

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
SEBASTIAN/MELBOURNE DISTRICT OFFICE

Laurie Willis,
Employee/Claimant,

OJCC Case No. 15-011663RLD

vs.

Accident date: 10/22/2014

Brevard County Public Schools/
Sedgwick CMS,
Employer/Carrier/Servicing Agent.

Judge: Robert L. Dietz

ORDER ON VERIFIED PETITION FOR APPELLATE ATTORNEY'S FEES

This matter came before the undersigned in Sebastian, Indian River County, Florida pursuant to a Verified Petition and Affidavit for Appellate Attorney's Fees filed October 25, 2016 (Docket Number (DN 53)). The Employer/Carrier filed a Verified Response to Claimant's Attorney's Verified Petition for Attorney Fee and Costs on November 1, 2016 (DN 54). The Claimant (Appellee) is represented by Nicholas A. Shannin, Esq. The Employer/Carrier (Appellant) is represented by William H. Rogner, Esq.

Having reviewed the Verified Petition for Attorney's Fees and Costs, the Verified Response, and being otherwise fully advised in the premises, I make the following findings:

- 1) The undersigned has jurisdiction over the parties and the subject matter.
- 2) The Employer/Carrier stipulates to the Claimant's entitlement to appellate attorney's fees and the reasonableness of the claimed 29.7 hours.
- 3) The Employer/Carrier is contesting the hourly rates claimed by the Claimant's attorney of \$375.00 to \$475.00 per hour.
- 4) The Employer/Carrier filed a Response to the Verified Petition and claimed that

\$250.00 per hour was the only previously adjudicated appellate hourly rate in the Sebastian/Melbourne District by the undersigned and that the reasonable range in the district was \$200.00 to \$350.00 per hour, and that the reasonable range in this case was between \$250.00 and \$300.00.

5) In Castellanos v. Next Door Co., ---So.3d---, 2016 WL 1700521 (Fla. April 28, 2016), the Florida Supreme Court directed that a reasonable fee would be decided based on the factors codified under Section 440.34(1) (a-h), Fla. Stat. and the rules regulating The Florida Bar 4-1.5(b)(1), and explained by Lee Engineering & Constr. Co. v. Fellows, 209 So.2d 454 (Fla. 1968). These factors and their application to this case along with whether the factor supports a deviation upward (positive or plus) or downward (negative or minus) from the guideline attorney fee (neutral) are as follows:

A) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly.

Time and Labor Required:

The parties have stipulated to 29.7 hours. This is a neutral factor.

Novelty and Difficulty of the Questions Involved:

The appellate issue was the interpretation of Section 440.185, Fla. Stat. and the sufficiency of the required notice to the Employer. Notice is a routine threshold issue in a workers' compensation case, but the nuances of statutory interpretation could have made this into a more novel and difficult question. Since the appeal was voluntarily dismissed prior to the filing of the appellee brief, this cannot be determined. This is a neutral to plus factor.

Skill Requisite to Perform the Legal Services Properly:

Mr. Shannin was successful in the appeal, despite the fact that it was not necessary to file the appellee brief. His skill requisite to perform the legal services properly was not contested. The appeal was defended by Bill Rogner, Esq., who is board certified in workers' compensation and appellate law and is known as an appellate specialist in the well-known statewide defense firm of Hurley, Rogner, Miller, Cox & Waranch, P.A. This is a neutral to plus factor.

B) The likelihood that the acceptance of the particular employment will preclude employment of the lawyer or cause antagonisms with other clients.

The tight time frames of appellate work are well known. Mr. Shannin could not adequately represent this Claimant without setting aside appropriate time, perhaps to the disadvantage of other clients. However, there was no evidence presented on such conflicts, and two extensions were granted by the First DCA during this appeal. This is a neutral factor.

C) The fee customarily charged in the locality for similar legal services .

The venue in this case is Brevard County in the Sebastian/Melbourne District. Mr. Shannin has not previously been awarded an appellate fee in a Brevard County workers' compensation case. The Employer/Carrier's attorney (who has handled numerous appeals in the Sebastian/Melbourne District) testified that the fee customarily charged in the locality for similar appellate legal services is \$200.00-\$350.00 per hour and that \$250.00 to \$300.00 per hour is appropriate in this case. I accept these ranges as appropriate. The First District Court of Appeal has held that the award must be predicated upon expert testimony regarding the reasonableness of

the hourly rate. See Smith v. U.S. Sugar Corp., 624 So.2d 315, 319 (Fla. 1st DCA 1993); G&A Bldg. Maint. v. Makuski, 510 So.2d 1074 (Fla. 1st DCA 1987). The Florida Supreme Court in Castellanos directed the judges of compensation claims to determine a reasonable attorney's fee after considering the Lee Engineering criteria being applied here. This would appear to require the consistent application of the fee customarily charged in the locality for similar legal services, and not be dependent on ranges generated by the attorneys (that have a vested interest in the outcome). It is impossible to arrive at a reasonable attorney's fee if the judge of compensation claims must accept, regardless of how unreasonable, the opinions of one of the attorneys involved in the case (as the "least unreasonable"). After considering the numerous variables that impact the hourly rate in this case, I find that \$300.00 per hour is appropriate in this case. This is a plus factor.

D) The amount involved in controversy and the benefits resulting to the claimant.

The Final Compensation Order (which was appealed and ultimately voluntarily dismissed) awarded compensability for an accident to the Claimant's elbow and authorization of treatment for a partially torn tendon. Claimant secured benefits of \$2,331.66 in past benefits plus 20% penalties, and temporary partial disability benefits again commencing at the start of the 2016 school year January 5, 2016. This is a plus factor.

E) The time limitation imposed by the claimant or the circumstances.

There were no unreasonable time limitations imposed in this case other than the needs of the Claimant. While the short timeframes of an appeal are often problematic, in this case the First DCA granted two extensions, one to each party. This is a

neutral factor.

F) The nature and length of the professional relationship with the claimant.

The Claimant's appellate attorney has been handling this case since shortly after the filing of the appeal. This is a neutral factor.

G) The experience, reputation, and ability of the lawyer or lawyers performing the services.

Nicholas A. Shannin, Esq., the Claimant's appellate attorney, has been practicing appellate litigation for over twenty years. He was board certified in appellate law by The Florida Bar in 2006. He does not practice exclusively in the field of workers' compensation. He has an excellent reputation in the workers' compensation field for representation of his clients. This is a plus factor.

H) The contingency or certainty of a fee.

Although no attorney takes a case and accepts a new client expecting to lose, there is no certainty of a fee in the appeal of a workers' compensation case. This matter was handled on a contingency basis, the contingency being that counsel for the Claimant would only be entitled to any attorney's fee if, and only if, he was to succeed in the appeal. The contingency fee versus the fee certain is a plus factor.

- 6) Based on the above findings, and the application of the statute and case law, I find that the Claimant's appellate attorney is entitled to \$300.00 per hour for 29.7 hours. The hourly rate is justified by Mr. Shannin's board certification in appellate law and the plus factors in this case.

It is **ORDERED and ADJUDGED** that:

The Employer/Carrier shall pay to the Claimant's appellate attorney a fee in the

amount of \$8,910.00.

Done and electronically served on Counsel and the Carrier this 3rd day of November, 2016, in Sebastian, Indian River County, Florida.



Robert L. Dietz
Judge of Compensation Claims
Sebastian/Melbourne District Office
1627 US-1, Suite 115
Sebastian, Florida 32958
(772)581-6800

COPIES FURNISHED:

Sedgwick CMS
FLOJCCInbox@sedgwickcms.com

Mark A. Nation, Esquire
suricchio@nationlaw.com,nzapatero@nationlaw.com

Nicholas A. Shannin, Esquire
nshannin@shanninlaw.com,mfigley@shanninlaw.com

H. A. Rigdon, Jr., Esquire
hrigdon@rigdonalexander.com,jconway@rigdonalexander.com

William H. Rogner, Esquire
wrogner@hrmcw.com,atierney@hrmcw.com