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

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| ANDREW RAPP, Executor of the Estate of John E. Rapp | : | CIVIL ACTION |
| | : | |
| v. | | |
| | : | |
| SCOTT C. CAMERON | | NO. 00-1376 |

**MEMORANDUM OF DECISION**

THOMAS J. RUETER
United States Magistrate Judge

February 20, 2002

Presently before the court is plaintiff's motion and supplemental motion for attorneys' fees pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. 54(d)(2) (collectively, the "Motion for Fees") (Document Nos. 62, 72 and 74). Defendant filed an opposition to the fee request (Document No. 76), and plaintiff filed a reply (Document No. 78).

## I. BACKGROUND

This action arose out of the death of decedent, John E. Rapp. On December 24, 1998, defendant, Scott C. Cameron, was a police officer for the City of Easton, Pennsylvania. In the course of his duties Officer Cameron shot and killed John E. Rapp. In his capacity as the Executor of his brother's estate, Andrew Rapp filed the instant wrongful death action against Officer Cameron alleging violation of 42 U.S.C. § 1983 and related Pennsylvania statutes.[1] Between August 17, 2001 and August 27, 2001, a jury trial was held before the undersigned upon the consent of the parties. See 28 U.S.C. § 636(c). On August 27, 2001, the jury returned a

[1] Plaintiff also brought claims against the City of Easton alleging misfeasance in the policies and training practices of the City of Easton prior to the December 24, 1998 shooting of decedent. Plaintiff did not pursue its claims against the City of Easton, and the City of Easton was released from the case by stipulation of all counsel.

verdict for the plaintiff and against defendant Cameron in the amount of $472,955.00, finding that defendant Cameron used excessive force in violation of decedent's constitutional rights on December 24, 1998.

## II. DISCUSSION

**1. The Motion for Fees.** In the Motion for Fees, plaintiff requests fees from a total of nine attorneys and one paralegal. The attorneys seeking fees are: Martin Cohen, Kelly Rambo, Barbara Baldo, Joseph Pulcini, and Michael Ryan (all from the law firm of Cohen & Feeley (the "Cohen Firm"), they shall be referred to herein collectively as the "Cohen Firm Attorneys"), Lee Swartz, Susan M. Seighman, and Cathleen A. Kohr (all from the law firm of Tucker, Arensberg & Swartz (the "Tucker Firm"), they shall be referred to herein collectively as the "Tucker Firm Attorneys"), and Alan D. Williams, III. Plaintiff also seeks fees for the services of Terri Yankus, a paralegal employed by the Cohen Firm.

Defendant raises numerous objections to the Motion for Fees, which fall into the following basic categories: (1) plaintiff seeks recovery of fees from eight of nine attorneys at unsupported billing rates and without adequate documentary evidence of hours worked; (2) plaintiff seeks payment from defendant Cameron for time spent on a dismissed claim against the City of Easton; (3) plaintiff seeks payment for routine estate administration expenses and for duplicative and inefficient efforts; and (4) plaintiff seeks to recover costs which are not recoverable. (Def.'s Resp. at 4.)

**2. The Standard for Recovery of Fees Under 42 U.S.C. § 1988.** In an action to enforce 42 U.S.C. § 1983, the court, in its discretion, may allow the prevailing party reasonable attorney's fees as part of the costs. 42 U.S.C. § 1988(b). The Supreme Court has

mandated that a prevailing plaintiff "'should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.'" Hensley v. Eckerhart, 461 U.S. 424, 429 (1983) (quoting Newman v. Piggie Park Enter., Inc., 390 U.S. 400, 402 (1968)). A plaintiff may be considered a "prevailing party" if it "succeed[s] on any significant issue in litigation which achieves some of the benefit the party sought in bringing suit." Hensley, 461 U.S. at 433 (quotation omitted).

Although plaintiff did not achieve success on every aspect of the litigation, the parties do not dispute that plaintiff is the prevailing party. The jury found that defendant Officer Cameron violated the decedent's constitutional rights by using excessive force in an attempt to arrest the decedent. Since it is clear that plaintiff succeeded on "a significant issue in litigation," see Texas State Teachers Ass'n v. Garland Indep. Sch. Dist., 489 U.S. 782, 791-92 (1989), the court next must determine the appropriate amounts to be awarded.

