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THE APPROVAL OF THE COMMITTEE ON OPINIONS

RICHARD RIVERA, *Plaintiff,* v. OFFICE OF THE COUNTY PROSECUTOR OF THE COUNTY OF BERGEN and FRANK PUCCIO, ESQ. in his official capacity as Executive Assistant Prosecutor and Records Custodian, *Defendants.*	SUPERIOR COURT OF NEW JERSEY LAW DIVISION BERGEN COUNTY DOCKET No. BER-L-4310-12 CIVIL ACTION OPINION

Argued: December 7, 2012
Decided: December 11, 2012

Honorable Peter E. Doyne, A.J.S.C.

Walter M. Luers, Esq. appearing on behalf of the plaintiff, Richard Rivera (Law Offices of Walter M. Luers, LLC).

John M. Carbone, Esq. appearing on behalf of the defendants, Office of the County Prosecutor of the County of Bergen and Frank Puccio, Esq., in his official capacity as Executive Assistant Prosecutor and Records Custodian (Carbone & Faasse Law Office).

Introduction

This matter comes before the court pursuant to motion filed by counsel for plaintiff, Richard Rivera ("Rivera" or "plaintiff"). Plaintiff is seeking an award of counsel fees and costs as the prevailing party in the matter concerning violations of the Open Public Records Act, N.J.S.A. 47:1A-1 to -13 ("OPRA" or the "Act"). Plaintiff sought from defendants, the Office of the County Prosecutor of the County of Bergen and Frank Puccio, Esq., Executive Assistant Prosecutor and Records Custodian (the "BCPO" and "Puccio" when referenced individually, "defendants" when referenced collectively), disclosure of redacted names and addresses of

persons subjected to the use of force by police officers on 1,079 use of force reports ("UFRs").

This court held the names on the UFRs must be released in non-redacted form to plaintiff. However, if someone subjected to force was not criminally charged and there was an indication on the UFR the person was "suicidal," an "emotionally disturbed person," "EDP," or a similar characterization of a purported psychological condition, the right to privacy weighed against the release of those names. Subsequent to the court's ruling, the parties unfortunately failed to agree upon a reasonable attorney's fee. As such, plaintiff has petitioned to determine the appropriate quantum of counsel's costs and fees.

Facts and Procedural History

Plaintiff Richard Rivera is a retired police officer who investigates police conduct by regularly requesting and evaluating publicly available documents. The BCPO is a municipal body organized according to the laws of the State of New Jersey. Pursuant to the Attorney General's policy, whenever physical, mechanical, or deadly force is used during an arrest, each officer who used force is to complete a UFR. Attorney General's Use of Force Policy, Sect. III. A. (June 2000), http://www.nj.gov/oag/dcj/agguide/useofforce2001/pdf. The BCPO annually receives UFRs from all law enforcement agencies in Bergen County. See id., Sect. IV. B. 1.

On March 25, 2012, Rivera requested copies of reports received from various Bergen County law enforcement agencies documenting the use of force by police officers occurring during the 2011 calendar year. On April 3, 2012, Puccio responded in writing, indicating that the requested UFRs totaled 1,079 pages, but due to a general privacy concern, the names of all persons subjected to force would be redacted from the UFRs before they would be issued to Rivera.

On May 18, 2012, Rivera paid the requested amount, but objected to the redaction.

Subsequently, on June 4, 2012, a verified complaint was filed on plaintiff's behalf with an order to show cause and a brief in support of the relief requested. The complaint alleged violations of both OPRA and the New Jersey common law right to access public records. Pursuant to OPRA statutory authority, plaintiff requested: 1) disclosure of the names of individuals identified as having been arrested in the UFRs provided by defendants pursuant to N.J.S.A. 47:1A-1; 2) counsel fees and costs pursuant to N.J.S.A. 47:1A-6; and 3) such other relief as the court may deem just and equitable. Plaintiff's alleged common law violations were as enumerated.

