

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN DEVORE : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA, et al. : NO. 00-3598

MEMORANDUM AND ORDER

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE February 20, 2004

We review the history of this case only briefly here as we have set forth the facts in the opinion disposing of the post-verdict motions. After an eight day trial in this Title VII / §1983 case, the jury returned a verdict for the Plaintiff against the City of Philadelphia, John Timoney, John Norris, Thomas Healey, and Joseph Sweeney. Although the jury did not find the Defendants liable for racial discrimination, they did find that the Plaintiff's civil rights had been violated.¹ After the court molded the verdict, the Plaintiff's award was \$354,167, not including interest. We now consider the Plaintiff's Petition for Attorneys' Fees.

The Plaintiff has requested a total of \$233,540 in attorneys' fees and \$6,719.71 in costs. The Defendants object to the fees and costs for several reasons: (1) the hourly rates charged by counsel are not reasonable and are not supported by sufficient evidence; (2) the Plaintiff was not completely successful in his suit; and (3) the hours charged are not reasonable.

Although the Defendants argue that the results of the litigation do not support the conclusion that Plaintiff was "successful," we believe that a jury verdict for \$ 430,000, including punitive damages against the former Police Commissioner, does qualify the Plaintiff as the

¹Prior to the court's ruling on the post-verdict motions, the parties settled the case. Due to a breach of the settlement agreement, the Plaintiff sought to vacate the settlement, which the Court will do in an opinion filed simultaneously with this Memorandum.

prevailing party for purposes of an award of attorneys' fees. If the Plaintiff was not the prevailing party, as the Defendants now allege, one wonders why the Defendants sought a new trial.

I. Lodestar

The logical starting point for determining attorneys' fees is the number of hours expended multiplied by a reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). This calculation results in the "lodestar," which is presumptively correct but which may be adjusted should the court find such adjustment appropriate. Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990). In reviewing fee requests, Plaintiff's counsel have the burden of showing that their fee request is proper and supported by evidence. Id. "Once the adverse party raises objections to the fee request, the district court has a great deal of discretion to adjust the fee award in light of those objections." Id.

a. Hourly Rate

"Generally, a reasonable hourly rate is to be calculated according to the prevailing market rates in the relevant community." Rode, 892 F.2d at 1183. In making this determination, "the court should assess the experience and skill of the prevailing party's attorneys and compare their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." Id. Here, Plaintiff's counsel have requested an hourly rate of \$300 for Mr. Puricelli, and \$350 for Mr. Erba. Both attorneys have provided declarations in support of their fee request. Mr. Erba supplemented his request with a fee award in a civil rights case, wherein he requested and was granted a billing rate of \$350 an hour. See Bianchi v. City of Philadelphia, 99-2409 (Order of May 28, 2002, Brody, J.), attached to Petition

as Exhibit D1. Both provide affidavits in support of their hourly rates.

With respect to Mr. Erba, the Defendants argue that, unlike the Bianchi case, Mr. Erba did not appear in court, draft pleadings, or conduct discovery in this case. “In the instant matter, his participation can best be described as Mr. Devore’s stealth attorney.” See Defendants’ Response, at 10. Thus, considering his limited role in this case, argue the Defendants, the hourly rate of \$350 is unjustified. We disagree. Although Mr. Erba was not the lead counsel in this case, on the occasions when he participated in conferences with the court, he was well versed in the case and the applicable law. Mr. Erba provides the statements of two reputable attorneys who are familiar with him and prior cases of his. They attest to the fact that \$350 per hour is a reasonable fee considering his experience and the rate for such expertise in the field of employment law. See Verified Statements of Stephen Pennington and Gerald Williams, attached to Petition as Exhibit E. We conclude that Mr. Erba’s hourly rate is reasonable.

The Defendants vehemently take exception to Mr. Puricelli’s fee of \$300 per hour. The Defendants begin with the following: “Mr. Puricelli’s requested hourly rate is not reasonable in light of the quality of his written work and the end results of this litigation.” See Response, at 2. With respect to the former, we could not agree more. With respect to the latter, we disagree wholeheartedly.

Mr. Puricelli’s written work is careless, to the point of disrespectful. The Defendants have described it as “vague, ambiguous, unintelligible, verbose and repetitive.” See Response, at 2. We agree. Although the Defendants have taken issue with some of the typographical errors present in Mr. Puricelli’s filings, the problems with his pleadings have gone beyond typos.

