

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JAMES LUTCHER NEGLEY,

Plaintiff,

v.

**FEDERAL BUREAU OF
INVESTIGATION,**

Defendant.

Civil Case No. 03-2126 (GK)

**NOTICE OF FILING BY PLAINTIFF JAMES LUTCHER NEGLEY PER THE
COURT’S OCTOBER 11, 2011 ORDER AND MEMORANDUM OPINION GRANTING
PLAINTIFF’S MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND COSTS**

Plaintiff, James Lutchter Negley, through his undersigned counsel, provides the following information requested by the Court in its October 11, 2011 Memorandum Opinion granting Negley’s Motion for an Award of Attorneys’ Fees and Costs (the “Motion”). Negley admits that the documentation attached to his prior Motion and Supplemental Filing was difficult to read and follow. Therefore, attached hereto is the requested support for an award of \$192,834.50 in attorneys’ fees and \$8,978.49 in costs for the time period through September 31, 2009,¹ and \$13,718.80 in attorneys’ fees for the time period October 1, 2009 through December 4, 2009.

¹ Negley notes that this figure is less than the amounts previously sought in his Motion because: 1) an entry-by-entry application of the Laffey Matrix reduced the amount of attorneys’ fees sought from \$198,854 to \$192,834.50; 2) the back-up for \$162.80 for court reporter/ deposition costs is in storage and, therefore, that amount of costs is not being sought by Negley; and 3) Negley could not locate back-up for \$899.51 for document printing and, therefore, that amount is no longer being sought by Negley. With respect to costs, the Court has not asked follow-up questions regarding each category of costs sought; thus, although this filing explains some of the costs sought, the remaining \$1,666.10 sought in costs is explained in the Motion ((Dkt. 92-1), at 20 (and Exhibit D to accompanying Declaration)).

I. REQUESTED SUBMISSIONS IN SUPPORT OF MOTION

A. Identification of Post-Litigation Hours and the Calculation of Requested Attorneys' Fees Based Upon the Laffey Matrix

The Court requested that Negley set forth “how many post-litigation hours he or the appropriate attorneys in his firm have spent on this case” and then to multiply those hours by the specific Laffey Matrix hourly rates relevant to each year in question. Attached as Exhibits A, B and C respectively are the entries (some of which are redacted to reflect attorney-client communications) for the time spent by Negley’s three attorneys – Prashant K. Khetan, Solomon L. Wisenberg and Paul C. Vitrano – in litigating this FOIA matter during the pertinent years. Moreover, because the Laffey Matrix appears to change mid-year (*i.e.*, it applies from June 1 through May 31 of the following year),² these charts include totals for each Laffey year in question (by attorney), and grand totals of the number of post-litigation hours for each of these three attorneys as follows:

Prashant K. Khetan	528.9 hours
Solomon L. Wisenberg	91.4 hours
Paul C. Vitrano	108.1 hours

² Attached as Exhibit D are the two Laffey Matrices upon which the calculations were based. The vast majority of the entries are subject to the first Matrix (for 2003-2010); Negley utilized the second Matrix (for 1992-2003) for pre-June 1, 2003 time entries by Mr. Wisenberg.

Based on Exhibits A, B and C, the below charts show the amounts sought for time entries by each of these three attorneys, based on the applicable Laffey Matrix hourly rates and years of experience of that attorney.

Prashant K. Khetan				
Year	Hours	Experience	Laffey Rate	Total
6/1/03-5/31/04	96.9	3	\$ 180.00	\$ 17,442.00
6/1/04-5/31/05	52.4	4	\$ 225.00	\$ 11,790.00
6/1/05-5/31/06	152.9	5	\$ 235.00	\$ 35,931.50
6/1/06-5/31/07	75.8	6	\$ 245.00	\$ 18,571.00
6/1/07-5/31/08	134.4	7	\$ 255.00	\$ 34,272.00
6/1/08-5/31/09	16.5	8	\$ 330.00	\$ 5,445.00
Total	528.9			\$ 123,451.50

Solomon L. Wisenberg				
Year	Hours	Experience	Laffey Rate	Total
6/1/01-5/31/02	8.6	20+	\$ 360.00	\$ 3,096.00
6/1/02-5/31/03	27.7	20+	\$ 370.00	\$ 10,249.00
6/1/03-5/31/04	49	20+	\$ 380.00	\$ 18,620.00
6/1/04-5/31/05	6.1	20+	\$ 390.00	\$ 2,379.00
Total	91.4			\$ 34,344.00

Paul C. Vitrano				
Year	Hours	Experience	Laffey Rate	Total
6/1/04-5/31/05	11.6	9	\$ 280.00	\$ 3,248.00
6/1/05-5/31/06	56.4	10	\$ 290.00	\$ 16,356.00
6/1/06-5/31/07	13.6	11	\$ 375.00	\$ 5,100.00
6/1/07-5/31/08	26.5	12	\$ 390.00	\$ 10,335.00
Total	108.1			\$ 35,039.00

As set forth in these charts, Negley seeks a total of \$192,834.50 in attorneys' fees.

