who also practice Labor and Employment Law attest that Aloia’s hourly rate of \$400 is reasonable. Aloia also certifies that his law firm incurred \$2,063 in expenses in this matter. Additionally, Victoria A. Lucido, Esq., an associate with the Aloia Law firm, certifies that she was admitted to practice law in June 2013, served as a law clerk in the Superior Court from August 2013 to August 2014, worked on Labor and Employment Law matters in private practice from August 2014 and became an associate with the Aloia Law Firm in September 2015 where she focuses heavily on Labor and Employment Law. Lucido certifies that she spent 45.4 hours working on this matter. Further, James E. Polles, Esq., a former associate with the Aloia Law Firm, certifies that he was admitted to the practice of law in 2011 and had approximately four years of Labor and Employment Law experience at the time he worked on this matter. Polles certifies that he spent 247.65 hour on this matter.

In response, Belleville, represented by Jeffrey R. Merlino, Esq., asserts that the Aloia Law Firm’s claim that it spent 656.25 hours in this matter is “outrageous” with the majority of the claimed hours to be for “legal research.” It presents that a review of the billing indicates that the Aloia Law Firm spent seven hours or greater on this matter on January 6, 2015 (7 hours), January 7, 2015 (7.5 hours), January 8, 2015 (8 hours), January 9, 2015 (8 hours), July 13, 2015 (9 hours), July 14, 2015 (7 hours), July 15, 2015 (9.5 hours), July 17, 2015 (8 hours), July 20, 2015 (8 hours), July 21, 2015 (8.5 hours), November 13, 2015 (10 hours) and January 26, 2016 (8 hours). Belleville argues that the amount of time that the Aloia Law Firm spent for

two half days of testimony at an administrative law hearing cannot be considered reasonable. It asserts that the issue of termination was relatively straightforward with no novel issues of law being argued. Belleville states that the invoices for routine research are not justified and that many of the purported research was duplicative.

Neither party submitted any arguments regarding the penalty imposed by the Commission in its prior decision nor regarding the award of only 50 percent of counsel fees.

CONCLUSION

N.J.S.A. 11A:2-22 provides that reasonable counsel fees may be awarded to an employee as provided by rule. *N.J.A.C.* 4A:2-2.12(a) indicates that the Commission shall award partial or full reasonable counsel fees incurred in proceedings before it and incurred in major disciplinary proceedings at the departmental level where an employee has prevailed on all or substantially all of the primary issues in an appeal of major disciplinary action before the Commission. As Fiscella did not completely prevail on all matters, the Commission determined that he was entitled to the amount of 50 percent of services rendered.

N.J.A.C. 4A:2-2.12(c) provides fee ranges for different categories of attorneys, based on the attorney's experience. Specifically, it provides as follows: an associate in a law firm is to be awarded an hourly rate between \$100 and \$150; a partner in a law firm with fewer than 15 years of experience in the practice of law is to be awarded an hourly rate between \$150 and \$175; and a partner in a law firm with 15 or more years of experience practicing law, or notwithstanding the number of years of experience, with a practice concentrated in employment or labor law, is to be awarded an hourly rate between \$175 and \$200. *N.J.A.C.* 4A:2-2.12(d) states that if an attorney has signed a specific fee agreement with the employee or employee's negotiations representative, the attorney shall disclose the agreement to the appointing authority. The fee ranges set forth in (c) above may be adjusted if the attorney has signed such an agreement, provided that the attorney shall not be entitled to a greater rate than that set forth in the agreement. *N.J.A.C.* 4A:2-2.12(e) indicates that the recommended fee ranges may be adjusted, based on the circumstances of a particular matter, taking into account the time and labor required, the novelty and difficulty of the questions involved, the skill requisite to performing the legal service properly, the fee customarily charged in the locality for similar legal services, the nature and length of the professional relationship with the employee, and the experience, reputation and ability of the attorney performing the services.

Further, *N.J.A.C.* 4A:2-2.12(g) provides that reasonable out-of-pocket costs shall be awarded, including, but not limited to, costs associated with expert and

subpoena fees and out-of-State travel expenses. Costs associated with normal office overhead shall not be awarded. These costs include photocopying expenses and expenses associated with the transmittal of documents through use of Federal Express or a messenger service. *See, e.g., In the Matter of Monica Malone*, 381 N.J. Super. 344 (App. Div. 2005).

Initially, it is noted that although Fiscella's appeal to the Appellate Division involved the penalty and the percentage of the attorney fee's award, neither party has addressed these issues in the current proceeding. Further, as these issues have already been argued and decided in the Commission's prior decisions, the Commission need not address these issues further in this matter.

With respect to Fiscella's 50 percent counsel fee award as ordered in the Commission's prior decisions and costs, Fiscella requests \$94,618.75 in counsel fees and \$2,063.80 for costs. The counsel fee request is based on 293.05 hours at an associate rate of \$150 per hour, which equals \$43,957.50 and 363.2 hours at a partner rate of \$400 per hour, which equals \$145,280. Further, 50 percent of these amounts is \$94,618.75. The request for costs is based on \$39 for parking, \$1,767.90 for transcripts, \$20 for the Civil Service Commission appeals fee, \$16.02 for supplies, \$27.74 for Federal Express Delivery, \$169 for Hand Delivery DC Express, and \$24.14 for postage. In response, Belleville asserts that the Aloia Law Firm's claim that it spent 656.25 hours in this matter is "outrageous." It contends that this matter was relatively straightforward with no novel issues being argued, the billing for routine research was not justified and much of the legal research was duplicative. Belleville highlights days where the Aloia Law Firm billed seven or more hours.

