

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

TRACY GARNER and DALE GARNER	:	CIVIL ACTION
	:	
vs.	:	
	:	
POLICE OFFICER LAWRENCE A. MEOLI; and POLICE OFFICER : GERALD M. MCTEAR	:	NO. 96-1351
	:	

ORDER AND MEMORANDUM

ORDER

AND NOW, to wit, this 31st day of August, 1998, upon consideration of Plaintiffs' Interim Motion for Attorneys' Fees (Doc. No. 122, filed June 1, 1998), and Response of Defendants, Lawrence H. Meoli and Gerald M. McTear to Plaintiffs' Interim Petition for Attorneys' Fees (Doc. No. 123, filed June 11, 1998), for the reasons set forth in the attached Memorandum, **IT IS ORDERED** that Plaintiffs' Interim Motion for Attorneys' Fees is **GRANTED IN PART** and **DENIED IN PART**, as follows:

Plaintiffs' are awarded attorneys' fees calculated in accordance with the accompanying Memorandum. The parties shall, within ten (10) days, submit a stipulation calculating such fees in accordance with the Memorandum. Where reductions are ordered in hours spent on tasks and more than one person worked on that task, such reduction shall be on a *pro rata* basis.

Plaintiffs' are awarded \$1,519.12 for costs incurred through April 30, 1998; this award is **WITHOUT PREJUDICE** to counsel's right to seek a supplemental award for expert witness and travel expenses not allowed in this Order by submitting affidavits detailing (a) the number of days its experts attended court and the amounts, if any, of

those witnesses' travel and subsistence expenses and (b) counsel's travel expenses and the reasons for the travel.

IT IS FURTHER ORDERED that plaintiffs' counsel may submit a supplemental motion for attorneys' fees at the conclusion of this matter.

MEMORANDUM

1. Background: Plaintiffs case arose out of an incident on June 29, 1994 in which they alleged that defendants – Lawrence H. Meoli and Gerald M. McTear – unlawfully arrested plaintiff Tracy Garner while using excessive force, illegally searched his home and thereafter maliciously prosecuted him, all in violation of 42 U.S.C. ' 1983. **Plaintiff Dale Garner, Tracy Garner's wife, claimed loss of consortium.**

The case was tried to a jury, commencing on April 6, 1998. The jury returned a verdict (a) in favor of plaintiff Tracy Garner and against defendant Police Officer Lawrence A. Meoli in the amount of \$78,250 in compensatory damages and \$500,000 in punitive damages, (b) in favor of plaintiff Tracy Garner and against defendant Police Officer Gerald M. McTear in the amount of \$75,000 in compensatory damages and \$250,000 in punitive damages, (c) in favor of plaintiff Dale Garner and against defendant Police Officer Lawrence A. Meoli in the amount of \$46,500 in compensatory damages and (d) in favor of plaintiff Dale Garner and against defendant Police Officer Gerald M. McTear in the amount of \$46,500 in compensatory damages. On April 15, 1998, this Court entered judgment on

the jury verdict.¹

Plaintiffs seek an award of fees and costs pursuant to 42 U.S.C. ' 1988.

2. **Attorneys' Fees:** To recover attorneys' fees, a party must establish (1) that it prevailed and (2) that the fee request is reasonable. There is no dispute in this case that plaintiffs prevailed. The issue, then, is the reasonableness of their fee request. The initial burden rests with the prevailing party to demonstrate the reasonableness of the fee request; to meet that burden, the fee petitioner must "submit evidence supporting the hours worked and rates claimed." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). Once that burden is met, the party opposing the fee request assumes the burden and must "challenge, by affidavit or brief with sufficient specificity to give fee applicants notice, the reasonableness of the requested fee." Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990) (citing Bell v. United Princeton Properties, Inc., 884 F.2d 713 (3d Cir.1989)). "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." See id. (citing Bell, 884 F.2d at 721).²

Defendants argue that plaintiffs have failed to meet, with the required specificity, their initial burden of submitting evidence of the amount of time

¹ For a more detailed description of the facts, see the Court's separate Memorandum and Order, dated August 31, 1998, deciding defendants' Omnibus Post-Trial Motion.

² The Court notes at the outset, however, that a "district court cannot 'decrease a fee award based on factors not raised at all by the adverse party.'" Rode, 892 at 1183 (quoting Bell v. United Princeton Properties, Inc., 884 F.2d 713, 720 (3d Cir.1989)).

worked. Defendants argue that the printout, attached as Exhibit A to the within Motion, makes it “impossible to determine how much time was spent on a particular task.” The Third Circuit has said that:

‘it is not necessary to know the exact number of minutes spent nor the precise activity to which each hour was devoted nor the specific attainments of each attorney.’ [Lindy Bros. Builders, Inc. of Phila. V. Amercian Radiator & Standard Sanatory Corp., 487 F.2d 161, 167 (3d Cir. 1973)]; Pawlak v. Greenawalt, 713 F.2d [972,] 978 [(3d Cir. 1983)]. A fee petition is required to be specific enough to allow the court ‘to determine if the hours claimed are unreasonable for the work performed.’ Pawlak, 713 F.2d at 978.

