

Hon. Alberto Rivas, J.S.C.
 Superior Court of New Jersey
 Middlesex Vicinage
 56 Paterson Street
 New Brunswick, NJ 08903

FILED
November 30, 2023
 Hon. Alberto Rivas, J.S.C.

<p>S.M. o/b/o H.M.,</p> <p style="text-align: right;">Plaintiffs,</p> <p>vs.</p> <p>BOARD OF EDUCATION OF THE TOWNSHIP OF MONROE IN THE COUNTY OF MIDDLESEX, J.H., S.H., A.H., ROBERT GOODALL, ANTHONY GAMBINO, DANIEL LEE, ABC CORPORATIONS 1-5 (fictitious names describing presently unidentified business entities), and JOHN DOES 1-5 (fictitious names describing presently unidentified individuals),</p> <p style="text-align: right;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY</p> <p>DOCKET NO.: MID-L-2756-17</p> <p style="text-align: center;"><u>Civil Action</u></p> <p style="text-align: center;">ORDER and STATEMENT OF REASONS</p>
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THIS MATTER having been tried before the Court between May 8, 2023 through May 23, 2023, and the jury having deliberated and determined the matter by finding in favor of Plaintiffs, S.M. o/b/o H.M. (collectively, the “Plaintiffs”) against Defendant Board of Education of the Township of Monroe in the County of Middlesex, on the issues of discrimination and harassment in violation of the New Jersey Law Against Discrimination (NJLAD), and negligence, resulting in a finding that Plaintiffs were entitled to damages; and the Court having reviewed the submissions of counsel; and for the reasons contained in the annexed Statement of Reasons; and for good cause having been shown:

IT IS on this 30th DAY OF NOVEMBER 2023 ORDERED AS FOLLOWS:

ORDERED that judgment is entered against Defendant, Board of Education of the Township of Monroe in the County of Middlesex, for compensatory damages in the amount of \$500,000.00; and it is further

ORDERED that judgment is entered against Defendant Board of Education of the Township of Monroe in the County of Middlesex for attorneys' fees and costs, including the lodestar (\$604,525.13) and contingency fee enhancement (\$199,493.29), in the amount of **\$804,018.42**; and it is further

ORDERED that judgment shall be entered against Defendant Board of Education of the Township of Monroe in the County of Middlesex for the total judgment awarded to Plaintiffs, including (1) compensatory damages (\$500,000.00) ; (2) an award of attorneys' fees and expenses, which includes the lodestar and contingency fee enhancement (\$804,018.42); and (3) pre-judgment interest (\$93,469.18¹), for a total judgment of **\$1,397,487.60**; and it is further

ORDERED that a copy of the within Order shall be served upon all counsel upon its upload to eCourts. Pursuant to R. 1:5-1(a), movant shall serve a copy of this Order on all parties not electronically served within seven days of the date of this Order.


Hon. Alberto Rivas, J.S.C.

¹ The Court relies on Plaintiff's calculation of prejudgment interest contained on page 10 of Plaintiff's motion for counsel fees filed with this Court on June 9, 2023.

S.M. o/b/o H. M. v. Board of Education of the Township of Monroe in the County of Middlesex, et als.
Docket No.: MID-L-2756-17

STATEMENT OF REASONS:

This case involves allegations of harassment, discrimination, and negligence against the Board of Education of the Township of Monroe in the County of Middlesex (“Board of Education”). The Plaintiff, who is a former student of Monroe Township High School, was assaulted by another student in the boys' locker room, during school hours, which resulted in substantial injuries.

A complaint was initiated by Plaintiff against the Board of Education, along with several individual defendants. Following extensive motion proceedings, the case was tried from May 8 to May 23, 2023. The jury determined that the Board of Education had violated the New Jersey Law Against Discrimination (NJLAD) and was also negligent. The jury awarded damages in the amount of \$400,000 for the NJLAD claim and \$100,000 for the negligence cause of action. Pursuant to N.J.S.A. 10:5-27.1, the prevailing party on an NJLAD claim is entitled to reasonable attorney fees. Currently before the court is Plaintiff’s motion for counsel fees.

In a fee shifting case such as this one, the Court’s initial obligation is to determine the “lodestar”, which is arrived at by calculating the number of hours reasonably expended by the attorney, multiplied by a reasonable hourly rate. Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 445 (2001). In analyzing the reasonableness of the application, the Court in Rendine v. Pantzer set forth several factors the Court must consider: (1) were the hours reasonably expended; (2) were the hours expended on the successful portion of the claim; (3) were the hours adequately documented, and (4) whether a contingency enhancement is appropriate for the case. Rendine v. Pantzer, 141 N.J. 292, 334-338 (1995).

In assessing reasonableness, the Court must take into consideration the factors set forth in R.P.C. 1.5. More specifically:

- (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 charged 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;
- (8) whether the fee is fixed or contingent.

RPC 1.5. See also Garneau v. DNV Concepts, Inc., 448 N.J. Super. 148, 160 (App.Div. 2016).

In this case, the Plaintiff was represented by the law firm of McOmber McOmber and Luber, who has provided the billing records for their services. The total hours submitted amount to 1,417, involving 13 lawyers, 4 paralegals, and 1 law clerk. The Court is required to “evaluate carefully and critically the aggregate hours and specific hourly rates advanced by counsel for the prevailing party to support the fee application.” Rendine, 141 N.J. at 335. The Court's assessment also considers the notion of “billing judgment,” as highlighted in Copeland v. Marshall, 641 F.2d 880, 891 (D.C. Cir. 1980).

HOURLY RATES

The two attorneys who logged the highest number of hours in this case were Armen McOmber (“RAM”) and Austin Tobin (“ABT”). McOmber's hourly rate was \$575, and Tobin's was \$550. McOmber, a partner at a twenty-six-lawyer firm since 2001, charges within the customary range for attorneys with similar experience in New Jersey. On the other hand, Tobin, who has been practicing since 2010, has a rate 95% of McOmber's, despite McOmber having almost twice the experience. Tobin is identified as an associate on the firm's website. Considering these factors, the court deems Tobin's hourly rate excessive and will adjust it to \$450.

William Carr (“WLC”), identified as a partner at the firm and admitted to the bar in 2005, maintains an hourly rate of \$550, a figure deemed acceptable by the Court given his experience. This rate aligns with the customary charges of attorneys with Mr. Carr's years of expertise in New Jersey.

Christian McOmber (“CUM”) and Matthew Luber (“MAL”), also partners at the firm, were admitted to the bar in 2010. Their hourly rate of \$550 is considered appropriate for partners and will be accepted by the Court for the purposes of this motion.

Jaclyn Lazzaro (“JNL”) and Kaitlyn Grajeck (“KRG”), admitted to the bar in 2016 and 2017 respectively, billed their time at \$250 per hour, a rate the Court deems presumptively reasonable.

Associate Lauren Hill (“LMH”), admitted in 2019, and Associates Tyler Burrell (“TJB”), Christian Fechter (“CJF”), Tiffany Vacullo (“TMV”), and Jeffery Rankel (“JPR”), all admitted in 2021, have posted rates of \$325 per hour. However, considering their years of experience, the Court deems this rate inappropriate, particularly when compared to the rate applied to lawyers admitted several years prior to them. For this group of attorneys, the Court will adjust the rate to \$250 per hour.

The firm's billing for paralegal work at \$200 per hour aligns with the customary rate for paralegal services in New Jersey and will be accepted by the Court. Similarly, the law clerk rate billed by the firm, set at \$175 per hour, is considered reasonable and appropriate and will be relied upon by the Court.

TIME EXPENDED

Work on this case began in 2016, and the complaint was filed in 2017. Throughout the process, 7 discovery motions and summary judgment motions were submitted by both parties. An attempt at mediation took place in fall 2019 with a retired judge. The case proceeded to trial over a 15-day period in May 2023. The matter was vigorously contested by both sides.

Despite the aforementioned factors, there were some billed hours the Court deemed unreasonable, necessitating their exclusion in calculating the lodestar. In making this determination, the Court relies on the "billing judgment" doctrine.

(a) TORT CLAIM NOTICE

The Plaintiff billed a total of 6 hours for general legal claims research on September 9, 2016, and an additional 8.6 hours between October 11-19, 2016, while preparing the Tort Claims Notice, developing facts, and researching claims. This work was conducted by first-year associate, KRG, at a billing rate of \$250 per hour. The Court has determined that the research undertaken for filing the Tort Claims Notice was excessive and, therefore, will reduce the total hours billed by 5 hours.

