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

The Secretary, U.S. Department of Housing and Urban Development, on behalf of Meki Bracken and Diana Lin, Charging Party, and Meki Bracken and Diana Lin, Complainants-Intervenors, v. Chak Man Fung and Jennifer Ho, Respondents.	HUDALJ 07-053-FH September 9, 2011

INITIAL DECISION AND ORDER ON PETITION FOR ATTORNEY'S FEES, COSTS AND EXPENSES

I. Procedural Background

This proceeding was initiated upon a Charge filed by the Secretary of the United States Department of Housing and Urban Development ("HUD" or the "Government") on behalf of Meki Bracken and Diana Lin (collectively, the "Complainant-Intervenors"). The Charge alleges that Jennifer Ho and Chak Man Fung (collectively, "Respondents") violated the Fair Housing Act, 42 U.S.C. §§ 3604 and 3617.[1]

[1] On May 11, 2011, David T. Anderson, former Director, Office of Hearing and Appeals, and the Undersigned's former first-level supervisor, issued to the presiding judge a memorandum titled: "Notices of Opportunity to Comment" and other steps toward disqualification in cases where no evidence of actual bias or partiality has been show. The memorandum states, in part: "[b]y memorandum to you dated March 1, 2011, which included an opinion by the HUD Office of General Counsel, you were instructed by me to cease disqualifying yourself from presiding in cases assigned to you, and to cease issuing notices of disqualification, unless specific facts exist indicating bias or partiality concerning the particular case at hand which could overcome the presumption of honesty and integrity of ALJs and hearing officers, i.e. unless actual bias or

The Charge was served on Respondents on August 23, 2007, but neither Respondent filed an answer to the Charge. Complainant-Intervenors were granted leave to intervene in the proceeding on September 28, 2007, and filed motions for default against each Respondent, neither of whom responded to the motions. Consequently, Respondents were found in default and liable for all acts of discrimination alleged in the Charge. A hearing on the penalty was held on November 15, 2007, at which Respondent Fung did not appear. Respondent Ho did appear at the hearing, unrepresented by counsel, and requested postponement of the hearing, which request was denied. Complainant-Intervenors attended the hearing, represented by the John Marshall Law School Fair Housing Legal Clinic ("Clinic" or "JMLS").

An Initial Decision was issued by ALJ Constance T. Obryant on January 31, 2008, awarding damages to Bracken in the amount of $49,284 and to Lin in the amount of $25,345, and assessing a civil penalty of $11,000 against each Respondent. The Initial Decision granted leave to Complainant-Intervenors to petition for attorney's fees, costs and expenses, and enjoined Respondents from transferring real properties in their possession until they have satisfied the judgment against them. The Initial Decision became final after time for review by the Secretary of HUD expired.

On March 11, 2008, pursuant to 42 U.S.C. § 3612(p), and the implementing regulation, 24 C.F.R. § 180.705, the Complainant-Intervenors filed a *Petition for Attorney's Fees, Costs and Expenses* ("Petition") on the basis that they are "prevailing parties" in the action. The Petition requested an award of $98,488.79, or in the alternative, an award of $75,910.50. Ruling on that request was stayed when Respondent Ho filed a petition for review of the Initial Decision with the Seventh Circuit Court of Appeals, in which proceeding Mr. Fung intervened, and HUD cross-petitioned for enforcement. Ultimately, the Seventh Circuit denied Respondents' petition for review of the Initial Decision and granted HUD's cross-petition for enforcement. Ho v. Donovan, 569 F.3d 677 (7th Cir. 2009). On July 1, 2009, Complainant-Intervenors filed a

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partiality exists. . . ." "Both HUD and OGE have concluded that the mere pendency of your discrimination claims against HUD do not warrant disqualification. HUD, as the employing agency, is entitled to make this determination and to instruct you accordingly. . . ." " Accordingly, you are again instructed to perform your described duties by presiding over assigned cases. . . ." "Be advised that non-compliance with this instruction, and with the legal opinions of the HUD Associate General Counsel and the Office of Government Ethics, may give rise to the commencement of an adverse personnel action against you." (Emphasis added.) That memorandum has not been rescinded.

No party at bar has argued that specific facts exist indicating bias or partiality concerning the particular case at hand which could overcome the presumption of honesty and integrity of the Undersigned. Consequently, although the Undersigned previously disqualified himself from serving at bar, he is compelled by the May 11, 2011, Anderson Memorandum to preside over this assigned case.

motion to lift the stay of the administrative proceedings and to issue an order on their Petition. The stay was lifted and a *Notice of Hearing and Order* was issued by the Undersigned. On September 11, 2009, Fung filed an *Objection to the Petition* ("Resp't's Objection"). Complainant-Intervenors submitted a *Reply to Fung's Objections* on September 17, 2009 ("Reply to Objection") and filed a *Motion for Ruling on the Pleadings*, requesting that their Petition be granted without a hearing, which motion was denied by Order dated September 30, 2009. The Petition remains at issue as the basis for this proceeding.[2]