To calculate a fee award in this context, the court multiplies the number of hours reasonably incurred by a reasonable hourly rate, to arrive at what is known as the "lodestar." Hensley, 461 U.S. at 433. The lodestar is strongly presumed to yield a reasonable fee. Washington v. Philadelphia Court of Common Pleas, 89 F.3d 1031, 1035 (3d Cir. 1996) (citing City of Burlington v. Dague, 505 U.S. 557 (1992)).

The Third Circuit Court of Appeals has summarized the procedure for calculating the lodestar. See, e.g., Washington v. Philadelphia County Court of Common Pleas, supra; Rode v. Dellarciprete, 892 F.2d 1177 (3d Cir. 1990); Lindy Bros. Builders, Inc. of Phila. v. Am. Radiator & Standard Sanitary Corp., 487 F.2d 161 (3d Cir. 1973). The party seeking attorney's fees must establish the reasonableness of its fee request by submitting evidence of the hours

worked and the hourly rate claimed. Rode, 892 F.2d at1183 (citing Hensley, 461 U.S. at 433). The "party opposing the fee award then has the burden to challenge, by affidavit or brief with sufficient specificity to give fee applicant's notice, the reasonableness of the requested fee." Id. (citing Bell v. United Princeton Prop., Inc., 884 F.2d 713 (3d Cir. 1989)). The court cannot "decrease a fee award based on factors not raised at all by the adverse party." Bell, 884 F.2d at 720. However, once the adverse party raises objections to the fee request, the court has a great deal of discretion to adjust the fee award in light of those objections. Id. at 721.

**3. The Billing Rates.** The general rule is that a reasonable hourly rate is calculated according to the prevailing market rates in the relevant community. Washington, 89 F.3d at 1035; Rode, 892 F.2d at 1183. The Third Circuit Court of Appeals has instructed that 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. (citations omitted). The prevailing party "bears the burden of establishing by way of satisfactory evidence, 'in addition to [the] attorney's own affidavits,' . . . that the requested hourly rates meet this standard." Maldonado v. Houstoun, 256 F.3d 181, 184 (3d Cir. 2001) (quoting Washington, 89 F.3d at 1035 (citing Blum v. Stenson, 465 U.S. 886, 895 n. 11 (1984))).

In the instant motion, plaintiff requests fees and expenses be paid to three groups of attorneys, and one paralegal, who were involved at various stages of the litigation. The billing rates requested are as follows:

**The Cohen Firm Attorneys ( and Paralegal)**

| Attorney | Hourly Rate |
|---|---|
| Martin D. Cohen (work prior to judgment) | $ 350 |
| Martin D. Cohen (work after judgment) | $ 300 |
| Barbara L. Baldo (work prior to judgment) | $ 200 |
| Barbara L. Baldo (work after judgment) | $ 150 |
| Kelly Clifford Rambo | $ 200 |
| Joseph Pulcini | $ 150 |
| Michael Ryan | $ 150 |
| Terri Yankus (Paralegal - work prior to judgment) | $ 35 |
| Terri Yankus (Paralegal - work after judgment) | $ 35 |

**The Tucker Firm Attorneys**

| Attorney | Hourly Rate |
|---|---|
| Lee C. Swartz | $ 225 |
| Susan M. Seighman | $ 100 |
| Cathleen A. Kohr | $ 60 |

**Other Attorneys**

| Attorney | Hourly Rate |
|---|---|
| Alan D. Williams | $ 145 |

As to the Cohen Firm Attorneys, plaintiff submitted affidavits in support of the reasonableness of Martin Cohen's requested hourly rates of $350 (prior to judgment) and $300 (after judgment). In his own affidavit, Mr. Cohen states that he has been practicing law since 1967, trying civil cases for over thirty years. (Pl.'s Supp. Mot. for Fees Ex. I.) At present, Mr. Cohen devotes 100 percent of his practice to civil litigation, including commercial, personal injury, medical malpractice, product liability, and automobile accident litigation. Mr. Cohen practices "some" federal litigation, "although limited in the last 10 years." Id. at 2. Mr. Cohen is a senior partner at the Cohen Law Firm. Mr. Cohen does not bill his time on an hourly basis for litigation or any other matters. In order to calculate an appropriate hourly rate for his time, Mr.

