

Maureen A. Josh
Clerk of the Circuit Court
DeKalb County, Illinois

Gen. No. 17 CH 103

RULING & OPINION

The issue before the Court is whether Plaintiff is entitled to an award for fees and costs as a result of this Court's ruling that defendant violated the Open Meetings Act (OMA).

Plaintiff has filed a petition, defendant has filed a response and plaintiff has filed a reply. The Court has reviewed the same.

Section 3d of 5 ILCS Sec. 120/3d gives this Court discretion to assess reasonable fees in the event a party substantially prevails in any action brought under this section.

Defendant does not contest the reasonableness of the time expended nor the hourly rate billed by counsel for plaintiff. Rather, defendant has chosen to contest whether plaintiff is the substantially prevailing party. The Court does not believe that it needs to conduct an evidentiary hearing since the only contested issue is a question of law.

The Court has reviewed In re Marriage of Murphy 327 Ill.App.3d 845 (4th Dist. 2002), rev. 203 Ill.2d 212, 2003. Although the court was reviewing a totally different statute it is instructive on the issue of substantially prevailing. The Court stated that to substantially prevail is to largely but not wholly prevail.

Plaintiff asserted a number of different theories and statutory sections that defendant violated. However, as this Court noted, plaintiff was essentially challenging the Board's approval of the Presidential Transition Agreement. This Court specifically ruled that defendant violated OMA.

This Court explained its reasons on the record and in great detail. Plaintiff obtained the relief she sought to obtain. Defendant is essentially asking this court to determine that because plaintiff did not prevail on all theories or more than one, then her fee petition should be reduced to correspond to the prevailing theory alone. Defendant is asking this Court to do a Loadstar Analysis. This Court is of the view that merely because plaintiff did not proceed on more of its claims, they still related to the successful claim and therefore, plaintiff achieved a level of success that allows this court to consider, sua sponte, the reasonableness of the time spent and rate charged for being the substantially prevailing party.

To be clear, this Court expressly finds plaintiff to be the substantially prevailing party. The Court, however, has an independent obligation to review the reasonableness of the fees.

Plaintiff is asking this Court to award fees and costs against defendant in the amount of \$83,118.89.

The Court finds that the hourly rates charged are reasonable. The final issue is the reasonableness of the time spent.

The Court has reviewed each time entry from 06-21-17 – 10-27-17 and the supplemental fee request from 11-29-17—12/07/17.

While this court is mindful that defendant is at its core charged with education and not with defending or prosecuting litigation, defendant must play by the rules. This Court was extremely critical of how defendant handled this situation. It could have done a do over once it was brought to its attention that this may have been an OMA violation. It made the decision not do that until after this Court's decision. It chose to believe that OMA was not violated thereby inviting a challenge to its decision. Defendant must have weighed the risks involved with its decision. Although it would be complete and total conjecture it must have decided that a Court would uphold and/or agree that no OMA violation occurred. Defendant rolled the proverbial dice and lost. Consequences necessarily flow from such a decision.

The court enters judgment in favor of plaintiff and against the defendant in the following amounts:

1. Costs: \$ 932.89
2. Attorney's Fees [✓] 55,946.00

Dated this 28 day of March, 2018.

ENTER: 

Bradley J. Waller
Circuit Judge