

IN THE CIRCUIT COURT OF THE 12<sup>TH</sup> JUDICIAL CIRCUIT  
WILL COUNTY , ILLINOIS

JOHN NORTON, )  
Plaintiff, )  
v. )  
LEONARD MCCUBBIN, JR., CONNIE ) Case #19 L 943  
HALE FORSYTE, MICHAEL ESPOSITO )  
CYNTHIA L. BRZANA, MARY JONES )  
KIRK ALLEN, BECKY BECKER, AND )  
ARLIN FRITZ, )  
Defendants. )

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT  
OF THEIR MOTION FOR ATTORNEY FEES**

Now Comes the Defendants, Connie Hale Forsythe, Cynthia Brzana, Kirk Allen and Becky Becker, (Collectively "Defendants") by and through their attorney, Robert T. Hanlon, with their Memorandum in Support of their Motion for Attorney Fees and states as follows:

**I. INTRODUCTION:**

This action arose because the Defendants exercised their rights of free speech and association to which Plaintiff sought to silence by virtue of this action. In defending this action Defendants hired counsel who endeavored to advance Motions to Dismiss pursuant to the Citizen Participation Act ("CPA"). This Court granted the Defendants' Motion to Dismiss under the Citizen Participation Act and dismissed this cause with prejudice. In granting the prayed for relief sought by Defendants, this court granted Defendants leave to file their petition for attorney fees. In ruling upon the CPA motion, the court determined that the complaint did not state a cause of action and that the immunity remedy under the CPA was well founded. This memorandum sets forth the framework under the Lodestar method for determining attorney fee award under the Citizen Participation Act. In total Defendants ask this court to award attorney fees totaling \$16,987.25

## **II. Authority for Awarding Attorney Fees**

In setting forth the policy of the State of Illinois for the enactment of the CPA was to provide for an efficient means to identify a SLAPP suit and to provide for attorney fees and costs to prevailing defendants. See 735 ILCS 110/5. The CPA also provides for Attorney fees. See 735 ILCS 110/25. In particular the CPA provides:

Sec. 25. Attorney's fees and costs. The court shall award a moving party who prevails in a motion under this Act reasonable attorney's fees and costs incurred in connection with the motion.

Because Defendants here prevailed under its CPA motion on July 31, 2020, attorney fees must be taxed against the plaintiff under the CPA to the benefit of defendants and their counsel.

### **SUMMARY OF LEGAL WORK COMPLETED**

The actions undertaken by Attorney Hanlon were necessary to this litigation and factually related to this case as shown in the billing records of Attorney Hanlon. See Affidavit of Attorney Hanlon.<sup>1</sup> Attorney Hanlon had to meet with his client, analyze the pleadings, review the facts as presented by Plaintiff, complete a Rule 137 investigation, interview potential witnesses, prepare a motions to dismiss that were incorporated into each other to comply with the legal authority of the Appellate Court and Supreme Court analysis over the CPA to ensure that Defendants would be successful on the CPA motion, filing the motion serving it upon Mr. Norton and being ready for argument and arguing the motion under the CPA.

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<sup>1</sup> There are two affidavits of Attorney Hanlon filed in connection with this Motion. One, contained in Group Exhibit A) is simply entitled Affidavit and the other is entitled "Experience Affidavit". Within this motion unless indicating the "Experience Affidavit" reference is made to the document in Group Exhibit A entitled "affidavit".

### III. Hourly Rate Discussion

#### REGULAR HOURLY RATE IS INDICATIVE OF THE MARKET

Attorney Hanlon since before accepting this representation charged as his regular hourly rate \$425.00 per hour for all matters. (See Affidavit of Attorney Hanlon)

As the 7<sup>th</sup> Circuit stated in *Moriarty II*, “The lawyer's regular rate is strongly presumed to be the market rate for his or her services.” *Moriarty v. Svec*, 233 F.3d 955, 965 (C.A. 7<sup>th</sup> 2000) (citing *Central States Pension Fund v. Central Cartage Co.*, 76 F.3d 114, 116-17 (7th Cir.1996); See also *Gusman v. Unisys Corp.*, 986 F.2d 1146, 1150 (7th Cir.1993). See also *Tolentino v. Friedman*, 46 F.3d 645 C.A.7 (Ill.),1995. (Establishing the regular hourly rate charged by the attorney as the basis for the presumptive rate to be applied in a lodestar analysis.) In *Tolentino* the 7<sup>th</sup> Circuit commented that the Third Circuit has similarly stated:

Congress provided fee shifting to enhance enforcement of important civil rights, consumer-protection, and environmental policies. By providing competitive rates we assure that attorneys will take such cases, and hence increase the likelihood that the congressional policy of redressing public interest claims will be vindicated.

citing *Student Public Interest Research Group v. AT & T Bell Laboratories*, 842 F.2d 1436, 1449 (3d Cir.1988). See also *Gusman v. Unisys Corp.*, 986 F.2d 1146, 1150 (7th Cir.1993), *Harper v. City of Chicago Heights*, 223 F.3d 593, 604 (7th Cir.2000).

In this case, Defendants’ counsel regularly charges for his time at an hourly rate of \$425 per hour. See Affidavit of Attorney Hanlon in Group Exhibit A. As such, the market has already determined the reasonable hourly rate for Attorney Hanlon’s time is at the rate he regularly charges other paying clients or \$425per hour.

Even though Defendant asked for all evidence Plaintiff intended to introduce in support of his position on fees, Plaintiff failed to respond or produce any such records.

Attorney Hanlon competes in a much larger area as evidenced by his appearances in the United States District Courts of Northern and Central Illinois, northern Indiana, Southern Texas, Eastern and western Wisconsin and others. Attorney Hanlon also represents local units of government in McHenry and Will Counties.

Moreover, the principal of substitution<sup>2</sup> supports the concept that if Attorney Hanlon's other clients could hire a similarly skilled attorney for less, they would not pay him at his standard hourly rate of \$425 per hour. Approximately two years ago the United States District court for the Northern District of Indiana found Attorney Hanlon's fees based on the work completed in that case were reasonable at \$400.00 per hour. See D5 Iron Works, Inc et al v Local 395 Ironworkers union. The court there cited not only to attorney Hanlon's work in the case, but also to his membership in the Trial bar of the United States District Court for the Northern District of Illinois as indicia that his hourly rate was reasonable. Since, that time attorney Hanlon raised his hourly rate to \$425/hr. Accordingly, the market forces of supply and demand have already established that Attorney Hanlon's time is worth \$425 per hour.

#### **ATTORNEY HANLON'S EXPERIENCE**

Attorney Hanlon has been dealing with dispute resolution and complex financial matters for over thirty years. Id. Prior to practicing before this Court, Attorney Hanlon worked as a Large Corporate Real Estate Lender and Commercial Credit Officer at three of the largest banks in the United States of America. In those roles, he resolved disputes over billions of dollars and had one of the lowest loss provisions of any of his contemporaries. Id. This ability to assess risk and

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<sup>2</sup> According to the principle of substitution, a buyer will not pay more for a property than an equally desirable property. Appraisal Institute, the Appraisal of Real Estate. The principal of substitution is central to general appraisal theory and has bearing on any analysis of market value of attorney fees in this context. However, most appraisal literature tends to focus on real estate.

return is highly applicable to the legal advice he provides and is applicable in deciding to accept certain cases, like the subject case.

Attorney Hanlon's actual trial experience includes trials before the United States District Court for Northern District of Illinois, Bankruptcy Court, Circuit Courts of McHenry County, Cook County, Kane County, and Will County; and cases before administrative law judges in the National Labor Relations Board, Illinois State Labor Board, and numerous arbitration settings.

Moreover, Attorney Hanlon's background is quite dynamic in which he has coupled several other skill sets (accounting, appraisal, banking, and finance) unique to the nature of his practice. Academically, Attorney Hanlon earned a Bachelor of Business Administration, and a Master of Business Administration from Loyola University of Chicago. Attorney Hanlon also earned a Juris Doctor from the John Marshall Law School. Attorney Hanlon is trained as an accountant, appraiser, attorney, banker and financial analyst. (See affidavit of Attorney Hanlon.)

