IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Harold Weisberg,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CA No. 75-1996
	)	
Department of Justice,	)	
	)	
Defendant.	)	
	)	

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR AN ORDER REQUIRING DEFENDANT TO PAY CONSULTANCY FEE

Preliminary Statement

The posture of this Freedom of Information Act (FOIA) lawsuit is fully detailed in the papers previously filed with this Court, and, most recently, in defendant's Memorandum In Support Of Its Motion For Partial Summary Judgment, filed on May 11, 1979. Subsequent to defendant filing its motion for partial summary judgment, plaintiff noticed depositions of certain individuals and defendant's moved for a protective order. The Court has not yet ruled on either of defendant's motions. Now, plaintiff has moved this Court for an Order Requiring Defendant To Pay Consultancy Fee. Defendant opposes this motion for the reasons discussed below.

Argument

The FOIA, 5 U.S.C. §552(a)(4)(E), provides that:

> The Court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

Thus, it is an express precondition of the award of attorneys' fees and litigation costs that a FOIA plaintiff must have

substantially prevailed in the litigation. See, e.g., Cuneo v. Rumsfeld, 553 F.2d 1360, 1364 (D.C. Cir. 1977). Although this standard has been generally interpreted by the Courts to mean that a plaintiff need not ultimately prevail at a final judgment on the merits, it does require more than a mere showing that requested information was disclosed by the agency subsequent to the institution of the lawsuit. See, e.g., Nationwide Building Maintenance, Inc. v. Sampson, 559 F.2d 704, 711 (D.C. Cir. 1977); Vermont Low Income Advocacy Council v. Usery, 546 F.2d 509 (2nd Cir. 1976); Exner v. FBI, 443 F.Supp. 1349, 1353 (S.D. Cal. 1978).

Since this lawsuit is currently at the stage where defendant has recently moved for partial summary judgment regarding the scope of the FBI's search for records responsive to plaintiff's FOIA request, and litigation has not yet fully begun on the merit of defendant's substantive withholdings, it is far too early to determine if plaintiff will "substantially prevail" in the lawsuit. Because substantially prevailing is the sine qua non for an award of fees and costs under the FOIA, the Court would abuse its discretion by ordering such an award at this time.

In addition, the policy objectives of the FOIA's fee provisions would not be served by an award at this time. As the Court of Appeals for this Circuit noted, the fee provision

> was not enacted to provide a reward for any litigant who successfully forces the government to disclose information it wished to withhold. It had a more limited purpose -- to remove the incentive for administrative resistance to disclosure based not on the merits of exemption claims, but on the knowledge that many FOIA plaintiffs do not have the financial resources or economic incentives to pursue their requests through expensive litigation.

Nationwide Building Maintenance v. Sampson, supra, at 711. See also, S.Rept. No. 93-854, 93d Cong., 2d Sess. (1974), page 17. It seems clear that plaintiff in this lawsuit has sufficient incentive -- economic or otherwise -- to vigorously pursue this litigation as well as several others in which he is involved.

Finally, even assuming arguendo that plaintiff will ultimately substantially prevail in this lawsuit, it is not at all clear that a consultancy fee is an item properly included in the phrase "litigation costs reasonably incurred." See, e.g., Wild v. HEW, Civil No. 4-72-130(D. Minn. August 24, 1978) (attached hereto as Appendix A) (fee denied for reasonable value of time expended by plaintiff). At the very least, prior to deciding this issue, the Court should request the parties to fully brief the question, and should require plaintiff to present a detailed, itemized bill for the services plaintiff claims to have performed.

CONCLUSION

For the foregoing reasons, plaintiff's Motion For An Order Requiring Defendant To Pay Consultancy Fee should be denied.

Respectfully submitted,

Barbara Allen Babcock

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	)	
Defendant.	)	
	)	

O R D E R

Upon consideration of plaintiff's Motion For An Order Requiring Defendant To Pay Consultancy Fee, the papers filed in support thereof and in opposition thereto, and the entire record herein, it is this ____ day of _____, 1979

ORDERED, that plaintiff's motion be, and it hereby is, denied.

