

Discussion

Ms. Davis's July 10, 2012 application seeks attorneys' fees incurred in pursuit of additional fees, sometimes known as "supplemental fees." Ms. Davis is entitled to supplemental fees "commensurate with the degree of success [she] achieved." Wagner v. Shinseki, 640 F.3d 1255, 1259 (Fed. Cir. 2011). Ms. Davis was entirely successful in her April 19, 2012 motion for review. Thus, she is entitled to an award for her reasonable attorneys' fees.

The basic method for determining a reasonable amount of attorneys' fees is to use the lodestar method in which a reasonable hourly rate is multiplied by the reasonable number of hours. Avera v. Sec'y of Health & Human Servs., 515 F.3d 1343, 1347-48 (Fed. Cir. 2008). To determine a reasonable number of hours, "[a] special master is permitted and even expected to examine a law firm's time sheets and root out 'hours that are excessive, redundant, or otherwise unnecessary.'" Davis v. Sec'y Health & Human Servs., 07-451V, 2012 WL 2878612, at *10 (Fed. Cl. June 29, 2012) (quoting Hensley v. Eckerhart, 461 U.S. 424, 434 (1983); see also Carrington ex rel. Carrington v. Sec'y Health & Human Servs., 83 Fed. Cl. 319, 323 (2008) (noting that excessive hours should be excluded from an award).

In this case, the Secretary challenged the number of hours Ms. Davis spent on work relating to her motion for review.² In particular, the Secretary argues that Ms. Davis's attorneys spent an excessive amount of time in (a) drafting the motion for review, (b) preparing for oral argument, and (c) having many interoffice meetings among multiple attorneys and staff members. Resp't Resp. at 2. Ms. Davis did not submit any reply. See Vaccine Rule 8(f)(1).

In evaluating the reasonableness of Ms. Davis's supplemental fee application and the Secretary's objections to it, the undersigned need not determine the amount of fees "with the precision of 'green-eyeshade accountants.'" Davis, 2012 WL 2878612, at *12, quoting Fox v. Vice, 131 S.Ct. 2205, 2216 (2011). Yet, at the same time, the undersigned must "provide a reasonably specific explanation for all aspects of [the] fee determination." Id., at *12, quoting Perdue v. Kenny A. ex rel. Winn, 130 S.Ct. 1662, 1676 (2010).

The basic thrust of the Secretary's objection is that too many people spent too much time working on the motion for review. Ms. Davis's synopsis shows that

² The Secretary did not challenge the hourly rate requested for Ms. Davis's attorneys. Resp't Resp., filed July 16, 2012, at 2 n.1.

each of the three partners in Ms. Davis's law firm (Kevin Conway, Ronald Homer, and Sylvia Chin-Caplan) spent some time on the motion for review. Most of the work was actually done by two different associates (Christine Ciampolillo and Meredith Daniels). A third associate (Amy Fashano) contributed. Finally, there are multiple entries for law clerk(s) and a single entry for a paralegal.

On a superficial basis, it seems unusual to have six attorneys work on a case, let alone one motion for review. In the undersigned's experience, a single attorney litigates the majority of cases in the Vaccine Program. In other cases, the case is staffed by one experienced attorney and one associate attorney. These staffing models can achieve satisfactory results for the client. See, e.g., Heinzelman v. Sec'y of Health & Human Servs., 681 F.3d 1374 (Fed. Cir. 2012) (exemplifying a solo attorney's successful defense of a special master's decision on appeal). It is only this firm that devotes so many attorneys to one case.

Although six attorneys is a high number, the question is whether having six attorneys is unreasonable. Here, a detailed review of the timesheets suggests that the answer is not so simple.

To start, the primary partner for this phase of the case was Mr. Conway, who charged approximately 11 hours for his work in the motion for review. Mr. Conway specializes in appellate work. See, e.g., Shaw v. Sec'y of Health & Human Servs., 609 F.3d 1372 (Fed. Cir. 2010); Wilkerson v. Sec'y of Health & Human Servs., 593 F.3d 1343 (Fed. Cir. 2010). The majority of Mr. Conway's time, nearly eight hours, was spent on April 17, 2012, when he wrote the first draft of the motion for review. Mr. Conway appears to have relied upon research memoranda that originated with two associates, Ms. Ciampolillo and Ms. Daniels. In addition to drafting the motion for review, Mr. Conway participated in several meetings with other attorneys. These duties appear reasonably consistent with how a senior attorney delegates assignments. Thus, all of Mr. Conway's hours are credited.

The next partner is Mr. Homer, who spent 1.7 hours on the motion for review phase of the case. Mr. Homer oversees cases when the firm is gathering medical records. Mr. Homer does not try cases and does not argue cases on appeal. For Ms. Davis's motion for review, Mr. Homer charged for tasks similar to case management, such as reviewing the Court's order scheduling the oral argument. Generally, Mr. Homer's activities did not duplicate work other attorneys performed. The only exception, however, is that on June 5, 2012, Mr. Homer spent 0.5 hours in conference with Mr. Conway and Ms. Daniels, preparing

for oral argument. Mr. Homer's participation was redundant with Mr. Conway's involvement, especially because Mr. Conway seems eminently qualified in helping an associate prepare for oral argument. Thus, this entry of 0.5 hours (valued at \$157.50) will be eliminated.