Cohen looked to the billing rates of other attorneys of his age and experience, as well as his income over the last fifteen years. Mr. Cohen reports that he is at the top rate of pay for attorneys in the Lehigh Valley area, and at a comparable rate for plaintiffs' attorneys in civil rights cases throughout the Eastern portion of the United States, including the Philadelphia and Pittsburgh regions. Mr. Cohen asserts that an hourly rate of $350 is consistent with his compensation over the past fifteen years, and also is consistent with the rate of senior litigation attorneys with the same experience, results, and background. Id.

In support of his requested hourly rate of $350, Mr. Cohen submitted the affidavits of attorneys Clifford E. Haines and Jane Leslie Dalton. (Pl.'s Supp. Mot. for Fees Exs. J and K (as substituted).) Mr. Haines is a shareholder in the Philadelphia law firm of Litvin, Blumberg, Matusow & Young, and has concentrated his law practice in the area of civil litigation, including some civil rights litigation, for twenty-one years. Like Mr. Cohen, Mr. Haines bills only on a contingency fee basis. However, Mr. Haines opines that, based upon his involvement in cases of this type and his familiarity with hourly rates charged by attorneys of Mr. Cohen's experience, "an hourly rate of $350 would be a reasonable rate for someone of Mr. Cohen's experience." (Pl.'s Supp. Mot. for Fees Ex. J.)

Ms. Dalton, a partner at the Philadelphia law firm of Duane, Morris & Heckscher, has handled numerous cases involving employment discrimination and civil rights litigation since 1973. Ms. Dalton accepts many civil rights cases on a contingency fee basis. Ms. Dalton avers that in her thirty years of practice, she has become familiar with the market rates for attorneys in the area, and opines that the hourly rates sought by Mr. Cohen "are very reasonable for attorneys of the skill, reputation, and experience of plaintiff's counsel, and are consistent with

the market rates in the Eastern District of Pennsylvania." (Pl.'s Supp. Mot. for Fees. Ex. K (as substituted).)

Defendant contends that this case was a "slam dunk" for plaintiff because defendant Cameron had pled guilty to involuntary manslaughter relating to the shooting of decedent, and was incarcerated for that crime. Therefore, an attorney of Mr. Cohen's experience was not required for this case and, hence, he should not receive an hourly rate of $350.00. See Ursic v. Bethlehem Mines, 719 F.2d 670, 677 (3d Cir. 1983) ("A Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn."). The court disagrees with defendant's assessment of the case. Even though defendant pled guilty to involuntary manslaughter, Officer Cameron offered a compelling explanation regarding his motivations for entering into the guilty plea. He stated that his wife was pregnant at the time and he avoided a mandatory five year jail term by pleading guilty to involuntary manslaughter. It was clear to this court that the jury accepted Officer Cameron's explanation and empathized with his predicament. Furthermore, Officer Cameron was an excellent witness with an exemplary employment record as a police officer for the City of Easton. Plaintiff's motion for summary judgment on the issue of liability was denied by the court. The jury was instructed to make a de novo determination as to defendant Cameron's liability for the shooting notwithstanding his guilty plea and a damaging internal police investigation.

While Officer Cameron was a sympathetic defendant in many respects, the decedent was not a sympathetic individual in all respects. For example, decedent was driving his truck while intoxicated just before he was shot by Officer Cameron. Just before he was shot, decedent had struck or brushed Officer Cameron with his truck one or two times while

attempting to flee. Moreover, plaintiff had a difficult time proving certain elements of damages. For example, the defendant seriously challenged plaintiff's assertion that the decedent provided many hours of tutelage and guidance to his surviving child. In this court's opinion, the existence of defendant Cameron's guilty plea made this case unusual from the typical excessive force case and presented new and challenging issues with respect to evidence and trial strategy. Consequently, the court declines to reduce Mr. Cohen's requested hourly rates based upon the defendant's opinion as to the difficulty involved in the case.

