

not recall that he had an affirmative obligation to notify the Clerk of the Court of the FOIA's expedition requirement regardless of whether appellant wanted the case expedited. After returning a phone call from the First Deputy Clerk on the afternoon of June 15, 1980, counsel read Rule 7(c)(3) afresh. This made it clear that his recollection had been quite wrong. Counsel apologizes to the Court and to the Clerk of the Court for his failure to comply with the rule.

This having been said, counsel wishes to state in all honesty that had an expedited briefing schedule been set in this case, he could not have met it; or at least it would have been met only by disregarding the briefing schedules in other of his clients several Freedom of Information Act cases.

There are several reasons for this. First, counsel is a sole practitioner. He does virtually all work connected with his cases by himself. This includes all legal research and brief writing and all typing and filing. A receptionist hired by others answers the phone while he is away from his office; otherwise counsel does all work himself. The typing which counsel does is extensive. The filing duties which are imposed upon him by the present nature of his practice are particularly time-consuming. The Freedom of Information Act cases which counsel has handled for Mr. Harold Weisberg have involved hundreds of thousands of pages of government documents. In order to be able to properly represent his client, counsel has had to familiarize himself with

large numbers of these documents. He has also had to file them. His downtown office contains three four-drawer file cabinets and six bankers' boxes of records which largely pertain to Mr. Weisberg's FOIA lawsuits. The office which he maintains in the basement of his home contains six four-drawer file cabinets and sixteen bankers' boxes all filled with records, most of which pertain to Mr. Weisberg's lawsuits under the Freedom of Information Act.

While these disadvantages under which counsel labors are factors which delay the prosecution of Mr. Weisberg's FOIA lawsuits, they are not the major cause. The root of the problem is that in case after case the government has engaged in obstructive tactics intended to delay Mr. Weisberg's access to records and to grind both of us down. Since 1975 counsel has handled a dozen Freedom of Information Act cases for Mr. Weisberg. Only one has been finally settled. When counsel began filing cases for Mr. Weisberg under the amended Freedom of Information Act, he never dreamed that it would anywhere as long as it has to finally conclude these cases. While counsel underestimated the amount of work involved in these case, the major problem has been the fact that his client is deeply hated by the government agencies he sues under FOIA and they are retaliating by obstructive tactics which delay and impede the resolution of his cases. One consequence of these tactics is that counsel has not filed any new FOIA cases on his client's behalf for nearly two years now, despite the fact that a number of cases with great merit could be filed at any time. The agencies, particularly the CIA, are aware of this and are

simply refusing to respond to FOIA requests he made as far back as 1975 and 1976.

Counsel is presently working on Mr. Weisberg's FOIA cases to the limit of his capacity. He customarily works at night as well as during the daytime and almost always does some work on weekends and hollidays. In the past three years counsel has learned he suffers from three physical ailments which can--and sometimes do--impair his capacity to work: gout, kidney stones, and back, neck and shoulder pains which stem from a degenerative cervical disc caused by a whiplash injury suffered in an automobile accident thirteen years ago. The brief in this case would probably have been filed last August had it not been for the severe pains which counsel suffered from this last ailment over a two month period.

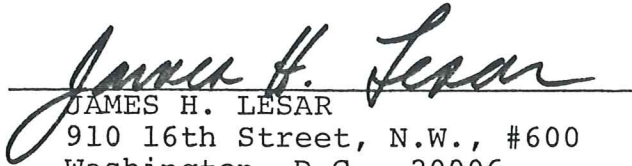
In view of the fact that at least two of these maladies are aggravated by stress, counsel is undoubtedly working more than he should be. Counsel is not a workaholic by nature or habit but by force of circumstance. He has handled Mr. Weisberg's cases without any fee because Mr. Weisberg cannot afford to pay him and the cases are, in counsel's view, of extreme public importance.

Last April 12th, this Court awarded Mr. Weisberg \$ 492.54 in costs in Weisberg v. General Services Administration, Case No. 77-1831 (consolidated). On April 24, 1979 the government filed a motion for reconsideration of the award of costs. Six months later, by order dated October 25, 1979, this Court denied the

the motion for reconsideration and because of an error in the previous award increased the sum awarded to \$522.06. About two weeks ago counsel called the government attorney to inquire about payment of this sum. He was informed that the government was considering filing a second motion for reconsideration of the award of costs! Although he was promised he would be notified as soon as that decision was made, he has so far received no such notice. He may soon be forced to spend additional time seeking an order compelling payment of the award granted by this Court. Similarly, last April 24th counsel moved for an award of attorneys' fees in the District Court in that case. (Weisberg v. General Services Administration, Civil Action No. 75-1448) That issue has not yet been decided by the District Court. While there was some unavoidable delay by plaintiff in filing some papers in connection with that motion, by far the major part of the time which has been consumed is directly attributed to repeated requests by the government for extensions of time to file its response to the motion and a supplemental affidavit to try to cure the obvious inadequacies of the first affidavit opposing the award of attorneys' fees. It was plaintiff's need to respond at length to the government's supplemental affidavit in opposition to the attorneys' fees motion in that case, a critical matter for both client and counsel, that accounts in part for the need to file the most recent request for an extension of time in this case.

The instant case is the only remaining Weisberg FOIA case pending in this Court in which no brief has yet been submitted. It will be submitted shortly.

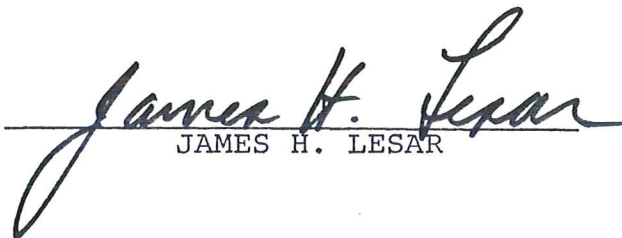
Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of January, 1980, mailed a copy of the foregoing Motion for Leave to File Memorandum Pursuant to General Rule 7(c)(3) to Mrs. Wendy Keats, Attorney, Appellate Staff, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.


JAMES H. LESAR