

STATE OF VERMONT  
WASHINGTON COUNTY, SS.

DEC -1 A 10:51

NATHANIEL SESSIONS,  
Plaintiff,

v.

STATE OF VERMONT, et al.,  
Defendants.

)  
)  
) Washington Superior Court  
) Docket No. 39-1-99 Wncv  
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)  
)

SUPERIOR COURT  
WASHINGTON COUNTY

**Entry Order: Plaintiff's Motion for Award of Attorneys' Fees, filed September 8, 2003**

On August 25, 2003, the jury in this case awarded, inter alia, damages totaling \$65,000 from the State, based on a violation of the Fair Employment Practice Act (FEPA). Now plaintiff seeks an award of attorneys' fees based on 21 V.S.A. § 495b. The court is asked to determine how much of plaintiff's attorneys' fees were reasonably incurred in obtaining the verdict on the FEPA claim.

Plaintiff's pleading takes an "all or nothing" approach. He seeks \$65,861.00 in attorney's fees and \$4,526.03 in expenses for Attorney Robert Halpert's firm, plus \$56,608.00 in attorney's fees, \$4,381.00 for investigator time, and \$1,985.30 in expenses for Attorney James M. Ritvo, for a grand total of \$133,361.33. These fee statements list attorney hours and expenses for all claims against all parties, and they may include some duplicated efforts.

The State first asks the court to defer any ruling on attorney's fees until after post-judgment motions are decided, and after an appeal to the Vermont Supreme Court. Under V.R.C.P. 54(d), this court may have discretion to defer ruling on attorneys' fees. However, in a case where the plaintiff has a statutory right to attorneys' fees as an element of damages, and where his request for fees exceeds the jury verdict for compensatory and punitive damages, it makes more sense to address the issue now, and to include the attorneys' fees in a final judgment that can then be appealed.

The State next proposes, as alternate approaches, that the court should (1) allow discovery of records underlying plaintiff's fee request, as well as depositions, or (2) deny plaintiff's claim as inadequately supported, or (3) reduce plaintiff's claim based on various factors such as fees incurred on unsuccessful claims, or fees incurred in litigating claims against the other defendants.

Plaintiff is entitled to reasonable fees incurred in successfully litigating the FEPA claim, but he is not entitled to fees incurred on unrelated or unsuccessful claims. See generally Hensley v.

Eckerhart, 461 U.S. 424 (1983) (extent of plaintiff's success is a crucial factor in determining the proper amount of attorney's fees award). Plaintiff bears the burden of proving his claim. Id. at 433-34. He must submit billing records that will enable the court to identify work done on distinct claims. Id. at 437, footnote 12 and accompanying text.

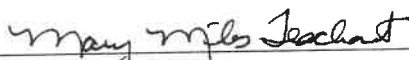
Plaintiff's motion cannot be granted as presented. He is not entitled to all the attorneys' fees and expenses incurred on all of his claims, and he has not provided enough detail to allow the court to conduct its own analysis of which fees were reasonably incurred on the FEPA claim. Nevertheless, the court will decline the State's invitation to deny plaintiff's claim altogether as inadequately supported. *See In re Ambassador Insurance Co.*, 153 Vt. 417, 429 (1989) (where the trial court rejected the "all or nothing" approach, it was appropriate to consider a claim for partial reimbursement). The court will give plaintiff additional time to present a reasonable claim for partial reimbursement, complete with a supplemental affidavit and adequate documentation. At a minimum, the itemized billing should explain the tasks performed, the connection to the FEPA claim, the hours spent on each task, and the appropriate hourly rate. Plaintiff should also explain why each of the itemized expenses was reasonably necessary for litigation of the FEPA claim. Given this approach, it is not necessary to allow discovery on the attorney's fees claim.

At this stage, there are various options available to determine a reasonable award, from a portion of the attorneys' fees and expenses actually incurred. As an example of one possible approach, attached is a copy of an award of attorneys' fees in the case Robertson v. Rome Family Corporation, No. S0458-97 RcC (Teachout, J., 8/26/99). Another approach, which has been suggested by the State, might be to select a percentage of the total fees as a rough estimate of plaintiff's work on the case that resulted in a jury verdict on the FEPA claim. There may be other reasonable approaches for the court to follow.

Fore the foregoing reasons, Plaintiff shall have until December 20, 2003 to provide adequate documentation to support a claim for partial reimbursement. Any objection is due 15 days after the filing of the Plaintiff's request.

**So Ordered.**

Dated at this 26<sup>th</sup> day of November, 2003.

  
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Hon. Mary Miles Teachout  
Superior Judge