While neither Messrs. Cohen or Haines, nor Ms. Dalton, devote their careers solely to the practice of civil rights litigation, they have engaged in long careers focusing on civil litigation of various types, including civil rights cases. Defendant seeks to have this court focus on comparable rates for attorneys who engage only in civil rights litigation. The court rejects that approach as too narrow. The court accepts Mr. Cohen's requested hourly rates of $350 (pre-judgment) and $300 (post-judgment) as appropriate for an attorney of his experience and reputation engaged in a general civil litigation practice in the Eastern District of Pennsylvania. See Pub. Interest Research Group v. Windall, 51 F.3d 1179, 1185-88 (3d Cir. 1995) (the relevant legal community, for the purposes of determining an hourly rate, is not confined necessarily to the borders of a particular town).

Plaintiff submitted no evidence with respect to the reasonableness of the hourly rates for the balance of the Cohen Firm Attorneys: Baldo, Rambo, Pulcini, and Ryan, or paralegal Yankus. The court is unaware of when the attorneys graduated law school, their areas of specialty, or the manner in which their time is normally billed to clients. Defendant highlighted

this issue for plaintiff's counsel in his opposition to the Motion for Fees, see Def.'s Opp. at 9, 12, yet plaintiff did not attempt to remedy this deficiency in its Reply to Defendant's Opposition.[2]

In Holmes v. Millcreek Township Sch. Dist., 205 F.3d 583 (3d Cir. 2000), the defendant contended that the hourly rate requested by the plaintiff's counsel was unreasonable and that plaintiff "failed to produce sufficient evidence that her rate request is commensurate with her skill, experience, and reputation in the community." Id. at 595. The only evidence submitted by plaintiff in support of the reasonableness of the requested rate was the affidavit of the attorney seeking the fees. Id. The Third Circuit Court of Appeals noted Supreme Court precedent requiring that an "attorney's showing of reasonableness [of the requested hourly rate] must rest on evidence other than the attorney's own affidavits." Id. (quoting Blum v. Stenson, 465 U.S. 886, 895-96 n.11 (1984)). The Third Circuit then reduced the district court's award of attorney's fees and costs by twenty-five percent after finding that counsel had failed "to properly support the hourly rate at which she requests reimbursement" and that the hours spent were excessive. Id. at 595-96. See also Maldonado v. Houstoun, 256 F.3d 181, 184 (3d Cir. 2001)

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[2] In his Reply to Defendant's Opposition, plaintiff requests that if the court should decide that plaintiff has failed to properly substantiate his request for fees and costs, he be provided an opportunity to submit additional documentation. The court rejects this request. Plaintiff submitted the following items with respect to the Motion for Fees: Plaintiff's Motion for Attorneys' Fees (Document No. 62); Plaintiff's Supplemental Motion for Attorneys' Fees (Document No. 72); Request to Substitute Appendices to Plaintiff's Supplemental Motion for Attorneys' Fees (Document No. 74); and Plaintiff's Reply to Defendant's Response to Petition for Attorneys' Fees and Costs (Document No. 78). Plaintiff clearly was aware of his burden of proof in order to receive payment. Plaintiff met that burden of proof with respect to Mr. Cohen's requested hourly rate. Defendant informed the court and plaintiff that plaintiff had failed to meet his burden of proof with respect to the hourly rates of the other attorneys for plaintiff involved in this case. Plaintiff did not address this deficiency in his Reply and/or seek to further supplement his Motion for Fees. While the court regrets decreasing the hourly rates of attorneys who so clearly provided services in this case, plaintiff's failure to meet his burden in this respect cannot be ignored, especially over the vigorous opposition of defendant.

(The prevailing party "bears the burden of establishing by way of satisfactory evidence, 'in addition to [the] attorney's own affidavits,' . . . that the requested hourly rates meet this standard.") (quoting Washington, 89 F.3d at 1035 (citing Blum v. Stenson, 465 U.S. 886, 895 n. 11 (1984))).

