IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MICHAEL E. MANN, PH.D., **Plaintiff,** **v.** **NATIONAL REVIEW, INC., *et al.*,** **Defendants.**	**2012 CA 008263 B** **Judge Alfred S. Irving, Jr.**

ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER AND SETTING MARCH 12, 2025 SANCTIONS AMOUNT

By Order dated March 12, 2025, the Court granted in part Defendants[1] Rand Simberg and Mark Steyn's motions to sanction Plaintiff Michael E. Mann, Ph.D., for bad-faith trial misconduct. *See generally* Order Granting in Part Defs.' Mots. for Sanctions (Mar. 12, 2025) [hereinafter "March 12, 2025 Order"]. The Court determined that 1) "the appropriate sanction is to award each Defendant the approximate expenses they incurred in responding to Dr. Mann's bad-faith trial misconduct, starting with Mr. Fontaine's redirect examination," *id.* at 42; 2) enumerated an exclusive list of events constituting the basis for calculating the sanctions award amount, *id.* at 43-45; and 3) directed Defendants to file by March 26, 2025, "all necessary materials in support of the costs and fees awarded" in the March 12, 2025 Order, *id.* at 45, (setting forth briefing schedule for any challenges to claimed fees and costs).

In accordance with the March 12, 2025 Order, on March 26, 2025, Defendants filed their respective requests for fees and costs. Mr. Simberg filed a *Request for Attorneys' Fees and Costs*, in which he claimed $16,515.50 in attorney's fees and $247.32 in costs, inclusive of fees on fees. *See generally* Def. Rand Simberg's Req. for Attys' Fees & Costs [hereinafter

[1] The Court's use of "Defendants" throughout this order refers solely to Mr. Simberg and Mr. Steyn, collectively.

"Simberg's Request"]. Mr. Steyn filed a *Submission on the Amount of Fees and Costs to be Awarded as a Sanction for Plaintiff's Bad-Faith Trial Misconduct and Supporting Documentation*, in which he claimed $27,553.40 in attorney's fees and $26.00 in costs, inclusive of fees on fees. *See generally* Def. Mark Steyn's Submission on the Amount of Fees & Costs to be Awarded as a Sanction for Pl.'s Bad-Faith Trial Misconduct & Supporting Documentation [hereinafter "Steyn's Request"].

Thereafter, on April 8, 2025, Dr. Mann filed a *Motion of Michael E. Mann, Ph.D., John B. Williams, and Peter J. Fontaine to Reconsider or to Alter or Amend Award of Sanctions*, in which Dr. Mann and two of his attorneys contend that the Court should reverse in its entirety its decision to sanction Dr. Mann. *See generally* Mot. of Michael E. Mann, Ph.D., John B. Williams, & Peter J. Fontaine to Recons. or to Alter or Amend Award of Sanctions [hereinafter "Pl.'s Mot."]; Mem. in Supp. of Mot. of Michael E. Mann, Ph.D., John B. Williams, & Peter J. Fontaine to Recons. or to Alter or Amend Award of Sanctions [hereinafter "Pl.'s Mem."]. Defendants filed separate oppositions to Dr. Mann's *Motion to Reconsider* on June 10, 2025, and seek recovery of fees and costs they incurred in responding to the *Motion to Reconsider*. *See generally* Def. Rand Simberg's Opp'n to Mot. of Michael E. Mann, Ph.D., John B. Williams, & Peter J. Fontaine to Recons. or to Alter or Amend Award of Sanctions [hereinafter "Simberg's Opp'n"]; Def. Mark Steyn's Opp'n to Mot. of Michael E. Mann, Ph.D., John B. Williams, & Peter J. Fontaine to Recons. or to Alter or Amend Award of Sanctions [hereinafter "Steyn's Opp'n"].

On June 17, 2025, Dr. Mann filed a *Reply*. *See generally* Reply Mem. in Supp. of Mot. of Michael E. Mann, Ph.D., John B. Williams, & Peter J. Fontaine to Recons. or to Alter or Amend Award of Sanctions [hereinafter "Pl.'s Reply"].