The third and final partner working on the motion for review was Ms. Chin-Caplan. Ms. Chin-Caplan spent 1.9 hours on this phase, mostly helping Ms. Daniels prepare for oral argument. Under the circumstances of this motion for review, Ms. Chin-Caplan's limited tutelage was reasonable. No change will be made to her entries.

This leaves three associates, Ms. Ciampolillo, Ms. Fashano, and Ms. Daniels. Ms. Ciampolillo, who had contributed to the motion for review and Federal Circuit appeal regarding entitlement in this case, spent 11.3 hours on the motion for review regarding attorneys' fees. Nine hours were spent on April 19, 2012, which was after Mr. Conway had written the first draft. On that date, Ms. Ciampolillo "work[ed] on Mot for Review, Memo, Tables, etc. Discuss[ed] edits [with Mr. Conway and Ms. Daniels]." The balance of Ms. Ciampolillo's time was devoted to preliminary work for Mr. Conway. All of Ms. Ciampolillo's time is accepted as reasonable.

Ms. Fashano spent two hours on one task – drafting the table of contents/authorities. This time duplicates work performed by Ms. Ciampolillo, who was also working on "tables." Ms. Davis's attorneys have not established that Ms. Ciampolillo's work and Ms. Fashano's work were sufficiently different that each should be compensated. In addition, given that word-processing software automates and simplifies the process of generating tables for legal briefs, a paralegal could have created the table. Moreover, given this same software, it appears that two hours is a lengthy amount of time to prepare a table of contents and a table of authorities. See, e.g., Blackburn v. ABC Legal Servs., Inc., 11-CV-01298 JSW NC, 2012 WL 1067632, at *5 (N.D. Cal. Feb. 24, 2012) (stating that charging an attorneys' hourly rate for the creation of a table of contents and table of authorities is excessive for these clerical tasks), report adopted, 2012 WL 1067551 (N.D. Cal. Mar. 28, 2012); Sound v. Koller, CV 09-00409 JMS/KSC, 2010 WL 1992194, at *7 (D. Haw. May 19, 2010) (noting that "[c]lerical and secretarial work, including creating a table of authorities, "is not compensable as attorneys' fees"). For all these reasons, Ms. Fashano's charges (\$436.00) will be deducted.

The last attorney is Ms. Daniels, who spent 36.6 hours on the motion for review. Most of her time was spent preparing for oral argument. Between May 16, 2012 and June 6, 2012, inclusive, Ms. Daniels spent 23.5 hours in preparation for oral argument.³ The Secretary has lodged a specific objection to the amount of time spent for preparing for oral argument.

Overall, this much time for oral argument is toward the higher end. For example, in the previous motion for review, the Court found that the undersigned's decision to credit 14.2 hours for oral argument preparation was within reasonable bounds. Davis, 2012 WL 2878612, at *11. That argument, however, was performed by Ms. Chin-Caplan, an experienced attorney whose hourly rate is approximately 50% more than Ms. Daniels' hourly rate. As a less experienced attorney, Ms. Daniels would reasonably spend more time to be as prepared as Ms. Chin-Caplan.

Even so, the law firm's decision to have Ms. Daniels argue the case appears to have increased the amount of time spent. Ms. Ciampolillo was more familiar with Ms. Davis's case because Ms. Ciampolillo worked on Ms. Davis's previous motion for review and because Ms. Ciampolillo assisted Mr. Conway in writing the motion for review on fees. Thus, if Ms. Ciampolillo had stayed with the case, her preparation for oral argument would have been less than Ms. Daniels's preparation. To account for the duplication of associates, the five hours spent by Ms. Daniels in "reading all decisions and briefs" on June 4, 2012 is eliminated. (The value associated with this task is \$1,045.00). After this adjustment, the remaining 18.5 hours Ms. Daniels spent preparing for oral argument is accepted.

There is no dispute about the remaining bills. The time spent by the law clerks and paralegal was reasonable. The costs (\$592.63) are adequately documented.

³ Ms. Daniels also spent time preparing for oral argument on June 7, 2012. This day was the day of the actual argument and the day that Ms. Daniels traveled to Washington, DC. The 23.5 hours mentioned in the text does not include activities on June 7, 2012.

Summary for Attorneys' Fees	
Amount Requested	\$16,471.30
Reduction for Mr. Homer	-\$157.50
Reduction for Ms. Fashano	-\$436.00
Reduction for Ms. Daniels	-\$1,045.00
TOTAL	\$14,832.80

Conclusion

For the reasons set forth above, a reasonable amount of attorneys' fees for the April 15, 2010 motion for review is \$14,832.80 and a reasonable amount of costs is \$592.63. **A check shall be made jointly payable to Ms. Davis and her law firm in the amount of \$15,425.43.**

Pursuant to Vaccine Rule 28.1, the Clerk's Office is instructed to enter judgment in accord with this decision unless a motion for review is filed.⁴ The Clerk's Office is also instructed to provide this decision to the assigned judge.

IT IS SO ORDERED.

s/Christian J. Moran
Special Master
Christian J. Moran

⁴ This amount is in addition to the judgments entered on July 10, 2012, and August 16, 2012.