Defendants served and filed their opposition papers on or about July 5, 2012, plaintiff served and filed reply papers, and oral argument was conducted on July 26, 2012. At this courts' request, supplemental briefings were received on August 3, 2012. By way of a written opinion dated August 6, 2012, the names of individuals on UFRs were ordered to be produced in a non-redacted form with the exception of individuals who were not criminally charged and where there was an indication on the UFR of psychological difficulties. On August 14, 2012 an order was so entered, and plaintiff was deemed the prevailing party. Pursuant to N.J.S.A. 47:1A-6, plaintiff was entitled to an award of reasonable attorney's fees.

Counsel were requested to attempt to agree upon a reasonable amount and memorialize the award of fees and costs by way of a consent order, if possible. Attempts at settlement were unsuccessful. Accordingly, plaintiff has petitioned to determine the reasonable amount of fees and costs to be awarded. Plaintiff's counsel claims that the time spent on the matter, multiplied by the various hourly rates of the different timekeepers, including the time of trial, totals $8,057.50. This total, also known as the "lodestar," is discussed below. An additional $373.34 in costs is also requested in this application as well as a 50% enhancement of the lodestar. The total amount sought by plaintiff relating to legal fees and costs, as the prevailing party in his

OPRA claim, is $11,646.25.

Legal Standards

A. Prevailing Party

The general rule is that a party is to bear his/her own legal fees, the so called "American Rule." See Coleman v. Fiore Bros., Inc., 113 N.J. 594, 596 (1989). Generally, New Jersey disfavors the shifting of attorney's fees. Litton Industries, Inc. v. IMO Industries, Inc., 200 N.J. 372, 385 (internal citations omitted). However, if statute, court rule, or contract expressly provides, the prevailing party can recover the costs of attorney's fees. See R. 4:42-9. See also Packard-Bamberger & Co., Inc. v. Collier, 167 N.J. 427, 440 (2001) (listing examples of statutory fee-shifting provisions). OPRA statutory authority provides that a "requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee." N.J.S.A. 47:1A-6. The directive for fee shifting provisions is to make certain plaintiffs with legitimate claims can find competent legal representation and to promote justice for the citizenry. See Coleman, 113 N.J. at 598; Litton Industries, 200 N.J. at 405. Before a determination of the reasonableness of a party's fee application can be made, that party must be established as the prevailing party.

Courts will generally consider a party to be the prevailing party if there has been an order or a consent decree so specifying. The basis for an award of attorney's fees may be established if a court has issued a judgment or an enforceable consent decree. Cf. Teeters v. Division of Youth and Family Services, 387 N.J. Super. 423, 428 (App. Div. 2006). Enforceable judgments on the merits and consent decrees sufficiently alter the relationship between the plaintiff and the defendant to justify an attorney's fees award. See Warrington v. Village Supermarket, Inc., 328 N.J. Super. 410, 420 (App. Div. 2000); E.C. ex rel. R.C. v. Bd. of Educ. of South Brunswick Tp., 348 N.J. Super. 654, 659 (Law Div. 2001).

Absent a judgment or a consent decree, courts generally use a two-part test to determine whether a party seeking attorney's fees is the prevailing party. Mason v. City of Hoboken, 196 N.J. 51, 73 (2008) (discussing the "catalyst" theory). First, the party must show his lawsuit was "causally related to securing the relief obtained[.]" Singer v. State, 95 N.J. 487, 494, cert. denied, New Jersey v. Singer, 469 U.S. 832, 832 (1984) (citing Nadeau v. Helgemoe, 581 F.2d 275, 279-80 (1st Cir. 1978)). Pursuant to this prong a lawsuit will be considered causally related to the relief obtained if the attorney's efforts are a "necessary and important" catalyst in furthering the objective of the lawsuit. Nadeau, 581 F.2d at 280. Second, the party "must establish that the relief granted had some basis in law." Singer, 95 N.J. at 494. If the defendant's actions are judicially required, the second prong of the prevailing party test will be met. Id. at 494-95. After verifying that the fee applicant is the prevailing party, the proper amount of the attorney's fee must be computed.