On July 14, 2010, Complainant-Intervenors submitted a *Motion to Withdraw Time Entries*, reducing the total amount of attorney's fees requested by $192.50, to a total of $98,296.29, or in the alternative, $75,718.[3]

The parties submitted briefs and supporting documents in accordance with the August 17 Order. Complainant-Intervenors submitted a *Supplement to Petition for Attorneys Fees, Costs and Expenses* ("Complainant-Intervenors' Supplemental Brief" or "C-I Supp. Brief") on September 3, 2010. Thereafter, *Respondent, Chak Man Fung's Supplemental Response to Complainant-Intervenors' Petition and Supplemental Petition for Attorney's Fees, Costs and Expenses* ("Respondent's Supplemental Brief" or "Resp't's Supp. Brief"), dated September 23, 2010, was filed. Complainant-Intervenors submitted a motion to strike the Respondent's Brief, which motion was denied by Order dated October 5, 2010. On October 28, 2010, Complainant-Intervenors filed a *Reply to Respondent's Brief* ("Complainant-Intervenors' Reply Brief" or "C-I Reply Brief"), and on November 12, 2010, Respondent Fung submitted a *Supplemental Reply to Complainant-Intervenors' Brief* ("Respondent's Supp. Reply Brief"), upon which the record of the hearing closed.[4]

II. Applicable Standard

The Fair Housing Act provides for the recovery of attorneys fees by a prevailing party

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[2] Numerous motions were filed by the parties thereafter. On July 13, 2010, Respondent Fung filed a *Motion for Entry of Parties Hearing Stipulation and Request to Approve Ruling on Petition for Attorney's Fees based on Written Briefs*, along with a stipulation signed by all parties except Respondent Ho. The stipulation states "Charging Party, Complainants-Intervenors, and Respondent Chak Man Fung, all wishing to avoid a prolonged and protracted hearing on the reasonableness of attorneys fees sought by Complainants-Intervenors, hereby agree and stipulate to allow for a ruling on the Petition for Attorney's Fees to be based on written briefs submitted by the parties along with supporting documents and filings only, without a live hearing, the presentation of live witnesses, or oral arguments." Respondent Ho did not file a response to the motion, and it was granted by *Order on Motion for Ruling on Written Record*, dated August 17, 2010.

[3] The Complainant-Intervenors' *Motion to Withdraw Time Entries*, which was unopposed, would not result in prejudice to any party, and is hereby granted.

[4] Respondent Jennifer Ho did not file any documents with regard to the issues discussed herein.

following the issuance of a final Departmental decision. Indeed,

> any prevailing party, except HUD, may apply for attorney's fees and costs. ... The initial decision will become HUD's final decision unless the Secretary reviews the initial decision and issues a final decision on fees and costs within 30 days.

24 C.F.R. § 180.705

The Act also provides as follows, in pertinent part:

Enforcement by Secretary.

* * *

(p) Attorney's fees. In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under section 812 [42 U.S.C. §3612], the administrative law judge or the court, as the case may be, in its discretion, may allow the prevailing party, other than the United States, a *reasonable* attorney's fee and costs.

42 U.S.C. §3612(p) (emphasis added).

The standard for recovery of attorney fees and costs is the same for administrative and federal court proceedings, so case law from the federal courts is instructive in this proceeding for interpreting and applying Section 3612(p). The rationale for awarding attorney fees in civil rights cases has been described as follows:

> If successful plaintiffs were routinely forced to bear they own attorney's fees, few aggrieved parties would be in a position to advance the public interest by invoking the powers of the federal courts [under the Civil Rights Act]. Congress therefore enacted the provision for counsel fees — not simply to penalize litigants who deliberately advance arguments they know to be untenable but, more broadly, to encourage individuals injured by racial discrimination to seek judicial relief . . . .

Newman v. Piggie Park Enters., Inc., 390 U.S. 400 (1968) (quoted with approval in City of Riverside v. Rivera, 477 U.S. 561 (1986); Jeanty v. McKey & Poague, Inc., 496 F.2d 1119, 1121 (7th Cir. 1974)). The Court in Rivera stated that "it [is] necessary to compensate lawyers for all time reasonably expended on a case . . . . [i]n order to ensure that lawyers would be willing to represent persons with legitimate civil rights grievances." Riverside v. Rivera, 477 U.S. 561, 562 (1986).

To determine a "reasonable attorney's fee," courts use the "lodestar" method, under which the court multiplies the hours reasonably expended on the case by a reasonable hourly

rate. Perdue v. Kenny, 130 S. Ct. 1662, 1672 (2010); Hensley v. Eckerhart, 461 U.S. 424, 433 (1983); People Who Care v. Rockford Bd. of Educ., 90 F.3d 1307, 1310 (7th Cir. 1996). The fee applicant bears the burden of proving the reasonableness of the hours worked and hourly rates claimed. Spegon v. Catholic Bishop of Chicago, 175 F.3d 544, 550 (7th Cir. 1999); Tomazzoli v. Sheedy, 804 F.2d 93, 96 (7th Cir. 1986) (stating that fee applicant has the burden of documenting to the satisfaction of the court its hours expended an hourly rates). Further, the applicant is expected to exercise 'billing judgment' in calculating his or her fee; excessive, redundant or otherwise unnecessary hours are to be omitted from the fee submission." Tomazzoli, 804 F.2d at 96 (quoting Hensley, 461 U.S. at 434). If the court finds hours to be based on inaccurate or misleading records, it may disallow those hours. Id. If it finds hours insufficiently documented, it may omit those hours or reduce the fee award by a proportionate amount. Hensley, 461 U.S. at 433.

