

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

RECEIVED

FEB 20 1980

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HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant  
.....

JAMES F. DAVEY, Clerk

Civil Action No. 75-1448

MEMORANDUM REGARDING DEFENDANT'S RESPONSE TO  
PLAINTIFF'S NOTICE OF FILING ON JANUARY 15, 1980

On January 31, 1980, defendant filed a pleading styled as a "response" to the notice of filing of the January 15, 1980 affidavit of plaintiff's counsel, Mr. James H. Lesar. This response complains that "plaintiff's counsel has now filed another affidavit revising his number of hours." (Emphasis added) It also renews defendant's request to engage in discovery "to obtain information which it needs to challenge the hourly rate and the number of hours claimed."

What plaintiff's counsel did in his affidavit of January 15, 1980 is more accurately described as "updating" rather than "revising" his number of hours. The only "revising" which has taken place occurred in the affidavit of plaintiff's counsel which was filed on September 12, 1979. At that time plaintiff's counsel eliminated some of the hours which defendant had challenged because he thought that defendant's position that they were not compensable was probably legally correct, although the issue might be argued. The intent of the affidavit filed on January 15, 1980 was to list in one document all the hours for which plaintiff seeks comp-

ensation. Counsel had indicated at the October 17, 1979 status call that he needed to update his accounting and the Court assented to this. Plaintiff's counsel would seem to have an obligation to his client to update his accounting of time and costs so that his client would not be shortchanged.


Defendant's renewed request that it be allowed to engage in discovery "to obtain information which it needs to challenge the hourly rate and the number of hours claimed" has been dealt with before. (See Reply to Defendant's Opposition to Motion for Attorney's Fees and Costs, pp. 12-17) The wording of this request makes it plain that defendant wants to engage in a fishing expedition in the hopes that it can delay the award of attorney's fees even longer. Such tactics, which have been employed by the government throughout this case. They are part of the continuing campaign to grind down those who seek information from the intelligence agencies, especially the CIA and the FBI, while these agencies await the right opportunity to convince Congress that they are the abused parties and that the Freedom of Information Act ought to be eviscerated.

As plaintiff previously pointed out, the rate at which he seeks compensation for his attorney's services is determined by the prevailing rate on attorneys' fees and not with regard to whether he works for a Wall Street law firm. (Plaintiff's Reply, p. 15) The government has not disputed this. Plaintiff has put evidence into the records as to the prevailing rate. This evidence consists of affidavits showing the rate awarded to other FOIA attorneys in other FOIA cases and the affidavit of plaintiff's counsel stating that the government itself has paid him at the rate of \$75 an hour in the only FOIA case which the issue was finally decided. If the government has reason to believe that these figures are un-

representative or inapplicable, it can present evidence to the contrary. There is no reason, however, why it should be allowed to further delay the conclusion of this case with unnecessary and irrelevant discovery.

As to the number of hours worked, plaintiff's counsel has been completely honest and open. Where he does not have records to back up the number of hours stated on his itemization, he has so indicated by marking these figures with an asterisk. If the government has any serious question about the accuracy of these figures, then it should so state and plaintiff's counsel will provide any further explanation that is possible.

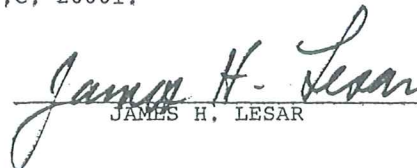
Respectfully submitted,

  
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JAMES H. LESAR  
310 16th Street, N.W., Suite 600  
Washington, D.C. 20006  
Phone: 223-5587

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I have this 20th day of February, 1980, mailed a copy of the foregoing Memorandum Regarding Defendant's Response to Plaintiff's Notice of Filing on January 15, 1980 and the attached February 20, 1980 affidavit of James H. Lesar to AUSA Patricia J. Kenney, United States Courthouse, Washington, D.C., 20001.

  
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JAMES H. LESAR

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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: :  
HAROLD WEISBERG, : :  
 : :  
 : Plaintiff, : :  
 : :  
 v, : : Civil Action No. 75-1448  
 : :  
 : :  
 GENERAL SERVICES ADMINISTRATION, : :  
 : :  
 : Defendant : :  
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.....

AFFIDAVIT OF JAMES H. LESAR

I, James H. Lesar, first having been duly sworn, depose and say as follows:

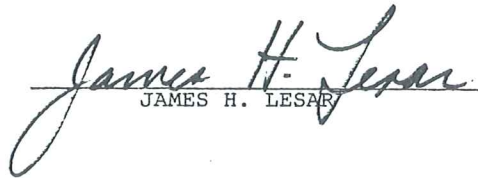
1. On January 15, 1980, I executed and filed an affidavit in which I detailed the amount of attorney's time and costs for which plaintiff seeks reimbursement. As a result of subsequent developments, the "Second Amended Itemization of Attorney's Time" and the "Amended Itemization of Costs" attached to my January 15, 1980 affidavit both require updating,

2. On January 29, 1980, plaintiff filed a Memorandum to the Court which called the Court's attention to some newly obtained evidence which bears on the CIA's bad faith handling of FOIA cases, including this one, and the total lack of credibility on the part of Mr, Robert E. Owen, the CIA official whose affidavits provide the only basis for the government's opposition to plaintiff's motion for attorney fees. This memorandum required a total of 3.2 hours of work by plaintiff's counsel. Another 1 1/2 hours has been spent on this affidavit and another memorandum which plaintiff is filing this date. This brings the total number of hours for which plaintiff seeks compensation to 404.7. At the requested rate of \$85 per hour, this comes to a total of \$34,484.50.

3. During a phone conversation I had with Mr. Weisberg a few days after my January 15, 1980 affidavit was filed, he called my attention to the fact that the "Amended Itemization of Costs" only listed \$30.00 for telephone calls. This is the result of a typographical error. The figure for telephone calls should be \$230.00. This error did not influence the total figure given for all costs as that figure, \$1733.11, includes the \$200 that was omitted from the figure for telephone calls by mistake.

4. Since the January 15, 1980 accounting was filed, some additional expenses have been occurred. These are: office xeroxing (\$3.20); xeroxing done at Panic Press (\$13.50); Postage (\$1.71). The total of these additional costs is \$18.41. Added to the previous total, this comes to \$1761.42.

5. Adding the amount sought for litigation costs to that sought for attorney's fees, the total amount of the base award sought by plaintiff comes to \$36,245.92. As outlined in plaintiff's briefs that have been submitted to the Court, plaintiff then seeks to have this base award increased due to a variety of factors such as delay in payment, risk of noncompensation, and bad faith conduct on the part of the government.

  
 JAMES H. LESAR

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 20th day of February, 1980.

  
 NOTARY PUBLIC IN AND FOR  
 THE DISTRICT OF COLUMBIA

My commission expires

7/31/84