With respect to the Cohen Firm Attorneys, however, the court witnessed first hand the valuable benefit derived by plaintiff from the work performed by the attorneys other than Mr. Cohen, especially, Barbara Baldo, Esquire. Ms. Baldo appeared in court on several occasions for pretrial matters and was co-trial counsel with Mr. Cohen. During these times, Ms. Baldo represented her client zealously and professionally. Also, the documentation submitted by these attorneys as to the services they performed, although not optimum as will be discussed later herein, provides this court with sufficient detail to determine which services should be compensated. The court, therefore, rather than deny payment for the services of these attorneys and the paralegal altogether, will reduce the requested hourly rates by twenty-five percent due to plaintiff's failure to meet his burden of proof as to the reasonableness of the requested fees. Such an award would not be unjust. See Hensley v. Eckerhart, 461 U.S. 424, 429 (1983) (prevailing plaintiff "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust") (quoting Newman v. Piggie Park Enter., Inc., 390 U.S. 400, 402 (1968)). Consequently, fees for the balance of the Cohen Firm Attorneys and the paralegal shall be calculated using the following hourly rates:

| **Attorney** | **Hourly Rate** |
|---|---|
| Barbara L. Baldo (work prior to judgment) | $ 150.00 |
| Barbara L. Baldo (work after judgment) | $ 112.50 |
| Kelly Clifford Rambo | $ 150.00 |
| Joseph Pulcini | $ 112.50 |

| | |
|---|---|
| Michael Ryan | $ 112.50 |
| Terri Yankus | $ 26.25 |

Similarly, plaintiff submitted no evidence to support the requested hourly rates of the Tucker Firm Attorneys, or Mr. Williams. Plaintiff did not even submit these attorneys' own affidavits to support the requested hourly rates. The court does not know when these individuals graduated from law school, their legal experience, their areas of specialty, or the manner in which their services are normally billed to clients. Unlike the Cohen Firm Attorneys, this court has no first hand knowledge of the value of the services provided by these attorneys.

Plaintiff failed to meet his burden with respect to establishing the reasonableness of the hourly rates requested for the Tucker Firm Attorneys and Mr. Williams. However, the records documenting the services performed by these attorneys are sufficiently detailed so that the court is able to make a reasoned determination as to which services should be compensated. Therefore, rather than deny fees to these attorneys all together, the court shall reduce the requested hourly rates of the Tucker Firm Attorneys and Alan Williams by fifty percent to the following hourly rates:

| **Attorney** | **Hourly Rate** |
|---|---|
| Lee C. Swartz | $ 112.50 |
| Susan M. Seighman | $ 50.00 |
| Cathleen A. Kohr | $ 30.00 |
| Alan D. Williams | $ 72.50 |

Such an award would not be unjust. Hensley v. Eckerhart, 461 U.S. 424, 429 (1983).

**4. The Number of Hours.** The party seeking fees bears the burden of providing the court with adequate documentation supporting the number of hours claimed. Additionally, in calculating the lodestar, the court should exclude hours that were not reasonably

expended. Rode, 892 F.2d at 1183 (citing Hensley, 461 U.S. at 434). Hours are not reasonably expended if they are excessive, redundant, or otherwise unnecessary. Id. The Third Circuit Court of Appeals recently reaffirmed that the court has an affirmative duty "to exclude from counsel's fee request 'hours that are excessive, redundant or otherwise unnecessary . . ..'" Holmes v. Millcreek Township Sch. Dist., 205 F.3d 583, 595 (3d Cir. 2000) (citing Hensley, 461 U.S. at 434).

**A. Specificity and Documentation – Reconstructed Time Records.**

The court may also deduct hours when the fee motion inadequately documents the hours claimed. Rode, 892 F.2d at 1183 (citing Hensley, 461 U.S. at 433.) In Washington, supra, the Third Circuit instructed as follows:

> On several occasions, this Court has considered the proper degree of specificity required of a party seeking attorneys' fees. In particular, we recently undertook such a review in Rode v. Dellarciprete, 892 F.2d 1177 (3d Cir. 1990). We explained that specificity should only be required to the extent necessary for the district court "to determine if the hours claimed are unreasonable for the work performed." Id. at 1190 (citing Pawlak v. Greenawalt, 713 F.2d 972, 978 (3d Cir. 1983), cert. denied sub nom. International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Pawlak, 464 U.S. 1041 (1984)). Specifically,
>
> > a fee petition should include "some fairly definite information as to the hours devoted to various general activities, e.g., pretrial discovery, settlement negotiations, and the hours spent by various classes of attorneys, e.g., senior partners, junior partners, associates." However, "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."

Washington, 89 F.3d at 1037-38 (quoting Rode, 892 F.2d at 1190 (citing Lindy Bros. Builders, 487 F.2d at 167)).

With respect to the instant Motion for Fees, the most difficult problem facing the court is that the Cohen Firm Attorneys submitted reconstructed time records to the court because they did not maintain contemporaneous time records.[3] Defendant argues that the Motion for Fees should be denied outright because of inadequate documentation. Reconstructed records create many problems for a court charged with the duty of calculating a lodestar. Courts have often emphasized the need for counsel to exercise good billing judgment in their fee requests. See, e.g., Hensley, 461 U.S. at 434; In re Fine Paper Litig., 751 F.2d 562, 594-95 (3d Cir. 1984). Without contemporaneous records, it is difficult to ascertain whether counsel, in preparing a fee petition, chose not to bill for certain fruitless hours for which a commercial client would not be billed. Retrospective estimates necessarily produce inaccuracy in the number of hours billed. While manifest unreasonableness is easy to discover, slight but consistent overstatement is not.

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[3] Plaintiff's counsel explained that they did not maintain contemporaneous time records because this was a contingency fee case. However, counsel certainly knew that, if successful on the § 1983 claim, they would be seeking fees under §1988, and that under § 1988 they bear the burden of proving the reasonableness of the hours spent. The failure to maintain contemporaneous time records in a case like this is almost inexcusable, and makes the court's task herein, described by the Third Circuit Court of Appeals as "a disagreeable and tedious task," see Maldonado v. Houstoun, 256 F.3d 181, 182 (3d Cir. 2001), even more difficult. While the Third Circuit Court of Appeals has accepted reconstructed time records to form the basis of an award of fees under § 1988, it is a practice to be discouraged. See Smith v. Int'l Total Serv., Inc., 1997 WL 667872, at *4 n.11 (E.D. Pa. Oct. 9, 1997) ("[I]t bears noting that courts in this jurisdiction have warned counsel that reconstructed records would not be accepted or would be subject to substantial fee reduction because they may create the perception of unaccountability and unfairness and because of the potential for systematic, albeit unintended, overstatement or misclassification of hours. (citations omitted). Moreover, in an action such as this in which counsel know from the beginning that they may recover fees, there is no excuse for failure to keep contemporaneous records from the start. I therefore warn counsel that, in my court at any rate, I do not expect to see reconstructed time records such as these again.") (O'Neill, J.). See also Fletcher v. O'Donnell, 729 F. Supp. 422, 429 (E.D. Pa. 1990) (The court, discussing that counsel failed to maintain contemporaneous time records, stated that "[c]ounsel should henceforth be on notice . . . that any future deficiencies in record keeping will be grounds for a significant fee reduction.") (Cahn, J.).

Even with the assistance of correspondence files and dockets to refresh attorneys' recollections of tasks performed, some of the requested hours may be misclassified. Should a particular category of fees be denied, misclassification could yield an erroneous fee. Finally, reconstructed records impede the adverse party's ability to satisfy its burden of challenging fee petitions in detail. See Rode, 892 F.2d at1183 (The "party opposing the fee award . . . has the burden to challenge, by affidavit or brief with sufficient specificity to give fee applicant's notice, the reasonableness of the requested fee.") (citing Bell v. United Princeton Prop., Inc., 884 F.2d 713 (3d Cir. 1989)). In fact, the court cannot "decrease a fee award based on factors not raised at all by the adverse party." Bell, 884 F.2d at 720. If the adverse party's ability to challenge the motion for fees is impeded, it may be prevented from raising meritorious objections to the fees and/or the hours requested.

Courts in the Third Circuit, however, have accepted reconstructed records as a basis for awarding fees under 42 U.S.C. § 1988. See Pawlak v. Greenawalt, 713 F.2d 972, 978 (3d Cir. 1983), cert. denied sub nom. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Pawlak, 464 U.S. 1041 (1984); Blair v. Protective Nat'l Ins. Co., 1999 WL 179743 (E.D. Pa. Mar. 10, 1999); Smith v. Int'l Total Serv., Inc., 1997 WL 667872 (E.D. Pa. Oct. 9, 1997); Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia, 1996 WL 355341 (E.D. Pa. June 20, 1996);Walker v. Upper Merion Police Dep't , 1996 WL 37822 (E.D. Pa. Jan. 26, 1996); Strauss v. Springer, 817 F. Supp. 1237 (E.D. Pa. 1993); Fletcher v. O'Donnell, 729 F. Supp. 422 (E.D. Pa. 1990); Hann v. Housing Auth. of the City of Easton, 1990 WL 102804 (E.D. Pa. July 16, 1990). The Third Circuit declared:

> Total denial of requested fees as a purely prophylactic measure, however, is a stringent sanction, to be reserved for only the most severe of situations, and appropriately invoked only in very limited circumstances. Outright denial may be justified when the party seeking fees declines to proffer any substantiation in the form of affidavits, timesheets or the like, or when the application is grossly and intolerably exaggerated, or manifestly filed in bad faith.

