

**STATE OF VERMONT  
WINDSOR COUNTY**

**TERRY MATHER**

v.

**MARGARET GOODWIN**

)  
)  
)  
)  
)

**Windsor Superior Court  
Docket No. 619-9-07 Wrcv**

**DECISION ON MOTION FOR SANCTIONS**

On December 30, 2009, this court ruled that plaintiff is entitled to awards of (1) "the reasonable expenses incurred in obtaining the January 5th discovery order," (2) the reasonable expenses incurred by the failure to comply with the order," and (3) "the reasonable expenses . . . incurred by reason of [defendant's] nonappearance" at mediation. The present question before the court is the amount of the monetary sanctions to be imposed in each category.

Plaintiff's attorney submitted her affidavit of attorney's fees and reasonable expenses on January 11, 2010. Defendant submitted an opposition on January 21, 2010. It is true that the opposition was submitted late, but the court will exercise its discretion to consider it anyway. The court would have been obliged to conduct its own review of the reasonableness of plaintiff's requested fees and expenses in any event.

The first category involves the reasonable expenses incurred in obtaining the January 5th discovery order. V.R.C.P. 37(a)(4). The amount of any award under this rule is limited to the reasonable expenses "incurred in making the motion" that led to the discovery order. See 8B Federal Practice and Procedure: Civil 2d § 2288 (discussing analogous federal rule). It does not include discovery expenses incurred prior to the motion. *Id.* The appropriate expenses here are therefore the attorneys' fees that were incurred in preparing and filing the motion to compel that led to the January 5th discovery order:

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
11/7/08	COK	Draft Motion to Compel	0.5	\$150	\$75
11/12/08	COK	Revise Motion to Compel	0.3	\$150	\$45
12/1/08	COK	Draft Reply for Motion to Compel	0.8	\$150	\$120

Total: \$240

The second category involves the reasonable expenses incurred by the failure to comply with the order. The amount of an award under Rule 37(b)(2) is limited to the reasonable expenses "caused by the failure" to obey the existing order, and can only include expenses incurred after the compliance deadline set by the court has expired. 8B Federal Practice and Procedure: Civil 2d § 2289. Here, the court awards the reasonable

**FILED**

**MAR -3 2010**

expenses incurred in preparing, filing, and arguing the motion for evidentiary and monetary sanctions, since that motion was necessitated by defendant's noncompliance with the January 5th order. Those amounts are as follows:

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
12/4/09	COK	Draft Motion in Limine	0.7	\$150	\$105
12/8/09	ESD	Complete Motion in Limine	3.0	\$250	\$750
12/21/09	ESD	Prepare for, travel to, and attend hrg.	2.5	\$250	\$625
12/29/09	ESD	Prepare for, travel to, and attend hrg.	2.5	\$250	\$625

Total: \$2,105

The final category involves the reasonable expenses incurred by reason of defendant's nonappearance at the mediation. V.R.C.P. 16.3(h). It appears that a portion of the requested fees involve time spent scheduling the mediation. Yet the court previously ruled that monetary sanctions would not be awarded in connection the scheduling of the mediation unless the session was not scheduled by March 2, 2009. See Entry Order (2/13/09). The parties subsequently agreed to extend the deadline for scheduling the session, and arrangements were made within the extended time. It would therefore be inappropriate to award any attorneys' fees here for time spent scheduling the mediation.

The December 30th order contemplated an award of reasonable expenses incurred *in preparation* for the mediation that Dr. Goodwin did not attend. The approved expenses are as follows:

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
4/30/09	ESD	Prepare for mediation	3.0	\$250	\$750
5/4/09	ESD	Prepare for mediation	1.0	\$250	\$250
5/5/09	ESD	Valuation research; prepare for mediation	2.0	\$250	\$500
5/6/09	ESD	Conv. w/ Atty. Bruce re: mediation	1.0	\$250	\$250
5/7/09	ESD	Prepare for mediation	2.0	\$250	\$500
5/8/09	ESD	Prepare for mediation w/ client	2.75	\$250	\$687.50
5/12/09	ESD	Telephone calls re: mediation	0.75	\$250	\$187.50
5/13/09	ESD	Prepare for, travel to, and attend mediation	10.00	\$250	\$2,500

Total: \$5,625

The court recognizes that Attorney Kadoch spent a half hour preparing for the mediation and ten hours attending the mediation. It may well have been that her assistance at the mediation was valuable, but the court cannot conclude that it was necessary for two lawyers to attend the mediation—at least for the purpose of awarding a reasonable amount of fees under Rule 16.3(h).

The court approves the requested rates as reasonable based on its own knowledge of reasonable attorneys' fees in the area. Both parties waived a hearing on this issue.

**FILED**

MAR -3 2010

WINDSOR COUNTY CLERK

The total amount of sanctions is \$7,970.00. This amount will be included as a separate line item in the final judgment order.

**ORDER**

Plaintiff's Motion for Sanctions (MPR #14) is *granted*. Plaintiff is awarded reasonable expenses in the amount of \$7,970.00. The amount will be included as a separate line item in the final judgment order.

Dated at Woodstock, Vermont this 3 day of March, 2010.

  
\_\_\_\_\_  
Hon. Harold E. Eaton, Jr.  
Presiding Judge

**FILED**

MAR -3 2010

**WINDSOR COUNTY CLERK**