At the outset, the court ordered the Plaintiff to file an amended complaint because

paragraphs and pages were missing from that filed with the court and sent to defense counsel. Moreover, although we recognize the complicated nature of this case, lying at the crossroads of § 1983 and Title VII, some of the Amended Complaint was nearly unintelligible. In ruling on the Motion to Dismiss the Amended Complaint, the Honorable Stewart Dalzell, to whom the case was assigned prior to its referral to the undersigned, noted that the court was “puzzled” by some of the Plaintiff’s arguments in opposition to the motion to dismiss and found others “odd.” See Order on Motion to Dismiss (Jan. 30, 2001, Dalzell, J.). Mr. Puricelli’s lack of care caused the court, and I am sure, defense counsel, to expend an inordinate amount of time deciphering the arguments and responding, accordingly.

As previously mentioned, Mr. Puricelli’s filings are replete with typographical errors and we would be remiss if we did not point out some of our favorites. Throughout the litigation, Mr. Puricelli identified the court as “THE UNITED STATES DISTRICT COURT FOR THE EASTER [sic] DISTRICT OF PENNSYLVANIA.” Considering the religious persuasion of the presiding officer, the “Passover” District would have been more appropriate. However, we took no personal offense at the reference. In response to the attorneys’ fees petition, the Defendants note that the typographical errors in Mr. Puricelli’s written work are epidemic. In response to this attack, Mr. Puricelli writes the following:

As for there being typos, yes there have been typos, but these errors have not detracted from the arguments or results, and the rule in this case was a victory for Mr. Devore. Further, had the Defendants not tired [sic] to paper Plaintiff’s counsel to death, some type [sic] would not have occurred. Furthermore, there have been omissions by the Defendants, thus they should not case [sic] stones.

If these mistakes were purposeful, they would be brilliant. However, based on the history of the case and Mr. Puricelli’s filings, we know otherwise. Finally, in the most recent letter to the

court, asking that we vacate the settlement agreement, Mr. Puricelli identifies the undersigned as “Honorable Jacon [sic] Hart.” I appreciate the elevation to what sounds like a character in the *Lord of the Rings*, but alas, I am but a judge.

In his reply to the Defendants’ response to the petition for attorneys’ fees, Plaintiff’s counsel argues that his typographical errors require no more than a \$20 per hour reduction. We disagree. As we previously stated, Mr. Puricelli’s complete lack of care in his written product shows disrespect for the court. His errors, not just typographical, caused the court a considerable amount of work. See infra, at note 5. Hence, a substantial reduction is in order. We believe that \$150 per hour is, in fact, generous.

As for the time Mr. Puricelli spent in court, considering the quality of his written work, the court was impressed with the transformation. Mr. Puricelli was well prepared, his witnesses were prepped, and his case proceeded quite artfully and smoothly. Although Mr. Puricelli fails to state what hourly rate he customarily charges, the statements that he provides in support of his fee do support such a rate. In our experience, \$300 - \$350 is on the high side of the customary rate, however considering the complexity of this case, we believe \$300 is justified for the work that Mr. Puricelli did in court.

b. Hours Expended

_____ Mr. Erba

In responding to the attorney fee petition, the Defendants also complain that the hours charged were not reasonable. Although the Defendants have expended a great number of pages addressing Mr. Puricelli’s hours, the only claim by the defense with respect to Mr. Erba is that he was a “stealth attorney,” who did not enter his appearance until March 17, 2003. We decline to

reduce the number of hours Mr. Erba billed based on his delayed entry of appearance. Mr. Erba had participated in conferences with the court prior to that date and was obviously well versed in the facts and law of the case. We find no justification for any reduction.

Mr. Puricelli

As previously mentioned, the Defendants have spent a great deal of time challenging the hours Mr. Puricelli put into this case. First, they claim that 12.6 of the hours billed by Mr. Puricelli are for activities ordinarily performed by a paralegal, messenger, or secretary. See Exhibit A, attached to Response to Fee Petition. After reviewing these entries, we agree. Plaintiff's counsel responds that, as a solo practitioner, he has no choice but to perform these duties. The Honorable Berle Schiller recently addressed this issue and concluded that clerical tasks should not be billed at a senior associate or paralegal rate. "Since the costs of clerical work, such as filing and copying, are ordinarily considered to be part of an attorney's rate as office overhead, they will not be compensated." Sheffer v. Experian Information Solutions, Inc., 290 F.Supp.2d 538, 549 (E.D. Pa. 2003)(citing Doe v. Ward, No. 98-1746, 2003 U.S. Dist. LEXIS 16651, at *31, 2003 WL 22187170, at *10 (W.D.Pa. Sept.16, 2003) (finding that clerical tasks are office overhead and therefore incorporated into attorney's rate.) See also Missouri v. Jenkins, 491 U.S. 274, 285-88, 109 S.Ct. 2463, 105 L.Ed.2d 229 (1989) (holding that "purely clerical or secretarial tasks should not be billed at a paralegal rate, regardless of who performs them"); see also Halderman v. Pennhurst State Sch. & Hosp., 49 F.3d 939, 942 (3d Cir.1995) (holding that it is not appropriate to allow "the wasteful use of highly skilled and highly priced talent for matters easily delegable to non-professionals"). Thus, these hours will not be

