

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2007-016137

05/25/2011

HONORABLE GEORGE H. FOSTER, JR.

CLERK OF THE COURT

L. Timpauer

Deputy

EDILSA NAIDU VOS

ROSVAL A PATTERSON

v.

SHERRI KELLY, et al.

STEVEN D KEIST

UNDER ADVISEMENT RULING

The Court had taken under advisement the matter of the fees of the Special Master. The Court previously ordered the special master to submit to the Court a supplement explaining his billings. The Court has not received his supplement as it has not been filed although the parties indicate they in fact received such a letter. Mr. Patterson has delivered a copy to the Court at the Court's request.

The Court has reviewed the supplement and finds as follows.

The parties stipulated to certain objections to the billings of the special master. Those objections are stated below and the Court has either sustained or overruled the objections as follows:

Excessive billing; October 22, 2009 for 1.1 hrs for email and setting up conference call with attorneys. *OVERRULED*

Excessive billing; December 15, 2010 two hour meeting with Ms. Vos. Ms. Vos spent no more than an hour meeting with Mr. Kennedy. *SUSTAINED. Time reduced to 1 hour.*

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Excessive billing; Contains 4.5 hours spent on engagement planning. It is unclear what engagement planning is and how it differs from review, analysis and/or development of documents. *OVERRULED*

Excessive billing; contains various rates. Mr. Kennedy charged \$150.00 per hour, then \$200 per hour, then \$150.00 again. On October 22, 2009 Mr. Kennedy charged \$150.00 per hour for emailing but on October 28, 2009 he charged \$200.00 per hour for phone calls. *OVERRULED*

Excessive billing; Mr. Kennedy charges different rates for the same tasks as reflected on Invoice 510. For Instance, on November 6, 2009 Mr. Kennedy charged \$150 per hour to review documents; on December 3, 2009 Mr. Kennedy charged \$200 for review of documents; on December 14, 2009 Mr. Kennedy charged \$150 for review of documents. *OVERRULED*

Excessive/Unclear billing; Invoice 522 contains billing for December 1, 2009 for developing schedules and December 3, 2009 for report writing. *OVERRULED*

Excessive/Unclear billing; Initial review of documents span from November 5, 2009 through December 3, 2009. Report writing begins on December 3, 2009 through December 4, 2009. Documents were reviewed and analyzed again December 14, 2009; January 3, 2010, February 1, 2010 and February 15, 2010. The report was rewritten on February 15, 2010, March 8, 2010 and finalized March 8, 2010. *OVERRULED*

Excessive billing; Mr. Kennedy and his assistant's ("TS") appear to be duplicative. For instance, on December 1, 2009 TS billed 2.5 hours to develop schedules. On December 3 and 4th TS billed 2 hours for report writing. On February 15, 2010 Mr. Kennedy billed 2.2 hours to review and make changes to the report. March 8, 2010 Mr. Kennedy billed 6.1 hours to 'Draft and adjustments to report. Prepare report schedules.' *OVERRULED*

Objections to Invoice 510 and 522

Excessive/Unclear billing; Invoice 510 and 522 are not concurrent. Invoice 510 spans from October 21, 2009 through January 26, 2010. Invoice 522 spans from December 1, 2009 through March 9, 2010. *OVERRULED*

Excessive/Unclear billing; Billing for December 2009 appears on both Invoice 510 and 522. Invoice 510 contains billing for review of documents and organize files on December 1; data analysis, set up binders, revise schedules, make copies, filing, reviewing documents and discussions on schedules on December 2, 2009; review of documents, phone calls, data analysis, set up binders and revising schedules on December 3, 2009. *OVERRULED*

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The Court has overruled several objections. It is noted the duties of the special master are set forth in the Court's order filed August 19, 2009. That order provides that the special master is appointed "for the purpose of performing an accounting and/or an evaluation of the business AZona Staffing, Inc., relative to the claims of the parties hereto." Order, pg 1 ¶1. The order provides further "said master shall prepare an analysis of the data provided by each party and shall obtain any documents or information needed from either party or third parties with due diligence." *Id.* at pg 2. ¶6. The parties also executed an engagement agreement with the special master dated October 22, 2009. It provided, in pertinent part: "Such services will include, for property settlement purposes, determination of impropriety of assets, if any, from the AZona Staffing Inc. ("the "Company") by any shareholder from the date of inception on or about July 16, 2005 through August 31, 2006. Should an appraisal of value of an equity interest in the Company be deemed necessary, we will prepare a separate engagement for the scope of such services at that time."

Suffice it to say, the scope of the work of the special master was limited to the Court's order and the terms of the engagement not inconsistent with that order. Simply put, the report reflects work done given the limitations of the engagement. Rule 52 A.R.C.P. The Court's order requires the factual recitations to stand as findings of fact in their case under Rule 52 A.R.C.P. Beyond that, notwithstanding the protestations of the parties to the contrary, the special master appears to have fulfilled its duty.

As to the objections to the time records, the parties suggest they have been over billed. The first argument is that the special master overcharged some tasks at \$200 per hour where he had initially charged at \$150 per hour. Again, the court looks to the engagement agreement where the special master clearly and unambiguously stated his hourly rate to be \$200 per hour. He did not overcharge; indeed it appears he undercharged at \$150 per hour for a number of matters.

As to the overlapping dates of invoices 510 and 522, a review indicates that the parties were not charged twice for the same tasks. Rather, it appears that time sheets for certain tasks had not been submitted or processed by the earlier billing date of February 2, 2010. This is not unusual in professional practices such as accounting firms and law firms. Although it is not a preferable practice to "late bill", in the absence of duplicative billing the objection is without merit.

As to the meeting with Ms. Voss on December 18, 2009, the Court has sustained that objection such that the time should be billed at 1 hour.

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IT IS ORDERED, the billings of the special master are reduced by 1 hour representing a \$200 reduction in billing.

IT IS FURTHER ORDERED, otherwise overruling the parties' objections as noted above.

IT IS FURTHER ORDERED, to the extent any party desires the special master to undertake any additional services at the expense of both parties, that party or both parties will apply to the Court for specific authorization.

IT IS FURTHER ORDERED, consistent with the prior orders of the Court, the findings by the special master are the findings of fact adopted by the Court.

IT IS FURTHER ORDERED, unless the parties have otherwise stipulated and an order has been entered consistent with said stipulation, the Plaintiff and the Defendant are each responsible to pay half of the special master's fee subject to adjustment by the Court.

/ s / HONORABLE GEORGE H. FOSTER, JR.

Hon. GEORGE H. FOSTER, JR.

ALERT: eFiling through AZTurboCourt.gov is mandatory in civil cases for attorney-filed documents effective May 1, 2011. See Arizona Supreme Court Administrative Orders 2010-117 and 2011-010. The Court may impose sanctions against counsel to ensure compliance with this requirement after May 1, 2011.