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Worcester argues for significantly reduced bill for panhandler ordinance legal costs

WORCESTER - In an at-times pointed and colorful response filed Friday in U.S. District Court, the city's Law Department sought a drastic reduction in fees and costs in connection with its unsuccessful defense of an ordinance restricting panhandling.

The American Civil Liberties Union of Massachusetts and the Boston law firm Goodwin Procter LLP have asked in court filings for just over \$1 million in fees and costs from the city in connection with a 2013 lawsuit that resulted in a federal judge last November striking down the city's panhandling ordinances.

The response, signed by City Solicitor David M. Moore and Assistant City Solicitor Wendy L. Quinn, called the fees and expenses sought by the plaintiffs' lawyers "wholly disproportionate" to the billable rate in the Worcester area, as well as to the nature and outcome of the "theoretical First Amendment violation" that was resolved before trial.

"The Plaintiffs' fee demand is not just unreasonable, it is avaricious, contemptible and punitive," the response stated. "It was clearly structured from the beginning to result in an outrageous claim. It makes a mockery of justice in general and of this Court in particular."

Lawyers for Goodwin Procter and the ACLU said in January they had hoped early discussion with Worcester and Lowell, where a similar ordinance was overturned, would result in voluntary withdrawal of the ordinances, which ultimately were found unconstitutional. They said the decisions the cities made instead drove up the cost of the litigation. The lawyers said Worcester adopted a "scorched earth" tactic through numerous filings that unnecessarily drove up attorneys' fees.

But the city's response asserted that the Goodwin Procter lawyers were the practitioners of "scorched earth" tactics and charged outrageously high fees for it. The response said the plaintiffs' lawyers vastly overstuffed what should have been routine depositions. Case law provides that courts can determine what would have been more reasonable fees and staffing levels, the response said.

The response outlined the rates the Goodwin Procter lawyers used in formulating the amount of fees and costs they are seeking in court. The city said lawyer Kevin Martin, for example, claimed a "discounted rate" of \$640 to \$680 per hour. Eight less-senior lawyers who worked on the case, including five who had "just graduated from law school in 2011, 2012, 2013, and 2014" claimed discounted rates of \$300 to \$580 per hour.

By contrast, the response states, the large Worcester-based law firm of Mirick O'Connell had an hourly billing rate in 2014 of \$315 to \$405 per hour at a partner level, and \$205 to \$265 per hour for junior partners or associates.

The response notes that the amount sought by the plaintiffs is around \$122,000 more than the city's entire legal claims budget for Fiscal 2016.

Goodwin Procter lawyers detailed in court filings more than 2,000 hours spent on the Worcester case and said it discounted its hourly rates by 20 percent in consideration of the budgets in Worcester and Lowell. Mr. Martin and the ACLU have said the success in overturning the ordinances was due in part to Goodwin Procter's expertise and experience, and has said that almost all of the requested fees, if approved, would be donated to the ACLU of Massachusetts.

The city said in the response that the plaintiffs simply deployed too many lawyers to work on a case that never went to trial, and noted that some of the work had already been done in the Lowell case and another case the ACLU brought in Portland, Maine. Eleven lawyers represented the plaintiffs, while Mr. Moore and Ms. Quinn did most of the work between the two of them for the city, the city noted in the response.

The response asserted that Goodwin Procter used the pro bono opportunity as a training ground for less-experienced associates. It described as "unduly lengthy" two five-hour depositions of Deputy Police Chief Edward McGinn and former City Manager Michael V. O'Brien. The city said that during those long depositions, a young associate lawyer had to be passed notes by another lawyer, and Mr. Martin intervened to ask questions.

"Multiple associates were also present for no other clear purpose than for observation," the response said.

The response details other areas where the city believed claimed fees and expenses could be trimmed, and came up with a final tally of \$97,314.13 it thought represented reasonable fees and costs in the case. But even that much reduction was not enough, the city said.

"The \$97,314.13 amount should be further reduced by half as a sanction for submitting such a blatantly excessive and fraudulent claim, to \$48,657," the city said in its response.



A woman panhandles on Highland Street, near the corner of Park Avenue in Worcester, in 2013. T&G File Photo