

**Matter of Cain v New York State Dept. of Corr. &
Community Supervision**

2025 NY Slip Op 35532(U)

January 21, 2025

Supreme Court, Albany County

Docket Number: Index No. 904890-23

Judge: Sharon A. Graff

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK

SUPREME COURT

ALBANY COUNTY

In the Matter of the Application of
MONIQUE CAIN, MARQUELL ANTHONY-
EFREM BOUTWELL, and MIKEHI JAMES
BOUTWELL,

Petitioner,

For a Judgment Pursuant to Article 78 of the CPLR

-against-

Decision & Order

Index No.: 904890-23

NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY
SUPERVISION and SUPERINTENDENT
JOSEPH E. COREY,

Respondents.

Supreme Court, Albany County, Special Term
Return Date: October 24, 2024

Present: Hon. Sharon A. Graff, JSC

Appearances: Bedlock Levine & Hoffman LLP
Attorneys for Petitioners
90 Park Avenue, PH/26th Floor
New York, New York 10016
By: Marc A. Cannan, Esq.

Hon. Letitia A. James
Attorney General of New York State
Attorney for Respondent
Department of Law
The Capitol
Albany, New York 12224
By: Jennifer J. Corcoran, Esq.

Graff, J.:

Petitioners commenced the underlying Article 78 proceeding seeking an order, *inter alia*, annulling and setting aside Respondents' determination to indefinitely suspend their rights to visit Respondents' Correctional Facilities. By Decision and Order dated August 2, 2024, this Court granted the petition. Petitioners now move for an award of attorney's fees in the amount of \$13,

511,765.00¹, together with actual costs and disbursements in the amount of \$1,748.29 pursuant to the New York State Equal Access to Justice Act, codified at CPLR § 8601.

Where, as here, a party prevails in a civil claim against the state, he or she is entitled to an attorney's fees, subject to limited exceptions. (CPLR § 8601 [a]). More specifically, § 8601[a] states in pertinent part:

“a court shall award to a prevailing party, other than the state, fees and other expenses incurred by such party in any civil action brought against the state, unless the court finds that the position of the state was substantially justified or that special circumstances made an award unjust.”

Petitioners' application is supported by the affirmation of their attorney, Marc A. Cannan, Esq. (“Cannan Affirmation”). A detailed and itemized time sheet reflecting his work and the work of a supervising attorney is annexed thereto. The Cannan affirmation more than adequately meets the requirements of CPLR § 8601 [b] and provides supporting facts, i.e., his educational background, admission to practice before the Courts of this State in 2012 and admission to Federal Courts, his experience working first as an associate and later as a partner of his law firm, particularly his focus on civil rights matters. The Cannan Affirmation also provides authority supporting the fact that the hourly rate of \$325.00 per hour is within the parameters of hourly rates charged by attorneys with his level of experience in the Albany, New York area. Mr. Cannan attaches exhibits documenting the actual expenses incurred for filing fees, etc., and LEXIS research charges.

The crux of respondents' opposition to the fee request is that the amount of time Mr. Cannan incurred is excessive.² Their argument is largely conclusory and overlooks, among other

¹ The itemized time sheet reflects 33.2 hours and request compensation of \$325.00 per hour. The supporting affirmation seeks an award for 36.2 hours at the same hourly rate. Due to the disparity, The Court's award is based upon the time sheet.

² Respondent does not raise any objection to the hourly rates requested by Mr. Cannan.

things, that a letter opposing Respondents' adjournment request and in connection with sur-reply papers involved legal issues requiring research. The Court is likewise unpersuaded by Respondents' argument that time spent conferring with other attorneys at Mr. Cannan's law firm was unreasonable due to this stated experience in civil rights matters and by Respondents' argument that the expenses for online legal research are not sufficiently documented.

Having examined the submissions, the Court concludes that the fee award requested by Petitioners' counsel is fair and reasonable, and reflective of the complexity of the matter, the high quality of the services provided, and the experience of petitioners' attorney. Moreover, case law cited by petitioners' counsel further demonstrate that the rate of compensation sought is commensurate the prevailing market rates for attorneys performing similar services in the Albany, New York area. Accordingly, it is hereby

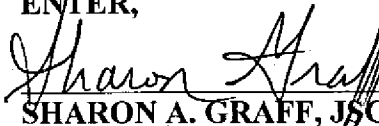
ORDERED that petitioner's motion for an award of attorneys' fees pursuant to CPLR § 8601 is granted. Petitioners are hereby awarded fees in the amount of \$11,765.00 and disbursements in the amount of \$1,748.29 which award shall be paid by respondent within thirty (30) days of the entered date of this decision and order.

This shall constitute the Decision and Order of the Court. The original Decision and Order is being filed with the Albany County Clerk's Office via NYSCEF. The signing of this Decision and Order shall not constitute entry or filing under CPLR § 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

SO ORDERED.

Dated: 1/21/25
Albany, New York

ENTER,


SHARON A. GRAFF, JSC

3


01/21/2025

Papers considered: Notice of Motion dated September 3, 2024; Supporting Affirmation of Marc A. Cannan, Esq., dated September 3, 2024, with Exhibits 1 - 5; Supporting Memorandum of Law dated September 3, 2024; Opposing Affirmation of Jennifer J. Corcoran, Esq., dated October 18, 2024, with Exhibit A; Reply Affirmation of Marc A. Cannan, Esq., dated October 24, 2024, with Exhibits 6 - 8 ; Reply Memorandum of Law dated October 24, 2024.