"Reasonable fees . . . are to be calculated according to the prevailing market rates in the relevant community, regardless of whether plaintiff is represented by private or non-profit counsel." Blum v. Stenson, 465 U.S. 886, 895 (1994) (internal quotations omitted). In order to establish the prevailing market rate, the fee applicant has the burden to produce "satisfactory evidence — in addition to the attorney's own affidavits — that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Id. at n.11.

III. Discussion

A. Complainant-Intervenors Qualify as Prevailing Parties Under 42 U.S.C. § 3612(p)

Complainant-Intervenors assert that, as prevailing parties in the underlying action, they may properly seek compensation for their attorneys' fees and costs, pursuant to 42 U.S.C. § 3612(p) and 24 C.F.R. § 180.705. Petition, p. 6, 8.

Plaintiffs are considered prevailing parties if they "succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." Henlsey, 461 U.S. at 433 (quoting Nadeau v. Helgemoe, 581 F.2d 275, 278-79 (1st Cir. 1978)) (internal quotation marks omitted). Prevailing intervenors are authorized to recoup such fees provided special circumstances do not render such an award unjust. 24 C.F.R. § 180.705(b). Complainant-Intervenors here brought suit and obtained default judgment in their favor. As such, they are prevailing parties in this matter. Respondent Fung does not dispute that Complainant-Intervenors' litigation was successful and does not identify any special circumstances that would make recovery of a fee award against him unjust.[5] The Court therefore

[5] Respondent Fung notes that he lacks the financial means to adequately repay the full amount requested by Complainant-Intervenors. (Intervening Petitioner/Cross-Respondent's Response Objecting to Intervening-Respondents' [sic] Petition for Attorneys' Fees, Costs and Expenses, ("Resp't Response") 5, filed September 11, 2009.) Respondent does not, however, attempt to argue that an inability to pay an attorney's fee award constitutes a special circumstance.

finds that Complainant-Intervenors are correctly identified as prevailing parties and are entitled to reasonable attorneys' fees.

B. Complainant-Intervenors' Full Attorneys' Fee Request is Not Reasonable

Given that Complainant-Intervenors are prevailing parties, the sole question here is whether the proposed fee award of $98,488.79 is reasonable within the context of 42 U.S.C. § 3612(p).

As first laid out in Hensley, "the most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." Hensley, 461 U.S. at 433.

Complainant-Intervenors assert that attorney J. Damian Ortiz and a phalanx of Clinic students expended 125.85 and 550.69 compensable hours, respectively, litigating this case. (Petition, 9.) Complainant-Intervenors request fees in the amount of $275 per hour for Ortiz and $116.23 per hour for the students. (Id.) In requesting the student rate, Complainant-Intervenors ask the Court to use the $75 per hour figure first identified in Butts v. Bowen, 775 F. Supp. 1167 (N.D. Ill. 1991), but to upwardly adjust the award to account for inflation.[6] In the alternative, Complainant-Intervenors seek an award for the law students' compensable hours using an unadjusted $75 per hour figure. (Id. at 9-10.)

Respondent Fung contends that most of the hours indicated by Ortiz and the students cannot be considered hours "reasonably expended" because they were duplicative, excessive, unnecessary, vaguely described, or represented non-legal work. (See Resp't's Supp. Brief, pp. 2-4.)

1. Many of Complainant-Intervenors' Hours are Duplicative

Respondent argues that the Clinic failed to coordinate the prosecution of the case with HUD, thereby wasting its time and resources by producing substantially identical documents. (Resp't's Supp. Brief, 6-15.) For example, Respondent notes that the Clinic requests compensation for 9.3 hours of work relating to the drafting and revising of its *Motion for*

Although Respondent asks the Court to consider his financial situation when determining the appropriate fee award, he fails to direct the Court's attention to any authority suggesting that such consideration is appropriate in such a determination.

[6] Complainant-Intervenors rely on the U.S. Department of Labor's Bureau of Labor Statistics ("BLS") to compute the value of inflation and the subsequent adjustment to the law student rate. The BLS maintains the Consumer Price Index, which suggested a 54.98% increase in costs between 1991 — the date of the Butts decision — and the filing of the Petition in 2008. Complainant-Intervenors arrive at the $116.23 rate by increasing the $75 per hour rate by 54.98%.

