



STATE OF NEW JERSEY

In the Matter of Ana Castillo, Passaic
City, Department of Public Safety

CSC Docket No. 2024-820

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

Request for Counsel Fees

ISSUED: January 17, 2024 (SLK)

Ana Castillo, represented by Michael A. Bukosky, Esq., a Fire Fighter with Passaic City, Department of Public Safety, requests counsel fees in accordance with *In the Matter of Ana Castillo* (CSC, decided August 23, 2023).

By way of background, the appointing authority suspended Castillo for six working days due to a verbal altercation with a fellow Fire Fighter. Upon Castillo's appeal to the Civil Service Commission (Commission), the matter was transmitted to the Office of Administrative Law as a contested case. Following a hearing and the Commission's *de novo* review, the Commission reversed the suspension and ordered Castillo to receive six working days of back pay, benefits, and seniority. The Commission also awarded counsel fees. However, the parties have been unable to agree on the amount of counsel fees.

In support of Castillo's request, Bukosky certifies that he is a partner in a law firm with over 31 years of experience, and he almost exclusively works on Public Sector Labor Employment cases. Bukosky provides an itemized statement of time, and he states that he spent 55.70 hours on this matter. Further, he indicates that he had an oral agreement with Castillo that his rate in this matter was \$220 per hour. Bukosky asserts that this rate is comparable with the hourly rates charged by attorneys of comparable experience for similar matters. Additionally, he cites case law where the courts have awarded higher hourly rates for attorney fees. Bukosky

also provides that the appeal filing fee was \$20, and the transcription costs were \$300. Therefore, Castillo is requesting \$12,574 (55.70 hours * \$220 per hour = \$12,254; \$12,254 + \$320 = \$12,574).

In response, the appointing authority, represented by Brian M. Hak, Esq., presents that the request for attorney fees at a rate of \$220 per hour exceeds the range that is authorized for experienced partners or partners who specialize in employment or labor law under *N.J.A.C.* 4A:2-2.12(c)3. Additionally, it highlights that Bukosky has not provided a copy of his fee arrangement as required. Concerning Bukosky's statement that \$220 per hour was agreed upon by Castillo via an oral agreement, the appointing authority notes that the Rules of Professional Conduct require that a lawyer communicate his or her fee to the client in writing. Moreover, it argues that the novelty and difficulty of the questions involved in this matter were not so special to warrant an upward adjustment above the standard \$175 to \$200 hourly rate. The appointing authority emphasizes that in Bukosky's certification, he did not identify any novel or difficult questions or special skills that were required to justify the request for an increased rate. Also, it states that none of the cases that Bukosky cited to support his request for an enhanced rate involved employment or labor law matters. Therefore, the appointing authority contends that Bukosky's hourly rate should be no more than the \$175 to \$200 per hour range. Concerning the time spent by Bukosky, it argues that it was excessive as the Zoom teleconference hearing took no more than several hours and the facts and issues presented were straightforward and simple. Therefore, the appointing authority asserts that hours spent by Bukosky should be capped at 40 hours.

CONCLUSION

N.J.A.C. 4A:2-1.8(a) provides, in pertinent part, that a \$20.00 processing fee shall be charged for all appeals and requests for relief filed with the Commission subject to certain exemptions.

N.J.A.C. 4A:2-2.12(a) provides 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 before the Commission.

N.J.A.C. 4A:2-2.12(c)3 provides that the fee range that shall apply in determining counsel fees for a partner or equivalent in a law firm with 15 or more years of experience in the practice of law, or, notwithstanding the number of years of experience, with a practice concentrated in employment or labor law, is \$175.00 to \$200.00 per hour.

N.J.A.C. 4A:2-2.12(d) provides that if an attorney has signed a specific 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) may be adjusted if the attorney signed such as 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) provides that an amount may also be determined or the ranges in (c) adjusted based on the circumstances of a particular matter, in which case the following factors (see the Rules of Professional Conduct of the New Jersey Curt Rules, at RPC 1.5 (a)) shall be considered:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. The fee customarily charged in the locality for similar legal services, applicable at the time the fee is calculated;
3. The nature and length of the professional relationship with the employee; and
4. The experience, reputation and ability of the attorney performing the services.

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.

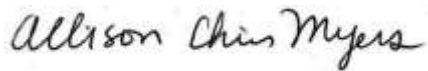
In this matter, concerning the request to award counsel fees for Bukosky's time based on a \$220 per hour rate, initially, as the apparent oral agreement was not in writing, it serves as no basis to award enhanced counsel fees. Further, there is nothing in the record to suggest that the time and labor required, the novelty and difficulty of the questions involved nor the skill requisite to perform the legal service would merit a counsel fee award above the amount outlined in *N.J.A.C. 4A:2-2.12(c)3*. Therefore, the Commission finds that Castillo shall be awarded counsel fees for Bukosky's time based on a rate of \$200 per hour as Bukosky is a partner in a law firm with more than 15 years of experience in the practice of law, and his practice concentrates in employment or labor law. Further, the Commission notes that Castillo is entitled to be awarded the \$300 cost of the transcript. However, Castillo is not entitled to reimbursement of the \$20 appeal fee as this is a processing fee. Regarding the amount of time spent, as Bukosky certified that he spent 55.70 hours on this matter, other than the appointing authority's belief that this time was excessive, there is nothing to support a finding that Bukosky did not need to, or in fact did not, spend this much time on this matter. Therefore, the Commission finds that Castillo is entitled to receive a counsel fee award in the amount of \$11,140 (55.70 * \$200 per hour) and costs of \$300 for a total award in the amount of \$11,440.

ORDER

Therefore, it is ordered that the appointing authority pay counsel fees and costs in the amount of \$11,440 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 17TH DAY OF JANUARY, 2024



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Ana Castillo
Michael A. Bukosky, Esq.
Hector Lora
Brian M. Hak, Esq.
Division of Agency Services
Records Center