Rode, 892 F.2d at 1190.

A review of the time sheets submitted by plaintiffs’ counsel demonstrate that they meet the standard set forth in Rode. The records disclose with sufficient specificity who worked on what aspect of the case and for how long, they also conform to the practice of other law firms in recording billable hours; more importantly, they are specific enough for the Court to determine whether the hours claimed are reasonable. The Court therefore turns to that question.

In statutory fee cases, a reasonable fee is calculated using the lodestar method: “The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” Hensley v. Eckerhart, 461 U.S. 424, 433 (1983).

a. Billing Rate

Defendants argue that \$280 an hour for Mr. Cooper’s time is an

excessive fee in light of the forty one hours billed to “background,” “1983 background material,” “research,” and “Civil Rights” when considering counsel’s experience. Defendants also contend that the associate, Molly Peckman, who billed at a rate between \$155 and \$175, charged excessively in light of the fact that she spent a considerable amount of time performing ministerial functions and that her experience is unspecified. Defendants note too that a 1995 law school graduate, Lorann B. Wood, billed at a rate of \$135.00, and a 1997 law school graduate, Rachel L. Cohen, billed at a rate of \$90.00. Defendants suggest that those rates are also excessive in light of the associates’ experience.

Generally, a reasonable hourly rate is to be calculated according to the prevailing market rates in the relevant community. Blum v. Stenson, 465 U.S. 886, 895 . . . (1984). Thus, 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. Student Public [Interest Research Group of New Jersey, Inc. v. AT & T Bell Laboratories], 842 F.2d [1436,] 1447 [(3d Cir. 1988)]; Blum, 465 U.S. at 895 n. 11

Rode, 892 F.2d at 1183. The prevailing party bears the burden of demonstrating that the requested rate is the “market rate.” While the self-designated billing rate of counsel carries some weight, it is not dispositive. See Public Interest Research Group of New Jersey, Inc. v. Windall, 51 F.3d 1179, 1185 (3d Cir. 1995). The burden “may be satisfied by the submission of affidavits of attorneys with personal knowledge of the hourly rates customarily charged in the relevant market.” Becker v. ARCO Chemical Co., -- F.Supp.2d. --, 1998 WL 420701, *3 (July 22, 1998 E.D. Pa.) (citing

Washington v. Philadelphia Court of Common Pleas, 89 F.3d 1031, 1036 (3d Cir. 1996)).

In this case, plaintiffs' counsel has submitted the affidavit of Barry H. Frank, Esq., a partner at Mesirov Gelman Jaffe Cramer & Jamieson, LLP, the firm retained by plaintiffs. Mr. Frank chairs the firm's Finance Committee in which capacity he recommends billing rates for the firm's attorneys and paralegals based on "knowledge, experience, age, length of service, and background of the attorney or paralegal. To the extent information is publicly available . . . information regarding billing rates of other firms in the Philadelphia area are given significant consideration in the setting of billing rates at Mesirov Gelman Jaffe Cramer & Jamieson, LLP." Affidavit of Barry H. Frank, Esq., dated June 1, 1998.

While this affidavit is not a conclusory statement that the rates charged were "reasonable," it only just escapes that label. Importantly, it only purports to set forth the rates attorneys at Mesirov Gelman generally charge, it does not purport to establish the relevant market rates for attorneys specifically litigating civil rights suits.

Judge Robreno, of this district, recently conducted a survey of the rates awarded to civil rights attorneys in connection with a motion for fees and costs. His conclusion was that "generally attorneys representing plaintiffs in civil rights cases are awarded an hourly rate of between" \$150 to \$275, depending on the attorneys' experience and the complexity of the case. Becker, 1998 WL 420701 at *6-7 (footnote omitted). The Court

concludes that these figures accurately reflect the market rate in the Philadelphia area for civil rights attorneys; it will, therefore, turn its attention to where within this range of \$150 to \$275 plaintiffs' counsel falls.