Pawlak, 713 F.2d at 978 (quoting Jordan v. United States Dep't of Justice, 691 F.2d 514, 518 (D.C.Cir. 1982)).

Here, although contemporaneous time records for the Cohen Firm Attorneys are lacking, the reconstructed records are sufficiently detailed to permit the defendant to challenge specific items. See Fletcher v. O'Donnell, 729 F. Supp. 422, 429 (E.D. Pa. 1990) (reaching a similar conclusion on the facts before it). Additionally, the reconstructed time records are sufficiently detailed to permit this court to make a thoughtful determination as to the reasonableness of the services performed. For all of these reasons, the court will accept the reconstructed time records for the purposes of the lodestar calculation, but will scrutinize them carefully.

**B. Redundant, Excessive, or Unnecessary Time Entries.**

Defendant contends that many of the time entries are noncompensable because they are for routine estate administration expenses and for duplicative and inefficient efforts. Also, defendant argues strenuously that time spent by Alan D. Williams and the Tucker Firm Attorneys in initiating the separate original lawsuits in this action should not be compensated because such work was duplicative of the work performed by the Cohen Firm in the federal court litigation. The complaint originally filed by Mr. Williams in the Court of Common Pleas of Northhampton County was removed by defendant City of Easton to federal court. The separate action filed by

the Tucker Firm for Lauralyn Rapp on behalf of her and decedent's daughter was dismissed without prejudice. Mr. Cohen, who initially replaced Mr. Swartz in the Lauralyn Rapp litigation, and subsequently replaced Mr. Williams in the present action on behalf of the executor, voluntarily dismissed the Lauralyn Rapp action on June 22, 2000 and, on June 26, 2000, entered his appearance in this action. See Def.'s Opp. to Mot. for Fees at 22 (discussing the early procedural history of this case).

**1. Alan D. Williams' Time Entries.** Attorney Alan D. Williams requests $6,062.35 in fees and costs (fees – $5,452.00 and costs – $610.35). Defendant contends that many of Mr. Williams's time entries are unrelated to plaintiff's successful section 1983 claim. (Def.'s Opp. to Motion for Fees Ex. E.) A review of Mr. Williams's time entries reveals several entries unrelated to the successful litigation. (Pl.'s Supp. Mot. for Fees Ex. F.) After a thorough and careful review of the fees and costs requested by Alan D. Williams, the court denies plaintiff's request for payment for the following entries as being redundant, excessive and/or unnecessary to plaintiff's successful claim:

| Date of Entry | Hours Claimed |
|---|---|
| 12/27/98 | 2.00 |
| 12/28/98 | 1.00 |
| 8/11/99 | 2.00 |
| 11/4/99 | 6.90 |
| 11/9/99 | 0.50 |
| 1/5/00 | 3.50 |
| 1/8/00 | 0.30 |
| 5/30/00 | 0.50 |
| 4/9/01 | 4.00 |
| Total Hours Disallowed: | 20.70 |

Mr. Williams requests payment for a total of 37.60 hours. (Pl.'s Supp. Mot. for Fees Ex. F.) The court finds it appropriate that Mr. Williams be paid for 16.90 hours at the reduced hourly rate of

$72.50. Payment to Mr. Williams shall be in the amount of $1,225.25 for fees and costs in the amount of $610.35, for a total payment of $1,835.60.

**2. The Tucker Firm Time Entries.** The Tucker Firm seeks $13,074.18 in fees and costs. (Pl.'s Supp. Mot. for Fees Ex. G.) As stated above, the Tucker Firm filed a separate action for client Lauralyn Rapp on behalf of her and decedent's daughter. Mr. Cohen, who replaced Mr. Swartz in the Lauralyn Rapp litigation, voluntarily dismissed the Lauralyn Rapp action on June 22, 2000. Mr. Cohen entered his appearance in this matter on June 26, 2000.

