

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

United States Department of Housing
and Urban Development,

Plaintiff,

v.

Roberta Lenz-O'Brien, Edward O'Brien,
and Robert G. Jones,

Defendants.

HUDALJ 97-7002-PF

Decided: May 6, 1998

Robert G. Jones, Esquire
Susan S. Walker, Esquire
For the Defendant Jones

James L. Anderson, Esquire
For the Government

Before: THOMAS C. HEINZ
Administrative Law Judge

INITIAL DECISION AND ORDER ON MOTION FOR RECONSIDERATION

Defendant Jones has filed a Motion for Reconsideration ("Motion") of the Initial Decision and Order on Application for Attorney's Fees and Expenses ("Decision") issued March 6, 1998. Defendant Jones' Application sought to recover the value of both his own time and the time of two members of his law firm who represented him in this proceeding. The Decision denied compensation for Defendant Jones' time and awarded approximately a third of the amount requested as compensation for expenses and for his colleagues' efforts. The Motion quarrels with the reduction in compensation for expenses and for the labors of Defendant Jones' associates but does not question the denial of fees for Defendant Jones' own work as an attorney appearing pro se.

The Decision awarded a fraction of the requested compensation for expenses and for Defendant Jones' colleagues' efforts because the record appeared to indicate that the

Application was seeking compensation for work performed by the firm not only on Defendant Jones' behalf but also on behalf of his two co-defendants, Mr. and Mrs. O'Brien. As noted in the Decision, Attorneys Walker and Stakes filed appearances on behalf of Mr. and Mrs. O'Brien on October 22, 1997, and the invoice submitted with the Application contained several shorthand billing entries that seemed to reflect work performed on behalf of the O'Briens.¹

The Motion sets out three arguments: (1) Attorney Walker did no work for Mr. and Mrs. O'Brien; (2) Attorney Stakes did some work for Defendant Jones during this proceeding in addition to services performed for the O'Briens, but none of his work for the O'Briens was included in the Application for Fees and Expenses; and (3) Attorney Walker's billing entries attached to the Application that mention Attorney Stakes and the O'Briens manifest nothing more than necessary coordination by Attorney Walker on behalf of Defendant Jones with Attorney Stakes and the O'Briens.

After the Government filed a response to the Motion, a telephone conference was held on April 8, 1998, to discuss the issues. Although the Application and the Motion ignore the appearances on the record by Attorney Walker and Attorney Stakes on behalf of the O'Briens, during the telephone conference Attorney Walker conceded these undeniable facts and acknowledged that some of the documents she filed indicate on their face that she represented the O'Briens. Nevertheless, she insisted that she did no work for the O'Briens. That assertion is supported by an affidavit submitted by Attorney Walker and by affidavits from Mr. and Mrs. O'Brien to the same effect.²

¹Attorney Stakes is no longer an associate of Defendant Jones' law firm.

²In their affidavits, the O'Briens aver that they received no invoices for services rendered by Attorney Walker and did not pay for any time or expense incurred by her on their behalf.

During the telephone conference, Attorney Stakes stated that he initially agreed to represent the O'Briens on a contingency basis with the expectation that the firm would collect his fees under EAJA. However, he later concluded that no EAJA claim would be filed. Hence it appears that the O'Briens received free legal services from Defendant Jones' firm. After the telephone conference, Defendant Jones submitted a copy of the joint representation agreement between the O'Briens and Defendant Jones' firm dated October 16, 1997, in which the O'Briens acknowledged and waived any potential conflict of interest that might arise during the litigation between themselves and Defendant Jones. Defendant Jones also filed a billing worksheet showing that Defendant Jones and Attorney Stakes performed work for the O'Briens that was not addressed in the Application. This worksheet tends to support Defendant Jones' claim that none of the

work done by Attorney Stakes for the O'Briens was included in the Application for Fees and Expenses.

I have reconsidered the shorthand and somewhat ambiguous billing entries filed in support of the Application and have concluded that they reflect only appropriate work by Attorney Walker on behalf of Defendant Jones rather than work performed on behalf of the O'Briens. This revised conclusion was reached in light of affidavits and billing evidence not in the record at the time the Decision was issued. Revision would not have been necessary if Defendant Jones and counsel had submitted all of their evidence initially and had not ignored evidence in the record clearly contrary to their position.

This is a close case. I have reached these conclusions primarily on the strength of Attorney Walker's affidavit as an officer of the court and in the absence of any evidence from the Government refuting that affidavit. Contrary conclusions would require referral of this matter to the bar for disciplinary action.

It is hereby ORDERED that the Motion for Reconsideration is granted and that the Order of March 6, 1998, issued herein is revised to read as follows:

1. Defendant Robert G. Jones' Application for Attorney Fees and Expenses is granted in part and denied in part;
2. Within 60 days of the date on which this Order becomes final, the Government shall pay Defendant Robert G. Jones a total of \$10,858.80, consisting of \$7,256.25 for 58.05 hours of work by Susan S. Walker, Esq., \$2,208.75 for 23.25 hours of work by Michael A. Stakes, Esq., \$605.00 for 11 hours of work by a paralegal, and \$788.80 for expenses; and
3. The Government's motion to strike Defendant Jones' "Answer to Government's

Response to Defendant's Application for Fees and Expenses" is denied.

/s/

THOMAS C. HEINZ
Administrative Law Judge

