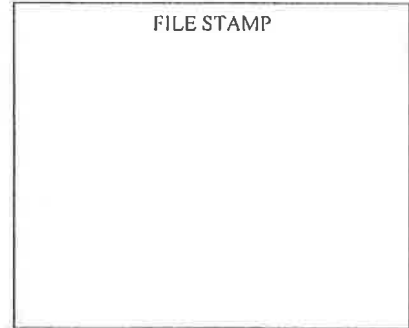


**STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO**

Sandra Rojas LPN, fka Sandra Mendoza
Plaintiff

Case No. 2016 L 160



Dr. Sandra Martell, Public Health Administrator
of the Winnebago Co. Public Health Department,
in her official capacity.
Defendant(s)

NOTICE OF FILING

PLEASE TAKE NOTICE that on February 16, 2022, the attached
Memorandum of Decision was filed by the Court.

CERTIFICATE OF SERVICE --- SERVICE LIST

Under penalties as provided by 735 ILCS 5/1-109, I state that I served this notice and the document referenced here to the persons listed below by the means specified.

Inean L. Ferris
Representative, Trial Court Administration

Party and address/email address	Method of Service (1st class, email, fax)
Elizabeth Knight/eknight@khkklaw.com	Email
Byron Knight/Bknight@khkklaw.com	Email
Michael Atkus/Matkus@khkklaw.com	Email
Noel Sterett/nsterett@daltonomich.com	Email
Nathan Noble/nnoble@attorneynoble.com	Email
Lafakeria Vaughn/ Lafakeria.Vaughn@Wincoil.us	Email

17th Circuit Court - Trial Court Administration
Winnebago County Courthouse
400 West State Street, Room 215
Rockford, Illinois 61101

**STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO**

SANDRA ROJAS, LPN, formerly and also known as)
SANDRA MENDOZA,)

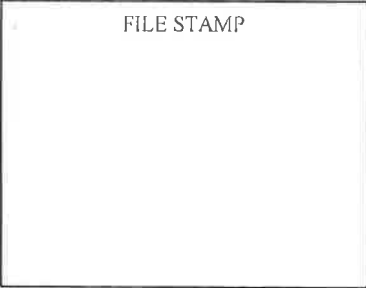
Plaintiff,)

vs.)

DR. SANDRA MARTELL, Public Health Administrator)
of the Winnebago County Health Department, in her)
official capacity,)

Defendants.)

) No. 2016-L-160



MEMORANDUM OF DECISION

Plaintiff Sandra Rojas was successful on her claim under the Illinois Healthcare Right of Conscience Act, 745 ILCS 70/1 *et seq.* (“Conscience Act”). However, she failed to prove compensable damages due to Defendant’s mitigation defense. Plaintiff’s recovery was therefore comprised solely of the statutorily mandated \$2,500 minimum.

The statute provides that Plaintiff is entitled to recover her attorney fees. Section 12 specifically provides that “in no case shall recovery be less than \$2,500 for each violation *in addition to* costs of the suit and reasonable attorney's fees.” 745 ILCS 70/12 (emphasis added). The issue presented here is what fees are “reasonable” under this situation.

The Lodestar Calculation

“The most useful starting point for determining the amount of a reasonable fee is the lodestar; that is, the product of the number of hours reasonably expended by counsel for the prevailing party, in this case the plaintiff, multiplied by a reasonable hourly rate.” *Aliano v. Transform SR LLC*, 2020 IL App (1st) 172325, ¶ 31.

In making the “lodestar” calculation, the Court first pauses on the fact that Plaintiff’s counsel is seeking recovery of fees expended in pursuing the instant petition for fees. The Court notes that Illinois law is somewhat unclear on whether “fees on fees” are generally recoverable. Compare *4300 Marine Drive Condo. Ass'n v. Tenenblatt*, 221 Ill. App. 3d 877, 885, 582 N.E.2d 1173, 1179 (1st Dist. 1991) (“Illinois courts have long prohibited ‘fees on fees’”), with *Rackow v. Illinois Human Rights Comm'n*, 152 Ill. App. 3d 1046, 1064, 504 N.E.2d 1344, 1356 (2d Dist. 1987) (“we find no abuse in the decision to award fees for preparation of the petition for attorney fees”). Here, however, Defendants have not objected, categorically, to the recovery of “fees on fees,” so the Court will not deduct the time spent on this petition.

In terms of the hours spent by Plaintiff's three attorneys and their paralegals, Defendants have argued that some of the time expended was not appropriate. Plaintiff concedes the objection to 30 hours of attorney Sterett's time and 20.8 hours of paralegal time.

Defendants object to 16.0 hours of attorney Brisky's time spent at trial, noting that Mr. Brisky did not present any evidence or argument to the Court. The Court agrees that Mr. Brisky's presence was an asset to Mr. Sterett in trying this case due to his experience as argued by Plaintiff. The Court notes that Defendants were not represented at trial by only one attorney, so the claim of some redundancy here is easily rejected. Consequently, the Court will make an award for 138.8 hours of Mr. Brisky's time.

With respect to the time expended by Plaintiff's local counsel, attorney Noble, Defendants object to time spent for matters at which Mr. Noble was present when Mr. Sterett was also present, contending that such time was redundant. The Court understands and respects the important role that local counsel can play, and it will not reduce Mr. Noble's time spent for various court appearances, etc. However, it probably goes beyond the pale to have local counsel serving as a third attorney present during trial. The court will therefore reduce Mr. Noble's compensable hours by 19, leaving a total of 47.4 hours.

