

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA



HAROLD WEISBERG, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 75-1996
 :
 U.S. DEPARTMENT OF JUSTICE, :
 :
 Defendant :

PLAINTIFF'S MEMORANDUM IN RESPONSE
TO COURT'S ORDER OF JULY 1, 1982

By its order of July 1, 1982, the Court ordered, sua sponte, that plaintiff has until July 22, 1982, "and not beyond" to respond to defendant's opposition to plaintiff's motion for consultancy fee; the Court further ordered, sua sponte, that "the parties shall file notice with the Court forthwith of any other motion (including attorney's fee application) they contend is pending before the Court in this action."

With regard to the second part of the Court's order, plaintiff hereby notifies the Court of his intent to file an application for an award of attorney's fees or costs as soon after he has completed work on his response to defendant's opposition to his motion for consultancy fee as is possible. Plaintiff's counsel intends to file the application for attorney's fees no later than August 1, 1982.

Plaintiff will file his response to defendant's opposition to the consultancy fee motion by July 22, 1982, as directed by the Court. He wishes to note, however, that for reasons unknown to the Court at the time it issued its July 1 order, this will place plaintiff's counsel on a very tight deadline. These reasons are briefly set forth below.

On May 27, 1982, plaintiff took the deposition of Mr. Daniel J. Metcalfe. During Mr. Metcalfe's deposition it developed that: (1) he had made no effort to comply with subpoena duces tecum

served on him in connection with his deposition; and (2) that he thought he recalled having created some notes and a memorandum relevant at least in part to the consultancy agreement.

Because Mr. Metcalfe did not produce these and other documents described in the subpoena duces tecum, plaintiff postponed the deposition of Mrs. Lynne K. Zusman, then scheduled for May 28, 1982. On June 14, 1982, the Court ruled that defendant would have to produce these materials notwithstanding defendant's claim that they were protected by attorney-client privilege and the work product doctrine.

At the conclusion of the June 14th status call plaintiff's counsel conferred with defendant's counsel and sought to arrange prompt delivery of the discovery materials, and to immediately reschedule the Zusman deposition. Defendant's counsel indicated that this would have to await a decision on whether to appeal the Court's ruling. A day or two later he informed plaintiff's counsel that defendant would provide the discovery materials, subject to certain excisions for materials not relevant to the consultancy matter. Because defendant's counsel was leaving the following week for a trip to St. Louis from which he would not return until June 28th, he would not be able to accomplish his review and excision of the documents until after that date. Consequently, the Zusman deposition was tentatively rescheduled for July 7, 1982.

On or about June 30 or July 1, 1982, plaintiff's counsel was notified that the discovery materials were available at the Department of Justice. On Thursday, July 1, plaintiff's counsel went to the Department of Justice and picked up the discovery materials. The Zusman deposition went ahead as scheduled on July 7, 1982. A copy of the transcript will not be available to plaintiff's counsel until Monday, July 19th.

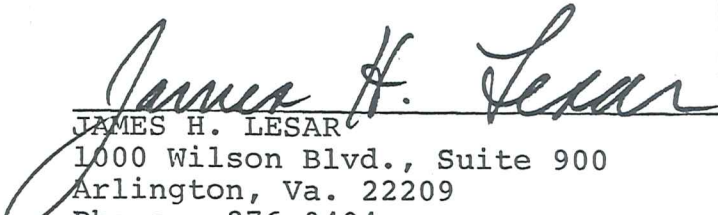
Immediately after the Zusman deposition, plaintiff's counsel indicated to defendant's counsel the need to depose Mr. Metcalfe again. This became necessary in his view because: (1) Mrs. Zusman

repeatedly asserted a lack of memory as to events concerning the consultancy; and (2) the discovery materials contained a memorandum (Attachment 1) and notes (Attachment 2)^{1/} by Mr. Metcalfe about which plaintiff was not previously able to question him. These materials bear directly on the existence of the consultancy agreement, including the issue of whether the Department offered to pay plaintiff a specific sum for his services. Their importance was reported in Ms. Betsy Ginsberg's note to Bill Schaffer of August 2, 1979, stating that the Metcalfe memo "creates a potential problem [for the Government]" and that "Lesar will want to depose you & Dan [Metcalfe] on the 'Weisberg meeting' mentioned in the buck slip." (Attachment 3)

On July 8, 1982, counsel for the parties agreed to take Mr. Metcalfe's deposition on July 13, 1982, the earliest date convenient to counsel for both sides. Plaintiff will order this transcript on an expedited basis so it will be available at about the same time as the Zusman deposition. Although this will place plaintiff's counsel on a tight schedule, he believes he can meet the Court's July 22 deadline.

^{1/} On July 8, 1982, during phone discussions concerning the scheduling of the Metcalfe deposition and plaintiff's request that the unexpurgated version of the discovery materials be available to Mr. Metcalfe during his deposition, defendant's counsel informed plaintiff's counsel that one phrase at the bottom of page one of the Metcalfe notes on the February 15, 1978 meeting (Attachment 2) had been inadvertently excised from the copy made available to plaintiff. Plaintiff's counsel has typed this inadvertently excised phrase on the document reproduced here as Attachment 2.

Respectfully submitted,



JAMES H. LESAR
1000 Wilson Blvd., Suite 900
Arlington, Va. 22209
Phone: 276-0404

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of July, 1982, mailed a copy of the foregoing Plaintiff's Memorandum in Response to Court's Order of July 1, 1982, to Mr. William G. Cole, Civil Division, Room 3338, U.S. Department of Justice, Washington, D.C. 20530.



JAMES H. LESAR

February 9, 1978

Weisberg Matters

Cases

D. Weisberg v. Department of Justice, Civil Action No. 75-1996 (Green. J.) King assassination materials.

5. Should we respond to Lesar's request for payment in the amount of \$6,000 for 80 hours of Mr. Weisberg's services? Do we have any other financial obligations in connection with this consultancy arrangement (e.g., for dictating equipment and supplies, etc.)?

8. Should we move for summary judgment in the King assassination case pending before Judge Green? If not, how much time do we allow Mr. Weisberg for his consultancy enterprise?

Feb 15 1978

Meeting with SULLIVAN
Pam, Dan, JoAnn

- SULLIVAN TO CALL BESTER

- LET THEM KNOW THAT
THERE'S A PROBLEM WITH THE FEE

- PAY THE LAW FIRM LESS

- BASICALLY CLERICAL

- NO PRIOR DISCUSSION OF RATE

- WE'D GIVE HIM EQUIPMENT AND
SECRETARIAL SUPPORT

Consultancy fee--another case Lynne knows about

For 15

SYNOPSIS OF MERTICA

- ① We should call LOSTA to let him know that there's a problem with \$7500 per hour
- ② We should determine what to buy him for whatever else he needs (see equipment)



Bill -

the only document (the first one in the file labeled "Weisberg - FOIA litigation) which created a potential problem is the memo from Dan Metcalfe dated Feb. 9, 1978, and its attached buck slip. Learer will want to depose you & Dan on the "Weisberg meeting" mentioned in the buck slip. How ~~you~~ do you feel about release?

I'll be leaving the Department at the end of August. Any chance we can have lunch before then?

Patsy

8-3-79

Patsy

As we discussed,
I'm not concerned with release
of any of the documents.

WTS

8/2/79