

## Judge Says School District 'Greatly Overpaid' Morgan Lewis

By Lauren Berg

*Law360 (March 5, 2021, 11:25 PM EST)* -- A New York federal judge awarded millions of dollars in attorney fees Friday to the NAACP after a Hudson Valley school district was found to be blocking minority voters' preferred candidates from the school board, while criticizing how much the school district paid its counsel at Morgan Lewis & Bockius LLP.

During a hearing, U.S. District Judge Cathy Seibel increased the \$4.3 million in attorney fees and costs that a federal magistrate judge recommended be awarded to the NAACP's counsel at Latham & Watkins LLP and the New York Civil Liberties Union Foundation after they won a bench trial. According to a transcript provided to Law360, the East Ramapo Central School District was found to have violated the Voting Rights Act.

Following the bench trial, Judge Seibel found that in the "unique" school district, in which 98% of private school students are white and 92% of public school students are Black or Latino, statistical analysis showed that both groups voted as blocs.

The minority group has been unable to get a single preferred candidate onto the board since 2007 due to highly organized resistance from the private school community, which is largely Jewish, the judge ruled. The Second Circuit in January upheld the ruling.

In their objections to the magistrate judge's recommended award, the NAACP's counsel said they should at least be paid the same amount that the school district paid Morgan Lewis and asked for about \$8.5 million — all of which they said they will donate to help the public schools in the district — while the school district said there shouldn't be a fee award because the attorneys are working pro bono, according to the transcript of Friday's hearing.

Judge Seibel said the NAACP's counsel isn't entitled to the same rate that its corporate clients pay because they are working pro bono, but they are entitled to a fee. She also noted that while the attorneys' plans to donate all of the money is "commendable," it will have no impact on her calculation of the fees.

The NAACP's counsel argued that the magistrate judge's award cuts their fees to half of what Morgan Lewis was paid, but Judge Seibel said it's not her job to compare what the plaintiffs seek with what the defendants were paid. She noted that she must determine what a reasonable, paying client would pay by multiplying the reasonable number of hours by a reasonable hourly rate.

The judge said the school district is not an example of a "reasonable, paying client."

"I think the district greatly overpaid," Judge Seibel said. "I have never heard of a school district in this area being charged or paying close to \$650 an hour for partners or \$450 an hour for associates, which is what Morgan Lewis charged."

The judge said that because this case was more complex than another more routine case, it's reasonable that the client might pay more than it usually would, but that the school district in this case paid about triple the normal rate.

"The record simply contains no indication that defendant's counsel's fee is, in fact, reasonable; and I think there are strong reasons to conclude it's not, so it doesn't make sense to try to match it," Judge Seibel said. "Latham's work has obviously been more valuable to its clients than Morgan Lewis's was to its, but that does not mean defendant has to pay Latham what defendant paid Morgan Lewis."

The judge also noted that the school district could have avoided paying fees to the NAACP's counsel had it settled the case before it went to trial, but she also said the district was under no obligation to settle and might have sincerely believed it could win the case.

The judge also disagreed with the school district's assertion that the NAACP didn't really achieve anything because the school board is still 6 to 3 in terms of white private school members versus minority public school members.

"First, plaintiffs achieved something really big here. They turned over a big rock and they exposed a years'-long violation of voting rights," Judge Seibel said. "Second, even if there are only three minority/public school members on the board, they will be ones chosen by the voters, not by a secretive white slating organization."

In her calculations, the judge said she came out a little higher than the magistrate judge, citing the difficulty and complexity of the case that required a high level of skill from the attorneys, as well as the substantial resources needed to effectively prosecute the case.

"I think above what is typical in normal civil rights cases is appropriate and I'm going to bump up from Judge [Judith C.] McCarthy's numbers, although not up to what plaintiffs asked for," Judge Seibel said.

The judge didn't specify the total amount of fees and costs she awarded the NAACP but did say she would offer a higher rate of 25% compared to the 20% offered by the magistrate judge.

At the end of the hearing, Judge Seibel told the NAACP's counsel at Latham that it shouldn't take umbrage at a fee award that will probably come out to be less than what the school district's counsel got, according to the transcript. She said she thinks the defense counsel got paid too much, but that "two wrongs don't make a right."

"Latham accomplished two very important things here: first, it got its associates some invaluable training and experience while also showing them how rewarding and satisfying public interest work can be; and second, it rectified a serious wrong in the community and restored the voting rights of thousands of people, and you cannot put a price tag on either of those things," Judge Seibel said.

"The firm ought to take pride in both of those accomplishments without diluting it by tying it to an arbitrary number paid to plaintiffs' counsel," she added.

In a statement to Law360 on Monday, the NAACP's counsel at Latham said Judge Seibel's ruling is "another step in ensuring that the [school] district cannot skirt its responsibilities to the students of East Ramapo and cannot continue to resist ensuring voting rights to their parents."

"We look forward to donating every penny of the fees awarded to us to a nonprofit that directly supports the public school students of East Ramapo," the attorneys said. "And we renew our call to the defense counsel to donate the millions of fees they charged the district in the failed attempt to try to avoid a fair ward system of voting that restores the voting power back to the Black and Latino community members."

Representatives for the school district and Morgan Lewis did not immediately respond to requests for comment.

The NAACP is represented by Corey A. Calabrese, Andrej Novakovski, Marc Zubick, Russell Mangas and Andrew Clubok of Latham & Watkins LLP and Arthur Eisenberg and Perry Grossman of the New York Civil Liberties Union Foundation.

The school district is represented by David J. Butler, Randall M. Levine, William S.D. Cravens and Clara Kollm of Morgan Lewis & Bockius LLP.

The case is NAACP Spring Valley Branch et al. v. East Ramapo Central School District et al., case number 7:17-cv-08943, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Cara Salvatore and Sarah Jarvis. Editing by Jay Jackson Jr.