B. The "Lodestar" Amount

The first and most important step in the attorney fee-setting process is to calculate the "lodestar." The lodestar is defined as the number of hours reasonably expended multiplied by a reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983); Walker v. Guiffre, 209 N.J. 124, 130-31 (2012); Rendine v. Pantzer, 141 N.J. 292, 334-35 (1994). Determining the lodestar is not an exact calculation, and the primary aim is to approve a reasonable attorney's fee that is not excessive. Litton Industries Inc., 200 N.J. at 338. To determine the amount of the lodestar, a trial court must carefully evaluate both the hours expended and the specific hourly rates advanced by the prevailing party's counsel in support of the fee application. Id.

The first determination in the lodestar calculation is whether the amount of time billed was reasonably expended by the applying party. Rendine, 141 N.J. at 334-35. The applying

attorney's organization of billable hours should be presented in sufficient detail to allow the trial court to determine how the billable hours were expended. Id. at 337. Hours not reasonably utilized, for example those that are "excessive, redundant, or otherwise unnecessary[,]" should be stricken from the lodestar calculus. Id. at 336 (quoting Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990) (internal citations omitted)).

The second step of the lodestar calculation is to verify whether the hourly rates charged by the prevailing party's attorneys in the litigation are reasonable. Rendine, 141 N.J. at 337. A reasonable hourly rate is calculated according to the relevant and current prevailing market rates in the "community[.]" Id. This market rate is established by comparing the skills and rates of the prevailing party's attorney against the rates of attorneys of reasonably comparable skill. Id. Although the required analysis should not be unnecessarily complicated, the court should appropriately "satisfy itself that the assigned hourly rates are fair, realistic, and accurate[.]" Id.

C. Contingency Fee Enhancement

Even if an attorney's fee is deemed reasonable based on the lodestar calculation, fairness and economic considerations may merit a financial enhancement of the lodestar. After the lodestar has been computed, the trial court may increase the fee "to reflect the risk of nonpayment in all cases in which the attorney's compensation entirely or substantially is contingent on a successful outcome." Rendine, 141 N.J. at 337 (emphasis added). An award cannot be considered reasonable unless the lodestar reflects the actual risk that the attorney may not receive payment if the suit is unsuccessful. Id. at 338. Contingency enhancements in fee-shifting cases should ordinarily range between five- and fifty-percent of the lodestar. Walker, 209 N.J. at 138 (construing and applying Rendine, 141 N.J. at 343). Such enhancements should never exceed one-hundred percent of the lodestar amount. Id.

The decision whether to grant a fee enhancement is within the discretion of the trial court. OPRA neither mandates nor forbids enhancements. New Jerseyans for a Death Penalty Moratorium v. NJDOC, 185 N.J. 137, 157 (2005) ("NJDPM") (applying Rendine to OPRA). Determining whether to enhance a fee award must depend on the facts. Id. Courts have outlined several factors to consider in determining the merits of a contingency enhancement. See, e.g., Walker, 209 N.J. at 138; NJDPM, 185 N.J. at 157-58. These factors include: 1) the public importance of the OPRA document request; 2) the novelty of the issue; 3) the risk of failure in securing the requested documents; 4) the time and labor needed to conclude the matter; and 5) whether representation precluded the applying attorney from undertaking other employment opportunities. NJDPM, 185 N.J. at 158.

Additionally, in both fee-shifting and non-fee-shifting cases, an attorney's fee application must be reasonable when interpreted under the guidance of the Rules of Professional Conduct. Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21-22 (2004) (applying RPC § 1.5(a)). Rule of Professional Conduct § 1.5(a) sets forth the standard governing fee applications. To verify the reasonableness of a fee, courts must address: 1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; 2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; 3) the fee customarily charged in the locality for similar legal services; 4) the amount involved and the results obtained; 5) the time limitations imposed by the client or by the circumstances; 6) the nature and length of the professional relationship with the client; 7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and 8) whether the fee is fixed or contingent. RPC § 1.5(a).

Analysis

A. Prevailing Party

Preliminarily, plaintiff is deemed the prevailing party as plaintiff's application for the release of the requested documents was successful. When a court issues a judgment on the merits, one party will be deemed to have prevailed. See Teeters, 387 N.J. Super. at 428, supra, p. 4. Here, this court previously issued an order for the release of the requested UFRs with names and addresses provided in non-redacted form.[1] As such, plaintiff prevailed on the merits and must be regarded as the "prevailing party." However, even under the two-part prevailing party test as discussed below, plaintiff is and has been deemed the prevailing party and is thus entitled to reasonable attorney's fees and costs.

Under Mason's generally accepted approach, plaintiff is the prevailing party. The first prong of the prevailing party test, the factual causal connection between the lawsuit and the relief sought, has been satisfied. Rivera sought the disclosure of the names of all arrested individuals subjected to force by a police officer and documented in numerous UFRs. Defendants declined to disclose the names of certain individuals, thus prompting this lawsuit. Accordingly, the factual causal connection between the original complaint and the acquired relief of receiving UFRs with non-redacted names and addresses is readily apparent. Without the complaint, plaintiff would have been unable to ascertain the names of individuals implicated in a UFR. Further, the second prong of the prevailing party test has also been satisfied. In its prior written decision, this court found plaintiff was a "prevailing party." See id. The legal basis for the production of non-redacted reports was the direct result of a judicial mandate. Thus, the factual and legal connections have been proven and plaintiff has met the generally accepted two-part "prevailing party" test. Therefore, because plaintiff is the prevailing party and is thus entitled to

[1] This court's prior written decision ("prior decision") dated Aug. 8, 2012 is incorporated herein as if set forth at length.

an award of attorney's fees and costs, the analysis can turn to the calculation of a reasonable award.

B. The Lodestar Amount

The first step in the calculation of the lodestar is to verify whether the applying attorney has expended an appropriate amount of time on the matter. Here, counsel took a reasonable amount of time to address the matter. Plaintiff's counsel expended 29.3 hours in the prosecution of his claim. Itemization of Hours and Expenses (attached as Exh. 2 to the certification of services of Walter M. Luers, Esq. (the "Luers Cert." and "Luers" when referenced individually)). Luers' organization of billable hours has been presented in ample detail. See id. Conveniently, plaintiff's counsel has organized the 29.3 hours expended into 29 separate and distinct entries, ranging from 3.9 hours spent reviewing cases and drafting a complaint to six minutes spent on a telephone conference with opposing counsel. See id. Plaintiff counsel's itemization of billable hours is thoroughly and adequately detailed.

Although defendants' ten objections to plaintiff counsel's fee application are less than compelling, four are worth addressing. Defendants assert that plaintiff counsel's billing for the review of a case in which he was the counsel of record should not be reimbursed has no basis in law. See id. Defendants cite no authority for the proposition that the review of a case in which the billing attorney represented one of the parties cannot be billed to the present matter. Such a ruling would require attorneys to memorize every facet of the previous case. Rather, it would appear counsel's familiarity with extant issues reduces, not expands, the reasonable time needed.

Second, defendants also dispute the charges for travel time. See id.; Luers Cert., Exh. 2 at July 26, 2012. Courts regularly permit attorneys to charge clients for travel time and costs. See, e.g., Matter of Estate of Reisen, 313 N.J. Super. 623, 636 (Ch. Div. 1998) (travel expenses

should normally be reimbursed); Council Enterprises, Inc. v. Atlantic City, 200 N.J. Super. 431, 443 (Law Div. 1984) ("[t]ime spent going to and from court is recoverable") (internal citations omitted). Luers is permitted to charge his client for the reasonable time spent traveling to and from the courthouse.

Third, defendants contend that the amount of time spent litigating this matter subsequent to the ruling, specifically the time spent relating directly to this fee dispute, should not be included in the lodestar calculation. Defendants' disagreement is not persuasive. Attorneys may be permitted to recover for the reasonable time spent "preparing the attorney's fees motion, memorandum and in litigating" the fee dispute. Council Enterprises, Inc., 200 N.J. Super. at 443-44 (internal citations omitted). Furthermore, "a party who rejects a settlement offer that turns out to be more favorable than the ultimate judgment" should be "penalized." Wiese v. Dedhia, 188 N.J. 587, 593 (2006) (outlining R. 4:58, the offer of judgment rule, and imposing fees and costs incurred following counsel's routine offer of settlement) (quoting Gonzalez v. Safe & Sound Sec. Corp., 185 N.J. 100, 125 (2005)). The BCPO had the opportunity to negotiate an agreeable fee settlement with Luers but failed to do so. The fact that Luers had to expend additional time on this matter can be directly attributed to counsels' inability to reach an appropriate settlement. Further, defendants' counsel conceded at oral argument the likelihood he will charge his clients for the hours he expended pertaining directly to this fee dispute. Therefore, it is appropriate to include plaintiff counsel's billable hours pertaining to this fee dispute to reach a fair and proper lodestar calculation.

A viable question is posed whether the court is entitled to question the amount of the settlement offers. See N.J. R. Evid. § 408 (settlement offers are "[in]admissible to prove liability for, or invalidity of, or amount of the disputed claim"). During oral argument, the court inquired

whether counsel would consent to disclosure of the settlement offers. Both parties consented and neither opposed making counsels' private offers public. Defendants' settlement offer of $1,750.00, regardless of the "relevant community," see infra p. 12, is inadequate.

Fourth, during oral argument defendants disputed the inclusion of hours expended to perform paralegal or secretarial duties. Defendants contend the hours expended typing documents should be stricken from the lodestar calculus or in the alternative, that there has been an insufficient demonstration by Luers to warrant inclusion of same. Luers' hourly itemization notates each entry to a tenth of an hour, includes no offensive entries, and cites no extraordinary amount of time. Luers does not employ a full-time secretary or paralegal. During oral argument, Luers characterized the time spent performing "secretarial" tasks as contemporaneous to the time expended conducting "lawyerly" duties. In Luers' case this approach is more efficient than dictation or handwriting and may have reduced rather than increased the total hours expended. It is apparent to this court that those graduating from law school now or in recent history have a far greater familiarity with the keyboard and electronic word processing than jurists or lawyers some years older. Generally lawyers of more recent admission to the bar perform the mechanical aspects of their job in addition to the legal functions of their role at the same time. Thus, because he described the secretarial and the legal functions of his work as simultaneously performed, Luers is permitted to include those hours into the lodestar calculation.

As plaintiff counsels' hours expended on this litigation are reasonable, the lodestar analysis can move to a quantification of the proper hourly rate. The hourly rate charged by plaintiff counsel is reasonable as defined by the "community" at hand and should be used in the lodestar calculation. As discussed previously, the reasonable hourly rate is based upon current "prevailing market rates in the relevant community[.]" Rendine, 141 N.J. at 337. Under either

possible definition of "community," plaintiff counsel's hourly rate is reasonable. First, community may be defined as the entire legal community. Plaintiff counsel's fee application requests an amount of $275.00 per hour billed. See Luers Cert., p. 9. If the Rendine treatment of the phrase "market rates in the relevant community" is defined broadly to include all lawyers in this county or state, Luers' rate is reasonable. According to a 2005 New Jersey Law Journal article, the reported average hourly rate in New Jersey for partners was $394 per hour and for associates was $235 per hour. "As Corporate Counsel Call the Shots, Law Firms Increase Fees Cautiously," N.J. Law Journal, Sept. 26, 2005. If the community market rate is defined at the state level, Luers' hourly rate of $275 is reasonable and should be accepted for the lodestar analysis.

Even if the community market rate is defined more narrowly, Luers' hourly rate is also reasonable. The second possible interpretation of the applicable "community" for purposes of the lodestar calculation includes those lawyers specializing in OPRA-related matters. Courts have approved hourly rates of $325 or more for lawyers who have litigated OPRA cases in superior court and appellate division. See DePalma v. Building Inspection Underwriters, 350 N.J. Super. 195, 217-18 (App. Div. 2002) (approving $350/hour rate). The prevailing parties in Paff v. Borough of Garwood and O'Boyle v. Borough of Longport earned judicial approval of a $350/hour and a $325/hourly rate, respectively. Specializing attorneys may well argue they are entitled to a higher hourly rate because their specific expertise may allow them to charge in an overall fashion for less time spent because they come to the matter with a wealth of knowledge. Plaintiff counsel's requested rate of $275 is within the range of approved hourly rates for attorneys specializing in OPRA-related matters.[2] Therefore, plaintiff counsel's hourly rate and

[2] Regarding the lack of a formal definition of the "relevant community," a question is posed whether a judge serving

hours expended on this litigation are reasonable and should be utilized in the lodestar calculus, as discussed below.