_____

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendant's Opposition to Plaintiff's Motion for an Order Requiring Defendant to Pay Consultancy Fee; and Order was mailed, postage prepaid, this 6th day of June, 1979, to:

James H. Lesar, Esquire
910 16th Street, N.W.
Suite 600
Washington, D.C. 20006

Betsy Ginsberg
BETSY GINSBERG

APPENDIX A
CIVIL NO. 75-1996

72-0132

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

JOHN J. WILD,

Plaintiff,

v.

4-72 Civ. 130

UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, an authority (i.e. agency) of the Government of the United States, and the UNITED STATES DEPARTMENT OF PUBLIC HEALTH, an authority (i.e. agency) of the Government of the United States,

MEMORANDUM ORDER

Defendants.

JAMES MALCOLM WILLIAMS, Esq., Minneapolis, Minnesota, appeared for the plaintiff.

Andrew W. Danielson, United States Attorney, by STEPHEN G. PALMER, Esq., Assistant United States Attorney, Minneapolis, Minnesota, appeared for the defendants.

Dr. John J. Wild brought this action against the United States Department of Health, Education and Welfare (HEW) and the United States Department of Public Health, to obtain disclosure of information he had requested under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA or the Act).

On August 1, 1962, the Public Health Service awarded a grant to the Minnesota Foundation of Saint Paul, Minnesota, to support a project entitled "Medico-Technological Research Unit" GM10063-02. The project was under the scientific leadership of the plaintiff. Apparently during the course of the project, dissention and dissatisfaction developed among the parties involved. On-site visits were conducted in St. Paul, Minnesota on July 17 and 18, 1963, and thereafter the Minnesota Foundation withdrew its sponsorship of Dr. Wild. The grant was continued to December 31, 1963 at which time it expired. The records which the plaintiff seeks are, in general,

the correspondence between Mr. Rarig of the Minnesota Foundation and Dr. Tuve and Dr. Brewer of the Public Health Service, memoranda relating to the site visit by Dr. Tuve and Dr. Brewer, and memoranda of telephone calls among the principals involved.

The plaintiff's quest for the documents in question commenced on March 24, 1969, at which time he visited the Public Information Center of the Department of Health, Education and Welfare and had an opportunity to make a preliminary review of and copy various documents contained in the government's files.

By letter of August 11, 1969, the plaintiff made additional written requests for such documents as had not been furnished to him at the time of his personal visit. By letter of October 21, 1969 from the Associate Director of Information and Public Service, plaintiff was advised that certain letters and records listed by him were not contained in the agency files and others were claimed to be exempt under the then-existing provisions of the FOIA. Thereafter, and by letter of November 14, 1969, plaintiff appealed that decision to the Assistant Secretary for Health and Scientific Affairs of the Department of Health, Education and Welfare.

By letter of October 1, 1970, the Assistant Secretary for Health and Scientific Affairs advised the plaintiff that additional specified documents were being made available to him but that others were again "not in the files and cannot be found." The decision that reports of project site visits were exempt was upheld. The present action followed.

This action was commenced on February 25, 1972. It has had an extended and tortuous history. It is interesting to note that the minute entry on October 5, 1973 quotes plaintiff's counsel as advising the court that the action is "probably 99% settled."

On October 5, 1973, the late Judge Philip Neville issued an order directing the Secretary of the United States Department of Health, Education and Welfare and those acting at his direction to produce for in-camera inspection by the court and counsel some 14 separate individual documents or categories of documents regarding projects with which Dr. Wild had been connected.

On February 8, 1974, plaintiff moved before Chief Judge Edward J. Devitt for an order assigning the action to a judge other than Judge Neville for immediate proceedings in conformity with the order of October 5, 1973. Pursuant to that motion and on February 8, 1974, Chief Judge Devitt ordered that the in-camera inspection required by Judge Neville's order dated October 5, 1973 be assigned to Magistrate Jonathan Earl Cudd. By his report dated July 25, 1974, Magistrate Cudd, after reviewing the documents, segregated the same into so-called "envelope A" containing those documents which the Magistrate deemed privileged under the Act and "envelope B," containing those documents which the Magistrate deemed to be not privileged under the Act. Thereafter and on October 11, 1974, plaintiff filed his objections to the government's production of documents and to the Magistrate's ruling as to access to them.

