

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2014 NOV 24 AM 8:13

BETTY J. GOULD, CLERK

9

- 1 EXPEDITE
- 2 No Hearing Set
- 3 Hearing is Set:
Date: 11/21/2014
- 4 Time: 9:00 AM
- 5 Judge Erik D. Price

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

EX PARTE

9 GRANT BOYER, individually,
10 Plaintiff,
11 vs.
12 STATE OF WASHINGTON,
13 Defendant.
14

11-2-01726-2
~~(PROPOSED)~~ SECOND AMENDED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
PLAINTIFF'S PETITION FOR
ATTORNEY FEES AND COSTS

15 THIS MATTER came on regularly before this Court on Plaintiff's Petition for Attorney
16 Fees and Costs. The Court heard the arguments of counsel and considered the following:

17 Plaintiff's Petition for Attorney Fees and Costs;

18 The Declaration of John P. Sheridan in Support of Plaintiff's Petition for Attorney Fees
19 and Costs with attached exhibits;

20 The Supplemental Declaration of John P. Sheridan in Support of Plaintiff's Petition for
21 Attorney Fees and Costs with attached exhibits;

22 The Second Supplemental Declaration of John P. Sheridan in Support of Plaintiff's
23 Petition for Attorney Fees and Costs with attached exhibits;

24 The Declaration of Grant Boyer Regarding Trial Expenses;

~~(PROPOSED)~~ SECOND AMENDED FINDINGS
OF FACT AND CONCLUSIONS OF LAW
REGARDING PLAINTIFF'S PETITION FOR
ATTORNEY FEES AND COSTS - 1

THE SHERIDAN LAW FIRM, P.S.
HOGE BUILDING, SUITE 1200
705 SECOND AVENUE
SEATTLE, WA 98104

TEL: 206-381-5949 FAX: 206-447-9206

 ORIGINAL

1 The Declaration of Beth Touschner in Support of Plaintiff's Petition for Attorney Fees
2 and Costs;

3 The Declaration of Katherine C. Chamberlain in Support of Plaintiff's Petition for
4 Attorney Fees and Costs;

5 The Defendant's response in opposition to Plaintiff's Petition for Attorney Fees and
6 Costs;

7 The declaration(s) of counsel in opposition to Plaintiff's Petition for Attorney Fees and
8 Costs with attached exhibits;

9 Plaintiff's Reply and supporting declaration with attached exhibits; and,

10 The record of these proceedings.

11 Having been fully advised, the Court makes the following findings of fact and
12 conclusions of law, *as explained in Court's oral ruling dated October 31, 2014.*

13 Background *further*

14 1. This case was filed pro se on May 11, 2011, in King County Superior Court
15 alleging violations of the Washington Law Against Discrimination, RCW 49.60. The case was
16 tried before a jury from August 4, 2014, and to August 14, 2014, at which time the jury found
17 that the State had failed to reasonably accommodate an impairment of Mr. Boyer's in
18 violation of the WLAD, and awarded \$75,000 in Damages.

19 2. Pursuant to RCW 49.60.030(2), it is undisputed that Plaintiff is entitled to an
20 award of reasonable attorneys' fees and costs. The trial court has great discretion in awarding a
21 reasonable fee and that great discretion starts with the lodestar. The lodestar is a mathematical
22 exercise of taking a reasonable rate and multiplying by the reasonable hours.

23
24 3. Nevertheless, the lodestar is only a starting point, and, thus, the fee calculated
25 using the lodestar is not necessarily a reasonable fee. *Berryman v. Metcalf*, 177 Wn. App. 674

1 (2013). Following the calculation of a lodestar, the fees can go up or down, depending on the
2 circumstances.

3 4. In *Chuong Van Pham v. Seattle*, 159 Wn.2d 527 (2007), the Washington State
4 Supreme Court wrote that:

5 The Washington law against discrimination places a premium on encouraging
6 private enforcement, and ... the possibly of a multiplier works to encourage civil
7 rights attorneys to accept difficult cases. While we presume that the lodestar
8 represents reasonable fees, occasionally a risk multiplier will be warranted,
because the lodestar figure does not adequately account for the high risk nature of
the case.

9 *Id.*, at 542.

10 **Plaintiff's Attorneys' Hourly Rates**

11 5. Defendant and Mr. Caryl argue that Plaintiff's requested rates are too high.
12 Notwithstanding these arguments, the Court finds that the rates requested by plaintiff to be
13 within the acceptable range for counsel. The Court's prior experience as a partner in a
14 regional law firm, including familiarity with the issue of rates, competitors' rates, what rates
15 ought to be, and what the market can and does support with respect to rates, leads the Court to
16 be persuaded by the plaintiff on the issue of his counsel's rates. While the rates of plaintiff's
17 counsel may be high, the Court finds the rates requested by plaintiff are within acceptable
18 ranges.

19 6. The Court declines to award Plaintiff's counsel his current rates for the entirety
20 of the representation. To the extent that Plaintiff seeks to apply rates that are not the "then-
21 applying rate" for the time period of the billing, those billings have been adjusted downward to
22 reflect the "then-applying rate."
23
24

25 **Total Hours Worked and Multiplier**

7. There is a dispute about the hours billed and a dispute about the multiplier.

1 The Court addresses these issues together.

2 8. There is support for defendant's argument that there are challengeable hours
3 here. There is support for defendant's argument that this was not a tremendously complicated
4 case, nor one with much risk. But there is also support for Plaintiff's argument that
5 discrimination cases are viewed differently with respect to multipliers than other cost-shifting
6 statutes. There is a policy to incentivize counsel to take cases such as this.

7 9. The Court spent an appropriate amount of time looking at the billings and
8 considering the strengths and weaknesses of the parties' positions. So taking the confluence of
9 all of these facts together, it exercises its discretion and makes a ruling that it believes
10 represents a reasonable fee for this matter.

11 10. Plaintiff will be able to collect, at the rates describe above, 100 percent of the
12 claimed hours and 100 percent of the claimed costs. There will be no multiplier. However, to
13 the extent that a line-by-line analysis of the billings would reveal some merit to defendant's
14 arguments about the billings, such as block billing, duplicated or inefficient hours, recovery by
15 plaintiff of those potentially-challengeable hours represents an upward adjustment of the
16 lodestar. This upward adjustment would be intended to provide, and in some measure does
17 provide, the incentivizing of the plaintiff's counsel that our law against discrimination wants to
18 have encouraged.

19 11. Having reviewed all the materials, considering the positions of the party,
20 including a sense of the magnitude of the billing infirmities that the Court has mentioned, and
21 personally having sat through this trial and observed the performance of plaintiff's counsel,
22 and read many, ~~many, many~~ other inches of materials that have been drafted by plaintiff's
23 counsel and his team, and having its own observations of the relative difficulty or ease of this
24 case, this ruling, in the Court's view, represents a reasonable fee.

25 12. Thus, the Court's calculation of a reasonable fee is as follows:

<u>Attorney/Staff</u>	<u>Hourly Rate</u>	<u>Hours Billed</u>	<u>Total</u>
Sheridan (2011 hourly)	\$450 (2011 hourly rate)	4.0	\$ 1,800.00
Sheridan (2011-12 contingent)	\$550 (current rate applied)	0	\$ 0.00
Sheridan (1/13-7/14 MHB contingent)	\$550	89.7	\$ 49,335.00
Sheridan (8/14 SLF contingent)	\$550	165.0	\$ 90,750.00
Shaeffer (2013 - 7/14 MHB contingent)	\$425	4.4	\$ 1,870.00
Touschner (2011-12 contingent)	\$300 (2011 hourly rate)	4.1	\$1,230.00
Touschner (2011-12 contingent)	\$325 (current rate applied)	0	\$ 0
Touschner (2013 on contingent)	\$325	90.8	\$ 29,510.00
Ackley (2011 hourly)	\$250	65	\$ 16,250.00
May (2011 hourly)	\$175 (2011 hourly rate)	11.14286	\$ 1,950.00
May (2011-12 contingent)	\$175	24.15714	\$ 4,227.50
May (2013 - 7/31/14 contingent)	\$200	326.4	\$ 65,280.00
May (8/1/14 contingent)	\$200	109.8	\$ 21,960.00
	Total Hours Worked:	894.5	\$284,162.50
		Total Fees (Before Fees Related To Fee Petition)	\$284,162.50

See Sheridan Dec., ¶24 (with adjustments made to provide for "then-applying rates").

The lodestar in this case is the product of the rates and hours billed as set forth above, which totals \$284,162.50. The Court finds this amount to be a reasonable fee.