The Court has considered the aforementioned pleadings, the relevant portions of the trial transcript and, indeed, the record of this case generally, as well as the Court's *Order Granting In Part Defendants' Motions for* Sanctions. For the reasons set forth below, the Court will deny Dr. Mann's *Motion to Reconsider* and will award certain of Defendant Simberg's claimed fees and costs, and will reduce Mr. Steyn's claimed fees and costs, awarding only such fees and costs that are consistent with the fees and costs that Mr. Simberg requested in his petition. In addition, the Court will decline to award any fees the Parties incurred in responding to Plaintiff's motion for reconsideration. The Court's March 12, 2025 Order was explicit about what fees and costs the Court would charge to Plaintiff as a sanction and the factual and legal bases for the Court's sanction.

I. LEGAL STANDARD

A. Dr. Mann's *Motion to Reconsider*

The Superior Court Rules of Civil Procedure, like its federal counterpart, do not provide for "motions for reconsideration." *Fleming v. District of Columbia*, 633 A.2d 846, 848 (D.C. 1993); *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991). "[W]hile there are no procedural rules (civil or criminal) that allow for reconsideration of interlocutory orders, nothing prevents a trial court from doing so while it exercises plenary jurisdiction over a case." *Marshall v. United States*, 145 A.3d 1014, 1018 (D.C. 2016). "Depending on the circumstances, motions for reconsideration may be properly analyzed under [Rules] 54(b), 59(e), or 60(b)." *Avery v. E&M Servs., LLC*, 342 F.R.D. 260, 265 (D.N.D. 2022).[2]

[2] Rules 54(b), 59(e), and 60(b) are substantively identical to their counterparts in the Federal Rules of Civil Procedure. Accordingly, the Court looks to "cases interpreting the federal rule for guidance on how to interpret our own." *Est. of Patterson v. Sharek*, 924 A.2d 1005, 1010 (D.C. 2007).

Where a party moves for reconsideration of an order that is not immediately appealable, Rule 54(b) vests the trial court with "revisory power." *See Trilon Plaza Co. v. Allstate Leasing Corp.*, 399 A.2d 34, 36-37 (D.C. 1979) (holding that an order setting forth "the quantum of attorney's fees to be paid," rather than the preceding order "which merely established entitlement to attorney's fees in an amount to be later determined," is the final and appealable order); *see also* Super. Ct. Civ. R. 54(a) (defining "judgment" to "include[] a decree and any order from which an appeal lies"); *Williams v. Vel Rey Props.*, 699 A.2d 416, 419 (D.C. 1997). This power should be exercised to "afford . . . relief from interlocutory judgments as justice requires,". *Cobell v. Jewell*, 802 F.3d 12, 25 (D.C. Cir. 2015) (quoting *Greene v. Union Mut. Life Ins. Co. of Am.*, 764 F.2d 19, 22 (1st Cir. 1985)). This "as justice requires" standard

> requires "determining, within the Court's discretion, whether reconsideration is necessary under the relevant circumstances." Considerations a court may take into account under the "as justice requires" standard include whether the court made a decision beyond the adversarial issues presented, made an error in failing to consider controlling decisions or data, or whether a controlling or significant change in the law has occurred. Furthermore, the party moving to reconsider carries the burden of proving that some harm would accompany a denial of the motion to reconsider: "In order for justice to require reconsideration, logically, it must be the case that, some sort of 'injustice' will result if reconsideration is refused. That is, the movant must demonstrate that some harm, legal or at least tangible, would flow from a denial of reconsideration."

In Def. of Animals v. Nat'l Insts. of Health, 543 F. Supp. 2d 70, 75-76 (D.D.C. 2008) (citations omitted).

B. Sanctions Award Amount

Where the Court has determined that sanctions in the form of attorney's fees and costs are appropriate, the final amount of the sanction award "should be limited to those expenses reasonably incurred to meet the other party's groundless, bad faith procedural moves." *Synanon Found., Inc. v. Bernstein*, 517 A.2d 28, 38 (D.C. 1986) (quoting *Browning Debenture Holders'*

Comm. v. DASA Corp., 560 F.2d 1078, 1089 (2d Cir. 1977)); *see also In re S.U.*, 292 A.3d 263, 271 (D.C. 2023) ("A court's inherent powers give it broad authority to craft sanctions that it deems will punish and deter bad-faith litigation. That certainly includes the authority to award all costs the prevailing party expended as a result of such litigation, regardless of whether those fees were attorney's fees qua attorney's fees.").