Default. (Id. at 10; Ex. G.) According to the Clinic's billing reports, work on the default motion began on October 3, 2007 and continued through the middle of November of that year. (Petition, Ex. A.) However, the Clinic was aware no later than August 25, 2007, that HUD was working on its own default motion, and that HUD filed its motion on October 1, 2007. (Id.) The Clinic continued to work on its own motion even after receiving the October 5 Court Order granting HUD's motion. (Id.)

Complainant-Intervenors justify this continued effort by stating that their interests as intervenors are not entirely identical to the interest of HUD, and so Complainant-Intervenors have the right to produce their own documents and present their own arguments to safeguard their interests. (Complainant-Intervenors' Memorandum of Law in Support of Its Reply to Fung's Objections to Attorney's Fees and Costs, 4-5, filed September 17, 2009.)

While there is no question that an intervenor has these rights, they are not without limits. It is generally well-settled that an intervenor may not demand attorney's fees for work that merely parrots that of the original plaintiff. King v. Ill. State Bd. of Educ., 410 F.3d 404 (7th Cir. 2005); Wilder v. Bernstein, 965 F.2d 1196 (2d Cir. 1992) (citing Grove v. Mead Sch. Dist., 753 F.2d 1528 (9th Cir. 1985)); Donnell v. United States, 682 F.2d 240 (D.C. Cir. 1982) (holding that where "the intervenor contributed little or nothing of substance in producing the outcome, then fees should not be awarded."); EEOC v. Sage Realty Corp., 521 F. Supp. 263 (S.D.N.Y. 1981); EEOC v. Strasburger, 626 F.2d 1272 (5th Cir. 1980).

Complainant-Intervenors are also correct that their objectives in the litigation are, to some degree, distinct from those of HUD. However, the interests of both parties, at least as they related to the default motions, were in lockstep, as evidenced by the fact that the Complainant-Intervenors' motion expressly adopted HUD's allegations and added none of its own. Faced with a very similar scenario, the Second Circuit found that a private attorney who had failed to coordinate with a government co-plaintiff could not claim attorneys' fees for the duplicative work. Sage Realty, 521 F. Supp. at 269-70.

Here, the Clinic admittedly "coordinated and communicated with the HUD attorneys to ensure an efficient prosecution of this case." (Complainant-Intervenors Memorandum of Law in Support of Its Reply to Fung's Objections to Attorney's Fees and Costs, p. 5, filed September 17, 2009.) The billing entries evidence a steady stream of communication between both parties. In fact, the Clinic has argued that the community of interest doctrine prevents those communications from being discoverable, going so far as to label the Clinic and HUD as "co-parties" who "sought to pursue the same purpose of prosecuting the violation of civil rights laws and seek damages." (Complainant-Intervenors Memorandum of Law In Support of Its Privilege Claim Regarding Communications Between Parties, pp. 4-5, filed October 28, 2009.) This degree of inter-party interaction makes the replication of arguments all the more unreasonable.

Accordingly, the Court finds that where Complainant-Intervenors' interests coincide with the interests of HUD, the Clinic's failure to coordinate with HUD attorneys renders the Clinic's work duplicative and unreasonable. The Court will therefore strike all fee entries relating to the

Clinic's *Motion for Default,* its *Motion to Compel*, and all research into Respondent Fung's real estate holdings. The Court does not, however, strike those entries relating to discovery, depositions, the post-hearing brief, or legal research, as Complainant-Intervenors' interests may reasonably differ from those of HUD with regard to those matters.

2. Many of the Law Students' Hours are for Clerical Work

Respondent next argues that many of the law students' billing entries are for clerical, rather than legal, work. Purely clerical tasks, when done by an attorney, are not compensable. Spegon v. Catholic Bishop of Chicago, 175 F.3d 544 (7th Cir. 1999) (holding that "tasks that are easily delegable to non-professional assistance" cannot be considered in an attorney fee award.") (quoting Halderman v. Pennhurst State Sch. & Hosp., 49 f.3d 939, 942 (3d Cir. 1995) (internal quotation marks omitted.) ; People Who Care v. Rockford Bd. of Educ., Sch. Dist. No. 205, 90 F.3d 1307, 1313 (7th Cir. 1996). To support this position, Respondent points to some 35 hours worth of billing entries detailing activities like "updating weekly case log," and scanning, printing, or mailing documents. (Resp't's Supp. Brief, pp. 20-23.)

Complainant-Intervenors do not dispute that these activities are clerical in nature. Rather, they assert that, as a pro bono legal clinic associated with a law school, the Clinic does not have clerical staff and so students must take on clerical responsibilities. (Complainant-Interveners Memorandum of Law in Support of Its Reply to Fung's Objections to Attorney's Fees and Costs, pp. 5-6.) Complainant-Intervenors suggest that clerical tasks should only be omitted from a fee award when the attorney has secretarial help available but chooses not to avail himself of their services. Id. This Court has found no caselaw to support such a proposition, and Complainant-Intervenors offer none. To accept this theory would be to invite many an unscrupulous attorney to stuff his own envelopes so as to charge attorney's rates for activities that properly command considerably less compensation. There is nothing to suggest such a practice is at play here, but the Court is unwilling to open the door to such a tactic.