(b) DEPOSITION PREPARATION

Attorneys RAM and ABT both billed for depositions that ABT conducted. There is no basis for two lawyers to bill for a deposition conducted by one lawyer. RAM in his billing record does not identify any specific witness that he prepared for on June 6, 2019 or September 23, 2019. From the records, ABT was the attorney who handled the depositions that took place on the following day. On June 3, 2020, the two attorneys participated in the zoom deposition for one of the parties;

again there is nothing in the record to warrant having two attorneys. Therefore, a total of 15.5 hours will be deducted from RAM.

(c) SUMMARY JUDGMENT MOTIONS

Both parties filed for summary judgment, with the Board of Education successfully obtaining summary judgment on Counts 2 and 8 of the Plaintiff's complaint. The Plaintiff, in turn, moved for summary judgment on Count 4 (Battery), Count 5 (Negligence), and Count 6 (Negligent Supervision). The Plaintiff's motion was denied. The firm's time records reveal that the law clerk billed 65.7 hours, LMH billed 45.4 hours, and ABT billed 28.7 hours for these efforts. The Plaintiff submitted a total of 128 pages for their motion, including a 70-page brief, whereas the Board of Education's filing consisted of only 36 pages.

The total time billed by the Plaintiff for the summary judgment motions, 139.8 hours, is deemed excessive considering the skill and experience of the firm's lawyers. The Court, recognizing that experience leads to efficiency, will therefore reduce the law clerk's billed time by 11 hours, the associate's time by 10 hours, and ABT's time by 5 hours.

(d) PRETRIAL CONFERENCE

Both RAM and ABT attended the pretrial conference at the courthouse on January 9, 2023. RAM billed 3 hours and ABT billed 4 hours. The Court will deduct 1 hour from ABT's billing for this event.

(e) IN LIMINE MOTIONS

The Board of Education filed 7 in limine motions, while the Plaintiff filed 8 in limine motions. In response to and preparation for these motions, the Plaintiff billed a total of 26 hours. Some of parties' motions were essentially duplicates of each other, with the Plaintiff submitting pro forma motions for sequestration, the use of demonstrative exhibits, note-taking, calling adverse parties in their case in chief, and allowing the introduction of remedial measures. These types of motions are standard in most cases and have no doubt been filed by Plaintiff's law firm in other litigation. JPR took on the majority of the work, and his hours will be reduced by 3 hours. Additionally, ABT's review time will be reduced by 2.4 hours.

(f) PRETRIAL EXCHANGE

The Plaintiff submitted a pretrial exchange and billed a total of 14.6 hours for this task. However, the exchange essentially consists of a summary compilation of proposed evidence, witness identification, voir dire requests, and proposed jury charges. Given the nature and the

experience of Plaintiff's litigation firm, the total time billed is considered excessive. Consequently, the Court will reduce ABT's billed time by 4 hours.

(g) TRIAL PREPARATION

Regarding trial preparation, MAL billed 54.9 hours from May 4 through May 11, 2023, while the trial itself took place from May 8 to May 23, 2023. All entries for MAL during this period indicate the same activities: "preparing opening statement; reviewing trial exhibits and deposition transcripts." Notably, MAL was not one of the trial attorneys. Presumably, the actual trial attorneys were involved in these actions immediately before and during the trial, as reflected in their billing time sheets. Consequently, the work attributed to MAL in the time sheets appears to be duplicative or redundant, leading the Court to deduct 54.9 hours from MAL.

Similarly, MAL's time entries for the preparation of expert witness outlines, review of expert reports, and preparing for closing/jury charge from May 13 to May 22, 2023, seem to be tasks undertaken that the trial team were responsible to complete. Therefore, an additional 14.3 hours will be deducted from MAL's time.

The firm billed 30.2 hours for the preparation of trial binders, a task undertaken by MAR and MS, two of the firm's paralegals. However, the Court finds the time spent on this project to be excessive, leading the Court to reduce MAR's billing entries by 5 hours.

Additionally, a directed verdict motion was drafted but never filed, and this will be deducted from LMH's billing entries, resulting in a total reduction of 3.3 hours.

