SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA, **Plaintiff,** **v.** **PRECISION CONTRACTING SOLUTIONS, LP *et al.*,** **Defendants.**	**Case No.: 2019 CA 005047 B** **Judge Juliet J. McKenna** **Next Event: Pretrial Conference, March 22, 2024; Jury Trial, May 6, 2024**
STEPHEN SIEBER, *et al.*, **Plaintiffs,** **v.** **KENNETH VOGEL *et al.*,** **Defendants.**	**Consolidated with:** **Case No.: 2020 CA 001596 B** **Judge Juliet J. McKenna**

ORDER

On March 30, 2023, for the reasons stated in open court and hereby incorporated into this Order, the Court granted the Motion to Quash, Motion for Protective Order, and Motion for Sanctions, filed on behalf of Natalie Delgadillo and American University (collectively "the AU Defendants"). This decision was reached after a thorough review of the docket, the AU Defendants' Motion; the Oppositions filed by Stephen Sieber, proceeding *pro* se, and on behalf of Derrick Sieber and Precision Contracting Solutions, LP (collectively "the Precision Parties"); the AU Defendants' Reply; and additional oral argument presented by Stephen Sieber at the March 30th hearing.[1] Now pending before the Court is the Affidavit of Attorneys' Fees of

[1] At the hearing, counsel for the AU Defendants rested on the pleadings and offered no further argument to the Court. Contrary to the assertion of Mr. Sieber in his April 26, 2023 Opposition, the Court explicitly invited and received additional argument from Mr. Sieber in support of his Opposition and extended the same opportunity to counsel for Derrick Sieber and Precision Contracting Solutions, LP, prior to quashing the subpoena, awarding sanctions, and entering a protective order. *See* Courtsmart Audio, Mar. 30, 2023, at 10:11-10:14:10.

Charles D. Tobin, counsel for the AU Defendants, and Stephen Sieber's April 26, 2023 Opposition and Revised Opposition to the Award of Sanctions and Attorneys' Fees.

APPLICABLE LEGAL STANDARDS

"Generally, under the 'American Rule' each party is responsible for paying its respective fees for legal services." *Assidon v. Abboushi,* 16 A.3d 939, 942 (D.C. 2011). One well-known exception to this rule is a court's authority to impose sanctions "when it finds that the attorney or party has engaged in bad faith litigation." *Jemison v. Nat'l Baptist Convention, USA, Inc.*, 720 A.2d 275, 287 (D.C. 1998) (recognizing the Court's inherent power to impose sanctions, including attorneys' fees, upon those who engage in bad faith conduct in the course of litigation); *see also Roadway Express, Inc. v. Piper,* 447 U.S. 752, 765–66 (1980) (award of attorneys' fees permitted against a party who has acted "in bad faith, vexatiously, wantonly, or for oppressive reasons" connected to the litigation).

In addition to the inherent power of the Court, Civil Rule 45, governing third party subpoenas, explicitly authorizes the imposition of "an appropriate sanction- which may include . . . reasonable attorney's fees" upon "a party . . . responsible for issuing and serving a subpoena" who fails to "take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena." *See* D.C. Super. Ct. R. Civ. P. 45(c)(1).

Whether acting pursuant to inherent or rule-based authority, "[i]n attempting to deter bad faith litigation through attorney fee awards, the court must scrupulously avoid penalizing a party for legitimate exercise of the right of access to the courts." *Synanon Foundation, Inc. v. Bernstein,* 517 A.2d 28, 37 (D.C. 1986). In order to award attorneys' fees for bad faith litigation, the party's conduct "must be so egregious that fee shifting becomes warranted as a matter of equity." *In re Jumper*, 984 A.2d 1232, 1247–48 (D.C. 2009) (citation omitted). Attorneys' fees for bad faith litigation are therefore proper only in the presence of extraordinary circumstances or

when dominating reasons of fairness so demand. *Launay v. Launay, Inc.*, 497 A.2d 443, 450 (1985). "The standards of bad faith are necessarily stringent." *Adams v. Carlson*, 521 F.2d 168, 170 (7th Cir. 1975).

Should the Court find an award of attorneys' fees is warranted, the formula for computing reasonable attorneys' fees begins with calculating the lodestar—"the number of hours reasonably expended by counsel multiplied by a reasonable hourly rate." *See, e.g., Campbell-Crane & Assocs., Inc. v. Stamenkovic*, 44 A.3d 924, 947 (D.C. 2012); *Fred A. Smith Mgmt. Co. v. Cerpe*, 957 A.2d 907, 918 (D.C. 2008). It is "counsel's burden to prove and establish the reasonableness of each dollar, each hour, above zero." *Lively v. Flexible Packaging Ass'n*, 930 A.2d 984, 993 (D.C. 2007) (quotation and citation omitted). The court may then "consider whether adjustments or multipliers to the lodestar are warranted." *Lucero v. Parkinson Constr. Co.*, No. 18-0515 (RC), 2019 U.S. Dist. LEXIS 109551, at *2 (D.D.C. July 1, 2019) (citing *Covington v. District of Columbia*, 57 F.3d 1101, 1107 (D.C. Cir. 1995)). In making this determination, the court considers:

> (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Frazier v. Franklin Inv. Co., 468 A.2d 1338, 1341 n.2 (D.C. 1983).