Alternatively, Complainant-Intervenors argue that the Clinic should be allowed to recover for clerical work because for-profit firms routinely include clerical expenses in their fees. Id. Complainant-Intervenors cite to Missouri v. Jenkins by Agyei for support. The Court in Jenkins did recognize that compensation for paralegals, law clerks, and other support staff should be included in a fee award. Jenkins, 491 U.S. at 284.[7] It also emphasized that such compensation is attainable either as part of the calculation for the attorney's fee or as a separately billed service, depending on the customs of the particular market. Id., at 287.

Importantly, however, Missouri speaks to compensation for clerical staff performing

[7] "[T]he [reasonable attorney's] fee must take into account the work not only of attorneys, but also of secretaries, messengers, librarians, janitors, and others whose labor contributes to the work product for which an attorney bills her client[.]" Missouri v. Jenkins by Agyei, 491 U.S. 274, 284 (1989).

clerical work, not for attorneys seeking to charge attorney rates for clerical work. Jenkins, 491 U.S. at 284-88. To be compensable under Missouri, the students would have to seek compensation as clerical staff rather than attorneys. Complainant-Intervenors, however, do not argue that the students should be considered as clerical staff and have offered no evidence of a prevailing rate for clerical staff. Complainant-Intervenors' request that the Clinic be "compensated at the market rate for clerical work when it performed the so-called clerical tasks" must therefore fail for lack of evidence.[8]

Consequently, the Court finds that the billing entries relating to purely clerical tasks are not compensable as attorneys fees and, therefore, are not reasonably expended hours for purposes of the lodestar calculation.

3. The Fee Petition Fails to Discount Redundant or Inefficient Law Student Hours

Respondent contends that Complainant-Intervenors have failed to show adequate billing judgment by submitting entries for student work that is redundant, excessive, or otherwise unnecessary. (Resp't's Supp. Brief, p. 16.) The prevailing party's counsel is expected to exclude such hours before submitting the fee petition. Hensley, 461 U.S. at 434. If a court determines counsel has not sufficiently "winnowed the hours actually expended down to the hours reasonably expended," the court may exclude the extra hours at its discretion. Id. In doing so, the court is also free to consider a range of additional factors, including the sophistication of the case, the experience of the attorneys, the amount of time required, the plaintiff's level of success, and the importance of the case to the public interest. Perdue v. Kenny, 130 S. Ct. 1662, 1672 (2010).

Respondent here contends that the Clinic wasted resources by assigning multiple students to the same projects, thereby compounding the number of billable hours associated with several discreet issues. (Resp't's Supp. Brief, at 26-34.)

For example, Respondent notes that 10 different students filed billing entries for preliminary reviews of the case file. Id. at 26. In two instances, this introductory exposure to the case was the students' only entry. Many courts have found that the time attorneys spend "getting up to speed" on a case is compensable, provided those attorneys thereafter spend a significant amount of time on the case. Dupuy v. McEwen, 648 F. Supp. 2d 1007, 1023 (N.D. Ill. 2009); Planned Parenthood of Cent. N.J. v. Attorney General of State of N.J., 297 F.3d 253, 271-72 (3d Cir. 2002) (approving "get up to speed" expenses).

Complainant-Intervenors emphasize that this case has been ongoing since 2004, making

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[8] Complainant-Intervenors offer only the Laffey Matrix as evidence of the prevailing market rate for clerical staff. (Complainant-Interveners Memorandum of Law in Support of Its Reply to Fung's Objections to Attorneys Fees and Costs, p. 6.) The Matrix is of no value in this regard, however, as it tracks the market rates of attorneys and paralegals in Washington, D.C., not of clerical staff in Chicago.

student turnover inevitable. They also note that Respondents bear some responsibility for the long lifespan of this case, as they refused to participate in settlement negotiations and did not offer a defense during the initial trial, resulting in their default. (Complainants-Intervenors' Reply to Respondent Chak Man Fung's Supplemental Response to Complainants-Intervenors' Petition and Supplemental Petition for Attorney's Fees, Costs and Expenses, p. 9.) It is not unreasonable that, over the course of several years, new attorneys — or students in this case — would need to be brought in and brought up to speed. Dupuy, 648 F. Supp. at 1023; Moreno v. City of Sacramento, 534 F.3d 1106 (9th Cir. 2008). Some degree of turnover over this time period would be expected even at a private firm. However, this Court feels it is unreasonable to award nearly $2,500 for the 32.13 hours these students spent acclimating themselves to this case. Accordingly, and in keeping with precedent, the Court will limit the hours spent reading the initial casefile to those students who contributed significant additional hours to the prosecution of the case.

Additionally, it must be noted that Respondent's lack of participation, combined with the aggressive prosecution by HUD, made for a particularly straightforward legal exercise for Complainant-Intervenors. Knowing that HUD was already capably shepherding the case through the legal system, the Clinic could easily have scaled back its involvement, monitored the proceeding and stepped in if Complainant-Intervenors' interests appeared likely to be threatened or ignored. Instead, the Clinic involved at least 21 students in this case.

The Seventh Circuit recently discussed the question of attorney over-staffing, affirming the lower court's ruling in Schlacher v. Law Offices of Phillip J. Rotche & Assoc., P.C., 574 F.3d 852 (7th Cir. 2009). There, four attorneys combined their efforts to bring a successful claim under the Fair Debt Collection Practices Act. The trial judge rejected the attorneys' fee petition seeking $12,495, awarding them only $6,500 because the lawsuit was quickly resolved and could have been effectively prosecuted with only one attorney. Schlacher, 574 F.3d at 855. Rather than allow four judges — and a paralegal — to recover their full fees, the judge concluded that the reasonable fee was the amount of time "one competent lawyer" would have spent on the case. Id.

The four attorneys in Schlacher each billed independently for work they did together, but which any one of them could have done alone.[9] In upholding the decision, the appellate court specifically noted that the case was "uncomplicated" and was resolved within three months and without discovery. Id., at 858.

The circumstances here are somewhat different. This case is more than six years old and has involved significant discovery and depositions. Moreover, while it appears clear from the entries that students rotated in and out of the Clinic each semester, generally no more than three students were simultaneously involved in the case. This does not strike the Court as gross over-

[9] Examples of quad-billed work include drafting the complaint, filing and arguing a motion to strike, and conducting legal research. Schlacher, 574 F.3d at 858.

staffing. The Court cannot, therefore, dismiss the entries in their entirety as unreasonably redundant, as Respondent requests.

After striking the entries that appear redundant, unnecessary, or that manifest only a fleeting interaction with this case, the Petition reveals a small core of heavily engaged Clinic students.[10] Of the 21 students listed in the Petition, eight appear to have done the lion's share of the work. The participation of eight "junior attorneys" during the course of a six-year case is not unusual or unreasonable. The Court therefore restricts the fee award for the law students to only the hours submitted by these eight students.

As noted by the U.S. Supreme Court in Hensley, courts may also consider the experience of the attorneys among several factors when determining the reasonability of the fee request.[11] By tasking students with assignments that would otherwise have to be done by Ortiz, the Clinic trims $200 per hour from its fee petition, assuming the student rate of $75 per hour. However, an experienced attorney like Ortiz would almost assuredly be able to complete these tasks in substantially less time than a student, and by doing so would eliminate the time he must spend reviewing and editing the student product. While student work is more cost-effective on a short scale, it is also inherently less efficient. This is not to say that students working in legal clinics do not do good, valuable work — they undoubtedly do. They simply do not do it as efficiently as a fully trained lawyer. The Court does not believe it is appropriate to pass the cost of that inefficiency on to the losing party, and so will trim the remaining compensable student hours by 50%.

4. Complainant-Intervenors' Hours are Generally Adequately Specific

Respondent next asserts that several of the billing entries are too vague to allow the Court to determine whether they were reasonably expended in the litigation. Resp't's Supp. Brief, p. 17. When a billing entry is vague or inadequately documented, a court is free to either strike the entry or reduce the proposed fee by a reasonable percentage, provided the court explains the reasons for its action. See Ohio-Sealy Mattress Mfg. Co. v. Sealy Inc., 776 F.2d 646, 651, 657-58 (7th Cir. 1985); Hensley, at 433("[W]here the documentation of hours is inadequate, the court

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[10] The eight students: Sarah Albrecht, Genevieve Hughes, Kristina Labanauskas, Aaron Rosenblatt, Scott Gilbert, Ryan Nalley, Matthew Tran, and Brian Berlin.

[11] Hensley identified 12 specific factors: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) **the experience, reputation, and ability of the attorneys**; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. (emphasis added.) Hensley, at 430, n. 3; Perdue, at 1673.

may reduce the award accordingly).

Specifically, Respondent points to entries with descriptions such as "reviewing agency law," "working on memo," and "preparing for phone call" as examples of unacceptable vagueness. Resp't's Supp. Brief, p. 18. Taken individually, a billing description of the sort identified by Respondent may appear insufficient. However, an independently vague description may become less so when taken in context. Berberena v. Coler, 753 F.2d 629, (7th Cir. 1985). After a careful review of the billing entries here, the Court determines that the descriptions are generally sufficient to convince the Court that the actions described were in the reasonable furtherance of the litigation. The few entries that do cross the line into impermissible vagary will not be figured into the lodestar calculation.

5. Respondent Cannot Show Overbilling by Clinic Staff

Respondent next argues that the entries for Ortiz and the students are rife with deliberate or inadvertent overbilling. Resp't's' Supp. Brief, pp. 26, 34. As support, Respondent highlights several dozen entries, noting the time spent on each activity and generally describing the complexity of the activity. Id., at 26-47. What Respondent does not do is provide any evidence to show how much time a reasonable attorney or law student would spend on the same tasks. Similarly, Respondent repeatedly questions the length of time Ortiz spent reviewing and editing documents, but Respondent cannot know what condition the documents were in when Ortiz received them. A concise, one-page document may be the final result of a sprawling, multipage submission. This scenario is especially probable given that much of the work product was originally written by law school students, not fully trained attorneys. At a glance, the time spent on these tasks does not appear excessive. Without some evidence to the contrary, this Court cannot accept Respondent's self-serving conclusion that the entries are impermissible. The Court will therefore not deduct any hours under this theory.

