STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DIANE BROWN and PANHANDLE CITIZENS COALITION, Petitioners, vs. BAY COUNTY and DEPARTMENT OF COMMUNITY AFFAIRS, Respondents, and ST. JOE COMPANY and CLARA AVENUE, LLC, Intervenors.	)	Case No. 06-0881GM

FINAL ORDER ON SANCTIONS

On September 11, 2007, a lengthy Order on Requests for Sanctions was entered in this case. It granted some requested sanctions, denied others, and retained jurisdiction to allow the parties to "file their agreement as to the reasonable amount of attorney's fees and costs and sanctions to be awarded; . . . submit the matter for determination on affidavits; or . . . request the scheduling of a hearing for purposes of determining the matter." Subsequently, all matters regarding sanctions were resolved by agreement except for the amount of the sanction (i.e., a reasonable attorney's fee) to be imposed for the part of paragraph 38 of Ms. Brown's Amended Petition alleging a failure to protect historic or cultural resources as to the Clara Avenue

Future Land Use Map (FLUM) Amendment. Since Clara Avenue and Ms. Brown were not able to settle, agree as to the reasonable amount of attorney's fees and costs, or agree to submit the matter for determination on affidavits, the matter was scheduled for a final hearing.

Initially, the matter was scheduled for a final hearing on April 2, 2008. However, at Ms. Brown's requests, it was first re-scheduled to February 7, 2008, and subsequently continued and re-scheduled to April 29, 2008, which is when the final hearing took place in Panama City.

At the final hearing, Clara Avenue called its counsel of record, Michael Dickey, Esquire, as a fact and expert witness, and called Jeffrey P. Whitton, Esquire, as an expert witness. Clara Avenue also had its Exhibits 1 through 4 admitted in evidence. Exhibit 1 was a redacted version of the Summary and Detail Transaction File List of the Law Firm of Barron, Redding, Hughes, Fite, Sanborn, Kiehn & Dickey, P.A. Exhibit 2 was a Fee Calculation by Mr. Dickey. Exhibit 3 was a resume of Mr. Whitton's qualifications as an expert. Exhibit 4 was the transcript of the deposition of Michael Kamprath, former counsel of record for Clara Avenue and former associate of Mr. Dickey. No other evidence was presented at the hearing.

After the presentation of evidence and oral closing statements, the parties' request to file proposed final orders by

May 23, 2008, was granted. The timely proposed final orders have been considered in the preparation of this Order.

In addition to proposed final orders, other post-hearing filings require rulings. On May 23, 2008, Ms. Brown filed a Motion for Official Recognition of a response filed in an unrelated circuit court case in which Mr. Dickey was seeking an award of attorney's fees and costs. This Motion for Official Recognition was opposed and is denied. On June 2, 2008, Ms. Brown filed Exceptions to Clara Avenue's proposed final order and another Motion for Official Recognition, this time for official recognition of Mr. Kamprath's deposition testimony, which already was in evidence. Clara Avenue did not oppose the Motion for Official Recognition but filed a Response to the Exceptions on June 4, 2008. On June 10, 2008, Ms. Brown moved to strike the Response. The next day she filed a Motion for Official Recognition of Supreme Court Orders Suspending David Russ from Practicing Law. The issues raised in those filings are addressed to the extent necessary in this Final Order on Sanctions.

FINDINGS OF FACT

1. Clara Avenue does not seek costs.

2. Clara Avenue's attorneys charged an attorney's fee based on time spent at hourly rates of $200 for partners in the firm (primarily Mr. Dickey), $150 for associates (primarily Mr. Kamprath), and $65 for clerks and paralegals. These hourly

rates are reasonable. While the hourly rates may have been somewhat conservative, there is no evidence that the fees charged to Clara Avenue were discounted.

3. Counsel for Clara Avenue did not keep track of time by issue, and the law firm's time records do not show time spent specifically on the part of paragraph 38 of the Amended Petition alleging a failure of the Clara Avenue FLUM Amendment to protect historic or cultural resources. This was not unreasonable. It is not customary to keep time records on specific issues raised in a case, and the need for such records was not reasonably foreseeable.

4. In lieu of calculating a reasonable attorney's fee from time spent specifically on the part of paragraph 38 of the Amended Petition alleging a failure of the Clara Avenue FLUM Amendment to protect historic or cultural resources, Clara Avenue seeks one-sixteenth of the total reasonable attorney's fee for counsel's entire representation on this matter, at least up to the entry of the Order on Requests for Sanctions on September 11, 2007. Clara Avenue's rationale for using this ratio is that paragraph 38 of the Amended Petition was one of sixteen numbered paragraphs of the Amended Petition litigated by Ms. Brown in the underlying proceeding.

5. Using the one-sixteenth ratio calculation, Clara Avenue seeks payment of $5,325.59 for attorney's fees through the entry of the Order on Requests for Sanctions on September 11, 2007,

plus $337.04 of statutory interest through April 29, 2008, the date of the final hearing on the fee amount determination.

6. Assuming the reasonableness under the circumstances of proving the amount of a reasonable attorney's fee to be imposed as a sanction for one of several claims by a pro rata share of the total reasonable attorney's fee, Clara Avenue's calculation had flaws and, in any event, resulted in the calculation of an excessive amount of attorney's fees to be imposed as a sanction in this case.

7. First, while paragraph 38 of the Amended Petition may have been one-sixteenth of the claims raised by Ms. Brown in the Amended Petition, protection of historic and cultural resources was only one of ten issues raised in that paragraph. For that reason, using Clara Avenue's rationale, the more appropriate ratio to use would be one-sixteenth times one-tenth, or 1/160.

8. Applying that 1/160 ratio to the total reasonable attorney's fee through the Final Order in the underlying proceeding, which Clara Avenue calculated to be $71,000 on an hourly rate basis, would result in the calculation of reasonable attorney's fee in the amount of $443.75.

9. However, even that amount would be excessive. First, the evidence was that some, if a small amount, of the time counted and figured in Clara Avenue's calculation of the $71,000 was spent on matters clearly unrelated to the underlying proceeding. Second, other time counted and figured in

calculating the $71,000 clearly was spent on other specific issues. This time should not have been included in a total of time spent on the case in general to be divided by an appropriate ratio. After making adjustments for the foregoing evidence, the more appropriate calculation of a reasonable attorney's fee through the Final Order in the underlying case would be reduced to $389.53.

10. Although $389 is a miniscule portion of the total reasonable fee of $71,000, there are other reasons why it would be a more reasonable attorney's fee than the $5,325.59 claimed by Clara Avenue for litigating the part of paragraph 38 of the Amended Petition alleging a failure to protect historic or cultural resources. First, the time records of Clara Avenue's attorney's did not indicate any time specifically devoted to the issue. Moreover, counsel for Clara Avenue could not recall any time being spent specifically on the issue. Clearly, the case was mostly, if not entirely, about the other issues raised and litigated, for which sanctions were not imposed.

11. Mr. Whitton suggested that the higher fee requested by Clara Avenue was justified because Ms. Brown benefited from economy of scale. In other words, he testified that an even higher fee would be justified if Ms. Brown's case had been tried only on the one issue of protection of historic or cultural resources. But it is very unlikely that the case would have been

tried through and beyond final hearing solely on that issue, in light of its relative unimportance in the case.

12. The evidence was that counsel for Clara Avenue recorded a substantial amount of time spent on the case between the entry of the Final Order in the underlying proceeding on April 3, 2007, and the entry of the Order on Requests for Sanctions on September 11, 2007, which resulted in another $14,209.50 of attorney's fees at the firm's reasonable hourly rates. Clara Avenue also seeks one-sixteenth of that amount--i.e., another $888. However, at the 1/160 ratio, the claim would be reduced to $88.80, for a total reasonable attorney's fee of $478.33. Based on all the evidence, it is found that it is appropriate to round this amount to $500.

13. Clara Avenue also seeks approximately $5,500 in attorney's fees for time spent litigating the amount of a reasonable attorney's fee to be imposed as a sanction, after the entry of the Order on Requests for Sanctions on September 11, 2007, which established entitlement.

CONCLUSIONS OF LAW

14. When it has been determined that sanctions should be imposed under Section 57.105, Florida Statutes (2007), for only one of several claims, and it is reasonable and customary not to keep specific time records by issue, failure to keep such records does not defeat the claim for sanctions. Cf. Hatcher v. Roberts, 538 So. 2d 1300, 1301 (Fla. 1st DCA 1989)(complex nature of the

work on the case provided ample explanation for the lack of specificity in the record of time spent on the various parts of the case). Where an allegation sanctioned under Section 57.105, Florida Statutes, is intertwined with other allegations not sanctioned, a proportionate amount of fees attributed to the sanctioned allegation is appropriate under some circumstances. See Franzen v. Lacuna Golf Limited Partnership, 717 So. 2d 1090, 1093 (Fla. 4th DCA 1998)(awarding fees proportionately against 64 individual plaintiffs, where time records were not broken out among them). However, an award must be based on competent, substantial evidence. See Yakavonis v. Dolphin Petroleum, Inc., 934 So. 2d 615, 618 (Fla. 4th DCA 2006); Weatherby Associates, Inc. v. Ballack, 783 So. 2d 1138, 1141 (Fla. 4th DCA 2001). Moreover, the award cannot be excessive. See Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145, 1150-51 (Fla. 1985). In this case, the attorney's fee requested by Clara Avenue was excessive.

15. A reasonable attorney's fee can be awarded for time spent litigating entitlement to the award, but not for time spent litigating the amount of the award. See Barron Chase Securities, Inc. v. Moser, 794 So. 2d 649 (Fla. 2d DCA 2001). In this case, that means a reasonable attorney's fee should be awarded only for time spent through the entry of the Order on Requests for Sanctions on September 11, 2007.

16. Prejudgement interest accrues on attorney's fees from the time entitlement is fixed through agreement, arbitration award, or court determination, even though the amount of the award has not yet been determined. See National Portland Cement Company v. Goudie, 718 So. 2d 274, 276 (Fla. 2d DCA 1998). In this case, prejudgment interest should be awarded on the $500 at the statutory rate from the entry of the Order on Requests for Sanctions on September 11, 2007.

17. Under Section 55.03(1), Florida Statutes, each year Florida's Chief Financial Officer sets the legal rate of interest on judgments. For judgments entered in 2007 (and 2008), the legal rate of interest on judgments is 11 percent per annum, or 0.0003014 per day. See Chief Financial Officer's website: http://www.fldfs.com/aadir/interest.htm.

18. Ms. Brown points out that, under Section 57.105, Florida Statutes, the sanction is to be imposed in equal parts against her and her former attorney, Ralf Brookes. Clara Avenue contends that the imposition of a sanction against Mr. Brookes is not appropriate. However, the appropriateness of imposing sanctions against Mr. Brookes was determined in the Order on Requests for Sanctions on September 11, 2007, which was not appealed by Mr. Brookes. On October 10, 2008, Mr. Brookes moved to apportion, limit, or reduce the sanction to be assessed against him, but he also gave notice of his settlement with Clara Avenue, and later withdrew from further participation. In any

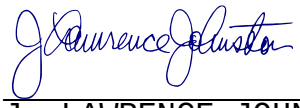
event, Ms. Brown is correct that only her equal part of the sanction--i.e., $250--should be imposed against her.

19. Ms. Brown also contends that, under Section 57.105, Florida Statutes, sanctions should be imposed against David Russ, an attorney now suspended from practicing law, who while still licensed and authorized to practice law, acted as an expert land use consultant and witness for Ms. Brown in the underlying proceeding. However, Mr. Russ never acted as an attorney for her, and the Order on Requests for Sanctions entered on September 11, 2007, imposed no sanctions on Mr. Russ, and it would be contrary to the statute to further reduce the sanction imposed on Ms. Brown by shifting an equal part to Mr. Russ. (It also would be a violation of due process to impose a sanction against Mr. Russ in this Final Order on Sanctions.)

DISPOSITION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Diane Brown pay Clara Avenue $250 as a reasonable attorney's fee to be imposed as a sanction under Section 57.105, Florida Statutes, for litigating the part of paragraph 38 of the Amended Petition alleging a failure of the Clara Avenue FLUM Amendment to protect historic or cultural resources, together with statutory interest on that amount from September 11, 2007.

DONE AND ORDERED this 14th day of July, 2008, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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this 14th day of July, 2008.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order on Sanctions is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of appeal with the Clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.