

DISTRICT COURT, LARIMER COUNTY, COLORADO Larimer County Justice Center 201 Laporte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 498-6100	DATE FILED: April 18, 2019 2:19 PM FILING ID: F8FC2F24A306C CASE NUMBER: 2018CV220
Plaintiff: STACY LYNNE v. Defendants: NOAH BEALS, Senior Planner, City of Fort Collins, in his individual and official capacity, and JEREMY CALL, Senior Associates – Logan Simpson Design, Contractor for the City of Fort Collins, in his individual and official capacity	COURT USE ONLY
Kimberly B. Schutt, #25947 WICK & TRAUTWEIN, LLC P.O. Box 2166 Fort Collins, CO 80522 Phone: (970) 482-4011 Email: kschutt@wicklaw.com	Case Number: 2018 CV 220 Courtroom: 3C
DEFENDANT BEAL'S NOTICE OF SUBMISSION OF ATTORNEY FEE AFFIDAVIT	

COMES NOW, the Defendant, Noah Beals, by and through his counsel, Wick & Trautwein, LLC, and hereby submits his attorney's affidavit of fees incurred in the defense of this matter, pursuant to the Court's order of dismissal dated April 3, 2019. In support hereof, Mr. Beals states as follows:

1. On April 3, 2019, the Court entered an order granting Defendant Beals' motion to dismiss this action pursuant to C.R.C.P. 12(b)(1), finding that the Court lacks subject matter jurisdiction to hear the claims pursuant to the provisions of the Colorado Governmental Immunity Act ("CGIA"), C.R.S. §24-10-101, et seq. As part of its order, the Court awarded Mr. Beals his reasonable attorney's fees, recognizing that such an award is statutorily required upon this Rule 12(b) dismissal, pursuant to C.R.S. 13-17-201 and C.R.S. 24-10-110(5)(a). The Court directed Mr. Beals to submit an affidavit of the attorney's fees incurred in the defense of this action within 15 days, and thus Mr. Beals timely complies.

2. Accordingly, attached hereto is an affidavit from defense counsel Kimberly B. Schutt, attesting that she has been retained by the City of Fort Collins to represent Mr. Beals as an employee of the City, outlining in detail the professional services performed and attesting to the reasonableness of the fees incurred based upon her experience in handling matters of this nature in Larimer County for over twenty years. As set forth in the Affidavit., she performed work on behalf of Defendant Beals at the hourly rate of \$185.00 per hour, which resulted in total fees incurred by the City of **\$6,049.50** to date.

3. Mr. Beals and his attorney submit that the fees incurred were reasonable and necessary in the defense of this matter. The Plaintiff filed a 27-page Complaint making a number of allegations against Mr. Beals, as an employee of the City of Fort Collins. Defense counsel took reasonable steps to investigate the extensive allegations, talk to the attorney for the co-defendant, communicate with the Plaintiff and other persons involved in this action, respond to the Plaintiff's other filings with the court, research and prepare the motion to dismiss, and draft a reply to Plaintiff's response to the motion. Defense counsel would note that, as represented in the Rule 121 certification included in the motion to dismiss, she attempted to confer with the Plaintiff to obtain a voluntary dismissal of the action prior to filing the motion, but Plaintiff failed to respond.

4. "An award of attorney fees must be reasonable. A determination of reasonableness is a question of fact for the trial court and 'will not be disturbed on review unless it is patently erroneous and unsupported by the evidence.'" *Spensieri v. Farmers All. Mut. Ins. Co.*, 804 P.2d 268, 270 (Colo. App. 1990) (citing *Hartman v. Freedman*, 197 Colo. 275, 591 P.2d 1318 (1979) and *Williams v. Farmers Insurance Group, Inc.*, 781 P.2d 156 (Colo.App.1989)).

5. The initial estimate by the court of a reasonable attorney fee is reached by calculation of the "lodestar" amount. This amount represents the number of hours reasonably expended multiplied by a reasonable hourly rate and carries with it a strong presumption of reasonableness. *Balkind v. Telluride Mountain Title Co.*, 8 P.3d 581, 587-88 (Colo. App. 2000). In determining a reasonable hourly rate, the trial court should look at the rates charged by attorneys of comparable skill, experience, and reputation in light of community standards in a reasonable community. *Id.* at 386-87 (citations omitted). *Anderson v. Pursell*, 244 P.3d 1188, 1197 (Colo. 2010), *as modified on denial of reh'g* (Jan. 10, 2011).

6. The attached affidavit from defense counsel provides sufficient evidence to establish the reasonable hourly rate, the time expended in defense of this matter, the lodestar amount and the reasonableness of the fees incurred. *See, Ravenstar, LLC v. One Ski Hill Place, LLC*, 405 P.3d 298, 307 (Colo. App. 2016).

7. Accordingly, as indicated above, Mr. Beals submits that the fees reflected in the detailed Affidavit attached hereto are in fact reasonable and necessary for the resolution of this dispute. Therefore, the Court will be acting properly under the standard enumerated above in awarding the City these fees.

WHEREFORE, Defendant Beals respectfully requests the Court to accept the attached Affidavit, find that the fees incurred were both reasonable and necessary and enter a judgment in the amount of \$6,049.50 against the Plaintiff and in favor of Defendant Beals, for the fees incurred in his defense, with statutory interest as allowed by law until satisfied in full.

Respectfully submitted this 18th day of April, 2019.

WICK & TRAUTWEIN, LLC

By: s/ Kimberly B. Schutt
Kimberly B. Schutt, #25947
Attorneys for Defendant Beals

[This document was served electronically pursuant to C.R.C.P. 121 §1-26. The original pleading signed by defense counsel is on file at the offices of Wick & Trautwein, LLC and the Fort Collins City Attorney's Office]

CERTIFICATE OF ELECTRONIC FILING

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANT BEAL'S NOTICE OF SUBMISSION OF ATTORNEY FEE AFFIDAVIT**, with attached Affidavit, was filed via the Colorado Courts E-Filing System and served this 18TH day of April, 2019, on the following:

Stacy Lynne
305 W. Magnolia Street #282
Fort Collins, CO 80521

A courtesy copy was also emailed to Ms. Lynne at *stacy_lynne@comcast.net*

s/ Jody L. Minch

[The original certificate of electronic filing signed by Jody L. Minch is on file at Wick & Trautwein, LLC]