6. Law Students' Hourly Rate is Consistent with Prevailing Market Rate

After determining the number of hours reasonably expended in the litigation, the final step in the lodestar formula requires the Court to multiply the hours by the attorney's reasonable hourly rate.

Respondent attacks the validity of the Clinic students' requested hourly rate, contending that Complainant-Intervenors have not provided sufficient evidence of a prevailing market rate for law students in the Chicago area. Resp't's Supp. Brief, p. 24.

The prevailing market rate is generally defined as the rate "in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Blum v. Stenson, at 895, n. 11; Uphoff v. Elegant Bath, Ltd., 176 F.3d 399, 407 (7th Cir. 1999) ("The market rate is the rate that lawyers of similar ability and experience in the community normally charge their paying clients for the type of work in question.") (internal quotations omitted). This rate is "normally deemed to be reasonable." Blum, at 895, n. 11; People Who Care, at 1310. It

is the burden of the prevailing party to "produce satisfactory evidence — in addition to the attorney's own affidavits — that the requested rates are in line with those prevailing in the community." Blum, at 895, n. 11. The burden then switches to the opposing party to demonstrate why a lower rate is more appropriate. People Who Care, at 1313.

Respondent initially argues that because the Clinic is a pro bono entity, nobody actually pays for work completed by its student attorneys and, therefore, the market rate for their services is zero. Resp't's Supp. Brief, p. 24-25. This argument misses the mark. As Blum states, it is "clear from the legislative history that Congress did not intend the calculation of fee awards to vary depending on whether the plaintiff was represented by private counsel or by a nonprofit legal services organization." Blum, at 895. The opinion goes on to declare unequivocally that nonprofit, public interest entities should "be awarded reasonable attorneys' fees to be computed in the traditional manner when its counsel perform services otherwise entitling them to the award of attorneys' fees."

Several jurisdictions have considered this question as it relates to law students working in nonprofit clinics and concluded not only that supervised law students are eligible for attorneys' fees, but that they must be paid the prevailing market rate for law students in that area. Jordan v. U.S. Dep't of Justice, 691 F.2d 514 (D.C. Cir. 1982); Mentor v. Astrue, 572 F. Supp. 2d 563 (D.N.J. 2008); Nkihtaqmikon v. Bureau of Indian Affairs, 723 F. Supp. 2d 272 (D. Me. 2010) (found supervised law students to be eligible for attorneys' fees, but have an "enhanced burden" to overcome presumption of student inefficiency); Elashi v. Sabol, slip op., 2010 WL 4536774, (M.D. Pa. 2010) (unpaid clinic students should be compensated akin to fees allowed for part-time or summer clerks at law firms) (citing DiGennaro v. Bowen, 666 F. Supp. 426 (E.D. Pa. 1987)); Christensen v. Park City Mun. Corp., slip op., 2011 WL 2690536 (D. Utah 2011).

As these cases suggest, the awarding of attorney fees is determined not by the size of the attorney's bill, but by the quality of the representation. See Jordan, at 524 ("Fee allowances are to be measured by the market value of the services rendered, not the amount actually received by the attorney"). It cannot be said that the services rendered by the law students here are of no value just because the students themselves are not paid for the work. As such, the students must be granted attorney fees. The only question is: at what rate?

Because the Clinic operates as a pro bono entity, there are no "actual billing rates" from which to determine the students' current market rate. Under such circumstances, the Court must look to the next best evidence of this rate — the amount normally charged by comparable attorneys in the market. See People Who Care, at p. 1310 (quoting Blum, at p. 895).

Complainant-Intervenors have requested a student compensation rate of $75 per hour, which they identify as the accepted market rate for law student work. Butts v. Bowen, 775 F. Supp. 1167, 1173 (N.D. Ill. 1991) (authorizing an hourly rate of $75 per hour for senior law students); Palmer v. Barnhart, 227 F. Supp. 2d 975, 978-79 (N.D. Ill. 2002). However, Complainant-Intervenors note that the rate has remained unchanged since 1991 and ask the Court to increase the award to $116.23 per hour to correct for inflation. Petition, p. 7. As evidence that

this enhanced rate is now the prevailing market rate for law students in Chicago, Complainant-Intervenors offer affidavits by Anne Gottschalk, the head paralegal at a Chicago law firm; and Craig B. Futterman, the supervising attorney at the University of Chicago Law School's Mandel Legal Aid Clinic. C-I Supp. Brief, Ex. A, B. According to Gottschalk's affidavit, paralegals in Chicago are regularly billed at $100 per hour. Futterman quotes the Laffey Matrix's rate of $130 per hour as appropriate for paralegals and law clerks, and cites local cases where clerks earned between $90 and $125 per hour. Id.

