

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHRISTINA VIERING,

Petitioner,

vs.

Case No. 13-2571FC

FLORIDA COMMISSION ON HUMAN
RELATIONS ON BEHALF OF BAHIIYIH
WATSON,

Respondent.

_____ /

ORDER DETERMINING AMOUNT OF FEES AND COSTS

On March 6, 2013, the First District Court of Appeal issued an Order in Case No. 1D12-3287 (Christina Viering, Appellant v. Florida Commission on Human Relations, etc., Respondent). The order states as follows:

Pursuant to section 120.595(5), Fla. Stat., appellant's motion requesting attorney's fees and costs, is granted. The fee motion is remanded to the Division of Administrative Hearings to assess the amount of a reasonable fee after a hearing on the motion if parties are unable to agree on the amount. (Citations omitted.)

The Mandate in Case No. 1D12-3287 was issued on March 22, 2013. On July 12, 2013, Respondent, Christina Viering (hereinafter "Viering"), filed a "Motion to Open a Fee Case" at DOAH. The motion was filed in DOAH Case No. 10-9371 but was then transferred to the instant case. The motion advised DOAH that the parties were not able to "agree on the amount" of the fee.

Pursuant to notice, a hearing was held on August 15, 2013, to determine the amount of attorney's fees and costs that should be awarded. At the final hearing, Respondent, Florida Commission on Human Relations on Behalf of Bahiyih Watson (the "Commission"), advised that the amount of fees proposed by Viering were essentially fair and correct with a minor exception.

The Commission objected to the use of a multiplier that Viering had used in the fee calculation. The Commission based its objection on the case of Sally Sarkis v. Allstate Ins., 963 So. 2d 210 (Fla. 2003), in which the Florida Supreme Court addressed the use of contingency risk multipliers in attorney's fee cases arising under s. 768.79, Fla. Stat. The Sarkis court affirmed the reasoning stated in Std. Guaranty Ins. Co. v. Quanstrom, 55 So. 2d 828 (Fla. 1990), which sets forth the bases for applying contingency risk multipliers. In discrimination cases, factors warranting a multiplier include: 1) the time and labor required; 2) the novelty and difficulty of the questions; 3) the skill requisite to perform the legal service properly; 4) the preclusion of other employment by the attorney due to acceptance of the case; 5) the custom fee; 6) whether the fee is fixed or contingent; 7) time limitations imposed by the client or the circumstances; 8) the amount involved, and the results obtained; 9) the experience, reputation, and ability of the attorney; 10) the "undesirability" of the case; 11) the nature and length of

the professional relationship with the client; and 12) awards in similar cases. It is important to note that the existence of a contingency fee arrangement is but one of the factors to be considered. In the instant case, there is a contingency fee, but Viering did not establish any other basis under Quanstrom for applying a multiplier to her attorney's fees.

The Commission also objected, without citation to any legal authority, to pre-judgment and post-judgment interest being assessed.

The amount of attorney's fees claimed by Viering is \$37,423.00, plus \$512 in costs. The total amount of all fees was calculated as follows:

-Filing fees for District Court of Appeal	\$300.00
-Fee charged for record prepared by Commission. .	\$212.00
-Attorney's fees for BrewerLong PLLC (law firm representing Viering following Entry of Final Order by the Commission)	\$11,289.00
-Attorney's fees for Woodring Law Firm (law firm representing Viering for appeal of Final Order)	\$26,134.00

At the hearing in this matter, Woodring requested fees of \$36,701 based upon use of a multiplier. The total attorney's fees amount was \$26,134, constituting \$21,134 in fees for work performed plus a \$5000 contingency fee. (The contingency fee was based on both prevailing in the appeal and shifting fees.) After removing the contingency fee amount, Woodring applied a

multiplier of 1.5 to the balance, then added back the \$5000 fee to arrive at his requested sum.

The Commission's objection to the use of a multiplier is granted. The remainder of Viering's fees and costs are reasonable. Pre-judgment interest shall run from the date the First District Court of Appeal rendered its Order granting attorney's fees and costs, i.e., March 6, 2013. Post-judgment interest shall run from the date of this Order.

Commission's Objection to Fees Assessment

The Commission does object, however, to the propriety of assessing fees at all. The basis of its objection is that section 760.35, Florida Statutes, prohibits assessment of fees. Subsection (3)(c) of that statute states:

The district courts of appeal may, upon the filing of appropriate notices of appeal, review final orders of the commission pursuant to s. 120.68. Costs or fees may not be assessed against the commission in any appeal from a final order issued by the commission under this subsection. Unless specifically ordered by the court, the commencement of an appeal does not suspend or stay an order of the commission.

The Commission also argues that Viering failed to comply with the requirements of section 284.30, Florida Statutes, which states:

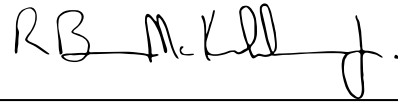
A state self-insurance fund, designated as the "State Risk Management Trust Fund," is created to be set up by the Department of Financial Services and administered with a program of risk management, which fund is to provide insurance, as authorized by s.

284.33, for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, and court-awarded attorney's fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission. A party to a suit in any court, to be entitled to have his or her attorney's fees paid by the state or any of its agencies, must serve a copy of the pleading claiming the fees on the Department of Financial Services; and thereafter the department shall be entitled to participate with the agency in the defense of the suit and any appeal thereof with respect to such fees.

Inasmuch as the First District Court of Appeal has already granted Viering's motion for fees and costs, and the Division of Administrative Hearings is charged only with a determination of the amount of the fees and costs, the Commission's objections as to the propriety of the award are not addressed by this Order. See Hernstadt v. Brickel Bay Club Condo. Ass'n, Inc., 602 So. 2d 967 (Fla. 3d DCA 1992).

Based upon the foregoing, it is hereby Ordered that Respondent, Florida Commission on Human Relations on behalf of Bahiyyih Watson, pay to Petitioner, Christina Viering, the sum of \$37,423.00 in attorney's fees and \$512.00 in costs, plus pre-judgment and post-judgment interest.

DONE AND ORDERED this 26th day of August, 2013, in
Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of August, 2013.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order 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 administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.