(h) TRIAL

During trial, the firm engaged three lawyers—RAM, ABT, and PDV—to handle the case, with RAM and ABT acting as the lead counsel. PDV, the third lawyer, is a senior attorney billing at \$550 per hour. While recognizing the competence and experience of all counsel involved, it is Court's judgment that the case could have been adequately managed by the two lead counsel without the necessity of a third lawyer. Pursuant to billing judgment, the time expended by the third lawyer, PDV, will be excluded from the lodestar calculation as it is deemed superfluous to the case's requirements.

(i) ATTORNEY'S FEE MOTION

The firm billed a total of 14.1 hours for the preparation of the attorney's fees motion, primarily centered around printing and producing the firm's billing records. However, the Court finds that the 5.3 hours charged by ABT for revisions and review to be excessive based on the

actual submission made to the Court. Therefore, the Court will deduct these 5.3 hours from ABT's billing entries.

CALCULATION OF LODESTAR

Consistent with the Court's reasoning as set forth above, below is the Court's calculation of the lodestar:

Attorney	Hourly Rate	Hours	Total
RAM	\$575	244.5	\$ 140,587.50
CVM	\$550	2.6	1,430.00
WLC	\$550	4.9	2,695.00
MAL	\$550	6.5	3,575.00
ABT	\$450	497.0	223,650.00
PDV	\$550	6.5	3,575.00
KRG	\$250	37.1	9,275.00
LMH	\$250	44.2	11,050.00
JNL	\$250	30.0	7,500.00
TJB	\$250	3.5	875.00
JPR	\$250	47.5	11,875.00
CJF	\$250	13.0	3,250.00
TMY	\$250	37.9	9,475.00
Paralegals (MAR, MS)	\$200	243.2	48,640.00
Law Clerk	\$175	134.3	23,502.50
TOTAL			\$500,954.50

The Court has reviewed the costs and disbursements made by the firm during this lengthy litigation in the amount of \$103,570.63 to be reasonable and appropriate. The Court will award same and will include the total in the amount of attorney's fees being awarded.

The Court finds the total lodestar in this case to be \$604,525.13 (\$500,954.50 + \$103,570.63).

CONTINGENCY FEE ENHANCEMENT

The Plaintiff has sought a contingency fee enhancement as a component of the attorney fees awarded. Specifically, the Plaintiff has requested a 50% enhancement.

"If the attorney's compensation is partly or entirely contingent on a successful outcome, the trial court then considers an enhancement to the lodestar in accordance with prescribed guidelines to account for the risk of nonpayment that the attorney assumed by pursuing the case." Hansen v. Rite Aid Corp., 253 N.J. 191, 201 (2023) (citing Rendine v. Pantzer, 141 N.J. 292, 316-45 (1995), and Walker v. Giuffre, 209 N.J. 124, 130-41 (2012)).

In this case, the Plaintiff prevailed in its NJLAD claim, with 80% of the jury award attributed to that specific claim. The law firm took on the representation on a contingent fee basis and was, in fact, the second firm to handle the matter. In accordance with Rendine, the Court has established that contingency enhancements in fee-shifting cases generally fall within the range of five to fifty percent of the lodestar fee. Specifically, in typical contingency cases, the enhancement typically ranges between twenty and thirty-five percent of the lodestar fee, as noted in Hansen, 253 N.J. at 218 (quoting Rendine, 141 N.J. at 343).

This Court is obligated to elucidate how the chosen contingency enhancement aligns with the customary ranges for such enhancements and how it contributes to the goals that the Legislature intended to achieve through the fee-shifting mechanism, as articulated in Walker v. Giuffre, 209 N.J. 124, 148 (2012).

This case was litigated for over seven years, involving numerous motions, including significant summary judgment motions that led to the dismissal of two of the Plaintiff's counts. The case underwent mediation with a highly regarded retired judge, but the Board of Education maintained an inflexible settlement posture throughout. The culmination was a multi-week trial before a jury. Notably, the theory of liability in this case differed from a typical NJLAD employment matter, focusing on an issue related to perceived sexual orientation, thereby advancing and vindicating one of the NJLAD's core objectives. Considering these factors collectively, the Court has determined that a contingency enhancement of 33% is appropriate in this case, supplementing the lodestar calculation established by the Court.

The total counsel fees awarded is \$804,018.42 (lodestar \$500,954.50 + 33% enhancement \$199,493.29). A form of Order is attached.