



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Office of Federal Operations**  
**P.O. Box 77960**  
**Washington, DC 20013**

[REDACTED]  
Sallie M.,  
(Complainant 1),

and

[REDACTED]  
Alexandria P.,<sup>1</sup>  
(Complainant 2),

v.

Megan J. Brennan,  
Postmaster General,  
United States Postal Service  
(Eastern Area),  
Agency.

Request Nos. 0520180407 & 0520180408

Appeal Nos. 0120170599 & 0120170600

Hearing Nos. 490-2010-00012X & 490-2010-00013X

Agency Nos. 4H-370-0057-09 & 4H-370-0056-09

**DECISION ON REQUEST FOR RECONSIDERATION**

On May 14, 2018, the complainants jointly timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal Nos. 0120170599 & 0520180408 (April 10, 2018). EEOC regulations provide that the Commission may, in its discretion, grant a request to reconsider any previous Commission decision issued pursuant to 29 C.F.R. § 1614.405(a), where the requesting party demonstrates that: (1) the appellate decision involved a clearly erroneous interpretation of material fact or law; or (2) the appellate decision will have a substantial impact on the policies, practices, or operations of the agency. See 29 C.F.R. § 1614.405(c).

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<sup>1</sup> This case has been randomly assigned pseudonyms which will replace Complainants' names when the decision is published to non-parties and the Commission's website.

### BACKGROUND

The Complainants' law firm represented the complainants throughout extensive discovery, motions work, and a 12-day hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainants prevailed on their sexual harassment and reprisal claims and obtained substantial relief.

In its fee petition, as supplemented, the complainants' law firm requested to be compensated for 1,930.10 hours of work at varying billing rates for paralegals, law clerks, and attorneys (rates varied for attorneys based on years of experience). The rates were derived from the "Laffey" rate matrix prepared by the U.S. Attorney's Office for the District of Columbia. Under the matrix, the rate for paralegals and law clerks is the same. The law firm requested a total of \$557,752.50 in fees for hours spent representing Complainants 1 and 2, separately and jointly.

The AJ awarded a total of \$325,944.50 in attorney fees. In so doing, she referred to some of her analysis and findings in her prior sanctions fee decision, and for ease of reading, as appropriate, we will treat the referenced findings as part of the later decision. The AJ decided to use hourly rates charged in the local area, not the Washington, D.C. Laffey rates. She determined that Knoxville, Tennessee was the appropriate local market because, in part, this was where the Complainants requested the entire hearing be held and where it was moved. The AJ was unpersuaded by the argument local attorneys lacked the requisite legal acumen to practice before the Commission and more specifically, to render competent and effective representation in the instant case, which was not complex, their argument was specious. The AJ noted a Knoxville attorney identified by the Agency whose website indicated that she was in practice since 1992, and mostly represented employees, including federal government employees, and who (in a Title VII case in 2008) obtained a six-figure verdict for her client and over a half a million dollars in attorney fees after an eight-day jury trial.

The AJ heard testimony at the hearing by Complainants 1 and 2 on their efforts to find local experienced counsel and found it lacking. The AJ found that had the complainants made a diligent but unsuccessful search for local experienced counsel, then perhaps the Laffey rate matrix would apply.

The AJ deducted the fees previously awarded as a sanction (which were not paid when the fee petition was fully briefed). The AJ observed that the law firm charged full hourly rates for the travel time (during business hours) of attorneys and staff, but since it was only reimbursable at half their hourly rates under Commission case law, she reduced the rate by 50% for travel time she could segregate. The AJ then applied a 10% across the board reduction to fee petition to arrive at the number of hours reasonably expended. The AJ gave some examples for why she did this. She wrote that some entries were block billed, so she could not extrapolate the travel time in those entries from the other time. She found such block billing, of which the above was only one example, was another reason for the across the board reduction. The AJ found that the complainants' law firm spent excessive hours engaging in lengthy research on damages, even though it is expert in all aspects of employment law litigation and spent excessive hours, referring

to Agency argument, by bringing additional attorneys “to the table.” In this regard, the Agency argued in part that even though an attorney with a lower hourly rate conducted a deposition in March 2010, and prepared for doing so with the assistance of a paralegal in February and March 2010, a more senior attorney with a higher billing rate also billed for preparing for the same deposition. The AJ wrote that she spent considerable time analyzing the billing entries of the law firm’s voluminous fee petition, and was confident that there was unnecessary, excessive, and redundant work performed and billed.

The AJ reduced the hourly rate of four law firm staff identified as attorneys to the paralegal rate because the fee petition contained no sworn biographical information on them, including their law schools, where and when they were admitted to the bar, and how long they had been practicing. The AJ reduced the hourly rate of law clerks, who she presumed were law students, to 25% of the paralegal rate. Of the 1,930.10 hours billed, the AJ determined that 44.82 involved the above four identified attorneys, and law clerks.

On appeal, the complainants, by and through their law firm, argued that the AJ should have used the Washington, D.C. Laffey rates, that the 10% across the board reduction was unjustified, acknowledged not including the missing biographical affidavits, submitted three and argued this cured the defect, and argued that law clerks and paralegals should be paid at the same rate.