The Court agrees with defendants that \$280 per hour for Mr. Cooper's time is excessive. In determining an appropriate rate, the Court considers the kind of work done, the experience and skill of counsel and the complexity of the case. In light of Mr. Cooper's professed experience, charges by Mr. Cooper for time spent doing routine background research and file organization was unwarranted: "A Michaelangelo should not charge Sistine Chapel rates for painting a farmer's barn." Ursic v. Bethlehem Mines, 719 F.2d 670, 677 (3d Cir. 1983). Similarly, Mr. Cooper, although experienced in general civil litigation, did not specialize in civil rights litigation and this factor weighs against charging a fee of \$280.00 an hour – a fee beyond the top range normally awarded civil rights attorneys. On the other hand, this case involved a great deal of complicated factual research – particularly with respect to a forensic examination of a hole in the wall of plaintiffs' home and with respect to information necessary to pursuing plaintiffs' Monell claim – and raised difficult legal issues that occasioned extensive research on the part of the Court and a considerable amount of argument before and during trial. The Court concludes that the case was relatively complex, a factor which weighs in favor of a fee in the upper limit of the reasonable range. In light of these factors, the Court sets Mr. Cooper's reasonable hourly rate for all of the time charged at \$225.00.

The Court also agrees with defendants' that Mr. Cooper's associates charged excessive fees. There is no indication of Ms. Peckman's legal experience, and to the best of this Court's recollection, she did not appear before the Court at trial or in conferences. A rate of between \$155.00 and \$175.00 is excessive for an associate of unspecified background and experience in civil rights litigation and the Court accordingly sets her reasonable rate at \$125.00 per hour. Similarly, \$135.00 for a second or third year associate is excessive in a civil rights suit of this nature and the Court will therefore set Ms. Wood's hourly rate at \$100.00. For the same reason, Ms. Cohen's hourly rate is reduced from \$90.00 to \$80.00.³

b. Time Spent

In addition to arguing that the rates charged were not reasonable, defendants also contend that the some of the time expended by plaintiffs' counsel and counsel's staff was unreasonable. In determining whether the hours expended on a case are reasonable, the Court should exclude hours that are "excessive, redundant, or otherwise unnecessary." Rode, 892 F.2d at 1183 (citing Hensley, 461 U.S. at 433). Defendants argue that the following time spent by plaintiffs' counsel meets that definition:

The 79.6 hours doing "general research" should be considered
excessive and redundant since it is not attributed to any

³ The Court will not adjust the hourly rates of Mark Gottlieb, Jeffrey D. Hofferma or Kim Love or Eugene F. Chay as defendants did not challenge those rates. See, e.g., Rode, 892 at 1183 (holding that a "district court cannot decrease a fee award based on factors not raised at all by the adverse party" (internal quotation omitted)).

“particular pleading or trial preparation.”

Thirty-eight point nine (38.9) hours were spent in file review and organization, much of that done by a senior associate or partner; defendants argue that this is “grossly” excessive, particularly at the billing rate charged by counsel.

Two attorneys attended the deposition of Officer Meoli and a pretrial conference with the Court for a total of 22.9 hours. Because one attorney would have been sufficient, the time should be divided in half.

The 82.4 hours spent by counsel responding to defendants’ Motion for Summary Judgment was excessive, particularly the 17 hours attributed to research alone.

The 63 hours spent preparing the exhibit list is “incomprehensibly” excessive, particularly considering that plaintiffs’ counsel also billed 38 hours for general file organization and review.

The time billed for preparation of pretrial submissions – 108.3 hours – was excessive in light of counsel’s “alleged” experience in handling civil rights matters.

The 28 hours billed for review of citizen complaints was relevant only with respect to the claim against Tredyffrin Township, which claims were dropped, and plaintiffs’ counsel cannot, therefore, recover attorneys’ fees for this expenditure.

The Court rejects defendants’ argument with respect to the time

billed for review of citizens complaints since the claims against Tredyffrin Township were voluntarily dismissed only after the Township agreed to indemnify the officer defendants on the eve of trial. The Court also concludes that the 79.6 hours billed for “general research” was reasonable. However, the Court agrees with defendants that the other time billed was excessive or redundant and will reduce that time as follows:

The 38.9 hours for “file review” and organization are reduced to 20 hours.

There was no need to have two attorneys attend Officer Meoli’s deposition or the pretrial conference. Accordingly, the 22.9 hours billed are reduced to 11.5 hours.

The 82.4 hours spent responding to defendants’ Motion for Summary Judgment was excessive and the Court reduces that to 50 hours.

It was unnecessary to spend 63 hours producing the exhibit list and the Court, therefore, reduces that time to 30 hours.

The 108.3 hours spent preparing pretrial submissions was excessive and is reduced to 70 hours.

In light of the Court’s determination, the request of plaintiffs’ counsel for \$257,805.50 must be recalculated. The Court will not recalculate the fee itself but instead, the parties shall, within ten (10) days, submit a stipulation calculating such fees in accordance with the Memorandum. In recalculating their fee request in accordance with this Order, plaintiffs’

counsel shall, where more than one person worked on any of the tasks described above, reduce the hours as ordered above on a pro rata basis.

