

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

FRANK ASTORQUIA, ) Case No. CV-WA-2012-14102

Petitioner,

vs.

STATE OF IDAHO, DEPARTMENT OF  
WATER RESOURCES, an agency of the  
State of Idaho,

Respondent.

\_\_\_\_\_  
 IN THE MATTER OF WATER RIGHT  
 LICENSE NO. 37-7460 IN THE NAME OF  
 FRANK ASTORQUIA AND/OR  
 JOSEPHINE ASTORQUIA  
 \_\_\_\_\_

**ORDER ON MOTION TO  
DISALLOW RESPONDENT'S  
MEMORANDUM OF COSTS  
AND ATTORNEY FEES**

**I.**

**PROCEDURAL BACKGROUND**

On May 7, 2013, this Court issued a *Memorandum Decision and Order* (“*Memorandum Decision*”) in the above-captioned matter. The procedural background and facts set forth in the *Memorandum Decision* are incorporated herein by reference and will not be repeated. In addition, on May 17, 2013, Respondent, Idaho Department of Water Resources (“IDWR” or “Department”), filed a *Memorandum of Costs and Attorney Fees* along with the *Affidavit of*

*Andrea L. Courtney* (“*Courtney Affidavit*”), seeking an award of attorney fees and costs as the prevailing party in this matter. On June 3, 2013, Petitioner Frank Astorquia (“Astorquia”) filed a *Motion to Disallow Respondent’s Memorandum of Costs and Attorney Fees* and subsequent supporting brief. Astorquia filed a *Response to Astorquia’s Motion to Disallow Respondent’s Memorandum of Costs and Attorney Fees* on June 21, 2013.

A hearing on Astorquia’s *Motion* was held on June 27, 2013. The parties did not request the opportunity to submit additional briefing, nor was any required by the Court. Therefore, this matter is deemed fully submitted for decision on June 28, 2013.

## II. ANALYSIS

In the *Memorandum of Costs and Attorney Fees*, the Department seeks an award of \$6.36 in costs and \$10,400.00 in fees, for a total award of \$10,406.36. The costs and fees are claimed pursuant to Idaho Code § 12-117, Idaho Rules of Civil Procedure (I.R.C.P.) 54(d)(1), 54(d)(5), and 54(e)(1). Astorquia disputes the reasonableness of *Respondent’s Memorandum of Costs and Attorney Fees* for two reasons. First, that because counsel for the Department was not present at the underlying March 13, 2012, administrative proceeding, more time was spent preparing for the case than would otherwise be necessary had counsel attended the administrative proceeding. Second, Astorquia disputes the Department’s request for fees associated with driving to and from the SRBA Court for oral argument on April 28, 2013, instead of appearing by video teleconference.

### A. Costs.

The Department seeks costs in the amount of \$6.36 attributable to the cost associated with serving its *Response Brief* in this matter. Idaho Rule of Civil Procedure 54(d)(1)(C) governs costs as a matter of right. It provides that actual fees for service of any pleading or document in the action may be recovered as a matter of right. The Court also notes that Astorquia has not opposed the Department’s request for costs. Therefore, the Court finds that the Department is entitled to costs in the amount of \$6.36.

**B. Applicable standard for attorney fees.**

Under Idaho law, the court has the discretion to determine whether attorney fees are reasonable. *Sanders v. Lankford*, 134 Idaho 322, 326, 1 P.3d 823, 827 (Ct. App. 2000).<sup>1</sup> The court's determination of reasonableness must be guided by the criteria listed in I.R.C.P. 54(e)(3).

*Id.* The rule provides the following criteria:

- (A) The time and labor required.
- (B) The novelty and difficulty of the questions.
- (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.
- (D) The prevailing charges for like work.
- (E) Whether the fee is fixed or contingent.
- (F) The time limitations imposed by the client or the circumstances of the case.
- (G) The amount involved and the results obtained.
- (H) The undesirability of the case.
- (I) The nature and length of the professional relationship with the client.
- (J) Awards in similar cases.
- (K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.
- (L) Any other factor which the court deems appropriate in the particular case.