In our previous decision, we affirmed the AJ’s decision. We found that if a complainant does not find counsel readily available in the locality of the case with the necessary skill and experience, under Commission case law it is reasonable for the party to go elsewhere to find an attorney, and the burden is on the agency to show that a Complainants’ decision to retain out-of-town counsel was unreasonable. We agreed with the AJ that the Agency met its burden of establishing that Complainants could have found alternate counsel in Tennessee with suitable experience. We recounted the AJ’s observation in part that Knoxville was a large metropolitan area with a highly respected local law school and found that the Complainants’ search for local counsel was insufficient. The Complainants request for reconsideration followed.

In their request for reconsideration, the Complainants, by and through their law firm, reiterate the arguments they previously made that the burden is on the Agency to prove it was unreasonable for them to retain non-local counsel, and past Commission cases applying this burden show the Agency did not meet it. They also argue that the previous decision did not address the remaining three attorney fees issues raised in their appeal. In opposition to Complainants’ request, the Agency argues that the Complainants failed to meet the criteria for reconsideration.

### ANALYSIS AND FINDINGS

Since the Complainants testified at the hearing about their efforts to retain local counsel, the AJ’s determination that their search was insufficient was subject to review on appeal under the substantial evidence standard. 29 C.F.R. § 1614.405(a). And because the previous decision reviewed and addressed the search matter, Complainants must show that the appellate decision on this issue involved a clearly erroneous interpretation of material fact or law.

The AJ's finding that the complainants' search was insufficient is supported by substantial evidence, which was recounted by the AJ, and the previous decision was not clearly erroneous on this. We disagree with the complainants' argument that the AJ shifted away from the Agency the burden of proving there was local counsel readily available with the necessary skill and experience when she considered complainants' search effort. As argued by the Agency in opposition to complainants' request, the AJ's weighing their search effort must be considered in its proper context – as a lack of rebuttal evidence to the Agency's showing that it was unreasonable for them to retain local counsel.

The complainants correctly argue that, in our previous decision, we neglected to address their three remaining arguments on attorney fees, and we will do so here.

We find, for the reasons given by the AJ, that a 10% across the board cut to the law firm billed and charged hours was appropriate. We add that in some block billed entries, law firm attorneys charged attorney legal service rates for non-attorney work, i.e., time spent scheduling appointments and sending notification thereof, sending completed documents, and communicating travel logistics. Also, while we did not do an analysis of the billing petition entries line by line, we noticed some double billing for the same work. See entries on fee petition pages 21 – 22 for Complainant 1, and page 23 for Complainant 2.

The AJ acted within her discretion in reducing the billing rate of four attorneys to the paralegal rate because their sworn biographical information was not included in the fee petition, and we will not disturb this.

While the law firm submitted no evidence on the local hourly rate of law clerks, we agree with its argument on appeal and request that the law clerks should have been paid at the same rate as paralegals. We make this finding because in response to complainants' fee petition, the Agency argued that paralegals and law clerks should be paid at the local rate of \$90 – the same rate – and the AJ did not cite any evidence nor explain why law clerks should be paid at 25% of the paralegal rate. As the AJ awarded fees for 29.16 hours in law clerk fees, we award the law firm an additional \$2187 in fees (29.16 hours x \$75).

In the interest of closing the fees litigation in this case, we will award fees for the work done by the law firm on the complainants' attorney fees appeal and request, rather than giving the complainants the right to submit another fee petition to be processed by the Agency for these fees. In reviewing the appeal and request briefs and estimating the time expended, we observe that necessarily some of what was written was a reiteration of what was argued below. But much more significantly, we consider the small degree of success on the appeal/request work regarding the fee award, i.e., the complainants did not prevail on switching the billing rate to the Washington D.C. Laffey rates nor reversing the 10% across the board cut to hours charged, which comprised the bulk of their brief arguments. We award an additional \$1,000 in fees for the work expended by complainants' attorneys' law firm on appeal and request.

The complainants' request for reconsideration is denied, except for the billing rate the AJ awarded law clerks. Further, we award fees herein for the work the complainants' attorneys' law firm did on their appeal and request briefs. The Agency shall comply with the order below, which includes the relief ordered in our previous decision.

### ORDER

If it has not already done so, within sixty (60) calendar days of the date this decision is issued, the Agency shall issue complainants' attorneys payment for attorney fees in the amount of \$325,944.50, as well as the uncontested costs of \$62,207.39

In addition, within sixty (60) calendar days of the date this decision is issued, the Agency shall issue Complainants' attorneys payment for additional attorney fees in the amount \$3187 (\$2187 + \$1,000).

### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

### COMPLAINANTS' RIGHT TO FILE A CIVIL ACTION (P0610)

This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision.

If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. “Agency” or “department” means the national organization, and not the local office, facility or department in which you work.

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainants’ Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:

A handwritten signature in blue ink that reads "Carlton M. Hadden". The signature is written in a cursive style and is positioned above a horizontal line.

Carlton M. Hadden, Director  
Office of Federal Operations

October 25, 2018

Date