In reference to Aloia's time, a review of his certification indicates that he is partner in law firm with 15 or more years in experience with a practice concentrated in Labor and Employment Law. However, the Commission finds that Fiscella has provided insufficient information to justify awarding him counsel fees for Aloia's time at the requested hourly rate of \$400. While Fiscella attempts to justify the requested rate by providing certifications from other attorneys who practice Labor and Employment Law, he provides no details regarding the subject matter of the cases for which these attorneys were reimbursed at the requested rate. Moreover, this type of appeal inherently lacks the legal complexity necessary to justify the hourly rate requested. In addition, unique legal experience was not required by counsel in order to establish that most of the charges against Fiscella were not warranted. *Compare, Malone, supra.* (Attorney who had a Master's degree and Ph.D. degree in Clinical Psychology and experience in psychology made him uniquely qualified to address psychological diagnostic issues that were raised during the hearing). Therefore, based on the information provided by Aloia regarding his experience in Labor and Employment Law and years of experience in the practice of law, and consistent with numerous similar awards by the

Commission, he should be reimbursed at the rate of \$200 per hour. *See N.J.A.C. 4A:2-2.12(c) and (e)*. With regard to the associates' hourly rate, a review of Polles' certification indicates that he was admitted to practice law in December 2011 and had approximately four years of Labor and Employment Law experience while working on this matter. A review of Lucido's certification indicates that she was admitted to practice law in June 2013, served as a law clerk in the Superior Court from August 2013 to August 2014 and worked on Labor and Employment Law matters in private practice since August 2014. The Commission notes that Belleville has not submitted any argument contending that their time should be billed at a lower rate. Therefore, based on the information provided by Polles and Lucido regarding their experience in Labor and Employment Law and years of experience in the practice of law, they should be reimbursed at the rate of \$150 per hour.

In reference to the itemized listing of services, Belleville contends that the number of hours that the Aloia Law Firm spent on this case was unreasonable and the number of hours that it spent performing legal research was unnecessary and many times duplicated. However, the fact that more than one attorney spent time performing legal research on or around the same date or the fact that the firm spent seven hours or more in a day on this matter by one or more attorney is not evidence that such research was unnecessary or duplicated. Further, the Aloia Law Firm also includes sufficient amount of detail in its invoice. In that regard, the invoice reflects the date that services were rendered, a description of such services, hours worked, and the lawyer who worked on the entry. Moreover, Fiscella's attorneys each certified that they did in fact perform the services as itemized. Accordingly, Fiscella is entitled to counsel fees of 362.2 hours billed at an hourly rate of \$200 and 294.05 hours billed at an hourly rate of \$150. Further, this amount shall be reduced by 50 percent as ordered in the Commission's prior decisions. Therefore, Fiscella is entitled to \$58,273.75 in counsel fees.

As to the costs, the expenses of \$1,767.90 for transcripts and \$39 for parking are reimbursable pursuant to *N.J.A.C. 4A:2-2.12(g)*. *See In the Matter of Tracey Andino* (MSB, decided August 21, 2003); *In the Matter of Gail Murray* (MSB, decided June 25, 2003). However, the costs for supplies, postage, and expedited delivery are not reimbursable as these expenses are considered regular overhead under *N.J.A.C. 4A:2-2.12(g)*. Finally, the appeal fee is not reimbursable as per *N.J.A.C. 4A:2-1.8(a)*, this is a processing fee. Therefore, Belleville shall reimburse Fiscella \$1,806.90 for his costs.

ORDER

Therefore, it is ordered that this request be granted in part and Belleville pay Vincent Fiscella, Jr. **\$58,273.75** in counsel fees and **\$1,806.90** for costs within 30 days of receipt of this decision.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 27th DAY OF MARCH, 2018



Deirdre L. Webster Cobb
Acting Chairperson
Civil Service Commission

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and
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Attachments

c: Vincent Fiscella, Jr.
Brian J. Aloia, Esq.
Mauro Tucci
Jeffrey R. Merlino, Esq.
Debra A. Allen, DAG
Joseph H. Orlando, Appellate Division Clerk

ORDER ON MOTION

IN THE MATTER OF
VINCENT FISCELLA, JR.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001528-16T2
MOTION NO. M-001692-17
BEFORE PART D
JUDGE(S): WILLIAM E. NUGENT
HEIDI W. CURRIER

MOTION FILED: 10/30/2017 BY: CIVIL SERVICE COMMISSION

ANSWER(S)
FILED:

SUBMITTED TO COURT: November 20, 2017

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
30th day of November, 2017, HEREBY ORDERED AS FOLLOWS:

MOTION BY RESPONDENT

MOTION FOR REMAND GRANTED AND OTHER

SUPPLEMENTAL: We do not retain jurisdiction.

FOR THE COURT:



WILLIAM E. NUGENT, J.A.D.

ORDER ON MOTION

IN THE MATTER OF
VINCENT FISCELLA, JR.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001403-16T2
MOTION NO. M-002777-17
BEFORE PART B
JUDGE(S): MARIE P SIMONELLI
GRETA GOODENBROWN

MOTION FILED: 12/08/2017 BY: CIVIL SERVICE COMMISSION
ANSWER(S) 12/22/2017 BY: VINCENT FISCELLA
FILED:

SUBMITTED TO COURT: December 28, 2017

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
29th day of December, 2017, HEREBY ORDERED AS FOLLOWS:

MOTION BY RESPONDENT

MOTION FOR REMAND GRANTED AND OTHER

SUPPLEMENTAL:

The remand shall be completed and a final agency decision shall
be rendered no later than forty-five (45) days of the date of
this order. Jurisdiction is retained.

FOR THE COURT:



MARIE P SIMONELLI, P.J.A.D.