compensated.²

Next, the Defendants complain about inflated time on three specific dates for which Mr. Puricelli billed nineteen hours each day. The Defendants argue that this is unreasonable considering the lack of specificity in the description and the fact that this exceeds any other single day's billable hours. Looking at Mr. Puricelli's submission, the activities for these dates are described as: "Prep for trial, trial, prep for next day." The court is well aware of Mr. Puricelli's activities from 9:00 a.m. to 5:00 p.m. on these days as they are the dates of the trial. Moreover, we are sure that certain pre-trial rulings affected Mr. Puricelli's strategy in presenting his case. Thus, he was required to regroup after those decisions. Finally, considering the fact that Mr. Puricelli failed to abide by the court's Scheduling Order for pretrial submissions, we are not surprised that he was "burning the midnight oil" to make up for lost time.

Next, the Defendants argue that Mr. Puricelli expended 10.9 hours for activities unrelated to this action. The Defendants claim that 3.6 hours were listed for the criminal expungement hearing on November 1, 2002. Due to the lack of specificity, the Defendants argue that it is impossible to assess whether this expungement hearing dealt with the theft of overtime, which is related to this civil action, or another charge, which, they argue, would not be related to this civil action. Considering the facts of this case, of which we are so well aware, and the interrelationship between the underlying facts in pressing the retaliation claim, we believe this time is related to the retaliation claim.

We agree with the Defendants that the .5 hour spent reviewing newspapers is more akin

²We note that one of the entries is compound. It includes both drafting a letter and hand delivering it on January 24, 2003, for a total of 1.3 hours. We will exclude .3 of this entry for a total reduction of 11.6 hours in this category.

to work a paralegal would do. Therefore, we will reduce the rate for this time to \$95.00.³ See Halderman, supra; Lewis v. Babbitt, 1999 WL 551878 *2 (E.D. Pa. Jun. 11, 1999)(solo practitioner should not bill the prevailing market rate for services that could be reasonably billed at a lower rate).

Next, the Defendants argue that Mr. Puricelli lists 6.6 hours for activities without specifying what, if any, relationship they have to this case. Although these entries were quite vague in the petition for attorneys' fees, counsel has adequately explained the relationship of these activities with the trial of this case in his reply. We will, therefore, permit these hours.

Next, the Defendants argue that the time Mr. Puricelli spent observing Mr. Devore's arbitration should be disallowed. Mr. Puricelli played no active roll in the arbitration. In response to the objection, Mr. Puricelli argues that attending the arbitration allowed him to assess Mr. Miller's performance: "how he would prepare his case, present his case, and make arguments about the evidence." See Plaintiff's Reply, at 7. We reject Plaintiff's justification. If we were to accept such an argument, counsel could easily sit in on any trial to "get a feel" for his opposition. Moreover, we note that Plaintiff's counsel spent an additional 8.3 hours reading the arbitration transcripts on November 19, 2002. We will strike the 9 hours spent on March 7, 2002, but will permit the .2 hour in August when counsel discussed the arbitration decision with defense counsel. We can understand the necessity for such discussions to determine trial strategy.

³Although the Defendants argue that this time should not receive any compensation because Mr. Puricelli has not identified how this activity is related to the case, we will not strike this time entirely. In reviewing the pleadings and exhibits in this case, the court finds that newspaper articles did play a role in the litigation of this case. See Exhibits EE and FF, attached to Plaintiff's Opposition to Defendants' Summary Judgment Motion (reinstatement of Brady and DiLacqua; termination of Devore).

The Defendants also ask the court to disallow the time Plaintiff's counsel spent preparing an unsuccessful motion for summary judgment. We decline to make such a reduction. The motion at issue involved a due process challenge to the proceedings surrounding the Plaintiff's termination. In fact, the Defendants were successful in their cross-motion on the same issue. Although the Plaintiff was not successful, the motion could hardly be called frivolous. Moreover, the court did use the Plaintiff's motion in ruling on the Defendants' motion. Hence, these hours will not be reduced.

