Entered 26-CI-002636 07/21/2026 David L. Nicholson, Jefferson Circuit Clerk

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26-CI-2636

JEFFERSON CIRCUIT COURT
DIVISION FOUR (4)
JUDGE JULIE KAELIN

HERBERT HENEMAN PLAINTIFF

V. **ORDER REGARDING ATTORNEY'S FEES**

SYLVIA SANDERS DEFENDANTS

* * * * * * * * * * * *

This matter have come before the Court on the Defendant, Sylvia E. Sanders' ("Sanders"), Petition for Attorneys' Fees and Costs incurred herein. After careful consideration of the record and the memoranda of the parties, as well as the applicable case, statutory and procedural law and being otherwise sufficiently advised, the Court **GRANTS** the Defendants Petition for Attorney's Fees.

FACTS

On June 16, 2026, the Court entered its Amended Opinion and Order dismissing Plaintiff's Complaint with prejudice pursuant to KRS§454.464. The Court found that Plaintiff's claims were based exclusively on statements and materials filed by Sanders in a judicial proceeding and that those communications were protected by Kentucky's Judicial Statements Privilege.

The Court further held that UPEPA applies because Plaintiff filed this action against Sanders based on Sanders' communication in a judicial proceeding on an issue under consideration in that proceeding. The Court rejected Plaintiff's attempt to preserve speculative extra-judicial claims because the Complaint did not identify the words, dates, media, speakers, recipients, or basis for attributing any such statement to Sanders.

The Court then held that KRS §454.478 requires an award of court costs, reasonable attorneys' fees, and reasonable litigation expenses to the prevailing moving party. The Court ordered Sanders to tender an affidavit justifying the amount of attorneys' fees, costs, and expenses sought within ten days of entry of the Order.

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OAF : 000001 of 000005

Entered 26-CI-002636 07/21/2026 David L. Nicholson, Jefferson Circuit Clerk

67EDFCA6-CF05-4BEE-8974-C6E20BDA7F50 : 000002 of 000005

ANALYSIS

KRS §454.478 provides that, on a motion under KRS §454.464, the Court shall award court costs, reasonable attorneys' fees, and reasonable litigation expenses related to the motion to the moving party if the moving party prevails on the motion. The statutory command is mandatory.

The Kentucky Court of Appeals recently confirmed the mandatory nature of UPEPA fee shifting in *Johnson v. Kearney*, 716 S.W.3d 227 (Ky. App. 2025). *Johnson* holds that once the moving party prevails on a UPEPA motion, KRS §454.478 entitles that party to an award of costs, reasonable attorneys' fees, and reasonable litigation expenses related to the motion. The court also rejected the notion that a court may avoid the statute because it believes the responding party acted in good faith or because the case was voluntarily dismissed after a UPEPA motion was filed.

III. Kentucky Uses the Lodestar Method and the Traditional Reasonableness Factors

Kentucky courts begin the fee inquiry with the lodestar: reasonable hours expended multiplied by a reasonable hourly rate. *Meyers v. Chapman Printing Co*., 840 S.W.2d 814, 826 (Ky. 1992)(adopting the federal lodestar analysis stated in *Hensley v. Eckerhart*, 461 U.S. 424 (1983)); see also *Alexander v. S & M Motors, Inc*., 28 S.W.3d 303 (Ky. 2000). The court may then consider traditional reasonableness factors, including the amount and character of the services rendered, the labor, time, and trouble involved, the nature and importance of the litigation, the responsibility imposed, the amount or value of the property affected, the skill and experience called for in performing the services, the professional standing of counsel, and the results secured.

Those factors are consistent with SCR 3.130(1.5), which likewise considers the time and labor required, the novelty and difficulty of the questions involved, the skill required, the fee customarily charged in the locality for similar legal services, the amount involved and results obtained, time limitations, the nature and length of the professional relationship, counsel's experience, reputation and ability, and whether the fee is fixed or contingent.

ARGUMENT

The same principles support the requested award here. Sanders faced claims targeting speech and petitioning activity in a judicial proceeding. The specialized defense required rapid

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analysis of Kentucky's newly enacted UPEPA, the judicial statements privilege, constitutional and anti-SLAPP policies, the interaction between KRS §454.464 and CR 12.02(f), and the factual relationship between the Jefferson action and the Nelson Circuit Court litigation. Counsel obtained complete dismissal with prejudice at the pleading stage, thereby achieving the precise result UPEPA is intended to provide.

