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IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO. CR 94-7132

STATE OF FLORIDA,
Plaintiff,

v.

THOMAS LEE GUDINAS,
Defendant.

ORDER ON MOTION TO DETERMINE REASONABLE 119 RECORD FEES

THIS CAUSE came before this Court on the 1st day of June, 1999, pursuant to the Defendant's Motion to Determine Reasonable 119 Record Fees. Present before the Court were: Lee O'Brien, Police Legal Advisor, on behalf of the Orlando Police Department; Abigail Dressel, Staff Attorney for the Capital Collateral Regional Counsel -- Middle, on behalf of the Defendant. Appearing by telephone was Julius Aulisio, also of CCRC -- Middle. The Court heard argument from both parties and reviewed the motion, response and authorities provided. The court being otherwise well advised in the premises, the Court makes the following findings of fact:

1. Records were retrieved and prepared for production pursuant to a public record demand made by the Capital Collateral Representative Counsel - Middle Region (hereinafter "CCRC"). CCRC was invoiced May 10, 1999. CCRC disputed the

amount billed. A compromise-adjusted invoice was sent to CCRC May 12, 1999, which CCRC also disputed. The records were provided by OPD to CCRC May 14, 1999, with the understanding that CCRC would pay OPD an amount to be judicially determined.

2. CCRC contests the amount billed for the special fee assessed by OPD for review and redaction of exempted material (13.7 hours at \$35.49 per hour for a total of \$468.47). CCRC also contests the fee assessed for the personnel time spent making some of the copies (11 hours at \$23.077 per hour for a total of \$253.85). The amount they contest for counting photocopies was adjusted to a clerical rate of pay prior to the filing of their motion and that issue is therefore moot.

3. Section 119.07(1)(b) provides in pertinent part:

If the nature or volume of public records requested to be inspected, examined, or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

4. The City of Orlando Policy 141.3.4.D and OPD Operational Policy OP-26.9 each provide:

For extraordinary requests requiring more than 30 minutes of staff time, a labor charge will be imposed. Such charge shall be the result of the employee's hourly rate of pay,

including benefits, multiplied by the actual time worked to accommodate the request and measured in tenths of an hour.

5. Fees were assessed for the public record production in accordance with both the statute and the policies above-referenced. Initially, the hourly rate charged for the service charge was for the rate of pay and benefits for each employee who conducted a particular task, as provided by policy. A compromise rate of only the base rate of pay was subsequently offered, which was rejected. Also, a compromise was offered wherein the rate of pay for the function of counting photocopies would be that of OPD's legal secretary, a compromise this Court endorses.

6. For review and redaction of all records by undersigned counsel, the rate of pay reflects Ms. O'Brien's base rate of pay, without the value of employment benefits paid by the City. The compromise offer was \$35.49 per hour (adjusted from \$44.87 per hour). The charge for the first 30 minutes was removed. Extensive review and redaction of records such as the one performed in connection with the Defendant's request may lawfully result in the assessment of a reasonable fee. Carden v. Chief of Police, City of Clewiston, 696 So. 2d 772 (Fla. 2d DCA 1996); Florida Institutional Legal Services, Inc., v. Florida Department of Corrections, 579 So. 2d 267 (Fla. 1st DCA 1991), review denied, 592 So. 2d 680. The Florida Institutional

Legal Services case specifically provides for the assessment of these charges for the review of documents to discover and redact confidential information. That case also holds that policies which assess special service charges for locating, reviewing for confidential information, copying and re-filing materials are consistent with the intent and purpose of section 119.07(1)(b), Florida Statutes. The charge must be based on "actual costs incurred." Nothing more than actual costs incurred were charged in the instant case. The Court specifically finds that the special service charge may be assessed in accordance with the letter and spirit of Chapter 119, Florida Statutes.