Plaintiff counsel's fee application similarly passes ethical scrutiny. The first factor to be addressed pursuant to Rule of Professional Conduct § 1.5(a) requires consideration of the time and labor involved, the novelty of the question presented, and the skill necessary to properly perform the work. RPC § 1.5(a). Plaintiff's counsel certifies he spent 29.3 hours working on this specific matter. Luers Cert., Exh 2. As previously discussed, 29.3 hours is a reasonable amount of time to spend litigating this OPRA matter. Supra, p. 9. Further, counsel briefed and argued a novel issue of law: the release of redacted names on UFRs of individuals with purported psychiatric conditions. This was an issue that courts have not previously addressed and, as such, the outcome of this case was difficult to predict. Finally, litigating an OPRA document request matter requires a fair degree of skill and attention. See NJDPM, 185 N.J. at 147. The balance of RPC § 1.5(a)'s first factor weighs in plaintiff counsel's favor.

For the second factor, courts are to determine whether the client was aware that representation on this matter would prevent the attorney from representing other clients in different matters. Plaintiff's counsel concedes it was not apparent to his client that acceptance of this representation was likely to preclude other employment.

The third factor, the fee customarily charged for similar legal services, warrants a finding Luers' fee is reasonable. Luers charged Rivera $275 for his services. In similar OPRA-related matters, courts have approved hourly rates above $275. As discussed above, supra, p. 10, $275 per hour is a fair rate for experienced representation in an OPRA-related lawsuit.

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on the bench for twenty years who has decided repeated fee applications can take judicial notice of a reasonable fee in the relevant community. See N.J. R. Evid. § 201. This is an intriguing question but is not addressed herein. However, based on this court's experience, clearly $275/hour would be reasonable.

Regarding the fourth factor, RPC § 1.5(a) instructs courts to evaluate the fee amount involved and the ultimate results obtained by the client. First, Luers' hourly rate multiplied by the time expended yields a reasonable lodestar of $8,057.50. See supra, p. 11, for the discussion of the reasonableness of the fee charged by Luers for his services. Second, plaintiff reports that 95% of the originally redacted names had been released in non-redacted form as a result of the court's ruling. In NJDPM, the court awarded plaintiff's counsel 100% of the proposed attorney's fee despite obtaining only 70% of the documents requested. 185 N.J. at 147. Defendants argue that limited success calls for a limited reward. Rivera sought disclosure of names to determine whether minorities were subject to greater uses of force than the remainder of the population. The disclosed UFRs do not provide a race or alienage of the individual involved, only a name. No scientific evidence exists regarding the connection between a last name and race. As defendants' counsel noted, there is nothing to say Whoopi Goldberg is Jewish or Senator Kevin O'Toole is Irish. The defendants' argument that the lodestar should be reduced to reflect a limited success is not persuasive. Luers' "95% success rate" thus justifies the award of a reasonable fee.

The fifth factor of RPC § 1.5(a), the time limitations imposed by the client or circumstances, were conceded by plaintiff's counsel as not excessive. Under the sixth factor, courts should consider the nature and length of the relationship between the attorney and the client. Luers has represented Rivera previously in several other OPRA-related matters filed in superior court. Furthermore, Luers has apparently developed a niche in the OPRA field, having obtained favorable results in more than twenty OPRA-related cases.

For the seventh factor, the experience, reputation, and ability of the attorney are readily apparent. Plaintiff's counsel specializes in addressing OPRA-related matters. Luers' reputation

has earned him a citation in the New Jersey Law Journal as one of the "2010 Lawyer[s] of the Year." Mary Gallagher, "OPRA Warriors," N.J. Law Journal, Dec. 23, 2010. Luers clerked for the Honorable Milton Pollack in the United States District Court, Southern District of New York, and has been a lawyer for nearly thirteen years. He is admitted to practice law in six jurisdictions. The results obtained by Luers, specifically the release of 95% of the requested reports with names in non-redacted form, further signals Luers' competence and ability.