The requested hourly rates are supported by Kentucky-area federal decisions approving higher rates for specialized and complex litigation. Courts in this region do not treat ordinary statewide averages as a ceiling. Instead, they look to the market for lawyers of comparable skill and experience performing comparable work, and they may consider specialized practice areas, national or regional markets, awards in analogous cases, and the Court's own knowledge and experience. See *Bourke v. Beshear*, No. 3:13-CV-00750-CRS, 2016 WL 164626 (W.D. Ky. Jan. 13, 2016)(Civil-rights litigation where the Court and approved $750 per hour for Supreme Court specialist Jeffrey Fisher, $700 per hour for ACLU attorney James Esseks, and $400 and $325 per hour for other ACLU attorneys); *Miller v. Davis*, 267 F. Supp. 3d 961, 994-95 (E.D. Ky. 2017), aff'd sub nom. *Miller v. Caudill*, 936 F.3d 442 (6th Cir. 2019)(specialist counsel rates of $700, $675, and $500 per hour approved); *Thompson v. Seagle Pizza, Inc*., No. 3:20-cv-00016-DJHRSE, 2022 WL 1431084, at *12 (W.D. Ky. May 5, 2022)(in a hybrid FLSA/class settlement, the court held the requested fee reasonable under a lodestar analysis and relied on the lower end of a $500 to $750 per hour range for partner-level employment lawyers);

The requested rates are also consistent with the complexity and risk of UPEPA defense practice. UPEPA motions require accelerated factual and legal development, trigger stays and special procedural rules, and carry mandatory fee consequences. Counsel was required to address Kentucky's relatively new anti-SLAPP framework, recent Kentucky appellate authority, and the absolute judicial statements privilege, while coordinating the record from the Nelson Circuit Court litigation.

Publicly available fee-related materials involving Plaintiff's counsel's law firm provide additional market context. *In re Lane*, Case No. 17-32237(1)(13)(Bankr. W.D. Ky. Oct. 10, 2018)(Seiller Waterman attorney Bordy billing at $340 per hour in 2018); *Ronaldo Designer Jewelry, Inc. v. Prinzo*, No. 5:14-cv-73-DCB-MTP, 2017 WL 3588806 (S.D. Miss. Aug. 21, 2017)(senior partner rates of $325 to $340 per hour, and paralegal rates up to $125 per hour, reasonable in 2017). Those rates were approved years ago and should be evaluated in light of

Entered 26-CI-002636 07/21/2026 David L. Nicholson, Jefferson Circuit Clerk

67EDFCA6-CF05-4BEE-8974-C6E20BDA7F50 : 000003 of 000005

OAF : 000003 of 000005

current market conditions, inflation, and the expedited complexity of this UPEPA defense.

Counsel has successfully demonstrated the value of his services in various cases as evidenced in his filings. His Curriculum Vitae independently supports the requested rate. Mr. Morris has practiced law since 1994, holds both a Juris Doctorate and a Master's in Public Administration, and has more than thirty years of experience in complex litigation, employment law, business torts, class actions, corporate governance, statutory and regulatory compliance, forensic investigations, and appellate practice. He has been admitted to ten (10) state bars, six (6) Federal Courts of Appeals, approximately twenty-four (24) Federal District Courts, and pro hac vice in numerous other federal and state court matters. Taken together, the rate record provides multiple independent anchors for the requested $550/hour rate: a federal court's express approval of that rate for Mr. Morris in complex litigation; subsequent sworn fee declarations using ordinary-course billing records and billing-judgment reductions; an arbitration record recognizing at least $400/hour as reasonable in 2020; and Mr. Morris's thirty-plus years of relevant experience. The requested rate is therefore reasonable and well-supported for a complex statutory defense resulting in complete dismissal with prejudice.

The recoverable work was related to the UPEPA motion and the successful dismissal of the Complaint. That includes, without limitation, factual investigation, review of the Jefferson Complaint and Nelson Circuit Court pleadings and orders, legal research concerning UPEPA and the judicial statements privilege, preparation and revision of the motion and supporting memorandum, preparation for and participation in hearings or argument, review of Plaintiff's opposition, preparation of the proposed order, and preparation of this fee petition and supporting affidavit.

Sanders’s counsel has exercised billing judgment. To the extent time entries involved unrelated tasks or clerical matters, those amounts have been excluded or reduced. The resulting request is reasonable in light of the expedited nature of UPEPA practice, the stakes of the litigation, and the complete success obtained.

ORDER

IT IS HEREBY ORDERED AND ADJUDGED that Defendant, Sylvia E. Sanders’ motion for fees is SUSTAINED, reflecting reasonable attorneys' fees in the amount of $27,390.00 plus additional fees and costs depending upon ongoing litigation and/or appellate

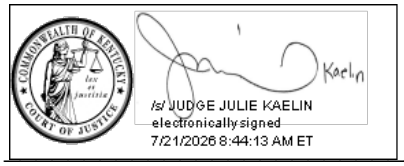
Entered 26-CI-002636 07/21/2026 David L. Nicholson, Jefferson Circuit Clerk

67EDFCA6-CF05-4BEE-8974-C6E20BDA7F50 : 000004 of 000005

OAF : 000004 of 000005

actions taken by Heneman; (2) reasonable litigation expenses in the amount of $245.00; (3) post-judgment interest as allowed by law; and (4) all further relief to which she may be entitled.

It is further ordered that the motion to quash is GRANTED and removed from motion hour for July 27, 2026. THIS IS A FINAL AND APPEALABLE ORDER with no just cause for delay.



HON. JULIE KAELIN, JUDGE

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