

lawyers service, e-mails, faxes, texts, appeal fee in this matter), for a total of \$8,477.85.¹

In response, the appointing authority, represented by Christopher D. Zingaro, Esq., asserts that it should not be required to pay counsel fees, as it was the Academy that initially issued the allegations against the petitioner that led to his removal which were ultimately found unsubstantiated. The appointing authority adds that counsel for petitioner was retained for the purpose of appealing the Academy's actions, and as such, the Academy should not be permitted to avoid its responsibility to provide compensation in this matter. The appointing authority acknowledges that it issued the Final Notice of Disciplinary Action (FNDA) against the petitioner, which immediately terminated the petitioner. The appointing authority explains that, since his appointment as a Police Officer was contingent upon his successful completion of Academy training, it issued the FNDA against the petitioner. The appointing authority contends that the Academy's charges were the predominant issues in the petitioner's arguments, and the consolidation of the OAL and Academy matters during the OAL trial show that the appellant's removal was ultimately an administrative action. As such, the appointing authority argues that, since its disciplinary penalty was only the direct result of the petitioner's dismissal by the Academy, it should not be responsible for paying counsel fees. Moreover, the appointing authority argues that the retainer agreement between the petitioner and his counsel indicates that she was solely representing him regarding the PTC matter.

Additionally, the appointing authority asserts that, presuming that it is responsible for awarding counsel fees, it should only be charged \$675, as such fees are limited to the disciplinary proceedings against the petitioner. The appointing authority argues that the other entries with respect to the counsel fees award do not concern the disciplinary proceeding. The appointing authority adds that its contribution should not reflect any entries concerning the determination of the counsel fee award.

CONCLUSION

N.J.A.C. 4A:2-2.12(c) 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 practice concentrated in employment or labor law, is to be awarded an hourly

¹ The 2021 Lawyers Diary and Manual indicates that Bette R. Grayson, Esq., is a partner at Grayson and Associates, LLC and was admitted as an attorney to the New Jersey Bar in 1977. It also indicates that the associate, Brian P. Matousek, Esq., is an associate at Grayson and Associates, LLC, and was admitted as an attorney to the New Jersey Bar in 2011.

rate between \$175 and \$200. *N.J.A.C.* 4A:2-2.12(d) provides that, if an attorney has signed a specific fee agreement with the employee or the employee's negotiations representative, the fee ranges set forth above may be adjusted. *N.J.A.C.* 4A:2-2.12(e) provides a fee amount may also be determined or the fee ranges in (c) above adjusted based on the circumstances of a particular matter, in which case the following factors shall be considered: the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; the fee customarily charged in the locality for similar legal services, applicable at the time the fee is calculated; the nature and length of the professional relationship with the employee; and 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, such as costs associated with expert witnesses, subpoena fees and out-of-state travel, shall be awarded. However, costs associated with normal office overhead shall not be awarded.

Initially, with respect to the appointing authority's argument that it is not responsible for an award of counsel fees, as it was the Academy's dismissal of the petitioner that led to its disciplinary action of removing the petitioner from employment as a Police Officer, such arguments are without merit. In this matter, while the Academy, an outside agency, provided the cause for the underlying charges that led to the petitioner's removal, the petitioner was the appointing authority's employee at the time of the removal. Accordingly, since the petitioner was employed by the appointing authority as a Police Officer, and the appointing authority ultimately issued the FNDA against the petitioner removing him from employment, it is responsible for counsel fees in this matter. Moreover, the Commission rejects the argument that it should only be responsible for counsel fees regarding the removal. The petitioner's removal stemmed from activities he was required to perform as an employee, namely, attending and completing the Academy. Thus, in order to have the removal reversed, he had to be found not guilty of any charges stemming from his Academy release. As such, any counsel fees that can be attributed to that goal are considered reimbursable by the appointing authority.

With respect to the request for counsel fees for pursuing this matter before the Commission, generally, an appellant is entitled to counsel fees regarding an enforcement request for a counsel fee award since New Jersey courts have recognized that attorneys should be reimbursed for the work performed in support of a fee application. See *H.I.P. (Heightened Independence and Progress, Inc.) v. K. Hovnanian at Mahwah VI, Inc.*, 291 *N.J. Super.* 144, 163 (Law Div. 1996) [quoting *Robb v. Ridgewood Board of Education*, 269 *N.J. Super.* 394, 411 (Ch. Div. 1993)].

Therefore, counsel fees are awarded as follows:

Ms. Grayson: 15.2 hours of work x \$200 = \$3,040

Mr. Matousek : 4.6 hours of work x \$150 = \$690

Total : \$3,730

In this regard, the requested hourly rates of \$450 per hour and \$325 per hour are unwarranted. This matter was no more complicated than any other removal from employment of a Police Officer. In fact, only one issue was relevant, whether the petitioner's actions were sufficient for his removal from the Academy. Thus, the Commission finds no reason to deviate from the amounts proscribed in *N.J.A.C. 4A:2-2.12(c)*.

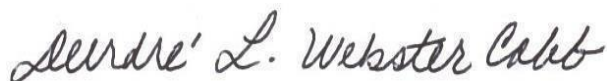
In addition, counsel requests \$147.85 in costs for use of a courier service, faxes received, e-mails and texts, copies of a transcript, and a filing fee. As indicated above, the costs that represent normal office overhead will not be awarded. See *N.J.A.C. 4A:2-2.12(g)*. These costs include photocopying 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). As such, counsel's request for \$147.85 in costs for the courier service is denied. The \$20 filing fee for the appeal in this matter is a required expense and is not reimbursable. The remaining expenses requested for OAL transcripts are reimbursable expenses 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). As such, petitioner is entitled to \$13.65 in costs for the OAL transcripts.

ORDER

Therefore, it is ordered that the appointing authority pay counsel fees in the amount of \$3,730 and costs in the amount of \$13.65 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 28th DAY OF APRIL, 2021



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