On May 22, 1975, plaintiff filed a motion for an order adjudging Jay Stewart Hunter, Director of Public Services, Department of Health, Education and Welfare; Dr. Robert P. Acres, Office of the Director, Extra-Mural Programs, National Institute of Health; Ms. Mary Goggins, a full-time employed legal assistant of the Department of Health, Education and Welfare; and Roger Egeberg, Assistant Secretary of Health and Scientific Affairs of the Department of Health, Education and Welfare to be in contempt of court for willfully failing

to abide by the terms and conditions of the order of Judge Neville. The hearing on this motion was held on June 6, 1975 and resulted in an order of September 3, 1975 directing Robert P. Acres to show cause why he should not be held in contempt of court for failure to abide by the order of Judge Neville.

Dr. Acres appeared and testified on October 10, 1975, at which time a further order was issued directing Ms. Mary Goggins to similarly show cause why she should not be held in contempt for failure to abide by the order of Judge Neville. Following a hearing on December 12, 1975, this court issued its order of April 9, 1976 reconfirming the production of documents' order of Judge Neville and further directing the Secretary of Health, Education and Welfare to produce such additional documents as would be encompassed within the provisions of 5 U.S.C. § 552. The matter was thereafter referred to Magistrate George G. McPartlin to determine whether or not the government had in fact complied with this court's order by furnishing the documents ordered to be produced by the defendants for in-camera inspection.

A hearing was thereafter conducted on June 14, 1976 at which time Magistrate George McPartlin reported to the court that the government had complied with Judge Neville's order of October 5, 1973 and with this court's order of April 9, 1976 by furnishing the documents therein ordered to be furnished for in-camera inspection. Plaintiff continued to assert that various documents had been withheld or at least not furnished by the government. The June 14, 1976 hearing resulted in an order of this court dated August 3, 1976 adopting the findings and determination of the United States Magistrate that the order of the late Judge Philip Neville dated October 5, 1973 and the order of this court dated

April 9, 1976 had been complied with as to the furnishing of documents by defendants. The court did, however, reserve to plaintiff the right to conduct further discovery on the issue of compliance or the availability of records the plaintiff claimed had not as yet been produced. The court further ordered that the defendants make available to the plaintiff for deposition certain designated agents and employees. All documents which had previously been designated by Magistrate Cudd into "envelope A" and "envelope B" and all additional documents furnished to Magistrate McPartlin, other than the so-called "litigation file," were made available to the plaintiff for inspection and copying.

Trial of the case was conducted on December 20, 1976 at which time the plaintiff testified on his own behalf and introduced various exhibits. Thereafter the parties were allowed an opportunity to submit briefs and proposed findings on the issues remaining.

The FOIA, promulgated in 1966, was intended generally to increase public access to government records. As the Act's legislative history makes clear, such access was intended to be very broad. Congress considered the Act necessary to provide a vehicle through which the public could gain access to official information that Congress thought had unnecessarily been withheld. See Brockway v. Department of Air Force, 518 F.2d 1184, 1186 (8th Cir. 1975). The statute was amended in 1974 to strengthen the disclosure requirements. Cox v. U. S. Department of Justice, 576 F.2d 1302 (8th Cir. 1978).

In the present case the vast majority of the various records and documents sought by the plaintiff have in fact been furnished to him, albeit in piecemeal fashion. Some documents were obtained by him at the time of his visit to

the Public Information Center of the Department of HEW. Following a second written request for documents, some were denied to him and designated as privileged or confidential under 5 U.S.C. § 552(b)(4) or as intra-agency memorandums or letters under 5 U.S.C. § 552(b)(5).

Following plaintiff's request for administrative review of the limited denial of his written request, and by letter of October 1, 1970, additional documents were furnished to him. Following the order of Judge Neville and the hearing before Magistrate Cudd, additional documents, namely those contained in so-called "envelope A," were furnished to him. Following the hearing before Magistrate McPartlin, yet additional documents, those contained in so-called "envelope B," were furnished to him.

Despite these disclosures, throughout the entire history of plaintiff's efforts to obtain documents from the defendants, the plaintiff has consistently maintained that yet other documents which the defendants have continued to refuse to furnish to him did at least at one time exist. Such a list is again presented to the court consisting of some twenty-two letters and memos, some eight memos or records of telephone calls, some four items of source material, together with twelve items of miscellaneous varieties. Interestingly enough, of the approximately twenty-six specific items of documentation sought by the plaintiff as set forth in the complaint, it would appear that only five categories or types of categories therein sought to be obtained by the plaintiff remain on the list of documents not yet obtained by him during the course of this litigation.

The real issue remaining before this court is not that of entitlement, i.e., whether the plaintiff is entitled to have the documents now listed by him as not having been

turned over now produced by the government, but is, instead, the question of whether or not such documents are indeed presently available. It is the government's position that except as to those documents contained in its litigation file, to which it claims an exemption under 5 U.S.C. § 552(b)(5) and which are not the documents plaintiff now designates as not having been produced, it has delivered to the plaintiff all the documents it presently possesses. Running throughout the entire course of this litigation, and in fact predating the litigation, is the defendants' claim that certain of the documents designated by the plaintiff are no longer in existence in government files.

In an effort to resolve this dispute the court first referred the matter to a magistrate for a hearing of the type contemplated in Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977. The court further specifically made available to the plaintiff by way of discovery and further deposition all of the "responsible employees" who had knowledge of the records sought by the plaintiff together with all employees who operate the computers which might have been used to search out the documents sought by plaintiff in the complaint. The plaintiff chose not to depose such parties, but instead relied upon his own testimony and various documentation to demonstrate, among other things, the absence of various and sundry documents to which reference is made in documents already made available to the plaintiff.

The court is satisfied and concludes that from the hearings held before the magistrate and the files, records and proceedings now presented to the court, to the extent that they are physically able to do so, the defendants have furnished to the plaintiff such documents as were sought by

him in his complaint and as were ordered to be produced by the late Judge Philip Neville by his order of October 5, 1973.

On June 14, 1976, the court granted the plaintiff leave to serve and file an amended complaint so as to include an allegation seeking an award of attorney's fees pursuant to 5 U.S.C. § 552(a)(4)(E). Such an amended complaint was filed on August 27, 1976. On November 5, 1976, the court denied the plaintiff's motion for an interim assessment of attorney's fees, but granted leave to renew such motion upon the conclusion of the trial. Such a motion was made, and there is before the court plaintiff's motion for an award of attorney's fees and litigation costs.

The general rule is that in the absence of an express contractual or statutory provision or of exceptional circumstances warranting the exercise of equitable powers, an award of attorney's fees is not available to a prevailing party. Alyeska Pipeline Serv. Co. v. Wilderness Society, 421 U.S. 240 (1975). However, the Freedom of Information Act, pursuant to which the present action is brought, provides that the court

> may assess against the United States reasonable attorney's fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

5 U.S.C. § 552(a)(4)(E). The issue the court must resolve is whether the plaintiff has "substantially prevailed" as that term is used in the above statutory provision, and, if attorney's fees are to be awarded, the amount thereof.

The Freedom of Information Act was enacted to insure that unnecessary secrecy would not surround information which the public is entitled to have. The attorney's fee provision of the statute has as its underlying purpose the implementation of this right to know by affording citizen

access to the courts to enforce it. Quite obviously, without some provision for attorney's fees, the majority of our citizens would be unable to seek vindication of their right to know by the instigation and conduct of litigation. Congress realized that an allowance of fees and costs was necessary in FOIA actions to encourage full public disclosure of government information and has clearly determined that an award of attorney's fees is appropriate and desirable whenever a complainant prevails in FOIA litigation.

Legislative history provides some insight into the purpose and function of the provision of attorney's fees. As originally proposed by the House of Representatives, the provision which was to become § 552(a)(4)(E) permitted recovery of attorney's fees and litigation costs in any FOIA case in which the United States "has not prevailed." H.R. 12471, 93d Cong., 2d Sess. (1974). The Senate's somewhat different version proposed an award of attorney's fees in any case where the complainant "substantially prevailed." S. 2543, 93d Cong., 2d Sess. (1974). The Senate bill outlined four criteria to be considered by the court in exercising its discretion to award attorney's fees: (1) the benefit to the public, if any, deriving from the case; (2) the commercial benefit to the complainant; (3) the nature of the complainant's interest in the records sought; and (4) whether the government's withholding of the records sought had a reasonable basis in law. The Senate report accompanying the bill included the following explanation:

> Generally, if a complainant has been successful in proving that a government official has wrongfully withheld information, he has acted as a private attorney general in vindicating an important public policy. In such cases it would seem tantamount to a penalty to require the wronged citizen to pay his attorneys' fees to make the government comply with the law.