3. **Costs:** Civil rights litigants who succeed at trial are entitled to reimbursement for the “costs” connected with litigating the claim “as long as the costs are reasonably and necessarily incurred.” Becker, 1998 WL 420701 at *11 (citing Planned Parenthood of Southeastern Pennsylvania v. Casey, 869 F.Supp. 1190, 1201 (E.D. Pa. 1994)). Defendants challenge three components of plaintiffs cost request:

\$1,272.22 in travel expenses was unnecessary as there was no business that could not have been conducted over the telephone.

\$945.12 for courier, Federal Express and hand deliveries because any deliveries could have been made through the United States mail.

\$16,440.70 in expert witness fees because those costs are not recoverable.

When attorneys in the local community customarily bill their clients separately for them, the following expenses are recoverable under 42 U.S.C. ' 1988: (1) reproduction expenses; (2) telephone expenses of the attorney; (3) travel time and expenses of the attorney; and (4) postage. See Abrams v. Lightolier Inc., 50 F.3d 1204, 1225 (3d Cir.1995). Like attorneys' fees, these costs must be reasonable. See Becker, 1998 WL 420701 at *11. The Court concludes that the use of Federal Express, courier and messenger services are reasonable as customary expenses generally

employed in the hurley-burley of a litigation practice. It will, therefore, award plaintiffs' counsel request for \$945.12 in such expenses. However, the Court finds that the travel expenses sought by plaintiffs' counsel are insufficiently documented. It is not possible, on the basis of the records submitted, for the Court to determine the necessity of plaintiffs' counsel travelling to Pittsburgh. If they wish to recover these costs, plaintiffs' counsel must submit an affidavit detailing the travel expenses and the reasons for the travel.

The award of expert witness fees under 42 U.S.C. ' 1988 is governed by the Third Circuit's opinion in West Virginia University Hospitals, Inc. v. Casey, 885 F.2d 11, 34 (3d Cir. 1989), aff'd 499 U.S. 83 (1991). That case held that the award of costs for expert witnesses in ' 1983 cases is limited to what is provided by 28 U.S.C. ' 1821. Section 1821(b) provides that a "witness shall be paid an attendance fee of \$40 per day for each day's attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of such attendance or at any time during such attendance." 28 U.S.C. ' 1821(b). Section 1821 also permits a recovery for the costs of travel and a subsistence allowance for overnight stays of witnesses. See id. at 1821(c)-(d). The Court may not award anything for the costs of an expert witness in excess of that authorized by statute. See Becker, 1998 WL 42071, *12 ("[A]s a general rule, compensation paid in excess of the statutory per diem fee, mileage and

subsistence allowance is not taxable as costs.”); Surgner v. Blair, C.A. No. 95-5331, 1996 WL 284993, *5 (E.D. Pa. May 20, 1996) (“Except to the extent provided in [28 U.S.C.] ' 1920 and ' 1821, there is no statutory authority, pursuant to 42 U.S.C. ' 1988, to shift the cost of expert fees to the losing party in a ' 1983 civil rights action.”); Hedlund v. Easttown Twp, C.A. No. 89-2866, 1991 WL 8878, *7 (E.D. Pa. Jan. 28, 1991) (“In this circuit, however, one may award only \$[4]0.00 per day for an expert witness, absent specific statutory authority to the contrary.”).

Counsel has not provided the Court with affidavits demonstrating the number of days its experts attended court or the amounts, if any, of their travel and subsistence expenses. The Court cannot, therefore, calculate the appropriate award for the costs of expert witnesses. Accordingly, if plaintiffs’ counsel wishes to recover these costs, they must submit an affidavit to this Court detailing the number of days their experts attended court and the costs, if any, of those witnesses’ travel and subsistence expenses.

The Court has awarded plaintiffs’ counsel \$1,519.12 in costs⁴ without prejudice to counsel’s right to seek reimbursement for reasonable travel expenses and expert witness fees after submitting the appropriate documentation.

4. Conclusion: For the foregoing reasons, the Court has granted in part

⁴ This award was calculated by adding \$574.00 (the amount uncontested by defendants) to \$945.12 (the costs of Federal Express, courier and messenger services).

and denied in part plaintiffs' Motion and has awarded plaintiffs' counsel \$1,519.12 in costs. This award is without prejudice to the right of plaintiffs' counsel to seek reimbursement for costs associated with travel expenses and expert witness expenses after submitting appropriate documentation. Plaintiffs' counsel has also been awarded attorneys' fees which shall be calculated by the parties in accordance with this Memorandum.

BY THE COURT:

JAN E. DUBOIS