

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
CLEVELAND COATS,  
Complainants

v.

DOCKET NO. 14-BEM-00729

MASSACHUSETTS STATE POLICE,  
Respondent

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**DECISION OF THE FULL COMMISSION**

This matter comes before us following a decision issued on December 28, 2023, by the Full Commission in favor of the Complainant, Cleveland Coats, Jr. (“Complainant”). The decision affirmed the hearing decision issued by Hearing Officer Betty E. Waxman on June 26, 2020, finding that the Respondent, the Massachusetts State Police (“Respondent”), was liable for discrimination on the basis of age and race in violation of M.G.L. c. 151B §§4(1) and (1B) when Respondent removed Complainant from his position in the Executive Protection Unit (“EPU”). On January 12, 2024, Complainant’s counsel filed a Supplemental Petition for Attorney’s Fees and Costs (the “Supplemental Petition”), along with an affidavit and time records for \$145,470.00 in attorney’s fees arising out of Respondent’s appeal and post-hearing decision motions.

The Petition seeks attorney’s fees for work performed between August 5, 2020, and January 12, 2024. Subsequently, on January 30, 2024, the parties jointly submitted a stipulation on the Supplemental Petition in which the Complainant agrees to waive nominal costs for the time period and to accept a supplemental fee award of \$100,000.00, in lieu of the petitioned for amount of \$145,470.00. Respondent stipulates that the amount is reasonable.

## LEGAL DISCUSSION

Having previously affirmed the Hearing Officer's decision in favor of the Complainant, and having concluded that the Complainant has prevailed in this matter and is entitled to an award of reasonable attorney fees and costs, we now conclude that he is entitled to an award of attorney's fees associated with this appeal. See M.G.L. c. 151B, § 5; 804 CMR 1.23(12) (2020). Chapter 151B, § 5 allows prevailing complainants to recover reasonable attorney's fees, and 804 CMR 1.23(12)(c) specifically provides for the award of attorney's fees and costs accrued as an appellee litigating a respondent's appeal to the Full Commission. The determination of whether a fee sought is reasonable is subject to the Commission's discretion and includes such factors as the time and resources required to litigate a claim of discrimination in the administrative forum. Baker v. Winchester School Committee, 14 MDLR 1097 (1992). The Commission has adopted the lodestar methodology for fee computation. Id. By this method, the Commission will first calculate the number of hours reasonably expended to litigate the claim and multiply that number by an hourly rate it deems reasonable. The Commission then examines the resulting figure, known as the "lodestar," and adjusts it either upward or downward or determines that no adjustment is warranted depending on various factors, including complexity of the matter. Id.

Only those hours that are reasonably expended are subject to compensation under M.G.L. c. 151B. In determining whether hours are compensable, the Commission will consider contemporaneous time records maintained by counsel and will review both the hours expended and tasks involved. Id. at 1099. Compensation is not awarded for work that appears to be duplicative, unproductive, excessive, or otherwise unnecessary to the prosecution of the claim. Hours that are insufficiently documented may also be subtracted from the total. Grendel's Den v. Larkin, 749 F.2d 945, 952 (1st Cir. 1984); Brown v. City of Salem, 14 MDLR 1365 (1992). The

party seeking fees has a duty to submit detailed and contemporaneous time records to document the hours spent on the case. Denton v. Boilermakers Local 29, 673 F. Supp. 37, 53 (D. Mass. 1987); Baker v. Winchester School Committee, 14 MDLR 1097 (1992).

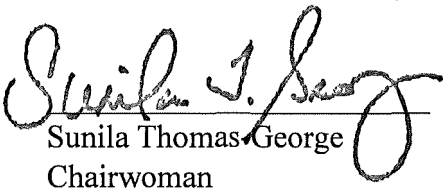
As discussed in the Full Commission's previous decision, the rates of \$575/hour for Attorney Brodeur-McGan, \$350/hour for Attorney Montagna, and \$150/hour for paralegals are reasonable. In this appeal, there was an atypical and significant amount of post-hearing decision activity exclusively driven by Respondent, including a number of motions Complainant zealously litigated. The Supplemental Petition includes approximately 264 billed hours for research and document drafting across 11 documents varying in complexity, and 216 of those hours were billed by lead counsel, Attorney Brodeur-McGan. With regard to Complainant's intervening brief in this appeal, Attorney Brodeur-McGan billed approximately 130 hours, Attorney Montagna billed approximately 9.5 hours, and paralegal Sharon LeFeave billed approximately 19.3 hours. Though Complainant submitted a well-reasoned and lengthy brief, there were several instances of repeated efforts of what appears to be extensive research and drafting the same sections of said brief. Similarly, Attorney Brodeur-McGan billed 29 hours to preparing and drafting an opposition to Respondent's two-page Motion for Leave to Introduce New Evidence, 15.5 hours on an opposition to Respondent's Appeal of Attorney's Fees and Costs, and 21 hours to preparing and drafting an opposition to Respondent's Motion for Protective Order/Impoundment Order and Stay of Publication and an associated cross motion. Attorney Montagna and paralegal Sharon LeFeave billed additional time on all these documents as well. Notwithstanding the unusual volume of litigation in this administrative appeal, the hours billed by an attorney with 34 years of civil rights litigation experience for drafting and researching these documents are excessive. However, the reduction of fees to \$100,000, as stipulated to by Respondent, reasonably accounts for such excess,

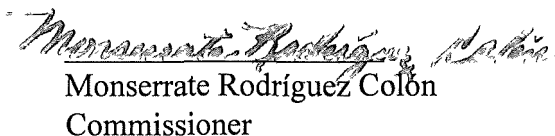
as well as the several line items in Complainant's Supplemental Petition that were vague, unrelated to this appeal, or otherwise administrative in nature totaling 13.9 hours.<sup>1</sup>

### **ORDER**

For the reasons set forth above, Respondent is hereby ordered to pay Complainant \$100,000 in attorney's fees with interest thereon at the rate of 12% per annum from the date of the filing of the Complainant's Supplemental Petition, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue. This decision on Complainant's Supplemental Petition together with the Full Commission's decision issued pursuant to 804 CMR 1.23(10) on December 28, 2023, constitutes the Final Decision of the Commission for the purpose of judicial review pursuant to M.G.L. c. 151B, § 6 and M.G.L. c. 30A, § 14(1).

SO ORDERED this 13<sup>th</sup> day of March 2024.

  
Sunila Thomas-George  
Chairwoman

  
Monserrate Rodríguez Colón  
Commissioner

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<sup>1</sup> These entries are dated 8/10/20, 8/17/20, 8/24/20, 9/3/20, 9/4/20, 9/8/20, 9/10/20, 9/14/20, 9/22/20, 9/24/20, 10/30/20, 11/10/20, 11/16/20, 2/18/21, 3/2/21, 3/3/21, 6/2/22, 12/6/22, 12/8/22, 12/9/22, 12/12/22, 5/15/23, 5/30/23, 5/31/23, 11/17/23 and are by Attorney Brodeur-McGan, Attorney Montagna, or Sharon LeFeave. Examples include an entry concerning reducing file/byte size of email attachments, a vague entry to "[p]ull dates for several events/documents," and research and an associated memorandum over two years after filing Complainant's brief in intervention.