

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

BARBARA D. MULLINAX,

Plaintiff,

v.

Case No: 5:17-cv-445-Oc-PRL

**COMMISSIONER OF SOCIAL
SECURITY**

Defendant.

ORDER

This matter is before the Court on Plaintiff's opposed motion for attorney's fees. (Doc. 28). Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §2412(d), Plaintiff requests an award of fees in the amount of \$3,527.27 and expenses in the amount of \$50.03. The attached documents confirm the attorney and paralegal hours (Docs. 28-1-28-14) and expenses. (Doc. 28-16).

There is no dispute that Plaintiff's counsel is entitled to EAJA fees. Plaintiff asserts that she is the prevailing party in this litigation, that the Commissioner's position in the underlying action was not substantially justified and that her net worth at the time the proceeding was filed was less than two million dollars.¹ On December 13, 2018, the Court entered an Order reversing and remanding this cause back to the Commissioner for further proceedings pursuant to sentence

¹ Under the EAJA, a claimant is eligible for an attorney fee award where: (1) the claimant is a prevailing party in a non-tort suit involving the United States; (2) the Government's position was not substantially justified; (3) the claimant filed a timely application for attorney's fees; (4) the claimant had a net worth of less than \$2 million at the time the complaint was filed; and (5) there are no special circumstances which would make the award of fees unjust. 28 U.S.C. § 2412(d).

four of 42 U.S.C. § 405(g). (Doc. 26). The next day, the Clerk entered Judgment. (Doc. 27). On March 13, 2019, Plaintiff filed her motion for attorney's fees. (Doc. 28). The Commissioner has filed a response in opposition. (Doc. 29).

While agreeing that time spent by paralegals (8.1 hours) and attorneys who have not been admitted to practice in the Middle District (25.0 hours) should be compensated at the customary rate in this District for paralegals, the parties disagree as to the applicable rate. (See Doc. 28 at 4, Doc. 29 at 3-4). Plaintiff requests \$100.00 per hour, while the Commissioner claims that the customary rate is only \$75.00 per hour. I agree with the Commissioner that \$75.00 is the normal reasonable rate in this District for paralegals. See *Schoenfeld v Berryhill*, 8:17-cv-407-T-AAS, 2018 WL 5634000, at *1 (M.D. Fla. October 31, 2018); *Wood v. Comm'r of Soc. Sec.*, No. 2:15-cv-437-FtM-29CM, 2017 WL 2298190, at *3 (M.D. Fla. May 26, 2017). Accordingly, the Court will reduce the hourly rate for attorneys Howard D. Olinsky, Melissa A. Palmer, Megan M.E. Wicklund, and Edward A. Wicklund, as well as paralegals Michelle Callahan, Jonnah Graser, Jennifer Overfield, Tamica Lockwood, Vincent Wisehoon, Krysten Gifford, Moira Deutch, and Michael P. Smith.

The Commissioner also challenges the reasonableness of the hours billed by attorneys and paralegals in connection with the case, noting hours billed for non-compensable clerical tasks. Review of the cited records reveals billing charges for non-compensable clerical time, including mailing correspondence to Plaintiff, and calendaring deadlines.² Accordingly, the following time

² On January 17, 2018, Attorney Edward Wicklund spent 0.4 hours on “[p]reliminary review of transcript-assign Attorney writer.” Plaintiff offers no further explanation regarding this entry. The task of assigning an attorney writer is clerical in nature, and presumably the review of the transcript was related to assigning the writer. Even so, the task of reviewing the transcript is duplicative of the work performed by the brief writer, Melissa Palmer: “[r]eview certified administrative record, take notes, organize facts.” And thus, would not be compensable as clerical and/or duplicative.

entries will be deducted. *See e.g., Shoenfeld, 2018 WL 5634000 at *1* (deducting time entries because tasks of a clerical nature are not compensable as attorney's fees).

Worker	Task	Date	Hrs
Vincent Wisehoon	FDC Packet Sent via Right Signature & USPS for client signature of contract	9/18/2017	0.2
Olinsky, Howard D.	Review summons issued as to Commissioner, USAO, and USAG	10/16/2017	0.2
Wicklund, Edward A.	Note summons returned executed as to USAO, calendar answer due date (12/26/17)	11/28/2017	0.2
	Note Proof of Service filed	11/28/2017	0.1
	Note motion for extension to file answer filed by OC	12/19/2017	0.1
	Note endorsed order granting extension to file answer to OC	1/3/2018	0.1
	Note set/reset deadline re: answer due 1/25/18	1/8/2018	0.1
	Combine, OCR, and Live Bookmark administrative transcript (770 pages)	1/17/2018	0.8
	Note Magistrate Consent filed by OC	1/17/2018	0.1
	Preliminary review of transcript-assign Attorney writer	1/17/2018	0.4
	Review scheduling order, calendar briefing deadlines to task pad	1/22/2018	0.3
	Note order approving Consent to Jurisdiction by Magistrate	1/23/2018	0.1
	Note case reassigned to Magistrate Judge Phillip R. Lammens, update case number	1/25/2018	0.1
	Note motion filed by OC re: Extension request to file Defendants brief	5/21/2018	0.1
	Note order granting Extension request to file Defendants brief, update calendar	5/22/2018	0.2

	Note motion filed by OC re: Second Extension request to file Defendants brief	6/21/2018	0.1
	Note order granting Second Extension request to file D brief, update calendar	6/25/2018	0.1


Based on the above revisions to the hourly rates and hours billed, the fees awarded to Plaintiff will be adjusted as follows:

Name	Hours/Rate	Total
Suzanne L. Harris Attorney, admitted M.D. Fla.	0.5 hours at \$97.81 0.6 hours at \$119.46	\$217.27
Howard D. Olinsky Attorney, not admitted to M.D. Fla.	1.4 hours at \$75.00	\$105.00
Melissa A. Palmer Attorney, not admitted to M.D. Fla.	19.1 hours at \$75.00	\$1,432.50
Megan M.E. Wicklund Attorney, not admitted to M.D. Fla.	0.6 hours at \$75.00	\$45.00
Edward A. Wicklund Attorney, not admitted to M.D. Fla.	0.8 hours at \$75.00	\$60.00
Michelle Callahan Paralegal	0.6 hours at \$75.00	\$45.00
Jonah Graser Paralegal	2.8 hours at \$75.00	\$210.00
Jennifer Overfield Paralegal	0.5 hours at \$75.00	\$37.50
Vincent Wisehoon Paralegal	0.9 hours at \$75.00	\$67.50
Kyrsten Gifford Paralegal	1.1 hours at \$75.00	\$82.50
Moira Deutch Paralegal	1.6 hours at \$75.00	\$120.00

Michael P. Smith Paralegal	0.4 hours at \$75.00	\$30.00
		Total \$2,452.27

Pursuant to the provisions of the Equal Access to Justice Act (28 U.S.C. §2412(d)), Plaintiff's motion for attorney's fees (Doc. 28) is **GRANTED in part**. Plaintiff is awarded attorney's fees in the amount of **\$2,452.27** and expenses in the amount of **\$50.03**. Payment is authorized to Plaintiff's counsel if the Commissioner determines Plaintiff does not owe a debt to the government.

DONE and ORDERED in Ocala, Florida on April 1, 2019.



PHILIP R. LAMMENS
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties