

Application for an Award of Advocacy and Witness Fees

Entity Name: Consumer Reports
Date Submitted: 1/4/2019 11:14:24 AM
Submitted By: Dena Mendelsohn
Application version: Original App

1. For which proceeding are you seeking compensation?

Proposed merger of CVS and Aetna

2. What is the amount requested?

\$9,325.00

3. Proceeding Contribution:

Provide a description of the ways in which your involvement made a substantial contribution to the proceeding as defined in California Code of Regulations, Title 28, Section 1010(b)(14), supported by specific citations to the record, your testimony, cross-examination, arguments, briefs, letters, motions, discovery, or any other appropriate evidence.

Consumer Reports submits this request for reasonable advocacy fees for our substantial contribution to the decision of the Department of Managed Health Care (DMHC) regarding CVS's acquisition of Aetna. Consumer Reports substantially contributed to DMHC's review of the proposed merger in a variety of ways. On May 2, 2018, Dena Mendelsohn, Senior Policy Counsel at Consumer Reports, provided an oral statement to the Department during which she voiced major concerns held by Consumer Reports regarding the proposed merger of this merger and pharmacy/retail/PBM. For example: - Being a vertical merger does not eliminate competition concerns. - Consolidation benefits the merging parties but the value for consumers is unclear. - Corporate savings from consolidation does not necessarily translate into savings for consumers. - The linkage of consolidation and innovation is unfounded. - A merged corporation could avoid profit regulations. - Merged health plan, pharmacy, and retail establishments may mean worse care for patients. - The merger of a health plan, pharmacy, and retail establishment raises privacy concerns. In addition to articulating the concerns of Consumer Reports in person, Ms. Mendelsohn provided the Department with a detailed written testimony dated May 7, 2018. This statement included a substantial collection of background information, derived from a literature review and extensive review and analysis of public records and reports, highlighting a pattern of troubling quality issues by both companies. Additionally, in our written testimony, Consumer Reports detailed for the Department seven recommended Undertakings, designed to protect consumer interests in the event that the Department approved the merger. They centered around: 1. Ensuring health insurance rates are fair and justified. 2. Protecting and enhancing provider networks. 3. Improving health plan quality and consumer satisfaction. 4. Protecting consumer privacy. 5. Dedicating staffing to transition issues. Although Consumer Reports is not privy to the closed negotiations between DMHC and the merging corporations, we believe Consumers Reports played an important role in the conversation and that our input is reflected. For example, the following agreements to: - keep premium rate increases to a minimum and not to increase premiums because of the acquisition; - correct all uncorrected deficiencies within twelve months; - improve its performance in meeting geographic access to healthcare providers; - take tangible steps to improve and maintain its OPA star ratings by 2021; and - maintain key functions and management in California for a period of five years;

4. Please attach your time and billing record in the "Add Attachment" box below. In the time and billing record, include the hourly rate of compensation for each witness or advocate and a justification for each hourly rate, which may include copies of or citations to previously approved hourly rate; and each witness or advocate's resume or curriculum vitae. The time and billing record should show the date and exact amount of time spent on each specific task in thirty (30) minute increments, as defined in California Code of Regulations, Title 22, Section 1010(d)(3).

Document Name	Date Uploaded	Uploaded By	
Betsy Imholz resume	1/4/2019 10:36:13 AM	Dena Mendelsohn	View
Dena Mendelsohn resume	1/4/2019 10:42:42 AM	Dena Mendelsohn	View
CVS Aetna time and billing record	1/4/2019 10:58:05 AM	Dena Mendelsohn	View

5. Clear and concise statement of participants interest in the proceeding which explains why participation is needed to represent the interests of consumers

Mergers in the healthcare sector - especially those that create large corporations that straddle especially wide swaths of how healthcare is accessed, such as with CVS and Aetna - pose a threat of increased premiums, diminished choice, and, in this case, eroded privacy. They also threaten to reduce the incentive to improve quality and innovation. Because this is a complicated and nuanced issue on which Consumer Reports has expertise, both nationally and in California, our mission dictates that we advocate for consumers in order to balance out the robust panel of attorneys representing the plans.

6. The information contained in the Petition to Participate remains true and correct to the best of the knowledge of the person verifying the information.

Yes

I am authorized to certify this document on behalf of the applicant. By entering my name below, I certify under penalty of perjury under the laws of the State of California that the foregoing statements within all documents filed electronically are true and correct and that this declaration was executed at SAN FRANCISCO (City), CA (State), on January 04, 2019.

Enter Name: Dena Mendelsohn

Elizabeth Imholz, JD

Director of Special Projects

Consumers Union, 1535 Mission Street, San Francisco, CA 94103

415-431-6747 x125 • 415-431-0906 Fax • Blmholz@consumer.org

EXPERIENCE

- Oct. 2006-present* **Special Projects Director, Consumers Union of U.S., Inc.**
Served as liaison on health policy work between CU's Advocacy and Editorial Divisions. Provides strategic advice on, develops and leads consumer engagement-oriented health projects. Manages multiple projects including California Safe Patient Network, Community Health Assets Project, and Consumer Voices in Health IT.
- Jan. 1999-Sept. 2006* **Director, Consumers Union of U.S., Inc., West Coast Office**
Developed and supervised implementation of policy agenda for regional office of national nonprofit; specialty focus on health policy and community engagement; provided leadership among consumer and other nonprofit groups across the country; developed and oversaw annual budget of \$2.1 million; led fundraising that resulted in \$10 million in foundation grants and other outside funds; supervised staff of 16; engaged in and supervised lobbying, media work, and development of reports and studies.
- Dec. 1994-Dec. 1998* **Senior Attorney/Policy Analyst, Consumers Union of U.S., Inc., West Coast Office**
Directed office's health team, focusing on access, quality and affordability of health care. Included extensive project development, media work, hearing testimony, advocacy before government agencies, trainings, lobbying and coordination of consumer group allies. Developed and managed highly successful project on enlisting local residents and their schools to assume leadership role in reaching out to families to enroll their children in government-sponsored health insurance.
- Nov. 1991 to Dec. 1997* **Director, Higher Education and Training Access Project, National Consumer Law Center**
Established national network of public interest groups and consumers involved in advocacy on behalf of low-income students on higher education and job training funding issues. Drafted proposals for reauthorization of federal Higher Education Act, the principal legislation dealing with federal involvement in postsecondary education, including for consumer representation in negotiated rulemaking. Secured consumer participants in subsequent negotiated rulemaking proceedings. From 1991 through 1994, the project operated under aegis of Legal Services for New York City and South Brooklyn Legal Services.
- June 1993 to Dec. 1994* **Special Consultant, California Council for Private Postsecondary and Vocational Education**
Acted as liaison between state agency that licenses proprietary trade schools and federal and other state agencies. Trained agency staff on student loan and other legal issues.
- Sept. 1990 to Nov. 1991* **Consumer Law Coordinator, Legal Services for New York City**
Organized and chaired consumer law task force for attorneys serving low-income consumers. Conducted training for citywide Legal Services staff and pro bono private attorneys. Served as consumer law resource for neighborhood programs. Lobbied state and federal agencies and legislatures for consumer law reform. Testified before committees of U.S. Senate and House of Representatives concerning fraudulent practices within proprietary trade school industry.
- Oct. 1984 to Nov. 1991* **Director, Consumer and Employment Unit, South Brooklyn Legal Services**
Supervised consumer and employment law unit of attorneys, paralegals, and law students. Initiated national vocational school watch project consisting of federal and state legislative and administrative advocacy; class action litigation; community education and engagement; and substantial media coverage. Engaged and coordinated services of pro bono counsel. Notable decisions: Minino v. Perales, 79 N.Y. 2d 883 (1992); U.S. v. Grundhoefer, et al., 916 F. 2d 788 (2d Cir. 1990); Figueroa v. Market Training Institute, et al., 562 A.D.2d 175 (2d Dept. 1990).
- Sept. 1980 to Sept. 1984* **Staff Attorney, South Brooklyn Legal Services**
Handled consumer, employment, and government benefits (Social Security Disability, public

Elizabeth Imholz, JD*Director of Special Projects*

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assistance, and unemployment benefits) cases before federal and state courts and administrative tribunals. Notable decisions: Robinson v. Secty of Health and Human Services, 733 F. 2d 255 (2d Cir. 1984); Dartmouth Plan, Inc. v. Valle, 117 Misc. 2d 534 (Sup. Ct. Kings Co. 1983).

- Jan. 1979 to Jan. 1980* **Research Assistant, Professor Arthur Kinoy, Rutgers School of Law**
 Researched and wrote memoranda on constitutional and civil rights issues. Helped compile materials for Professor Kinoy's book, Rights on Trial (1983).
- Summers, 1978 and 1979* **Law Clerk, Reproductive Freedom Project, American Civil Liberties Union Foundation**
 Researched and wrote briefs, legal memoranda, motions, and affidavits for federal litigation on reproductive rights.
- May 1976 to Sept. 1977* **Legislative Assistant, Office of the City Council President**
 Assisted in development of Ombudsman Office to handle citizen complaints against New York City agencies. Wrote reports for New York City Charter Revision Commission. Analyzed contracts presented for approval by Board of Estimate and ordinances introduced before City Council.

EDUCATION

- June 1980* **Rutgers University School of Law, Newark, New Jersey**
Juris Doctorate
 Clinical Experience: Women's Rights Litigation Clinic (1978)
 Urban Legal Clinic (1980)
 Honors: Articles Editor, *Women's Rights Law Reporter*, (1979-1980)
 G.A. Moore Prize for distinguished work in equal employment opportunity law.
- May 1976* **Columbia University, New York, New York**
Bachelor of Arts, Political Science and Urban Studies
 Honors: *Magna Cum Laude*
 Columbia University Scholarship (1973-1976)
 Phi Beta Kappa

BAR MEMBERSHIPS

- New York State (1981)
- Federal District Court, Southern and Eastern Districts of N.Y. (1981)
- Federal Court of Appeals, Second Circuit (1989)

PROFESSIONAL AWARDS, HONORS, MEMBERSHIPS

- National Consumer Law Center, Vern Countryman Consumer Law Award (1996): For "outstanding efforts to strengthen and affirm the rights of low-income Americans through the practice of consumer law."
- Association of the Bar of the City of New York, Legal Services Award (1991): For "outstanding work in providing civil legal assistance to the poor in New York City and equal access to justice."
- California Department of Managed Health Care, Advisory Committee on Managed Care, Gubernatorial Appointee (2000-2005).
- U.C.L. A. California Health Information Survey, Advisory Board Member.
- Insure the Uninsured Project Award (2009): For "Thoughtful Leadership on Value Purchasing and Quality Improvement."

PUBLICATIONS

- *Caveat Venditor*, a New York consumer law manual, with Stephen Newman, Professor of Law at New York Law School (1994).
- "Jobs, Education, Employment and Training," *Clearinghouse Review*, January 1994 co-author on advocacy opportunities.

Dena B. Mendelsohn

1535 Mission Street, San Francisco, CA 94103

Dena.Mendelsohn@consumer.org ♦ 415.431.6747 (office)

EXPERIENCE

2014-present

Senior Policy Counsel, Consumer Reports (f.k.a. Consumers Union)

Staff Attorney (2015-2017); Policy Analyst (2014-2015)

Full-scope policy analyst portfolio covering federal and state health policy related to health insurance coverage and Medicaid policy, such as Affordable Care Act (ACA) implementation and repeal/replace efforts, health insurance rate review, medical loss ratio, inaccurate provider directories, health information technology, health privacy, and health sector mergers. Formulation of policy positions, providing analysis, recommendations, and strategic thinking for senior leadership. Lead policy response to rapidly evolving landscape of federal health care reform, review of proposed legislation, drafting of explanatory materials for internal and external use. Represent the organization at stakeholder and public meetings, regulatory hearings, conferences, panel discussions, and in the media. Cultivate a national consortium of experts and advocates on the topic of health insurance rate review. Work cross-functionally with teams in remote offices as well as across silos to leverage resources within the organization and to amplify position. (Registered lobbyist in California.)

2011-2013

Policy Analyst, Pacific Business Group on Health

Worked with stakeholders and experts nationwide to improve the quality, safety, efficiency, and patient-reported outcomes of health care. Ad hoc assignments related to employer wellness programs, membership and press communications, and creation of policy presentations for leadership. Review of draft regulations on the topic of digital health/health IT regulations, and other federal rulemaking, and drafting of comment letters in collaboration with colleagues. Support representatives on four NQF committees. Grant-related project management.

2008-2010

Budget and Planning Analyst II, State of Missouri

Office of Administration, Division of Budget and Planning

Tasked with educating the Governor's Office on all pending legislation related to three major statewide departments as well as singularly managing budgets totaling approximately \$800 million. Represented the Governor's budgeting office in diverse settings with various stakeholders. Developed budget recommendations including drug court funding, responses to an influx in the prison population, and budget shortfalls for public attorneys. Engaged in the challenging work of budget cuts during a national economic crisis.

2005-2006

Private Practicing Attorney, O'Gorman & Sandroni, P.C.

Practice primarily estate law and general litigation. Conceptualized and developed firm website, marketing materials.

Dena B. Mendelsohn

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Dena.Mendelsohn@consumer.org ♦ 415.431.6747 (office)

EDUCATION

- May 2008 **Saint Louis University**, St. Louis, Missouri
Master of Public Health (focus: health policy)
Honors and Activities
Passed comprehensive exams with great distinction (sole recipient)
Alpha Delta Chapter of Delta Omega – The Honorary Public Health Society
The Health Policy Outstanding Student Award recipient
Vice President, Graduate Students in Health Policy and Advocacy
Alpha Epsilon Lambda (AEL) Honor Society, based on academics (gpa 3.97),
leadership, recommendations
- May 2005 **Washington University**, St. Louis, Missouri
Juris Doctorate
Clinical Experience: Environmental Law Clinic (2004)
Honors and Activities:
Merit tuition scholarship award
Dean's List
CALI Award for highest grade in Biomedical Ethics writing seminar course
Excellence Award in Oral Advocacy
Credited for contribution in two legal treatises
- May 2002 **Emory University**, Atlanta, GA
Bachelor of Arts, English and Creative Writing
Honors and Activities:
Magna Cum Laude
Dean's list
Leader of the Year award

BAR MEMBERSHIPS

- Missouri (2005, currently inactive status)

PROFESSIONAL AWARDS, HONORS, MEMBERSHIPS

- National Quality Forum (NQF) Health IT Safety Committee (2015-2016)
- Project Advisory Committee, Health Insurance Rate Watch, A Project of OSPIRG Foundation (2016-present)

**Consumer Reports Time and Billing Record for Award of Advocacy and Witness Fees
Acquisition of Aetna by CVS**

Hourly rates are based on the Intervenor Compensation Rates set by the Public Utilities Commission.

DENA MENDEL SOHN, SENIOR POLICY COUNSEL ATTORNEY -- RATE \$350/hour		
Date	Description	Time spent (to half hour)
4/25/18	Background research on CVS and Aetna, testimonies before Congress.	4
4/26/18	Draft written testimony for DMHC hearing	5
4/27/18	Draft written testimony for DMHC hearing	5
4/30/18	Meeting with Health Access to coordinate testimony	0.5
5/1/18	Preparation of oral testimony for DMHC public meeting	0.5
5/2/18	Attended DMHC hearing re proposed merger of Anthem and Cigna, presented oral testimony on the impact to consumers.	2
5/2/18	Commute to and from the DMHC hearing	4
5/4/18	Final revisions to written testimony, including edits and updates following public meeting.	2
TOTAL		\$ 8,050.00

ELIZABETH M. IMHOLZ, Special Projects Director -- RATE: \$425/hour		
Date	Description	Time spent (to quarter hour)
5/1/18	Review written testimony	3
TOTAL		\$ 1,275.00

TOTAL AWARD REQUESTED	\$ 9,325.00
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