

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL., MUNICIPAL )  
CONSTRUCTION EQUIPMENT )  
OPERATORS' LABOR COUNCIL, et al., )

Case No. 2006-2056

Relators )

-v- )

CITY OF CLEVELAND, et al., )

Respondents. )

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**RESPONDENTS' OBJECTIONS TO ATTORNEY FEES**

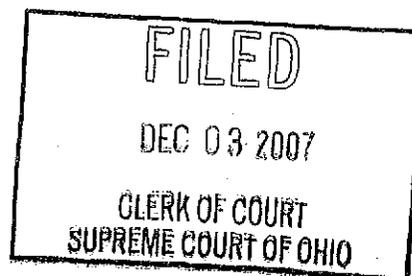
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## MEMORANDUM OF LAW

The Court, on November 13, 2007, ruled on the outstanding motions filed by the parties. The Court awarded relators attorney fees related to their motions, and directed counsel for relators to submit a bill and documentation in support of the award. The Court concluded its ruling, allowing respondents ten days from the date of submission to file objections, and relators five days to reply.<sup>1</sup>

Respondents' object to the attorney fees submitted by relators' counsel because some of the submissions are unrelated to the motions that were before the Court, excessive, and duplicative.

### I. EXCESSIVE COSTS

The Ohio Rules of Professional Conduct, Rule 1.5 sets out eight factors to be considered in determining the reasonableness of a fee. The eight factors are: (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 likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charge in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent. The Official Comment states that the factors are not exclusive one to the other.

Respondents identify the following submissions as excessive:

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1. The date on the Certificate of Service for the bill submitted by relators' attorney is unreadable. The City received an automated case notice from the Court that relators filed the bill on November 21, but due to the holiday, the City received the filing on November 26, however, respondents are filing their objections within the ten days, December 3, 2007.

9/18/2007 - \$1,568.00 billed by Mr. Roll for 6.4 hours to prepare for an MCEOLC Board meeting. Mr. Roll should not charge for his attendance, and given the succinct issues well-known to his client, the hours charged are excessive.

10/1/2007 - \$1,127.00 billed by Mr. Roll for 4.6 hours to prepare the affidavit of Frank Madonia. The amount billed is excessive in light of the result, that the Court struck more than three-fourths of this affidavit.

10/8/2007 - \$808.50 billed by Mr. Roll for 3.3 hours to prepare his own affidavit is excessive.

Respondents respectfully request the Court deny the \$3,503.50 charges submitted by relators because they are excessive under the guidelines in Rule 1.5 of the Ohio Rules of Professional Conduct.

## II. UNRELATED COSTS CHARGED TO RESPONDENTS

Respondents object to the fees charged by relators for services unrelated to the particular matters presented to this Court.<sup>2</sup> The following are charges submitted by Mr. Roll's associate Mary Ann Schleimer. Ms. Schleimer submitted charges for her efforts in calculating "underpayments." Relators had been suggesting that the City did not calculate overtime properly. That could have easily been determined by reading the Construction Employers' Association agreement. The agreement enumerates which if any of the prevailing wage components were included or excluded from overtime. In addition, Ms. Schleimer submitted charges to prepare to testify at a debtors' exam per a motion filed by Mr. Roll. This action was filed in the Court of Common Pleas. Respondents have never stated or acted in any way that would give relators a reasonable belief that the *City of Cleveland* would or could not make the payments required by the Court's orders. That respondents challenged those eligible to receive payment did not give rise to the overkill approach taken by relators. The following are the charges submitted that are unrelated to the filings that were before this Court:

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2. *Riad v. Riad*, 1986 WL 11737 (Ohio App. 2 Dist.), Not reported in N.E.2d.

8/22/2007 - \$612.50 billed by Ms. Schleimer (MAS) for 4.9 hours to prepare spreadsheets related to overtime and double time calculations.

8/23/2007 - \$912.50 billed by MAS for 7.3 hours reviewing overtime deficiency.

8/27/2007 - \$250.00 billed by MAS for 2 hours to review her own spreadsheets.

8/28/2007 - \$100.00 billed by MAS for 0.80 hour to discuss with Mr. Roll the underpayments.

8/28/2007 - \$412.50 billed by MAS for 3.3 hours to input data relating to underpayments.

8/29/2007 - \$1,062.50 billed by MAS for 8.5 hours to input data relating to underpayments.

8/30/2007 - \$400.00 billed by MAS for 3.2 hours to format information anticipated by the City.

9/6/2007 - \$525.00 billed by MAS for 4.2 hours to review data related to underpayments.

9/12/2007 - \$725.00 billed by MAS for 5.8 hours to review data related to underpayments.

9/14/2007 - \$36.00 billed by the firm for witness fees. Respondents are returning the checks to counsel for relators. Relators issued the subpoenas to examine the witnesses related to the debtor exam motion filed in common pleas court.

9/19/2007 - \$350.00 billed by MAS for 2.8 hours to review documents related to overtime and double time payments for one individual union member.

10/9/2007 - \$50.00 billed by MAS for 0.40 hour to review underpayment calculation.

10/10/2007 - \$275.00 billed by MAS for 2.2 hours to write out method of calculating underpayments.

10/12/2007 - \$512.50 billed by MAS for 4.1 hours to review data provided by the City.

10/17/2007 - \$1,000 billed by MAS for 8 hours to review and analyze city records related to underpayments.

10/18/2007 - \$1,000.00 billed by MAS for 8 hours to review and analyze city records related to underpayments.

10/19/2007 - \$925.00 billed by MAS for 7.4 hours to review and analyze city records related to underpayments.

10/22/2007 - \$312.50 billed by MAS 2.5 hours to review and analyze city records related to underpayments.

10/22/2007 - \$662.50 billed by MAS for 5.3 hours to prepare to testify at the hearing in common pleas court in the debtor action.

10/23/2007 - \$500.00 billed by MAS for 4 hours to attend the hearing.

10/24/2007 - \$762.50 billed by MAS for 6.1 hours to review and analyze city records related to underpayments.

10/25/2007 - \$250.00 billed by MAS for 2 hours to review and analyze city records related to underpayments.

10/25/2007 - \$125.00 billed by MAS for 1 hour to prepare a summary related to the underpayments.

10/31/2007 - \$14.55 billed by the law firm, for mileage reimbursement to and from court charged by Michael J. Shapiro.

10/31/2007 - \$562.50 billed by MAS for 4.5 hours in anticipation for testifying at the hearing on the debtor exam.

11/6/2007 - \$112.50 billed by MAS for 0.90 hour to research meaning of overtime.

Respondents respectfully ask this Court deny all the charges unrelated to the motions filed and before the Court. The unrelated charges total \$12,090.55. Respondents object to \$15,594.05 of the charges submitted to this Court and respectfully ask they be denied.

### III. CONCLUSION

This Court awarded relators attorney fees, allowing respondents to file objections. The attorney fees submitted by relators' counsel are excessive, and nearly half the charges are unrelated to the filings and motions that were before this Court from September through November 13, 2007. Respondents have established that the charges are unreasonable, excessive, and unrelated and respectfully ask this Court deny those charges enumerated.

Therefore, for all of the above reasons, Respondents respectfully request that this Honorable Court deny the above referenced charges.

RESPECTFULLY SUBMITTED,  
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ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

A copy of the foregoing Respondents' Objections to Relators' Submission of Attorney Fees was mailed by regular U.S. mail, postage prepaid, and emailed December 3, 2007 to attorney for Relators:

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S/ Theodora M. Monegan  
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