

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

REQUITA HALL,)	
)	
)	
Plaintiff,)	C.A. No. 2013 CA 008368 B
)	Judge Craig Iscoe
v.)	
)	
DISTRICT OF COLUMBIA,)	
)	
Defendant.)	

**PLAINTIFF’S REPLY IN SUPPORT OF SUMMARY JUDGMENT AND
OPPOSITION TO DEFENDANT’S CROSS-MOTION FOR SUMMARY JUDGMENT**

District of Columbia Public Schools (DCPS) admits that it entered into settlement agreements requiring DCPS to pay attorney fees in accordance with guidelines that set an hourly rate of \$200 to \$275 for attorneys with the experience level applicable here. DCPS argues that its failure to do so should be excused for two reasons. First, DCPS argues that if plaintiff’s counsel in the settled cases was appointed under the Criminal Justice Act (CJA), the applicable rate is set by statute at \$90 per hour regardless of the terms of the contracts. Second, DCPS argues that an error in the invoices submitted by plaintiff’s counsel relieves DCPS of its contractual obligations. DCPS is wrong on both counts.

I. The Applicable Hourly Rate is Set by the Contracts, Not by Statute.

DCPS asserts that whether plaintiff’s counsel in the settled administrative cases was court-appointed “is highly relevant to this dispute,” Def. Mem. at 8, because an attorney appointed to represent an indigent under the CJA is entitled to compensation from the Superior Court at a fixed rate of \$90 per hour no matter the outcome of the case. *See* D.C. Code § 11-2604(a). This case, however, does not involve a claim by court-appointed counsel for

compensation from the Superior Court under the CJA. Rather, plaintiff contracted with DCPS for attorney fees to be paid at the rates set forth in the guidelines incorporated by reference in the settlement agreements. *See Adams v. District of Columbia*, No. 2012-SC2-002801 (D.C. Super. Ct. July 11, 2012) (holding that settlement agreements using the same language at issue here incorporated the hourly rates set forth in the guidelines) (attached as Exhibit G to plaintiff's statement of material facts). Thus, the hourly rate that might otherwise have been paid to plaintiff's counsel under the CJA is irrelevant. The applicable rate is the rate incorporated in the contracts.

DCPS further errs by suggesting that D.C. Code § 11-2606(b) prohibits plaintiff from contracting with DCPS for attorney fees at a rate in excess of the CJA rate. Def. Mem. at 7. Section 11-2606(b) provides that an attorney appointed under the CJA may not demand additional compensation *from the indigent client* for services the attorney is already obliged to perform. *See In re L.R.*, 640 A.2d 697, 700 (D.C. 1994) (finding that the statute prohibits acceptance of "payment from the client [the lawyer] was appointed to represent"); *Willcher v. United States*, 408 A.2d 67, 78 (D.C. 1979) (finding that the Act "prohibit[s] appointed counsel from requesting or accepting payments from the person represented"); *Gregory v. United States*, 393 A.2d 132, 141 (D.C. 1978) (finding that, in enacting the CJA, Congress sought "to make it illegal for a court-appointed attorney to request or accept a fee from his indigent client"). The statute does not prohibit a settling party with appointed counsel from negotiating for attorney fees to be paid by the opposing party where, as here, the underlying case is brought pursuant to a fee-shifting statute.

DCPS also argues that, if counsel was appointed under the CJA, counsel's reasonable hourly rate is \$90 per hour because that is the rate counsel agreed to accept. Def. Mem. at 8.

DCPS's argument is foreclosed by the language of the settlement agreements, which incorporate the guideline rates; neither the settlement agreements nor the guidelines mention the CJA rate. Moreover, even if "reasonable hourly rate" as used in the settlement agreements did not incorporate the guideline rates, it is well-settled that fee awards are not capped by the rate the lawyer agreed to accept. *Blanchard v. Bergeron*, 489 U.S. 87, 93 (1989) ("The presence of a pre-existing fee agreement . . . does not impose an automatic ceiling on an award of attorney's fees."); accord *Blum v. Stenson*, 465 U.S. 886, 894-96 (1984); *Link v. District of Columbia*, 650 A.2d 929, 934 (D.C. 1994); *Henderson v. District of Columbia*, 493 A.2d 982, 999 (D.C. 1985).

II. The Error in the Invoices Submitted by Plaintiff's Counsel Did Not Void the Contracts.

In her opening memorandum, plaintiff conceded that the invoices submitted by her counsel in the administrative cases sought \$300 per hour rather than the \$275 per hour guideline rate, and she made clear that she seeks an order compelling DCPS to pay the invoices at the guideline rate. Pl. Mem. at 2 n.2. DCPS argues that it has been relieved of any obligation to pay attorney fees because the invoices did not comply strictly with the guidelines. Def. Mem. at 8. DCPS is wrong. It is well-settled that minor deviations from a contract's requirements do not void the entire contract. See, e.g., *Burtoff v. Burtoff*, 418 A.2d 1085, 1090 (D.C. 1980) (holding that "substantial compliance" with agreement rendered enforcement appropriate); *Shapiro v. Bimblich*, 101 A.2d 890, 892-93 (D.C. 1954) (rejecting argument that "minor defect corrected at nominal cost" should prevent breaching party from any recovery under agreement, as "there was no substantial breach of contract"). Indeed, the D.C. Court of Appeals has held that even a material breach of a settlement agreement by one party does not nullify the obligations of the other party absent a showing of harm. *Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 186-87

(D.C. 2009). Here, the defect in the originally submitted invoices caused no harm or prejudice to DCPS; thus, plaintiff has not forfeited the relief due her under the agreements.

CONCLUSION

DCPS breached its contracts with plaintiff by failing to pay attorney fees in accordance with the guideline rates incorporated by reference in the settlement agreements. The Court should enter judgment for plaintiff and order DCPS to pay plaintiff \$13,166 pursuant to the contracts, plus interest and costs.¹

Date: July 1, 2014

Respectfully submitted,

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¹ The total amount of attorney fees sought is based on 32 hours of work in M.H.'s case at \$275 an hour and 23.6 hours of work in R.H.'s case at \$275 an hour, minus the \$2,124 paid by DCPS in R.H.'s case.

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**PLAINTIFF’S RESPONSE TO DEFENDANT’S
STATEMENT OF UNDISPUTED MATERIAL FACTS**

Plaintiff responds to Defendant’s Statement of Undisputed Material Facts (filed June 3, 2014) as follows:

1. Undisputed.
2. Undisputed.
3. Undisputed.
4. Undisputed that Plaintiff Requita Hall filed a due process complaint against DCPS on behalf of M.H., but the complaint was filed on February 10, 2012.
5. Undisputed.
6. Undisputed.
7. Undisputed.
8. Undisputed.
9. Undisputed that the District of Columbia Courts will pay appointed counsel \$90 per hour pursuant to the CJA if attorney fees cannot be recovered from DCPS. Plaintiff disputes that

