



STATE OF NEW JERSEY

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| In the Matter of Jeffrey Benton, East Jersey State Prison, Department of Corrections | : | FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION |
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| CSC Docket No. 2024-581 | : | |
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| | : | Request for Counsel Fees |
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ISSUED: May 1, 2024 (SLK)

Jeffrey Benton, a Senior Correctional Police Officer with Northern State Prison,¹ Department of Corrections, represented by Stuart J. Alterman, Esq., requests counsel fees in accordance with *In the Matter of Jeffrey Benton, East Jersey State Prison, Department of Corrections* (CSC, decided March 29, 2023).

By way of background, the Department of Corrections removed Benton for conduct unbecoming a public employee and other sufficient cause. Upon Benton’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 removal and ordered Benton to receive mitigated back pay, benefits, and seniority from the first date of separation until the date of reinstatement. The Commission also awarded counsel fees. *See In the Matter of Jeffrey Benton, supra*. Although the parties have indicated that they reached an agreement on the back pay, the parties have been unable to agree on the amount of counsel fees.

In support of Benton’s request, Benton’s lead counsel, Stuart J. Alterman, Esq., from Alterman & Associates, LLC, certifies that he has over 25 years of experience and he predominantly works in police defense work. Alterman provides an itemized statement of services from January 2, 2018 to April 4, 2023, requesting counsel fees based on 239 hours for Alterman at a rate of \$300 per hour; 20.8 hours for John A.

¹ At the time of the alleged incidents, Benton had been serving as a Senior Correctional Police Officer with East Jersey State Prison.

Ferner, Esq. (billed for services rendered on various dates from March 22, 2018 to April 4, 2023) at a rate of \$250 per hour; and 62.6 hours for Timothy J. Prol, Esq. (billed for services rendered on various dates between October 12, 2018 to January 16, 2023), at a rate of \$250 per hour. Additionally, Alterman requests fees based on 52.9 hours for an investigator, at a rate of \$120 per hour, and 10.4 hours for a paralegal, at a rate of \$100 per hour. The total fees requested is listed as \$99,968.² Alterman also indicates that the firm expended \$1,173.75 for a transcript. Therefore, the total request is for \$101,141.75. Additionally, as set forth in various correspondence between the parties, Alterman states that Benton did not sign a fee agreement with him and his representation was authorized by Benton's local negotiations representative (local), as he has been the general counsel for the local since June 2016. Alterman notes that his firm's billable rate was \$200 per hour as general counsel for the local when the representation started, and the rate increased to \$215 per hour on January 1, 2020. Further, Alterman explains that he bills the local based on the \$215 per hour rate. However, if the firm is successful in defending the local's member, the firm seeks the maximum reimbursement by law, and it reimburses the local up to \$215 per hour and the firm keeps the difference above \$215, which would have been what the firm would have made if the member had been self-billed.

In response, the appointing authority presents that under Civil Service rules, there is no fee award for paralegals or investigators. Further, although Benton requests counsel fees in the amount of \$250 per hour for associates, under Civil Service rules, associate fees are awarded between \$100 and \$150 per hour and there is no differentiation of fees for associates based on experience. Concerning the associates, the appointing authority states that their resumes do not indicate experience in labor or employment law. It notes that Prol was admitted to practice law in 2014 and Ferner was admitted in 2022.³ The appointing authority asserts that Benton has not submitted anything to depart from the fee awards under the Civil Service rules. Therefore, it believes that the counsel fee award for the associates should be \$100 per hour. Additionally, the appointing authority provides that under Civil Service rules, the award of counsel fees for partners with more than 15 years of experience is between \$175 to \$200 per hour. It notes that Alterman is a partner with more than 25 years of experience. However, Benton is asking for \$300 per hour for Alterman's time which is \$125 more than the rules dictate. Further, Civil Service

² Upon review of the calculation, it appears that a typographical error may have occurred as the total amount of services billed should have been \$99,938 based on the varying rates and a total of 385.7 hours.

³ Resumes of Prol and Ferner have been presented in the record. Prol's resume indicates that he received his Juris Doctor degree in May 2014 and had various legal and non-legal positions since graduation, with the most recent position listed as a Staff Attorney beginning in 2017. Ferner's resume reveals that he received his Juris Doctor degree in May 2021 and was admitted to practice law in New Jersey in January 2022 and had been an attorney since then. However, he worked in a police department in the patrol division in various capacities from June 1997 to July 2022. Both resumes do not indicate that they worked specifically in Alterman's law firm.

rules provide that an attorney shall not be entitled to fees greater than as set forth in an agreement between the employee or the local. The appointing authority presents that although it asked for the agreement between Alterman and the local, Alterman only provides an explanation of the agreement and not the actual agreement. It emphasizes that Benton is seeking a rate for Alterman which is greater than the agreement that Alterman has with the local. Moreover, while the appointing authority acknowledges that under certain circumstances the Commission may upwardly adjust the hourly rate for an attorney's time, it asserts that Alterman has not sufficiently justified why this case would warrant an upward adjustment for the partner hourly rate. Therefore, the appointing authority argues that Alterman's time should be awarded based on \$175 per hour.

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) 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)1 provides that the fee range that shall apply in determining counsel fees for an associate in a law firm is \$100 to \$150 per hour.

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 to \$200 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 a fee amount may also be determined or the fee 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 Court 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 Alterman's time based on a \$300 per hour rate, 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 maximum amount allowable by rule. *See N.J.A.C.* 4A:2-2.12(e)1. Further, the record does not justify an increase of the regulatory rate based on the other factors set forth in *N.J.A.C.* 4A:2-2.12(e). Therefore, Benton shall be awarded counsel fees for Alterman's time based on a rate of \$200 per hour as Alterman is a partner in a law firm with more than 25 years of experience in the practice of law, and his practice concentrates in employment or labor law. *See N.J.A.C.* 4A:2-2.12(c)3. This rate is consistent with Alterman's representation that the local agreement set the rate for legal services rendered at \$200 per hour prior to January 1, 2020. *See N.J.A.C.* 4A:2-2.12(d). Although on that date the rate was purportedly set at \$215 per hour, the agreement was not provided and, as indicated above, the Commission does not find a basis to adjust the regulatory maximum of \$200 per hour in this case.

Regarding the hourly rates for Ferner and Prol, the Commission initially finds that notwithstanding that their resumes did not indicate as such, they performed legal services under Alterman & Associates, LLC, as associates. However, work performed by Ferner from March 22, 2018 to March 28, 2018 is not reimbursable, as Ferner did not receive his Juris Doctor degree until May 2021 and was not yet admitted to practice law in New Jersey until January 2022. His work for those dates is akin to work as a law clerk. *N.J.A.C.* 4A:2-2.12 contains no provision regarding compensation for law clerks. *See e.g., In the Matter of Joseph Renna* (MSB, decided February 23, 2005) (Duties performed by a law clerk were found to be akin to duties of a paralegal, and as such, were not compensable). Further, it is unclear from the record when Ferner actually started practicing law. However, Ferner billed for services rendered in March 2023 and April 2023, which is only a little over a year after he was admitted to practice law. For this reason, the Commission cannot justify granting Ferner a rate at the higher end of the associate rate for legal services billed

from March 2023 to April 2023. Thus, his services shall be set at \$100 per hour in accordance with *N.J.A.C.* 4A:2-2.12(c)1. However, as Prol received his Juris Doctor degree in May 2014 and had a few years of legal experience at the time he rendered his legal services, his rate shall be \$150 per hour as permitted by *N.J.A.C.* 4A:2-2.12(c)1. Moreover, the Commission notes that Benton is entitled to be awarded the cost of the transcript. *See N.J.A.C.* 4A:2-2.12(g). However, the request for an award for the investigator's time and paralegal's time is denied as *N.J.A.C.* 4A:2-2.12 contains no provision regarding compensation for investigators and paralegals. It is settled that work performed by paralegals is not reimbursable under Civil Service rules. *See 33 N.J.R.* 3895(a); *In the Matter of Trust of Brown*, 213 *N.J. Super.* 489, 493-494 (Law Div. 1986).


Therefore, the Commission finds that the total award shall be \$59,593.75 (Alterman's time is 239 hours x \$200 per hour = \$47,800 + Ferner's time is 12.3 hours x \$100 per hour = \$1,230 + Prol's time is 62.6 hours x \$150 per hour = \$9,390 + \$1,173.75 for the transcript).

ORDER

Therefore, it is ordered that the appointing authority pay counsel fees and costs in the amount of \$59,593.75 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 1ST DAY OF MAY, 2024



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