The argument is unpersuasive for several reasons. First, Complainant-Intervenors' support for the prevailing law student rate in Chicago resides solely in their own affidavits. As previously stated, "the burden is on the fee application to produce satisfactory evidence — *in addition to the attorney's own affidavits* — that the requested rates are in line with those prevailing in the community..." Blum, at 895, n. 11 (emphasis added). The Laffey Matrix offers little additional weight to Complainant-Intervenors' contention because it only purports to list market rates for the District of Columbia, not Chicago.

Secondly, the Matrix lists rates for paralegals, not for law students. While there is some overlap between the responsibilities of these groups, the Court does not consider them to be interchangeable. Complainant-Intervenors wish for the Court to assume not only that law students are comparable to paralegals, but also that market rates in Chicago are comparable to those in the District of Columbia. While both assumptions may be plausible, Complainant-Intervenors do not provide any evidence to allow the Court to reach that conclusion.

The affidavits are similarly imprecise, as both speak only to prevailing Chicago rates for paralegals. A review of fee awards in Illinois over the past decade reveals that law students and part-time clerks generally receive fee awards in the $75-$100 per hour range. See Local 1546 Welfare Fund v. BBHM Mgmt. Co., slip op., 2011 WL 1740034 (N.D. Ill., 2011) (finding law student rate of $80); Begoun v. Astrue, slip op., 2011 WL 3626601 (N.D. Ill., 2011) (finding law student rate of $100); Sierra Club v. Franklin Cty. Power of Ill., LLC, 670 F. Supp. 2d 825 (S.D. Ill., 2009) (finding rate of $75); Flaherty v. Marchand, 284 F. Supp. 2d 1056 (N.D. Ill., 2003) (finding rate of $75); Palmer v. Barnhart, 227 F. Supp. 2d 975 (N.D. Ill., 2002) (finding $75). Futterman's affidavit, meanwhile, cites to three unreported cases, none of which refer at all to law students. The affidavit is therefore of little value in determining the prevailing market rate. The Court finds that Complainant-Intervenors have therefore not met their burden of proving that $116.23 per hour is a prevailing rate for law students in the Chicago area. There is ample evidence, however, that the $75 per hour rate is still widely relied upon in the district, and so that figure will be used to calculate the law students' lodestar rate.[12]

[12] Respondent has raised no objection to the $75 per hour rate for students or the $275 per hour rate for Ortiz.

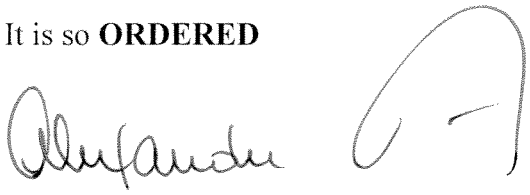
IV. Order

For the reasons stated here, the Court concludes that Complainant-Intervenors are prevailing parties as described in 42 U.S.C. § 3612(p) and are entitled to attorneys' fees in the following amounts:

Ortiz:	$275/hr	x	95.55 hours	=	$26,276.25
Students	$75/hr	x	137.85 hours	=	$10,338.75
TOTAL					**$36,615.00**

Respondents Chak Man Fung and Jennifer Ho are **ORDERED** to pay, jointly and severally, the John Marshall Law School Fair Housing Legal Clinic the sum of $36,615.00 in attorneys' fees.

It is so **ORDERED**



Alexander Fernández
Administrative Law Judge

Notice of appeal rights. The appeal procedure is set forth in detail in 24 C.F.R. § 180.675 (2009). This Initial Decision and Order may be appealed by any party to the Secretary of HUD by petition for review. Any petition for review must be received by the Secretary within 15 days after the date of this Initial Decision and Order. Any statement in opposition to a petition for review must be received by the Secretary within 22 days after issuance of this Initial Decision and Order.

Service of appeal documents. Any petition for review or statement in opposition must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development
Attention: Secretarial Review Clerk
1250 Maryland Ave, S.W., Portals Bldg., Suite 200
Washington, DC 20024
Facsimile: (202) 708-3498
Scanned electronic document: secretarialreview@hud.gov

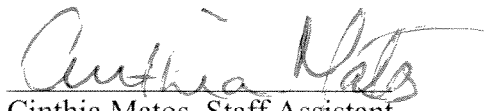
Copies of appeal documents. Copies of any Petition for Review or statement in opposition shall also be served on the opposing party(s), and on the HUD Office of Administrative Law Judges.

Finality of decision. The agency decision becomes final as indicated in 24 C.F.R. § 180.680.

Judicial review of final decision. Any party adversely affected by a final decision may file a petition in the appropriate United States Court of Appeals for review of the decision under 42 U.S.C. 3612(i). The petition must be filed within 30 days after the date of issuance of the final decision.

CERTIFICATE OF SERVICE

I hereby certify that copies of this Initial **Decision and Consent Order and Petition for Attorney's Fees, Cost and Expenses** issued by Alexander Fernández Administrative Law Judge, in HUDALJ 07-053-FH, were sent to the following parties on this 9th day of September , 2011, in the manner indicated:



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