Finally, the eighth factor weighs in favor of upholding plaintiff counsel's fee application as reasonable. Luers was entitled to seek an attorney's fees award only if plaintiff succeeded. As will be discussed below, representation of a client on a contingent basis may merit a contingency fee enhancement. See infra, p. 13-15. Pursuant to RPC § 1.5(a), representation of a client on a purely contingent basis justifies an upward departure from the hourly rate that would be otherwise charged to a client on a fixed-fee basis. The balance of the eight factors articulated by Rule of Professional Conduct § 1.5(a) weighs in favor of upholding plaintiff counsel's fee application as reasonable.

C. Contingency Fee Enhancement

Plaintiff counsel's application for a contingency enhancement is warranted. The balance of the six enhancement considerations in NJDPM weigh in favor of augmenting the fee award as initially determined by the lodestar calculation. First, as discussed above, this litigation involved a novel issue, namely whether or not the names of individuals with psychiatric difficulties subjected to the use of force by a police officer should be released pursuant to OPRA. This is an issue of first impression, which required and demonstrated competent and adept advocacy by both counsel.

Second, the public importance of the document request merits a fee enhancement.

Governmental efficacy rests on a system of checks and balances. Investigations of potential system abuse or circumvention are useful and essential to an ordered and civilized society. A retired police officer who requests access to public documents to determine whether physical abuse of arrested individuals with psychological difficulties occurs within the state of New Jersey is surely a public good. Defendants argue that the public importance of the documents requested in NJDPM is not analogous to Rivera's requests. The documents requested in NJDPM concerned capital punishment by lethal injection, clearly a matter requiring accessible information to permit an informed public discourse. See NJDPM, 185 N.J. at 143. Rivera requested access to police reports involving the use of physical force in an apparent attempt to determine whether force was used more extensively in connection with various sociological factors and/or groups. While the degrees of potential system abuse between the cases are unequal, capital punishment versus the use of physical force in an arrest, this inequality does not negate the public import of a civilian investigation into the possible use of excessive force. Thus, defendants' insistence that this factor of NJDPM is not met here is not persuasive.

Third, the time and labor needed to conclude the matter weigh in favor of a contingency fee enhancement. The third factor under the NJDPM analysis is the amount of time and labor the applying attorney spent on the instant litigation. As discussed previously, 29.3 hours is a reasonable amount of time to properly and competently represent a client in this OPRA-related litigation. Supra, p. 8-9.

Fourth, plaintiff's likelihood of failure in requesting non-redacted names in reports merits a departure from the lodestar amount. In NJDPM, the plaintiff's risk of failure was high because the New Jersey Department of Corrections claimed a blanket privilege of confidentiality. 185 N.J. at 146. Similarly, the BCPO claimed the names of adult arrestees implicated in UFRs were

protected by a broad right to individual privacy. The New Jersey Legislature structured OPRA to incentivize competent counsel to represent clients whose claims risk failure and thus non-recovery. See Walker, 209 N.J. at 129. Statutorily mandating a prevailing party's recovery of costs and fees, and a possible enhancement of the same, mitigates the risk of non-recovery that attorneys face in OPRA-litigation. Finally, as the court has previously noted, plaintiff's counsel has proceeded with competence and diligence. Ultimately, the factors enunciated in NJDPM suggest that plaintiff's attorney has proceeded in a fashion deserving a contingency enhancement.

Conclusion

Plaintiff is entitled to a lodestar award and a contingency enhancement. The accepted lodestar is $8,057.50. As indicated previously, contingency enhancements typically fall between five- and fifty-percent of the lodestar. In light of Luers' competent and cooperative approach to this litigation, the court grants a 25% enhancement to the lodestar amount of $8,057.50, which equals $2,014.38 for a total of $10,071.88. Luers is also provided $373.34 in costs related to this litigation. The aggregated amount thus totals $10,445.22.

Plaintiff's counsel shall submit the appropriate order in conformity with the above.