Fees to prepare Fee Petition

13. In cases brought under RCW 49.60, *et seq.*, the Court may "award fees for

1 time expended to prepare a fee petition....” *Steele v. Lundgren*, 96 Wn. App. 773, 781 (1999).
2 Mr. Sheridan submits a supplemental declaration totaling \$17,335 in fees for preparing the fee
3 petition and related pleadings. Sheridan 2nd Supp’l Dec., Ex. 1. MHB attorneys Katherine
4 Chamberlain and Beth Tuschner also submit billings of \$1,600 and \$780, respectively, in
5 relation to preparing MHB’s fee petition. Chamberlain Dec., ¶¶ 8-9; *accord* Dec., Tuschner
6 Dec., ¶¶ 14. The Court finds that Plaintiff’s fees for preparing the fee petition and related
7 pleadings, totaling **\$19,715**, are reasonable and awards these fees.

8 14. The Court also finds that for 14.7 hours spent by Plaintiff’s counsel in
9 preparing for and attending the hearing on the fee petition are reasonable. Sheridan 3rd Supp’l
10 Dec., Ex. 1. Such fees total **\$8,085**. The Court awards these fees.

11 **Costs**

12 15. Plaintiff submitted the following declarations with exhibits related to costs:

<u>Declaration</u>	<u>Total</u>
Sheridan Dec. (dated Sept. 11, 2014), Ex. 10	\$ 9,567.42
Chamberlain Dec. (dated Sept. 10, 2014), Ex. B	\$ 8,538.11
Sheridan 2 nd Supp’l Dec. (dated Oct. 28, 2014), Ex. 2	\$ 2,512.30
Sheridan 3 rd Supp’l Dec. (dated Nov. 13, 2014), Ex. 2	\$ 420.95
TOTAL COSTS	\$21,038.78

13
14
15
16
17
18
19 16. The Court finds that the costs submitted are reasonable and awards them.

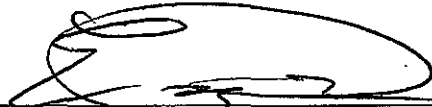
20
21
22 **Summary and Allocation**

23 17. The defendant is ordered to pay the plaintiff for attorneys’ fees and costs as
24 follows:
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Attorney Fees:	\$ 284,162.50
Fees to Prepare Fee Petition pleadings:	\$ 19,715.00
Fees to Prepare for and Attend Hearing on Fee Petition:	\$ 8,085.00
Costs:	\$ 21,038.78
Total Owing:	\$ 333,001.28

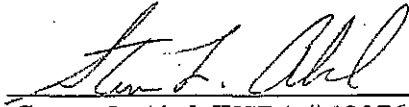
DATED this 21st day of November, 2014.


Hon. Erik D. Price
Thurston County Superior Court

Presented by:
THE SHERIDAN LAW FIRM, P.S.

By: s/John P. Sheridan
John P. Sheridan, WSBA # 21473
Attorneys for Plaintiff

Approved:
ROBERT W. FERGUSON
Attorney General

By: 
Steven L. Abel, WSBA # 12076
Attorneys for Defendant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

I, Patti Lane, certify under penalty of perjury under the laws of the State of Washington and the United States that, on October 28, 2014, I served the document to which this Certificate is attached, as well as the underlying documents, via email to the party listed below.

Attorneys and Staff for Defendant State of Washington

Steven Abel StevenA@ATG.WA.GOV

Suzanne LiaBraaten, SuzanneL@ATG.WA.GOV

AmnyaR@atg.wa.gov

KrisE@atg.wa.gov

TORSEAEF@atg.wa.gov

DATED this 12th day of November, 2014.

s/Patti Lane
Patti Lane, Legal Assistant

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN AND FOR THE
COUNTY OF THURSTON

GRANT BOYER,

Plaintiff/Petitioner

vs

No. 11-2-01726-2

STATE OF WASHINGTON,

DECLARATION OF
EMAILED DOCUMENT
(DCLR)

Defendant/Respondent

I declare as follows:

1. I am the party who received the foregoing email transmission for filing.
2. My address is: 3400 Capitol Blvd. SE #103, Tumwater WA 98501
3. My phone number is (360) 754-6595.
4. I have examined the foregoing document, determined that it consists of 9 pages, including this Declaration page, and that it is complete and legible.

I certify under the penalty of perjury under the laws of the State of Washington that the above is true and correct.

Dated: November 20, 2014 at Tumwater, Washington.

Signature: _____

Print Name: James Lincoln