I.R.C.P. 54(e)(3).

When determining the amount of attorney fees to award, the court must consider each factor individually, and "no one element is to be given undue weight or emphasis." *Nalen v. Jenkins*, 113 Idaho 79, 81, 741 P.2d 366, 368 (Ct. App. 1987). Under Rule 54(e)(3) the court must, "at a minimum, provide a record which establishes that the court considered the factors under this rule . . ." *Building Concepts, Ltd. v. Pickering*, 114 Idaho 640, 645, 759 P.2d 931, 936 (Ct. App. 1988).

---

<sup>1</sup> Initially, this Court notes that its May 7, 2013 *Memorandum Decision and Order* relied upon Idaho Code § 12-117 for the authority to award attorney fees as the motion was brought pursuant to that statute. However, I.R.C.P. 84 governs judicial review of agency actions by the district court, and section (r) states that procedures not specified or covered under Rule 84, such as the procedure at hand, will be governed by the Idaho Appellate Rules. I.R.C.P. 84(r).

Therefore, this court's award of costs attorney fees is governed by Idaho Code § 12-117 as well as Idaho Appellate Rules (I.A.R.) 40 and 41, respectively. In this case, relying only on § 12-117 is of no consequence because the same standard applies whether under § 12-117 or I.A.R. 40 and 41. *Lowery v. Board of County Comm'rs*, 115 Idaho 64, 68, 764 P.2d 431, 435 (Ct. App. 1988).

**C. Respondent's requested attorney fees are reasonable.**

In this case, this Court determines whether the fees asserted in the Department's *Memorandum of Costs and Attorney Fees* are reasonable using the Rule 54(e)(3) factors listed above. Based on the following, the Court finds the fees to be reasonable.

**(A) The time and labor required.**

The time and labor expended for which fees are being sought is set forth in Exhibit A of the *Courtney Affidavit*. The Department claims a total of 83.20 hours with \$10,406.36 in costs and fees. This Court finds that the time and labor spent in this case was reasonable considering the large back-file dating back to the early 1980's and the issues involved.

**(B) The novelty and difficulty of the questions in this case.**

In this case, Astorquia raised numerous issues involving not only water law principles but also constitutional issues including unlawful takings and violations of the equal protection clause. Analysis of these issues warranted extensive research outside the scope of a typical water related case. Therefore, this Court finds that, due to the novelty and difficulty of the issues in this case, the fees are reasonable.

**(C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.**

In evaluating whether attorney fees are reasonable under this subsection the court may consider the expertise of the attorney in the field to which the case pertains. *Cf. Garnett v. Transamerica Ins. Servs.*, 118 Idaho 769, 784, 800 P.2d 656, 671 (1990). Ms. Courtney has practiced law for six years in Idaho, eleven years total, and is currently working in the Natural Resources Division of the Idaho Attorney General's Office. *Courtney Affidavit* ¶ 3. Therefore, this Court finds that Ms. Courtney has sufficient experience to warrant charging reasonable attorney fees.

**(D) The prevailing charges for like work.**

Ms. Courtney's hourly rate is based upon the *Idaho Attorney General's Employee Handbook* regarding recovery of attorney fees and costs, Exhibit B to her *Affidavit*, which was

last updated in 2005. *Courtney Affidavit* ¶ 3. The hourly charge is consistent with the market rate in Boise, Idaho for similar experienced attorneys. *Id.* For these reasons, this Court finds that the fees are reasonable.

**(E) Whether the fee is fixed or contingent.**

This case was billed on a hourly rate, the fees were neither fixed nor contingent. Therefore this factor is inapplicable to the case at hand.

**(F) The time limitations imposed by the client or the circumstances of the case.**

No time limitations were imposed in this case, therefore this factor is also inapplicable to the fees and costs sought.