7. With regard to whether the charge is "reasonable," the fee charged was for the rate of pay only. Actual hourly salary plus actual photocopy costs are "reasonable." Id.; Office of Attorney General Bob Butterworth, Public Records, A Guide for Law Enforcement Agencies, 1999 ed., citing Malone v. City of Satellite Beach, No. 94-10557-CA-D (Fla. 18th Cir. Ct. December 15, 1995), per curiam affirmed, 687 So. 2d 252 (Fla. 5th DCA 1997) (other citations omitted). Considering the complexity of the records reviewed, the various public record exemptions and possible prohibitions, and the necessary discretionary decisions to be made with respect to potential exemptions, this type of review is not one that could be considered clerical in nature. Only an attorney or paralegal could responsibly perform this

type of review. The Court finds the rate charged to be more than reasonable for the work performed.

8. With regard to whether the hourly fee assessed for a light-duty sergeant to make photocopies was "reasonable," this Court finds that the hourly rate for making photocopies should be for a clerical rate of pay, notwithstanding the staff shortages in Ms. O'Brien's office. The fee to be assessed for the 11 hours of photocopying is hereby adjusted to \$14.00 per hour.

9. The final adjusted fees for which CCRC-Middle is responsible to the City of Orlando Police Department is as follows:

Description of service	Cost
13.7 hours to review and redact all records by undersigned counsel at rate of pay of \$35.49/hour, less .5 hour	\$ 468.47
In excess of six hours of photocopy time by an unpaid volunteer	No charge
11 hours to photocopy documents at rate of pay of \$14.00/hour	\$ 154.00
6 audiocassettes (tape copies) at \$2.00 each	\$ 12.00
3.1 hours at \$14.48/hour	\$ 44.89
2,094 one-sided pages @ \$.15/page	\$ 314.10
45 11x17" one-sided pages @ \$.15/page	\$ 6.75
533 two-sided pages @ \$.20/page	\$ 106.60
111 color copies @ \$.54/page	\$ 59.94
FINAL TOTAL	\$1,166.75

It is therefore ORDERED AND ADJUDGED that CCRC - Middle will remit to the City of Orlando payment in the amount of \$1,166.75. Payment shall be sent to Lee O'Brien, Police Legal Advisor, Orlando Police Department, 100 South Hughey Avenue, Orlando, Florida 32801.

SO ORDERED this _____ day of June, 1999, nunc pro tunc to June 1, 1999.

/s/ Belvin Perry, Jr.

BELVIN PERRY, JR.
CIRCUIT COURT JUDGE
CHIEF JUDGE, 9TH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was provided by U.S. mail hand delivery to the following individuals this _____ day of June, 1999: Lee O'Brien, Police Legal Advisor, Orlando Police Department, 100 South Hughey Avenue, Orlando, Florida 32801; Clerk of Court, Ninth Judicial Circuit, Criminal Division, Appeals, 425 North Orange Avenue, Orlando, Florida 32801; Chris A. Lerner, Assistant State Attorney, Office of Lawson L. Lamar, State Attorney, P.O. Box 1673, Orlando, Florida 32802-1673; Kenneth S. Nunnelley, Assistant Attorney General, Office of the Attorney

) General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach,
Florida 32118-3951; Julius J. Aulisio, Assistant Capital
Collateral Regional Counsel - Middle, 3901 Corporex Park, Drive,
Suite 210, Tampa, Florida 33619-1136; George L. Dorsett, Esq.,
Assistant County Attorney, Orange County Attorney's Office,
Orange County Administration Center, 201 South Rosalind Avenue,
Orlando, Florida 32801; Susan Schwartz, Assistant General
Counsel, Florida Department of Corrections, 2601 Blairstone
Road, Tallahassee, Florida 32399-2500; Fern Rosenwasser,
Assistant General Counsel, Florida Department of Law
Enforcement, P.O. Box 1489, Tallahassee, Florida 32302-1489.

/s/ Jill Gay

JUDICIAL ASSISTANT