As to the reasonableness of attorney's fees, the Court must determine the lodestar which is defined as "the number of hours reasonably expended by counsel multiplied by a reasonable hourly rate." *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 530 (D.C. 2003). Then, "'in exceptional cases,' making upward or downward adjustments as appropriate," *id.* (quoting *Hampton Cts. Tenants Ass'n v. D.C. Rental Hous. Comm'n*, 599 A.2d 1113, 1115 (D.C. 1991)*; see also Frazier v. Franklin Inv. Co.*, 468 A.2d 1338, 1341 n.2 (D.C. 1983) (setting forth considerations for adjustment of lodestar). "[T]he burden is on the fee applicant to produce satisfactory evidence . . . that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonable comparable skill, experience, and reputation." *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984); *see also District of Columbia v. Jerry M.*, 580 A.2d 1270, 1281 (D.C. 1990) (reasonable hourly rate is "measured by prevailing market rates in the relevant community for attorneys of similar experience and skill"). Similarly, a fee applicant must provide materials that are "sufficiently detailed to permit the [Court] to make an independent determination whether or not the hours claimed are justified." *Hampton Cts. Tenants Ass'n*, 599 A.2d at 1117. The Court "should compute the number of hours reasonably expended on the litigation, excluding any claimed hours that are excessive, redundant, or unnecessary." *Jerry M.*, 580 A.2d at 1281. "The essential goal in shifting fees . . . is to do rough justice, not to achieve auditing perfection. So, trial courts may take into account

their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time." *Fox v. Vice*, 563 U.S. 826, 838 (2011).

II. DISCUSSION

A. Dr. Mann's *Motion to Reconsider*

The Court has considered Dr. Mann's request for reconsideration. For the reasons Mr. Simberg and Mr. Steyn articulated orally during in-court arguments and presented in their pleadings, and as reasoned in the Court's March 12, 2025 Order, the Court will deny the request. To be sure, the Court's 45-page *Order Granting In Part Defendants' Motions for Sanctions* comprehensively set forth the Court's bases for concluding that sanctions were appropriate in the circumstances of this case. Moreover, the Court's Order largely addressed the concerns and arguments Dr. Mann and his attorneys raise in the instant motion, including the attached declarations. The fact remains that Dr. Mann throughout this litigation complained that he suffered lost grant funding directly stemming from the defamatory statements of Messrs. Simberg and Steyn, while providing very little in the way of specifics about the dollar amounts of his losses directly attributable to the statements (such as corroborating testimony from percipient witnesses), all while promising to illuminate the Court at trial. At trial, Dr. Mann elected through his attorneys to present to the jury a blown-up demonstrative, without redaction or explanation, a demonstrative intentionally prepared for its use at trial, which included a budget (loss) amount of $9,713,924.00, when the correct amount, previously corrected during a third round of discovery, was $112,000. Dr. Mann and his attorneys explain that there was no harm in publishing the demonstrative to the jury because Defendants and the Court knew well that the $9.7 million was later corrected during discovery, while ignoring the fact that the trial's factfinders, the jury, were never made privy to the discovery corrections

through Dr. Mann's in-court testimony. To date, Dr. Mann and his attorneys have provided no plausible explanation why they prepared a demonstrative that contained incorrect figures to be used at trial, when they could have very well prepared a demonstrative with the correct figures. This is particularly troubling given that the lost grant funding amounts were central to Dr. Mann's case, and considering that Dr. Mann, indeed, was represented by very skilled and seasoned attorneys. The attorneys' assertions that they knew Defendants would "deal with" making the corrections during re-cross strain credulity and nevertheless fail to explain why the use of an erroneous demonstrative was preferable over a non-erroneous demonstrative. To be sure, without redactions or corrective testimony, Plaintiff left the jury with misleading evidence, suggesting that he suffered damages in at least the amount of $9,713,924.00. The Court rightfully concluded that Plaintiff and his attorneys acted in bad faith and that their litigation tactics cannot and should not be condoned in this jurisdiction. Because the Court's Order addresses the pertinent and salient arguments that the movants presented in the instant pleading, the Court hereby declines to address further any other assertions set forth in their filing seeking reconsideration.

