

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

AMITHA NANAYAKKARA, : CIVIL ACTION
Plaintiff :
 :
v. :
 :
EDWARD KRUG and :
TONYA SHUEY, :
Defendants. : NO. 95-CV-6418

MEMORANDUM & ORDER

Plaintiff in this matter, Amitha Nanayakkara ("Nanayakkara"), has filed a Motion to Add Prejudgment and Postjudgment Interest and a Motion for Attorney Fees and Costs Pursuant to 42 U.S.C. § 1988. In Findings of Fact and Conclusions of Law issued by the Court on March 17, 1998, the Court found that Defendant Krug had returned Nanayakkara from a half-way house to prison in retaliation for Nanayakkara's exercise of his First Amendment rights. Nanayakkara was awarded \$32,500.00 in compensatory damages.

Krug argues that the attorney fees provisions of the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(d), applies to and limits the amount available in Nanayakkara's petition for attorney fees. Krug further urges that all fees billed by Nanayakkara's attorneys are subject to the limiting provisions of the PLRA. Nanayakkara argues that the attorney fees provisions of the PLRA should not be applied retroactively to his case which was filed prior to enactment of the PLRA. Nanayakkara also argues that if the PLRA's attorney fees

provisions are to be applied retroactively, that portion of the PLRA is unconstitutional. The United States was allowed to intervene because Nanayakkara challenged the constitutionality of a federal statute. The United States urges that the PLRA is constitutional if applied to fees for work performed after the effective date of the PLRA, April 26, 1996. Finally, Nanayakkara argues that he is entitled to prejudgment interest, which Krug contests, and postjudgment interest, which has been paid. Nanayakkara believes that any interest should become part of his judgment, which would increase the amount of fees available under the PLRA. Oral argument and an evidentiary hearing were held on these issues.

Pamela Tobin ("Tobin") was appointed to represent Nanayakkara on December 1, 1995. At the time of her appointment, Tobin was an associate with the law firm of La Brum & Doak. Subsequently she joined the law firm of Fox, Rothschild, O'Brien & Frankel. Tobin has submitted bills for \$168,337.50 in fees and \$3,592.75 in expenses.

DISCUSSION

INTEREST

Post judgment interest shall not be added to the judgment. Post judgment interest is awarded as a matter of course as it recognizes that the prevailing plaintiff is entitled to the judgment at the time of the judgment. Prejudgment

interest, on the other hand, compensates the plaintiff for money lost while trying to prove the case.

On the day that oral argument was held in this matter, the Supreme Court granted certiorari in a case that addresses retroactive fees in a case filed prior to enactment of the PLRA, but decided after enactment of the PLRA. Johnson v. Hadix, 67 U.S.L.W. 3336 (U.S. Nov. 16, 1998). The Supreme Court specifically determined to address whether the PLRA attorney fee provisions applied retroactively for work performed prior to enactment of the PLRA and to work performed after enactment of the PLRA in a case filed prior to the effective date of the PLRA. Id. The constitutionality of the retroactivity of the attorney fees provisions of the PLRA will likely be part of the Supreme Court's analysis. Because the Supreme Court will hear argument on these issues that are central to this case, the Court believes that it is prudent to reserve its decision as to any fees in excess of the amount that Nanayakkara would be allowed if the PLRA applied to all work done by his counsel in this matter. It is not disputed, however, that Nanayakkara is a prevailing party entitled to some attorney's fee award pursuant to § 1988. Accordingly, the Court shall address the issues that would be central to any fee award and make an interim award under the most restrictive interpretation of the PLRA as argued by Krug.

Reasonable Attorneys' Fees and Costs

A. Attorneys' Fees

"The party seeking attorneys' fees has the burden to prove that its request . . . is reasonable." Rode v. Dellaciprete, 892 F.2d 1177, 1183 (3d Cir. 1990). The opposing party must challenge the requested fee with specificity. Bell v. United Princeton Properties, 884 F.2d 713, 719-20 (3d Cir. 1989). The court may not reduce the fee amount sua sponte. Id. Once the party opposing the fee request objects, however, the court "has a great deal of discretion to adjust the fee award in light of those objections." Rode, 892 F.2d at 1183. (citing Bell, 884 F.2d at 721).

"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, 461 U.S. at 433. The result, known as the "lodestar," is presumed to represent a reasonable award of attorney's fees. Id.

1. Hourly Rates

"[A] reasonable hourly rate is calculated according to the prevailing market rates in the community." Smith v. Philadelphia Hous. Auth., 107 F.3d 223, 225 (3d Cir. 1997). Nanayakkara submitted an affidavit by Edward Dennis in which he stated that the rates submitted are consistent with market rates in the Philadelphia area. Nanayakkara also presented the testimony of Jack Bernard who had referred a case to Tobin and

was familiar with her work on the referred case and the present case. He also believed that the rates submitted were consistent with the market rates in the Philadelphia area. Krug did not object to the claimed hourly rates, but rather argues that the Court's analysis should start with the hourly rates allowed by the PLRA. This starting point is contrary to the lodestar analysis. Therefore, Nanayakkara's counsel's hourly billing rates are approved.

2. Hours Expended

A party is entitled to compensation for work that is "useful and of a type ordinarily necessary to secure the final result obtained." Pennsylvania v. Delaware Valley Citizens' Council, 478 U.S. 546, 561 (1986). "Hours are not reasonably expended if they are excessive, redundant, or otherwise unnecessary." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983).

Krug takes a machete approach to the hours billed on this case. Krug would have the Court make vast percentage reductions for the number of Defendants initially named in this matter against whom Nanayakkara did not prevail, the number of causes of action alleged on which Nanayakkara did not prevail, and the various types of relief sought by Nanayakkara which he did not receive. Where a party entitled to attorneys' fees prevails on some but not all of its claims and those claims arose from the same set of factual circumstances, a fee award is not modified to recognize the percent of success. This recognizes

that hours spent on the successful claim would be spent whether or not the unsuccessful claim was raised. Northeast Women's Center v. McMonagle, 889 F.2d 466, 476 (3rd Cir. 1989).

Krug also attacks some entries in the bills submitted by Tobin for combining tasks performed in one day into one entry. Such combined entries, as Krug tacitly recognizes, do not result in the hours being disallowed, rather, the billing attorney risks that the Court will assume an improper number of hours have been billed on a task. Rode, 892 F.2d at 1191.

The underlying factual scenario in this case, proved by Nanayakkara at trial, is that he was removed from a halfway house, and consequently lost his job, because he exercised his First Amendment rights. Clearly, he and Tobin had no idea at the commencement of this action who was really responsible for this constitutional violation and Krug tried to deflect blame throughout the trial. Nanayakkara also had colorable claims that he had been deprived of other constitutional rights. All of the issues presented to the Court arose from the same core of facts. Accordingly, the Court shall look to the hours billed for specific hours expended on unsuccessful claims, but reject the blanket percentage reductions suggested by Krug.

HOURS TO BE CUT.

3. PLRA

Attorney's fees under § 1988 may only be awarded to a prisoner to the extent that the fee "was directly and reasonably incurred in proving an actual violation of the plaintiff's rights." 42 U.S.C. § 1997e(d)(1)(A). The amount of an award must be "proportionately related to the court ordered relief." Id., § 1997e(d)(1)(B)(i). Where a monetary judgment is awarded to a prisoner, up to 25% of the amount of the judgment must be applied to any attorney's fee award. Id., § 1997e(d)(2). A defendant's liability for an attorney's fee award is then limited to 150% of the judgment. Id. The hourly rate that may be awarded is limited to "150 percent of the hourly rate established under section 3006A of Title 18." It is undisputed that under the PLRA, the maximum fee for time spent in court in this matter would be \$97.50 per hour and the maximum rate for other time would be \$6x.50 per hour.

The PLRA does not provide guidance as to how to apportion a share of a plaintiff's judgment toward attorney fees, other than to cap the amount at 25 percent. The Court believes that assessing Nanayakkara the allowed 25 percent of his judgment is appropriate because this figure is less than he would have to agree to under most contingent fee arrangements. Also, the Court believes that Nanayakkara bears a substantial portion of the responsibility for the amount of work required for his attorney to prevail at trial. The record in this matter is filled with

the attempts of Nanayakkara to either fire or subvert his attorney. As a result, Tobin was always in the unenviable position of needing to proceed knowing that her client was inclined to be unhappy with her representation. Consequently, as any prudent attorney in her circumstances would do, she had to consider and adopt any remotely reasonable position offered by her client, even if she did not feel the client's position was tactically sound. Also, Tobin had to prepare for trial with a client whose:

unsupported testimony . . . is totally unreliable. . . . He will tell anything to anyone if he believes it suits his purpose. . . . The only testimony of Nanayakkara that is credible is where he has been adequately corroborated by other witnesses or documents.

Nanayakkara v. Krug, C.A. No. 95-6418, slip op. at 10 (E.D. Pa. March 17, 1998) (Findings of Fact Paragraphs 49 and 51).

Krug argues that Nanayakkara should be allowed only a portion of the hourly rate allowed by the PLRA. Krug points to Tobin's inexperience and lack of jury trials and argues that the maximum fees should be reserved for the most experienced litigators. While the PLRA sets only a ceiling upon the rate of attorney fees, the Court believes that in this matter it must also serve as a floor. Tobin has been an attorney for ten years and has been involved in many cases. She has been involved in ten or fifteen cases that have gone to bench trials. At the same time that she was presenting the case of a liar, Tobin faced

Defendants who tried to shift blame and who tried to limit the amount of information they provided through discovery and testimony. The Court believes that Tobin presented her case very effectively and since the Court has already decided that her hourly rate is reasonable, there is no reason to reduce the hourly rate beyond the minimum reduction required by the PLRA.

Nanayakkara originally filed this action alleging

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O R D E R

AND NOW, this 21st day of December, 1998, upon consideration of the Motion to Add Prejudgment and Postjudgment Interest (Doc. No. 130) and the Motion for Attorney Fees and Costs (Doc. No. 131), the various Responses, Replies and Sur-replies thereto, the Memorandum of Intervenor, the United States of America, and after an evidentiary hearing and oral argument in these matters, it is ORDERED:

1. The issue of retroactive application of the attorney fees provisions of the Prisoner's Litigation Reform Act, 42 U.S.C. § 1997e(d), is HELD IN ABEYANCE pending the decision of

the Supreme Court of the United States of America in Johnson v. Hadix, 67 U.S.L.W. 3336 (U.S. Nov. 16, 1998)(cert. granted).

2. The Motion for Postjudgment Interest is DISMISSED as moot. Postjudgment interest shall not be added to the Judgment in this matter.

3. The Motion for Prejudgment Interest is GRANTED IN PART. Nanayakkara is awarded \$3,500.00 in prejudgment interest that shall be added to the judgment in this matter.

4. Nanayakkara is AWARDED an interim award of \$45,000.00 of attorneys' fees from Defendant Edward Krug.

5. Nanayakkara is AWARDED \$3,592.75 in costs from Defendant Edward Krug.

BY THE COURT:

JAMES MCGIRR KELLY, J.