S. Rep. No. 93-854, 93d Cong., 2d Sess. 19 (1974).

The compromise bill which emerged from conference retained the "substantially prevailed" language of the Senate bill but eliminated the four criteria set forth above. Although the conferees did not wish to preclude the courts from taking such criteria into consideration, they believed the courts should not be limited to these criteria in exercising their discretion. H.R. Rep. No. 93-1380, 93d Cong., 2d Sess. 9 (1974). The conference report stated that the conferees did not intend to make the award of attorney's fees automatic and that such an award lies in the court's sound discretion. The detailed list of criteria governing a court's discretion was eliminated not because the conferees disagreed with it, but because they regarded it as "too delimiting" and "unnecessary." See Vermont Low Income Advocacy Council v. Usery, 546 F.2d 509, 513 (2d Cir. 1976).

At the outset, it must be stated that the rendition of a judgment in favor of the plaintiff is not a necessary precondition to the award of attorney's fees and costs under § 552(a)(4)(E). Vermont Low Income Advocacy Council, Inc. v. Usery, supra; Kaye v. Burns, 411 F. Supp. 897 (S.D.N.Y. 1976). The fact that the court will enter judgment in favor of the government, dismissing the action, is not determinative against the plaintiff on this issue.

In order to obtain an award of attorney's fees in an FOIA action, the plaintiff must show as a minimal prerequisite: (1) that the prosecution of the action could reasonably have been regarded as necessary and (2) that the action had a substantial causative effect on the delivery of the information ultimately obtained. Vermont Low Income Advocacy Council v. Usery, supra. In the court's opinion both conditions have been fulfilled here.

With reference to the first condition, plaintiff had, and continues to have, a compelling need for the information sought and ultimately obtained. Plaintiff was not simply an ordinary citizen curious as to information contained in government documents. Plaintiff had, and continues to have, substantial litigation against third parties, the subject matter of which is directly related to the contents of the documents which are the subject of this action. It would appear that the information contained in the documents sought goes both to the subject matter of the third-party litigation and also to the applicability of various tolling provisions of statutes of limitations. Beyond that, plaintiff was of the view that the information sought bore directly upon his professional competence and integrity. By reason of these concerns, plaintiff did and does have a legitimate interest in reviewing the information contained in the defendants' files. The commencement of this action to obtain that review must under the circumstances herein set forth be deemed to have been necessary.

As regards the issue of causative effect, the court has no doubt that the commencement and maintenance of this action was directly responsible for the delivery of such documents as the plaintiff has obtained since the commencement thereof. The government suggests that the court has never had to render a decision in this action regarding the right of the defendants to withhold any of the documents, and that it was the 1974 amendments to the Act which in effect resulted in the withdrawal by the defendants of all objections to release of documents to the plaintiff.

In the first instance, the court is unable to conclude that it was in fact the 1974 amendments that brought about

the government's change in position. Magistrate Cudd's report of July 25, 1974 indicates that the defendants claimed their exemption from disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b)(4) as:

> trade secrets and commercial and financial information obtained from a person and privileged or confidential

and under the provisions of § 552(b)(5) which exempts from disclosure,

> inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

The court is unable to ascertain that any changes in these two exemption provisions were made by the 1974 amendments.

Regardless of the foregoing, it is the court's opinion that it was the order of Judge Neville dated October 5, 1973 and this court's later efforts to implement that order that were the causative factors in bringing about the delivery of the information ultimately furnished to the plaintiff. It would appear from a total review of the records that perhaps the tenacity and persistence of the plaintiff and his counsel were such as to instill an attitude of caution and reluctance in the representatives of the defendants responsible for the administration of the Act. Whatever the cause, the court is persuaded that it was the determination of plaintiff and his counsel that was the ultimate causative effect of the production of documents which this action has produced and not a voluntary tender of the defendant agencies. Under those circumstances the court is satisfied that the plaintiff has "substantially prevailed," as that term is used in § 552(a)(4)(E).

The sole remaining question is what constitutes "reasonable attorney's fees" under the circumstances of these

proceedings. Plaintiff's counsel urges an award of attorney's fees in the sum of $18,125.00 based upon the following:

Miscellaneous research, preparation of documents, preparation for hearings, review of documents, investigation, telephone calls and conferences -- 287.5 hours at $50/hour	$14,375.00
Preparation for trial and trial -- 35 hours at $75/hour	2,625.00
Post-trial research including preparation of proposed order and memorandum of law -- 15 hours at $75/hour	1,125.00
Total	$18,125.00

In addition counsel seeks out-of-town expenses of $500.00, two days per diem to Washington, D.C. totalling $1,000.00, filing fees of $15.00, and document reproduction costs of $350.00, all for an additional $1,865.00 as expenses. Plaintiff in his own right seeks $6,000.00 in fees and $4,365.00 in transportation and lodging. Defendant on the other hand urges that if fees are to be allowed, a reasonable award would range from $1,000.00 to $1,400.00 on a per case basis.

The reported decisions regarding the determination of an amount to be awarded as attorney's fees under the FOIA have reached varying results. See Annot., 36 A.L.R. Fed. 530 at 550 (1978). A concise synopsis of the history of § 552(a)(4)(E) is contained in American Federation of Government Employees v. Rosen, 418 F.Supp. 205 (N.D. Ill. 1976). Some of the cases would indicate that there ought be an "average fee" in FOIA cases (Campbell v. U.S. Civil Service Commission, 539 F.2d 58 (10th Cir. 1976)) while others would place primary reliance upon time devoted to the litigation multiplied by an hourly rate (Consumers' Union of United States, Inc. v. Board of Governors of Federal Reserve System, 410 F. Supp. 63 (D.D.C. 1976)). The issue has not been before the United States Court of Appeals for the Eighth Circuit.

In another context, that court has referred trial judges to the guidelines listed in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974) in determining a fair award as and for attorney's fees. See Doe v. Poelker, 515 F.2d 541 (8th Cir. 1975), rev. on other grnds., 432 U.S. 519 (1977).

The court is of the view that consideration should be given to the time and labor factors, the customary fee in the area, the results obtained, and awards in similar cases. In addition, the court deems it appropriate to consider the criteria for a determination of the award as originally suggested in the Senate Committee, namely:

1. General public benefit;
2. Vindication of Congressional policy;
3. Commercial or personal benefit to the plaintiff;
4. Whether the government had at least a colorable right to withhold.

Finally, the court considers it not inappropriate to have in mind some form of maximum recovery, absent complex and extended litigation. The court does not deem itself bound by the designation of hours expended or the rate therefor as set forth in the affidavits of plaintiff's counsel in the materials submitted in support of the motion for attorney's fees. See Lyle v. Teresi, 327 F. Supp. 683 (D. Minn. 1971).

In assessing the underlying data submitted in support of the award of attorney's fees by plaintiff's counsel, the court is satisfied that the expenditure of 35 hours in preparation for trial and trial, and the expenditure of 15 hours in post-trial research and preparation of a proposed order and memorandum is appropriate. The court deems an appropriate hourly rate therefor to be the sum of $50.00 per hour or a total fee for such services in the sum of $2,500.00.

The court is unwilling to accept, however, an expenditure of 287.5 hours for such legal work as was expended by counsel in this action prior to its trial. Certainly the vast majority of such time must have been expended prior to the institution of litigation, for under no circumstances would the services rendered in this case up to the point of preparation for trial require the hourly endeavor set forth by counsel for plaintiff. By its review of the file the court is satisfied that the services rendered and appearances necessary up to counsel's preparation for trial have a reasonable value of $1,500.00. The court finds then that a reasonable attorney's fee is the total sum of $4,000.00 and there shall be added thereto filing fees of $15.00. Although sought by the plaintiff, under no circumstances does the Act authorize an award for the reasonable value of the time expended by the plaintiff personally or his individual expenses in connection therewith.

Upon the foregoing,

IT IS ORDERED That the clerk enter judgment as follows:

1. Dismissing the above-entitled action with prejudice and on the merits;

2. Granting judgment to the plaintiff in the sum of $4,015.00 as and for his attorney's fees and costs.

DATED: August 24, 1978.

Donald D. Alsop
United States District Judge