As to Dr. Mann, in particular, he was indeed ultimately responsible for the conduct of the litigation of his case and it was his responsibility to ensure that the facts of his case were presented truthfully and straightforwardly, so that the jury could reach a fair and reasonable decision based on the facts. Furthermore, he was tasked with knowing the facts of his case, one he filed in 2012. The Court observed during Dr. Mann's own testimony that he often expanded his answers exceeding the bounds of the questions asked when it suited him. He could have done so, here, when his attorneys explored all aspects of the subject demonstrative except for correcting the incorrect loss amounts contained in the demonstrative. Again, to argue that he

made corrections during discovery serves no purpose when he elected not to make the corrections for the factfinders' consideration during trial. To argue further that Dr. Mann and his attorneys knew that Defendants would make the corrections during re-cross examination misses the point and presumes that the Court would have even allowed re-cross examination. Such a trial tactic does not explain why experienced attorneys and a sophisticated client would risk having the Plaintiff's credibility unnecessarily brought into question when the stakes were so high. The only explanation the Court could glean is that each knew that if the jury saw the $9.7 million figure, and it went unchallenged or inadequately challenged, the jury might have finally been presented with something tangible in deciding compensable damages. While Plaintiff and his attorneys find nothing wrong with such practice, the Court simply cannot condone such bad faith litigation tactics, particularly in a case that had been zealously litigated across several years and a case involving complicated facts. Thus, the Court's ruling must stand. It is the Court's duty to punish and deter bad faith litigation tactics.

B. Sanctions Award Amount

1. Mr. Simberg's Attorney's Fees.

By way of his petition filed on March 26, 2025, Mr. Simberg requested attorney's fees in the amount of $16,515.50 and costs in the amount of $245.32. The attorney's fee amount includes charges for preparing the fee petition, or fees on fees. Mr. Simberg's attorneys expended 3.8 hours to prepare the fee petition for a total cost of $1,419.00. Attorney Mark DeLaquil, who served as lead counsel, noted in paragraph 3 of his declaration that "[t]he rates that Baker Hostetler billed in this matter are substantially lower than our customary rates." (Emphasis added.) He further represented in paragraph 4 that "[f]our Baker Hostetler attorneys billed time for the work identified in the Court's March 12, 2025 Order," and he included the

attorneys' qualifications. With 20 plus years of experience, Mr. DeLaquil billed at an hourly rate of $525.00. With 17 years of litigation experience, Attorney Andrew Grossman billed at an hourly rate of $525.00. With 16 years of litigation experience, Attorney Victoria Weatherford billed at an hourly rate of $525.00. And, finally, with nine years of litigation experience, Associate Attorney Renee Knudsen billed at an hourly rate of $365.00. The Court notes that the four attorneys often played lead or otherwise significant roles in the presentation of Mr. Simberg's defense throughout much, if not all, of the litigation including the trial, with their efforts at times inuring to Mr. Steyn's benefit, who during major stages of the litigation represented himself.

Plaintiff in his opposition did not challenge the hourly rates each attorney charged, asserting he does "not contest the hourly rates." Further, Plaintiff did not challenge the specific tasks the attorneys performed or the specific hours Mr. Simberg's attorneys expended on the tasks. Rather, Plaintiff quarreled with the number of attorneys for whom Mr. Simberg sought attorneys' fees and contended that the Court should only allow charges for two attorneys because allowing charges for four would be excessive. As Mr. Simberg noted, Plaintiff devoted one paragraph to his argument, and the Court finds it inadequate and not persuasive.

For the reasons Mr. Simberg provides, and from the Court's own assessment of the attorneys' work during the conduct of the trial, the Court will grant the charges for all four attorneys as reasonable and consistent with this Court's Order.

In addition to the aforementioned fees, Defendant Simberg seeks reimbursement for fees he incurred in responding to Plaintiff's motion for reconsideration. For that work, Defendant seeks a total amount of $32,947. The Court will deny the request and will only allow, consistent with the Court's March 12, 2025 Order, charges that fall within the strict parameters of the

Court's Order. As the Court explained, by its sanction order, the Court sought only "to do rough justice" and to punish and deter bad faith litigation, not to compensate Defendants for all expenses they incurred in litigating the matter. The Court's Order satisfied its intent.

2. Mr. Steyn's Attorney's Fees.

As an initial matter, Mr. Steyn filed a motion asking the Court to deem conceded his request for fees and costs because Plaintiff had failed to file a timely opposition to his request. The Court will deny the request. It is the practice in this jurisdiction to decide matters on the merits, and particularly where there is no prejudice to any party to the litigation**.** Plaintiff eventually filed an opposition, and the Court will consider it.

As to Mr. Steyn's fee request, unlike Defendant Simberg's attorneys who provided their actual hourly rates, Attorney H. Christopher Bartolomucci, whom the Court met for the first time at trial, failed to provide actual rates he and his colleagues billed Mr. Steyn. To be clear, at page 42 of its Order, the Court found that it was appropriate "to award each Defendant the approximate expenses they <u>incurred</u> in responding to Dr. Mann's bad faith trial misconduct, starting with the time for Mr. Fontaine's redirect examination." (Emphasis added.) At pages 43 and 44, the Court identified the areas of work and the time for which it would award attorney's fees. Mr. Steyn seemed to be of the view that the Court should simply use the Laffey Matrix as its sole guide in setting rates to be awarded to his attorneys, rather than awarding the fees that his attorneys actually charged him, if the Court deemed them to be reasonable. Mr. Steyn's request fails to comply with the letter and intent of the Court's March 12 Order.

Mr. Simberg's attorneys, on the other hand, understood the Court's Order and affirmed that their fee request "is based on the actual fees for the three attorneys attending trial as well as the fees Attorney Grossman charged." Dr. Mann's opposition does not specifically address the

hourly rates of the attorneys who assisted Mr. Steyn behind the scenes, or the time that they expended or whether they are entitled to any fees whatsoever. Dr. Mann asserted simply that Mr. Steyn's allowable fees should be limited to the amount that Mr. Simberg's attorneys charged Mr. Simberg. Absent any alternative request from Mr. Steyn, the Court must agree with Dr. Mann's brief opposition regarding Mr. Steyn's fee request. The Court therefore will make a side-by-side comparison and adjust Mr. Steyn's fee statement accordingly.

The Court noted in footnote 6 of its March 12, 2025 Order:

> Although Mr. Steyn represented himself through major portions of the trial, the Court will permit Mr. Steyn to recover fees incurred through his engagement of H. Christopher Bartolomucci, Esq., as "assisting trial counsel" because Mr. Bartolomucci plainly performed legal services for Mr. Steyn commensurate with the activities of the other Parties' trial counsel throughout the periods set forth herein. *See Upson,* 3 A.3d at 1168-69 (award of fees for sanctions under court's inherent authority requires "expenses that must actually be paid to a third party attorney.").

March 12, 2025 Order at 43. Attorney Bartolomucci served as a silent partner during in-court proceedings, and none of Mr. Steyn's attorneys made any public substantive presentations or representations, such as conducting direct or cross examination of witnesses or presenting oral arguments during the entirety of the trial. Mr. Steyn largely performed that work. No matter, attorney Bartolomucci represented in his Declaration that three attorneys, including himself, billed time on the Court's designated billable tasks and that a senior paralegal had billable time.

Attorney Bartolomucci represents that he has practiced law for "more than 30 years." He seeks the Laffey hourly rate of $1,057. Again, he does not represent that he billed Mr. Steyn at that hourly rate, and he does not represent that Mr. Steyn committed to paying him that rate. Attorney Justin Miller, who provided assistance and at the time, had been out of law school for a little more than five years, seeks the Laffey hourly rate of $538.00, more than the $525.00 hourly rate the three Baker & Hostetler partners charged Mr. Simberg and more than the hourly rate of

$365.00 associate attorney Knudsen charged, with her nine years of experience. Similarly, Attorney Aaron Gordon worked on the case and charged a Laffey rate of $538.00 to perform one research assignment. He had approximately 5 years of experience. Mr. Bartolomucci charged time for a senior paralegal at an hourly rate of $239.00.

As noted above, the Court finds the rates at which the Baker & Hostetler attorneys charged Mr. Simberg are reasonable and Plaintiff agrees. The Court will therefore allow most of the hours that Mr. Steyn's attorneys and paralegal expended on the delineated areas of work. The Court, however, will reduce the hourly rates of Mr. Steyn's attorneys to be more consistent with the hourly rates of Mr. Simberg's attorneys. In addition, the Court will limit the hours expended on preparation of the fee statement to be more consistent with the time expended by Mr. Simberg's attorneys.

While Mr. Bartolomucci's role during the trial was not the equivalent of the roles Mr. Simberg's attorneys played, Mr. Bartolomucci certainly added value and should be compensated for his work. However, he should not be compensated by twice the fees that Mr. DeLaquil charged Mr. Simberg. While the Court was not presented with the actual hourly rate Mr. Bartolomucci charged Mr. Steyn, a side-by-side comparison nevertheless is appropriate here. As such the Court will permit an hourly rate of $525.00 for Mr. Bartolomucci. In conducting its side-by-side evaluation, the Court considered the comprehensiveness of the Parties' briefings, and the role Mr. Bartolomucci played juxtaposed with the roles of the Baker & Hostetler partners during the presentation of oral arguments. The two other attorneys who assisted Mr. Steyn, Mr. Miller and Mr. Gordon, and who played "silent assistant" roles at trial, will be permitted an hourly rate of $300.00. Both attorneys possessed far fewer years of

litigation experience than attorney Renee Knudsen who billed at an hourly rate of $365.00. Finally, the Court will allow the hourly rate of $239.00 for Ms. Robinson's work.

Mr. Steyn's request for fees on fees totaling $10,650.60, is extraordinarily overstated when compared to the $1,419.00 that Mr. Simberg's attorneys charged. Mr. Simberg's attorneys, Mr. DeLaquil and Ms. Knudsen, together performed 3.80 hours of work preparing the fee statement, while Mr. Bartolomucci, Mr. Miller and Ms. Robinson together expended a total of 12.9 hours. Rather than attempting to parse the reasonableness the work each professional expended and reduce accordingly the appropriate hourly rate, the Court will simply reduce the total amount Mr. Steyn's attorneys seek to the amount sought by Mr. DeLaquil and Ms. Knudsen. The Court will award Mr. Steyn's attorneys $1,419.00. Fee statement preparation costs should not almost rival the costs of the substantive work that the attorneys performed.

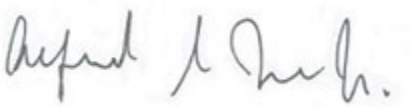
ACCORDINGLY, it is by the Court this 22nd day of January 2026, hereby

ORDERED that Plaintiff Michael E. Mann, Ph.D.'s *Motion of Michael E. Mann, Ph.D., John B. Williams, and Peter J. Fontaine to Reconsider or to Alter or Amend Award of Sanctions*, filed on April 8, 2025, is **DENIED**; and it is further

ORDERED that Defendant Rand Simberg's *Request for Attorneys' Fees and Costs* and Defendant Mark Steyn's *Submission on the Amount of Fees and Costs*, both filed on March 26, 2025, are **GRANTED IN PART**; and it is further

ORDERED that Plaintiff Michael E. Mann, Ph.D., will, within thirty days of this Order, pay Defendant Rand Simberg the sum of $16,762.82, representing $15,096.50 in attorneys' fees, and $247.32 in costs, and $1,419.00 in fees on fees, as a sanctions for the former's bad-faith trial misconduct as determined in the March 12, 2025 *Order Granting in Part Defendants' Motions for Sanctions*; and it is further

ORDERED that that Plaintiff Michael E. Mann, Ph.D., will, within thirty days of this Order, pay Defendant Mark Steyn the sum of $11,404.80, representing $9,959.80 in attorneys' fees, $26.00 in costs, and $1,419.00, in fees on fees, as a sanctions for the former's bad-faith trial misconduct as determined in the March 12, 2025 *Order Granting in Part Defendants' Motions for Sanctions*.



Senior Judge Alfred S. Irving, Jr.

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