B. Explanation of \$30,000 Deducted from the Attorneys' Fees Sought

As indicated in the Motion, Negley only sought reimbursement of attorneys' fees for time entries attributable to this FOIA lawsuit. See Motion (Dkt. 92-1), at 18. When Negley first obtained the printouts of time entries from counsel, the printouts included entries for work unrelated to this FOIA lawsuit; in an effort to be reasonable, Negley removed the amount associated with those entries from his Motion and, consistent with that position, is not seeking that amount today (which is a total of approximately \$30,000).³ This amount is not reflected in the \$192,834.50 (or previously \$198,854) sought; to further deduct \$30,000 from the amount sought would be a penalty when Negley already has taken the reasonable step of not seeking that amount. Thus, Negley seeks \$192,834.50 in attorneys' fees through September 31, 2009.

C. Explanation of Court Reporter/Deposition Costs

Attached as Exhibit E are copies of each invoice relating to both videographer and transcription services in connection with each deposition, totaling \$7,312.39 as follows:⁴

Date	Subject	Task	Cost
3/12/2007	Clifford C. Holly	Transcript	\$ 1,469.75
5/23/2007	David M. Hardy	Video	\$ 1,161.41
5/23/2007	David M. Hardy	Transcript	\$ 1,420.64
6/27/2007	Jennifer Wilson	Transcript	\$ 1,735.07
6/27/2007	Jennifer Wilson	Video	\$ 731.82
7/13/2007	Sandra Figoni	Transcript	\$ 793.70
Total			\$ 7,312.39

³ For ease of this Court and the parties, Exhibits A, B and C do not contain these removed entries at all (in contrast, the exhibits to the original Motion contained the entries but were blackened out and labeled "unrelated"). Negley believes that the FBI was confusing the blackened out entries (which Negley did not include in his total of the amount sought) with entries containing redactions (for which Negley is entitled to fees).

⁴ Included in the "Cost" are taxes in connection with each invoice, which are not always reflected on the invoice. At the same time, Negley is no longer seeking \$162.80 for the January 17, 2007 invoice because some files have been moved offsite and are not readily available.

D. Explanation of \$899.51 for Document Printing – No Longer Being Sought

II. REQUESTED SUBMISSIONS IN SUPPORT OF SUPPLEMENTAL REQUEST

A. Time Period of October 1, 2009 through December 4, 2009

The Court requested identification of the amount of time incurred between October 1, 2009 and December 4, 2009 that was devoted to settlement discussions, and then to deduct the corresponding amount (using the applicable Laffey Matrix) from the amount of attorneys' fees sought in Negley's Supplemental Request. Negley has determined that 2.6 hours were devoted to settlement negotiations during this time period as follows: 10/7/09 - .4 hours; 10/29/09 - .1 hours; 11/10/09 - .1 hours; 11/11/09 - .4 hours; 11/19/09 - .4 hours; 11/20/09 - .3 hours; 11/23/09 - .6 hours; 11/25/09 - .1 hours; 12/02/09 - .2 hours. Where entries were block billed, Negley estimated the amount of time for the settlement negotiations (always rounding up to decrease the amounts sought in this petition). Based on the Laffey Matrix hourly rate for Prashant K. Khetan, the only attorney engaged in settlement discussions during this time period, Negley calculated that \$858 should be deducted. The new computation of attorneys' fees for this time period is as follows:

\$18,006.50	Page 13 of Court Order
-\$858	Deduction for Settlement Discussions
\$17,148.50	Total
-\$3,429.70	20% Deduction per Court (for reasonableness)
\$13,718.80	Grand Total

B. Time Period of December 5, 2009 through December 12, 2009

Negley understands that the Court has ruled that \$6,500 is to be deducted from the amount of attorneys' fees sought in his Supplemental Request on the ground that "Plaintiff admits in his supplemental declaration . . . that the firm is unable to generate the detailed type of report for hours spent on this case between" that time period. Negley apologizes for the confusion, but in fact, the report can be generated, but could not at the time of the Supplemental Filing because the invoice (which would have been generated at the end of the month) had not been prepared. If the Court will reconsider, then attached as Exhibits F and G respectively are the entries for the time spent by Prashant K. Khetan and Rowena Santiago during this one week time period (redacted where appropriate). During this time period, Prashant K. Khetan recorded 10 hours and Rowena Santiago recorded 12 hours. Per the Laffey Matrix, the amount for this time period is \$6,000 (slightly less than the \$6,500 estimated by Negley in his Supplemental Filing). If the Court will consider this time period, then after a 20% deduction for reasonableness, Negley seeks an additional \$4,800 for this time period.

II. CONCLUSION

As set forth above (and in the Motion and Supplemental Filing), Negley seeks an award of \$192,834.50 in attorneys' fees and \$8,978.49 in costs for the time period through September 31, 2009, and \$13,718.80 in attorneys' fees for the time period October 1, 2009 through December 4, 2009. And if the Court will reconsider its prior ruling, then an additional \$4,800 in attorneys' fees for the time period December 5, 2009 through December 12, 2009.

Dated: October 31, 2011

Respectfully submitted,

/s/ Prashant K. Khetan

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