Next, the Defendants challenge a total of 34.8 hours that the Plaintiff's counsel billed for activities that were in response to court directives. As previously mentioned, the Plaintiff was required to file an Amended Complaint because the original Complaint was missing paragraphs and pages. Since the time spent amending the complaint and filing it with the court was necessitated by counsel's carelessness, we will strike the entries relating to the Amended Complaint, a total of 12.4 hours. Although the Defendants have also identified time related to the initial complaint, we will permit those hours.

Similarly, the Defendants request a reduction for the hours expended by Plaintiff's counsel in responding to a motion to compel discovery. Reviewing the filings, that motion was granted in part and denied in part. Plaintiff objected to the compound nature of the interrogatories and was partially successful in his objections. Therefore, we see no need for a reduction.

Next, the Defendants challenge the hours spent on matters involving the District Attorney's Office. Since the District Attorney's Office was not a party and, according to the Defendants, the Plaintiff could have obtained the requested documents from his criminal

attorney, they argue that the court should reduce counsel's hours by 20.5 hours. We will decline to make such a reduction. The information that Plaintiff sought was necessary to formulate the discrimination claim and establish comparator evidence.⁴

On April 14, 2003, Mr. Puricelli filed a "Memorandum in Response to the Defendants' Response on the Issue of Attorney Fees," in which he includes a petition for an additional 30.8 hours. Although Defendants' filed a Sur Response, it is not clear that they have taken the opportunity to address this additional time. Because we anticipate an additional fee petition based on the time counsel has now expended due to the City's breach of the settlement agreement, we will not address these hours in this opinion.

c. Calculation

_____The result of the deductions from Mr. Puricelli's hours and reductions to his billing rate is as follows:

| | | |
|---|--------|-----------|
| Hours Excluded Completely | 32.1 | 0 |
| Written Work to be Billed at \$150 per hour | 209.67 | 31,450.50 |
| Work to be Billed at Paralegal Rate of \$95 | .5 | 47.50 |
| Work to be Billed at \$300 per hour | 470.43 | 141,129 |

This results in a total of \$172,627 for Mr. Puricelli. Mr. Erba's fee will not be reduced. He billed 56.8 hours at \$350 per hour for a total of \$19,880.⁵

⁴Although the Defendants also object to counsel billing for "participating in medication," we will permit the Plaintiff's counsel to bill for participating in mediation. See Discussion of typographical errors, supra.

⁵As an example of the additional work that was caused by counsel's carelessness, Mr. Erba's spreadsheet, attached to the Petition for Fees, lists 56.8 hours for a total of \$19,880. Yet, in the Petition for Fees, the digits in the number of hours is transposed to 58.6 hours and the total

Thus, the total award of attorneys' fees is \$192,507.

II. Costs

Plaintiffs' counsel have also filed a bill of costs, to which the Defendants object. In general, the Defendants argue that the costs are improper because Mr. Erba presented the Bill of Costs, yet he did not enter his appearance until the jury had returned its verdict. We reject this argument. It is clear that the costs listed in Mr. Erba's "Statement of Expended Costs," were incurred in this case. More specifically, the Defendants claim Plaintiff's counsel have failed to support the amount charged for subpoena fees and exemplification and copies. In response, the Plaintiff's counsel have provided adequate support for all but \$40.00 for a subpoena fee to the Equal Employment Opportunity Commission. The cancelled check that was promised in the Response to Defendants' Objections has never been received. Thus, we will reduce the costs by \$40.00.

An appropriate Order follows.

is \$17,535. See Petition for Fees, at 6. The court is not sure how counsel came to this number as the total for 58.6 hours would be \$20,510 and the total for 56.8 hours is \$19,880.

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ORDER

AND NOW, this 20 day of February, 2004, upon consideration of the Plaintiff's "Motion in Support of Plaintiff's Request for Attorney Fees and Litigation Costs," the Response, the avalanche of filings that followed the Request, and for the reasons stated in the accompanying Memorandum, IT IS HEREBY ORDERED that Plaintiff's Motion is GRANTED WITH MODIFICATION. The Defendants' request for a reduction in the lodestar is GRANTED IN PART AND DENIED IN PART. Plaintiff is awarded fees totaling \$192,507. Counsel may file a supplemental request for fees for the time expended on the case after March 18, 2003. Costs in the amount of \$6,679.71 are also awarded to the Plaintiff.

BY THE COURT:

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE

