

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	ORDER FIXING COSTS
	:	Order0000375
TRACY L. ESPOSITO,	:	08NUR346
RESPONDENT.	:	

On September 2, 2010, the Board of Nursing filed its Final Decision and Order in the above-captioned matter by which the board ordered that pursuant to sec. 440.22, Wis. Stats., the costs of this proceeding be assessed against respondent. Pursuant to sec. RL 2.18 (4), Wis. Admin. Code, on or about September 14, 2010, the Board of Nursing received the Affidavit of Costs in the amount of \$865.76, filed by Attorney Jeanette Lytle. On or about September 8, 2010, the Board of Nursing received the Affidavit of Costs of the Division of Hearings and Appeals in the amount of \$225.70, filed by Administrative Law Judge Amanda Tollefsen.

The Board of Nursing considered the following factors in determining whether to impose full costs in this matter against the respondent:

- 1) The number of counts, charged, contested, and proven.
- 2) The nature and seriousness of the misconduct.
- 3) The level of discipline sought by the parties.
- 4) The respondent's cooperation with the disciplinary process.
- 5) Prior discipline, if any.
- 6) The fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licensees and the fairness of imposing the costs disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct.

Respondent, by the nature of being in default, did not present any evidence regarding any of the above factors that would mitigate the imposition of full costs in this proceeding. All of the counts charged were deemed admitted and proven to the requisite standard of proof. There was no argument that any of the factual findings were investigated and litigated unnecessarily. The alleged misconduct is serious and the level of discipline, the revocation of licensure, is a significant disciplinary outcome. The respondent failed to cooperate with the disciplinary process. Finally, the department is a revenue program agency; therefore it would be fundamentally unfair to assess the costs of this disciplinary action upon the fellow members of the profession who have not engaged in such conduct. Based upon the foregoing analysis, the Board of Nursing considered the Affidavits of Costs on November 4, 2010, and orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that pursuant to sec. 440.22, Wis. Stats., the costs of this proceeding in the amount of \$1,091.46, set forth in the Affidavits of Costs of Attorney Jeanette Lytle and Administrative Law Judge Amanda Tollefsen, which are attached hereto and made a part hereof, are hereby assessed against respondent, and shall be payable by respondent to the Department of Regulation and Licensing. **Failure of respondent to make payment on or before December 6, 2010, shall constitute a violation of the Order unless respondent petitions for and the board grants a different deadline.** Under sec. 440.22 (3), Wis. Stats., the

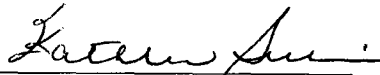
Department of Regulation and Licensing may not restore, renew or otherwise issue any credential to the respondent until respondent has made payment to the department in the full amount assessed.

Payment shall be made payable to the Wisconsin Department of Regulation and Licensing and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Dated this 4th day of November, 2010.

BOARD OF NURSING

By: 
Member of the Board

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST
TRACY ESPOSITO
RESPONDENT

AFFIDAVIT OF COSTS
08 NUR 346

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Being duly on affirmation, the undersigned employee of the Department of Regulation and Licensing, upon information and belief, deposes and states as follows:

That set out below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.

INVESTIGATOR EXPENSE -- Daniel Williams			HOURS	MINUTES
DATE				
02/24/2010	receive/review IL Board order, scan, org file, case summ, disc w/JCL, email to/from Sullivan, file to JCL for discipline. Email to R.		3	0
02/11/2010	Atts to get thru to IL Board. Call to another area for FAX number. Create & FAX ltr re: response		0	30
02/10/2010	Atts to get thru to IL Board re; late response		0	25
01/19/2010	Research IL re; discipline. Ltr to IL re: Board Order. Att call to esposito, speak w/Mark Esposito, he will forward info to her as she is out on assignment. Would not provide details.		0	35
12/14/2009	Review C info, cert ltr to R		1	0
12/04/2009	Call to maryJo & roseclif, transfer to DON Ouimet-msg		0	18
11/30/2009	status check, call to Mary Jo-msg		0	18
11/11/2009	Call from/to Wodicka. Ltr & fax to Wodicks		1	0
11/10/2009	Vmail from HR. Call to HR-msg		0	12
11/09/2009	research & call to DON re: HR failure to respond.		0	24
11/05/2009	Review, org, call to C-msg		0	24
11/02/2009	receive file, disc w/TaraA, emails re: transfer		0	12
TOTAL INVESTIGATOR EXPENSE --			8 HOURS AND	18 MINUTES
(Based on their average salary and benefits at the Division of Enforcement)			TOTALS	8 18
AT \$29.00 PER HOUR = \$240.70				

INVESTIGATOR EXPENSE -- Sherrie Johnson			HOURS	MINUTES
DATE				
09/10/2009	update cts billing		0	4
09/09/2009	review case status with sup		0	4
08/31/2009	update cts billing		0	4
08/21/2009	review file and report for case status review by sup.		0	10
07/23/2009	update cts billing		0	4
07/15/2009	re-wrote r and c		1	30
10/14/2008	update cts billing		0	5
10/07/2008	reviewed and tracked in file. wrote r and c. cts note. ccap and il lic checks		2	45
TOTAL INVESTIGATOR EXPENSE --			4 HOURS AND	46 MINUTES
(Based on their average salary and benefits at the Division of Enforcement)			TOTALS	4 46
AT \$29.00 PER HOUR = \$138.23				

PARALEGAL EXPENSE -- Jan Johnson			HOURS	MINUTES
DATE				
05/11/2010	Receive file; disc w/ JL; draft default motion & affid; rough draft of ltr to ALJ - to & disc w/ JL		2	0

04/28/2010	Receive ret'd cmp (cert mailing); make copy of env & send w/ orig doc's (cmp/hn/aff serv/cert mail slip) to DHA; file copy to JL for pleadings file	0	10
04/08/2010	File to & disc w/ JL	0	5
04/07/2010	Draft & process aff serv; receive response from DHA; FM; organize file	0	25
04/06/2010	Receive signed doc's; process-file/serve cmp (deliver to post office); create pleadings file	0	30
03/30/2010	Review JL's e-mail; ck ICE; review/edit cmp; finalize hn; prep for mailing cmp	0	45
03/16/2010	Review/edit rough draft of cmp - to & disc w/ atty Lytle (JL); review revisions to cmp	0	35
03/15/2010	Draft cmp	3	25
03/12/2010	Receive file; FM; ck ICE; review file; draft hearing notice (hn); start drafting cmp	1	20

TOTAL PARALEGAL EXPENSE --- 9 HOURS AND 15 MINUTES
 (Based on their average salary and benefits at the Division of Enforcement)

TOTALS	9	15
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AT \$29.00 PER HOUR = \$268.25

PROSECUTING ATTORNEY EXPENSE --- Jeanette Lytle

DATE		HOURS	MINUTES
09/08/2010	File maintenance.	0	10
07/30/2010	Review proposed decision.	0	20
07/27/2010	Check status.	0	5
05/20/2010	Draft motion for default and letter recommending discipline, mail to ALJ and R.	0	45
05/12/2010	Prepare default motion.	0	30
05/11/2010	Prepare for prehearing conf. Conf. with Lucy of DHA. File to paralegal for default motion.	0	20
04/06/2010	Review and revise complaint.	0	20
03/16/2010	Revise complaint and forward to paralegal.	0	45
02/26/2010	Review and arrange for drafting.	0	20

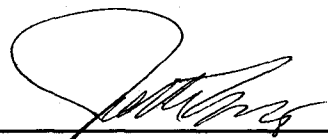
TOTAL PROSECUTING ATTORNEY EXPENSE --- 3 HOURS AND 35 MINUTES
 (Based on their average salary and benefits at the Division of Enforcement)

TOTALS	3	35
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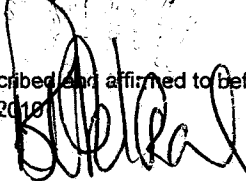
AT \$61.00 PER HOUR = \$218.58

EXPENSE SUMMARY

PARALEGAL EXPENSE	Jan Johnson	\$268.25
INVESTIGATOR EXPENSE	Daniel Williams	\$240.70
INVESTIGATOR EXPENSE	Sherrie Johnson	\$138.23
PROSECUTING ATTORNEY EXPENSE	Jeanette Lytle	\$218.58
TOTAL ASSESSABLE COST >>>		\$865.76



 Jeanette Lytle, Attorney

Subscribed and affirmed to before me this
 9/14/2010


Notary Public
 My commission MARCH 25 2012



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **TRACY L. ESPOSITO**, Respondent

AFFIDAVIT OF COSTS
DHA Case No. DRL-10-0022

Division of Enforcement Case No. 08 NUR 346

Amanda Tollefsen, affirms the following before a notary public for use in this action, subject to the penalties for perjury in Wis. Stat. § 946.31:

1. I am an administrative law judge/attorney licensed to practice law in the State of Wisconsin, and am employed by the Wisconsin Division of Hearings and Appeals. I served as the Administrative Law Judge in the above-captioned matter.

2. This affidavit sets forth the costs and expenses incurred in this matter based upon my contemporaneous time keeping entries in connection with the hearing.

April 26, 2010	File Review, Draft Prehearing Conference Notice	.3 hours
June 10, 2010	File Review	.2 hours
June 28, 2010	File Review, Prehearing Conference, Draft Default Order	.4 hours
July 27, 2010	Draft Proposed Decision	.3 hours
July 28, 2010	Draft Proposed Decision	2.5 hours

3. That upon information and belief the total assessable costs for the Division of Hearings and Appeals are as follows:

A. Administrative Law Judge: 3.7 hours at \$61.00 per hour = \$225.70

Dated this 8 day of September, 2010.

By: Amanda Tollefsen
Amanda Tollefsen
Administrative Law Judge
Division of Hearings and Appeals

Subscribed and sworn to before me this
8th day of September, 2010

James H. Richard
NOTARY PUBLIC, STATE OF WISCONSIN
MY COMMISSION EXPIRES ON 06/26/11.