Attorney Hanlon has been admitted to the following Courts:

- All Illinois State Courts
- United States District Court for Northern District of Illinois
- United States District Court for the Central District of Illinois
- United States District Court for the Northern District of Indiana
- United States District Court for the Southern District of Texas
- United States District Court for the District of North Dakota
- United States District Court for the District of Colorado
- United States District Court for the Eastern District of Wisconsin
- United States District Court for the Western District of Wisconsin
- The United States Bankruptcy Court
- 7<sup>th</sup> Circuit United States Court of Appeals.

Id.

#### **TOTAL TIME**

The actual time (not block billing time devoted to advancing Defendants' CPA motion totaled 39.97 hours. This does not include the time spent to present this motion to this court.

Additionally, this does not reflect time spent advancing the petition for Rule to Show Cause as that motion was outside the fee shifting provision of the CPA.

**TIME SPENT WAS REASONABLE AND RELATED TO THE CPA MOTION.**

Attorney Hanlon's work commenced with a discussion with Defendants and a review of the complaint in the case at bar. Attorney Hanlon explored the scope of the Plaintiff's allegations, Plaintiff's basis for his claims, and sources for potential evidence to support or refute Plaintiff's claims. In keeping with the mandates of Rule 137 Attorney Hanlon did not delegate his investigation into the facts to others.

**PROPORTIONALITY OF JUDGMENT AMOUNT AND REASONABLE ATTORNEY FEES**

Plaintiff sought \$10,000,000 in damages. His claim, however specious, carried with it a real risk to the defendants. If measured by the amount in controversy, the legal fees here are small comparatively at approximately 0.1698% of the amount in controversy.

Nevertheless, the 7<sup>th</sup> Circuit explained in *Anderson v. AB Painting and Sandblasting Inc.*, 578 F.3d 542 C.A.7 (Ill.),2009, the following with respect to the proportionality of the amount in controversy to the amount of reasonable attorney fees related to a fee shifting statute:

The amount in controversy is not the measure of reasonable attorney fees. This is because Congress wants even small violations of certain laws to be checked through private litigation and because litigation is expensive, it is no surprise that the cost to pursue a contested claim will often exceed the amount in controversy. *Tuf Racing Products, Inc. v. American Suzuki Motor Corp.*, 223 F.3d 585, 592 (7th Cir.2000). The court went on to say: "That is the whole point of fee-shifting, it allows plaintiffs to bring those types of cases because it makes no difference to an attorney whether she receives \$20,000 for pursuing a \$10,000 claim or \$20,000 for pursuing a \$100,000 claim." See *id.* Fee-shifting would not "discourage petty tyranny" if attorney's fees were capped or measured by the amount in controversy. *Barrow*, 977 F.2d at 1103; see *Tuf Racing*, 223 F.3d at 592.

There can be no better or more appropriate description of Mr. Norton's conduct as anything other than "petty tyranny" like that referenced in *Anderson*. Mr. Norton engaged in conduct in filing the SLAPP action.

In *Anderson*, the Court went on to say:

For example, it is absolutely permissible to spend \$100,000 litigating what is known to be a \$10,000 claim if that is a reasonable method of achieving the result. But it might not be a reasonable method. Proportionality then, where useful at all, could alert the court to situations where we might expect that the same result could have been achieved more efficiently. But if, for some reason, the hours expended were reasonable in a particular case, then so is the fee.

*Anderson* at 545.

Thus, the 7<sup>th</sup> Circuit United States Court of Appeals rejected the idea that proportionality is relevant to the decision on fees, and that it is absolutely permissible to charge 10 times the amount in controversy to achieve a result. With the amount in controversy, as defined in the prayer for relief at \$10,000,000, Plaintiff's fees are well below the amount in controversy.

Applying the logic of the 7<sup>th</sup> Circuit in *Anderson*, it would have been appropriate to spend over \$100,000,000 million in time pursuing the defense in this case. Thus, the relatively small fee of only 0.169% of the claim amount is reasonable under *Anderson*.