**(G) The amount involved and the results obtained.**

This case did not involve a monetary amount. Therefore this factor is also not at issue in this case. With respect to the result, the Court finds that the result was favorable for the Department and that the Department's action was affirmed.

**(H) The undesirability of the case.**

This Court finds no evidence in the record indicating undesirability of this case, therefore this factor is inapplicable to this case.

**(I) The nature and length of the professional relationship with the client.**

The Department is always represented by the Attorney General's Office, and there is no evidence in the record of this longstanding relationship that would have any effect on this Court's determination of reasonableness of fees. Therefore, this Court finds that the nature and length of the professional relationship between the Idaho Attorney General's Office and the Department is of no consequence to the reasonableness of the fees.

**(J) Awards in similar cases.**

Because attorney fees are rarely requested in this context, there are essentially no similar cases to use for comparison. However, the attorney fees are consistent with awards in the SRBA involving private parties and involving similar issues.

**(K) The reasonable cost of automated legal research.**

The Attorney General's Office did not list automated legal research costs in their *Memorandum of Costs and Attorney Fees*, therefore this factor is not applicable to this case.

**(L) Any other factor which the court deems appropriate in the particular case.**

Astorquia raises two additional factors for this Court to consider in determining the reasonableness of attorney fees in this case. First, Astorquia argues that because the Department did not have counsel present at the March 13, 2012, administrative proceeding its counsel spent more time doing background research and preparation than would be necessary had counsel been present. This Court disagrees. Ms. Courtney states that it is uncommon for counsel to be present during administrative hearings and that having counsel present would have had no bearing on the amount of time needed to prepare for briefing and arguing the matter. Because having counsel present at the administrative hearing was of no consequence to the amount of time spent on the case, Astorquia's argument has no bearing on the reasonableness of the fees.

Second, Astorquia contests the fees claimed for travelling to and from the SRBA Courthouse on April 8, 2013, to attend the oral argument in person instead of appearing by video teleconference ("VTC"). Ms. Courtney cites to the novel nature of the arguments and the unique case history as reason for appearing before this Court in person.

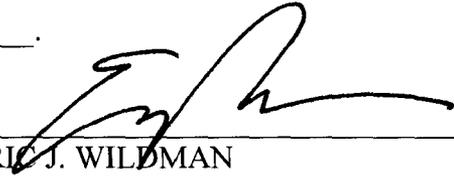
The use of the video teleconference system as well as the telephone participation system is liberally used in this Court as a convenience to the parties. However, as a general matter unless ordered to the contrary, the method by which a party elects to appear is left to the discretion of the party. While there indeed may be certain hearings where appearing in person in lieu of appearing telephonically or via VTC may be considered unreasonable for the award of fees depending on the nature of the hearing, oral argument on an administrative appeal is not one of those hearings. A party should not be penalized for attending a hearing where that party reasonably believes attendance in person is necessary.

**III.**  
**ORDER**

Therefore, IT IS ORDERED that the *Motion to Disallow Respondent's Memorandum of Costs and Attorney Fees* **is hereby denied**. Respondent is awarded costs in the amount of \$6.36 and attorney fees in the amount of \$10,400.00, for a total award of \$10,406.36

IT IS SO ORDERED.

DATED: July 3, 2013.

  
\_\_\_\_\_  
ERIC J. WILDMAN  
District Judge

**CERTIFICATE OF MAILING**

I certify that a true and correct copy of the ORDER ON MOTION TO DISALLOW RESPONDENT'S MEMORANDUM OF COSTS AND ATTORNEY FEES was mailed on July 03, 2013, with sufficient first-class postage to the following:

STATE OF IDAHO DEPARTMENT OF

Represented by:

GARRICK L BAXTER

DEPUTY ATTORNEY GENERAL

STATE OF IDAHO - IDWR

PO BOX 83720

BOISE, ID 83720-0098

Phone: 208-287-4800

FRANK ASTORQUIA

Represented by:

JOSEPHINE P BEEMAN

409 W JEFFERSON ST

BOISE, ID 83702-6049

Phone: 208-331-0950

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098