Hourly rates sought in a fee application are reasonable if they are consistent with rates "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *D.L. v. District of Columbia*, 924 F.3d 585, 588 (D.C. Cir. 2019) (quoting *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984)). Accordingly, to establish a reasonable

hourly rate, an applicant must make a showing of (1) "the attorneys' billing practices"; (2) "the attorneys' skill, experience, and reputation"; and (3) "the prevailing market rates in the relevant community." *Covington*, 57 F.3d at 1107. "A matrix showing the average hourly price tag of comparable lawyers may 'provide a useful starting point' in calculating market rates." *D.L.*, 924 F.3d at 589.

The District of Columbia Court of Appeals has reiterated that "*Laffey* matrix rates are presumptively reasonable." *See Nwaneri v. Quinn Emanuel Urquhart & Sullivan, LLP*, 250 A.3d 1079, 1086 (D.C. 2021). More recently, the District of Columbia District Court has found that "the rates provided by the [newly developed D.C. United States Attorney's Office's] Fitzpatrick Matrix more accurately represent the prevailing rates" for complex civil litigation in the District of Columbia. *See J.T. v. District of Columbia*, 2023 U.S. Dist. LEXIS 12271, at *61 (D.D.C. Jan. 23, 2023); *see also* https://www.justice.gov/usao-dc/page/file/1189846/download.

The party seeking an award of attorneys' fees also bears the burden of establishing the reasonableness of the hours for which they seek reimbursement. *See Herrera v. Mitch O'Hara LLC*, 257 F. Supp. 3d 37, 46 (D.C. 2017). A fee applicant satisfies its burden by submitting documentation "sufficiently detailed to permit the [court] to make an independent determination whether or not the hours claimed are justified." *Hampton Cts. Tenants Ass'n v. D.C. Rental Hous. Comm'n*, 599 A.2d 1113, 1117 (D.C. 1991). The Court has the discretion to decrease compensable hours that are "excessive, redundant, or otherwise unnecessary." *District of Columbia v. Hunt*, 525 A.2d 1015, 1016 (D.C. 1987) (internal citation omitted). But the determination of reasonable attorney fees "should not result in a second major litigation." *Fox v. Vice*, 563 U.S. 826, 838 (2011) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)). Courts need not "engage in a detailed line-by-line analysis of the fee petition and the voluminous file in th[e] case to determine, like a

quasi-management consultant, if plaintiffs' counsel could have accomplished particular tasks or pleadings more efficiently." *Save Our Cumberland Mountains, Inc. v. Hodel*, 651 F. Supp. 1528, 1532 (D.D.C. 1986); *see also Copeland v. Marshall*, 641 F.2d 880, 896 (D.C. Cir. 1980) (trial court should not "become enmeshed in a meticulous analysis of every detailed facet of the professional representation"); *Fox*, 563 U.S. at 827 ("The essential goal in shifting fees is to do rough justice, not to achieve auditing perfection.").

Though broad summaries of hours and work product are insufficient to support an award of attorneys' fees, a fee applicant "need not present the exact number of minutes spent nor the precise activity to which each hour was devoted nor the specific attainments of each attorney." *Nat'l Ass'n of Concerned Veterans v. Sec'y of Def.*, 675 F.2d 1319 (D.C. Cir. 1982) (citing *Copeland*, 641 F.2d at 891) (internal quotation marks omitted). Courts may, however, decline to award the full amount sought by the petitioner where the party "makes no effort to 'separate out' the hours attributable to the issue as to which she prevailed" from other hours. *Middleton v. District of Columbia*, No. 14-01151 CRC/DAR, 2015 U.S. Dist. LEXIS 120302, at *10–11 (D.D.C. Aug. 31, 2015).

ANALYSIS

As the Court found at the March 30, 2023 hearing, there is ample evidence to support a finding that Stephen Sieber acted in bad faith and for improper purpose in subpoenaing Natalie Delgadillo as a witness at trial. Stephen Sieber's claims against Natalie Delgadillo and the AU Defendants have previously been the subject of extensive litigation before the Honorable Jason Park in these consolidated cases. After full briefing and a hearing on the issue, the Court twice dismissed all claims of the Precision Parties against the AU Defendants on the grounds that the AU Defendants' publication of an article reporting on the D.C. Office of Attorney General's

("OAG") lawsuit against the Precision Parties was fully protected under D.C. Code § 16-5501, *et. seq.* (the "Anti-SLAPP Act). *See generally* Order (Feb. 21, 2022); Order (Oct. 15, 2020); Order (June 25, 2020). Additionally, in the course of this prior litigation, Judge Park denied any attempt by the Precision Parties to compel discovery from Ms. Delgadillo, or to compel her to sit for a deposition or testify in court. *See generally* Order (Aug. 18, 2021). Following the conclusion of the Anti-SLAPP litigation, Judge Park found the Precision Parties jointly and severally liable to the AU Defendants for $115,994.54 in legal fees and costs. *See generally* Order (Oct. 7, 2022).

Notwithstanding this earlier extensive litigation, the dismissal of all claims against the AU Defendants, and the prior award of attorneys' fees, Stephen Sieber subpoenaed Ms. Delgadillo as a witness at trial in the ongoing litigation between the District of Columbia and the Precision Parties in Case No. 2019-CA-5407-B. Prior to the filing the Motion to Quash, counsel for the AU Defendants engaged in extensive email communication with Mr. Sieber regarding the protections afforded to journalists by the Free Flow of Information Act, D.C. Code § 16-4701, *et. seq.*, in an effort to persuade Mr. Sieber to voluntarily withdraw the subpoena.

Thus, the Court finds that Mr. Sieber has been repeatedly advised over the past three years, both by the Court and by counsel for the AU Defendants, that any testimony from Ms. Delgadillo about her work as a journalist is both privileged and irrelevant to the issues in the ongoing litigation between the District of Columbia and the Precision Parties. Given the record in this case, the Court finds that Stephen Sieber failed to take reasonable steps to avoid imposing an undue burden or expense and was acting in bad faith in subpoenaing Ms. Delgadillo for trial.

The Court is cognizant of the fact that Stephen Sieber is proceeding *pro se*, as is his right. The Court's precedent regarding the flexibility commonly afforded to *pro se* litigants is well-

founded in case law. *See Macleod v. Georgetown Univ. Med. Ctr.*, 736 A.2d 977, 979–80 (D.C. 1999) (noting the "the numerous steps that . . . trial and appellate courts have taken to assist *pro se* litigants dealing with the judicial system). However, a *pro se* litigant "must not expect or seek concessions because of his inexperience and lack of trial knowledge and training and must, when acting as his own lawyer, be bound by and conform to the rules of court procedure equally binding upon members of the bar." *Id.* at 979 (internal quotations and citations omitted). Throughout the pendency of this litigation, by the filing of numerous well-written and researched pleadings and vigorous and articulate oral advocacy on his own behalf, Stephen Sieber has amply demonstrated that he is in little need of special consideration or accommodations by virtue of his self-represented status.

Turning then to the award of attorneys' fees and costs incurred by the AU Defendants in defending against the subpoena, the Court is satisfied that the $440 blended hourly rate for attorneys and the $215 hourly rate for paralegals charged by Ballard Spahr, LLP in this matter are reasonable and below market rate compared against either the *Laffey* or Fitzpatrick Matrix. Charles Tobin is a partner in the Media & Entertainment Law Group at Ballard Spahr with over thirty-four years of legal experience. *See* Tobin Decl. ¶¶ 2, 15–17. Lauren Russell is an associate attorney and received her journalism degree in 2012 and law degree in 2018. *See id.* ¶ 18(a). Ryan Relyea and Brendan McCann are paralegals, with 16 and 35 years of legal experience respectively. *See id.* ¶¶ 18(c)–(d). Consequently, had each individual billed at the rates set by the *Laffey* Matrix for persons in their roles and with their respective experience levels, they would have billed a total of $30,293.90 in legal fees for 52.4 hours of work, and $28,971.30 if billed pursuant to the Fitzpatrick Matrix rate, as opposed to the $21,368.50 actually billed. *See id.* ¶ 24. Accordingly, the Court finds that the blended rates charged by Ballard Spahr are reasonable,

given that the rates set by the *Laffey* or Fitzpatrick Matrix would have yielded higher attorneys' fees in this case. *See Fox v. Vice*, 563 U.S. 826, 827 (2011) ("The essential goal in shifting fees is to do rough justice, not to achieve auditing perfection.").

The Court is also satisfied that the vast majority of the 52.4 hours billed in connection with defending Ms. Delgadillo against the trial witness subpoena were reasonable and necessary, and that the $184.46 in costs incurred for filing and delivery of pleadings was also reasonable and necessary. However, the Court has determined to deduct 1.7 hours of attorney time, totaling $748, billed for communications with the District of Columbia Attorney General's Office given that the redactions to the billing invoice render the Court unable to determine whether such communications were strictly related and necessary to the representation of Ms. Delgadillo. Accordingly the Court awards $20,620.50 in attorneys' fees and $184.46 in costs to the AU Defendants against Stephen Sieber.

CONCLUSION

For the reasons stated above, it is this 2nd day of May 2023, hereby

ORDERED, that the AU Defendants' Motion for Attorneys' Fees and Costs is **GRANTED IN PART;** and it is

FURTHER ORDERED, that Stephen Sieber is liable to and shall pay the AU Defendants $20,804.96 in attorneys' fees and costs, in addition to any prior award of attorneys' fees and costs.

IT IS SO ORDERED.

Judge Juliet J. McKenna
Superior Court of the District of Columbia

Copies to: Counsel of record and parties via Odyssey (eFileDC) and electronic mail.