Plaintiff's method of achieving the result in this case was reasonable in that the chose path of motion practice limited the total litigation to less than a year.

Efforts to avoid filing Defendants fee petition.

On Several occasions, Attorney Hanlon reached out to Mr. Norton to discuss resolution of the fees, to avoid the need to motion up the Fee petition. Nevertheless, Mr. Norton elected to ignore Attorney Hanlon and his numerous correspondences. Rather, than addressing the merit of the fee award and the amount of fees due in this case, Mr. Norton elected to use social media to allege that Attorney Hanlon used some racial slur towards Mr. Norton and demanded an apology. This behavior is puzzling because attorney Hanlon extended the proverbial "fig branch" to reduce the amount of time spent on this fee petition and to allow Mr. Norton to avoid the expense. .

**CONCLUSION:**

Based on the above and the supporting documentation, this court should award attorney fees in the amount of \$16,987.25 based on the actual time expended and the standard hourly rate of Attorney Hanlon.

Dated: August 13, 2020

Respectfully Submitted,

/s/ Robert T. Hanlon  
Robert T. Hanlon, Esq.

Robert T. Hanlon  
131 East Calhoun Street  
Woodstock, Illinois, 60098  
ARDC #6286331  
815-206-2200



**CERTIFICATE OF SERVICE**

I, Robert T. Hanlon, an attorney, certify that I caused a true and correct copy of **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEY FEES**, to be served electronically pursuant to ECF upon the following on August 13, 2020:

John Norton  
1834 Robert Street  
Wilmington, IL 60481  
Via e-mail at n9lye@hotmail.com

/s/ Robert T. Hanlon  
One of Plaintiffs' Attorneys

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Case #2019 MR 000953

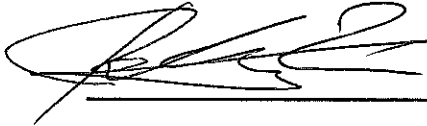
Affidavit of Attorney Hanlon

I, Robert T. Hanlon, being first duly sworn under oath and affirmation, do hereby depose and state as follows on personal knowledge as to the matters stated herein:

1. I am an attorney licensed to practice in the State of Illinois and I am counsel for Kirk Allen, Cynthia Brzana, and Connie Hale Forsythe and Becky Becker in the above captioned case.
2. I am currently licensed to practice in the State of Illinois, the United States District Court for Districts of Northern Illinois, Central Illinois, Eastern and Western Wisconsin, Southern Texas, Colorado, North Dakota.
3. I am also admitted to practice in the United States Bankruptcy Court and the United States Court of Appeals for the Seventh Circuit.
4. I am the principal owner of the Law Offices of Robert T. Hanlon and Associates P.C.
5. From 1988 to 2005, I was engaged in large corporate banking in which a substantial amount of my time was devoted to large commercial loan workouts involving collectively billions of dollars.
6. I have been conferred with the following educational degrees:
  - a. Bachelors of Business Administration, Loyola University Chicago
  - b. Masters of Business Administration, Loyola University of Chicago
  - c. a Juris Doctor, The John Marshall Law School.
7. That since 2005, my practice has mainly involved prosecuting and defending claims in both State and Federal Court.

8. I have tried felony cases involving criminal sexual assault and murder. In addition to State court litigation I have tried matters in federal court involving child pornography, including the week long trial of Michael Chapparo in 2019.
9. I am counsel in approximately 50 cases where less than 10% of my total revenue comes from flat fee arrangements.
10. My standard hourly rate is \$425.00 per hour, which is what I charge to all of my hourly rate clients.
11. I presently represent local units of government including McHenry Township, Algonquin Township Road District, and Joliet Township Road District.
12. The entries for time on this case show actual time expended.
13. Attached hereto is a true and accurate record for the billing of time in furtherance of the CPA motion and excludes time spent on activities outside of the CPA motion.
14. The time spent in pursuing the CPA motion was reasonable and necessary to the defense in this case.

Affiant Further Sayeth Naught.



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Robert T. Hanlon

Subscribed and sworn to before me

This 13<sup>th</sup> day of August, 2020



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Notary Public