The next issue is the hourly rate for each of the three attorneys representing Plaintiff. Plaintiff argues that Mr. Sterett should be compensated at the rate of \$500 per hour (not his most recent cash rate of \$410 per hour); Mr. Brisky at the rate of \$600 per hour (not his usual cash rate of \$500); and Mr. Noble at the rate of \$350 per hour (rather than his more customary cash rate of \$300 per hour). Plaintiff argues that the attorneys should be compensated at their higher *contingent* rates.

The Court disagrees. A contingent rate reflects the attorney's risk that no recovery will be had, and that payment may never be received, but holds out the prospect of a greater recovery to be paid by the opposing party. However, the inquiry here is the reasonable value of the services, now *knowing* that there will be an award of fees. The concept of a "market rate" for any good or service reflects the price a willing buyer (or client) is willing to pay. Here, the Court finds that the cash amount paid by the attorneys' clients for legal services reflects an accurate assessment of the *value* of those services. Adding a premium into the rate due to the contingent nature of the work introduces a concept at the lodestar stage that need not be considered there. The Court might still adjust the lodestar calculation based on other factors, as discussed below. However, it does not appear proper to build into the lodestar calculation a higher rate – one implicitly premised on the possibility of future success – when, as discussed below, the degree of success here is in meaningful dispute.

The Court finds that Mr. Sterett should be compensated at the rate of \$410 per hour, Mr. Brisky at the rate of \$500 per hour, and Mr. Noble at the rate of \$300 per hour.

The following summarizes the Court's baseline lodestar calculation of fees:

Attorney/Paralegal	Hours	Hourly Rate	Lodestar
Noel Sterett	1,134.60	\$410	\$465,186.00
Whitman Brisky	130.80	500	69,400.00
Nathan Noble	65.9	300	19,770.00
Paralegal	54.4	125	6,800
TOTALS			\$561,156.00

Adjustment of the Lodestar Totals

The lodestar calculation is presumed reasonable, but not conclusive. The Court can adjust the lodestar totals for a number of factors, including the “result obtained.” *Aliano*, 2020 IL App (1st) 172325 at ¶31. Indeed, the 7th Circuit has commented that the “plaintiff’s success” is “the most important factor” in adjusting the lodestar calculation. *Simpson v. Sheahan*, 104 F.3d 998, 1001 (7th Cir. 1997). It is the degree of Plaintiff’s success here – a statutorily mandated minimum recovery of \$2,500 – that is the main point of contention when it comes to determination of a reasonable fee award.

For perspective, the Court notes that if Plaintiff’s counsel were working under a one-third contingent fee contract, a recovery of \$2,500 would generate a fee of less than \$1,000. Looked at from the other direction, to support a fee in the amount of \$561,000 the recovery would have to have been in excess of \$1.6 million.

The Court strongly disagrees with Defendants’ contention in their brief that the “only reasonable attorney’s fee is no fee at all.” Indeed, at argument on the motion, Defendants’ counsel clarified that Defendants are “not arguing for zero.” It is clear that the statute requires a fee to be awarded, but the following factors support Defendants’ position that a substantial reduction in the fees is called for:

- The huge disparity between the amount of the recovery – the statutory minimum, Plaintiff having proven no damages – cannot be ignored. Were it not for the statutory minimum, Plaintiff would have lost this case.
- When the parties finally did discuss settlement, Plaintiff’s bottom line was greatly divergent from the ultimate outcome.
- Plaintiff’s Achilles heel on her damages claim – the availability of alternative jobs to mitigate damages – was on the horizon from the earliest days of this case.
- There has been no other non-monetary relief of consequence in this case.
- Plaintiff’s fee request is *nearly three times as high* as the highest possible compensatory damage award which could have been achieved.

However, the following factors explain why more than just the disparity between the fees and the award must be considered:

- Defendants contested this case vigorously, including to the Appellate Court. Plaintiff's counsel had little choice but to respond to motions for summary judgment (albeit in one instance with a cross-motion) and the appeal. Defendants have a difficult time complaining about fees incurred in meeting their positions.
- Defendants did not engage in serious settlement discussions until after most of Plaintiff's attorney fees had been incurred.
- The legislature appears to have intended that there be a "reasonable" attorney fee even if there is a recovery only at the statutory minimum level.
- Plaintiff is correct in noting that this case, specifically the interlocutory appeal, has made law with respect to claims under the Conscience Act; Plaintiff largely prevailed on the issues in the Appellate Court. In setting a reasonable fee award, a court may consider whether the case "resolve[d] a significant legal question regarding the" statute under which it was brought. *Aliano*, 2020 IL App (1st) at ¶31.


Putting proportionality aside, Plaintiff's attorneys did good work on this case. Their efforts were largely in response to the vigorous (and sometimes changing) defenses interposed by Defendants. Still, the Court feels that there *must* be a reduction in the lodestar fee calculation to reflect the very modest degree of success on the claim. There is no precise or meticulous way to approach that reduction; for this procedure, a cleaver is as useful as a scalpel. In consideration of all of the above factors, the Court concludes that a 1/3 reduction is appropriate; this leaves a final award of attorney fees (not including costs) of \$374,104.60. The Court believes that this properly balances the need to meet the statutorily required award while still recognizing the need for a reduction due to the modest outcome.

Conclusion

The Court asks Plaintiff to submit a judgment order reflecting the original compensatory award, plus \$374,104.60 in attorney fees and \$7,890.37 in (uncontested) costs. That judgment order should strike the March 23, 2022, status date, because the judgment order will be the final order in this case pursuant to Supreme Court Rule 272.

2-16-22

Date



Hon. Eugene J. Doherty, Circuit Judge