Defendant opposes every time entry by the Tucker Firm Attorneys arguing that their efforts related to a dismissed action by Lauralyn Rapp on behalf of her and decedent's daughter. Defendant contends that Lauralyn Rapp was not a prevailing party entitled to recover fees and that the dismissed action was brought in error. While this action was indeed dismissed, the action in federal court also sought to benefit decedent's daughter, and some of the work performed by Mr. Swartz appears to have provided a benefit to the Cohen Firm and streamlined their efforts in presenting the federal court action. Therefore, as a general rule, this court will not automatically deny compensation for such work performed by the Tucker Firm Attorneys. The court, however, will scrutinize such time to prevent any unnecessary duplication of effort, and to prevent payment of fees for which a private client would not be billed.

After a thorough and careful review of the fees and costs requested by the Tucker Firm Attorneys, the court denies plaintiff's request for payment for the following entries as being redundant, excessive and/or unnecessary to the successful section 1988 claim: entry dated 11/24/99 - 1.20 hours by Cathleen A. Kohr, and entry dated 3/28/00 – 5.50 hours by Lee Swartz.

Time entries submitted by the Tucker Firm indicate that there were many telephone calls between the Tucker Firm Attorneys and the Cohen Firm Attorneys from November, 1999 through June, 2000, when Mr. Cohen formally entered his appearance in this case. These entries indicate that there might have been a duplication between the two groups of attorneys. This suspicion is minimized by the fact that a significant number of these time entries do not appear in the Cohen Firm time entries. However, many of the Tucker Firm time entries in this regard are very vague and lack a detailed description of the services provided, thereby depriving the court of a meaningful ability to determine whether compensation is due for the tasks performed. Consequently, the court will deduct one hour of time from Mr. Swartz's requested fees to insure that compensation is not being provided for duplicative and/or unnecessary efforts.

Additionally, the Tucker Firm time entries are replete with vague entries such as: "Research," "Review Letter," and "Review Document." Again, the court cannot discern the appropriateness of the service provided when such vague and general descriptions are employed. Since the majority of these entries are attributable to Mr. Swartz, the court shall deduct one hour of his time in order to ensure that the defendant is not taxed inappropriately.

Finally, Mr. Cohen entered his appearance in this case on June 26, 2000. (Document No. 5.) Mr. Swartz has numerous time entries dated from June 27, 2000 through September 6, 2001 – requesting compensation for a total of 15.5 hours. The majority of these entries are for telephone calls and letters to the client (presumably Lauralyn Rapp) and to forwarding counsel (presumably Mr. Cohen), and research. At this point in time, the Cohen Firm Attorneys were handling the case. While Mr. Swartz may desire to keep himself and his client

informed regarding the status of the case, those services are clearly not related to the plaintiff's successful claim against the defendant and shall not be charged to defendant herein.

Consequently, the court will allow compensation to the Tucker Firm in the following amounts:

| Attorney | Hours Requested | Hours Allowed | Total Compensation |
|---|---|---|---|
| Lee C. Swartz | 53.2 | 30.2 | $ 3,397.50 |
| Susan M. Seighman | 4.9 | 4.9 | $ 245.00 |
| Cathleen A. Kohr | 2.2 | 1.0 | $ 30.00 |
| | | **TOTAL:** | $ 3,672.50 |

The Tucker Firm shall be allowed the total amount of costs requested of $632.18, for a total award of $4,304.68.

**3. The Cohen Firm Time Entries.** Defendant argues that many of the time entries of the Cohen Firm Attorneys are not compensable because they pertain to the dismissed action, or are incomprehensible, duplicative or unnecessary. After a thorough and careful review of the time entries of the Cohen Firm Attorneys, the court makes the following deductions:

| Date of Entry (Attorney) | Hours Claimed | Reason for Deduction |
|---|---|---|
| May to July, 2000 (Cohen) | 2.0 | Unrelated |
| 6/23/00 (Cohen) | 1.0 | Unrelated |
| 7/18/00 (Cohen) | 1.3 | Excessive |
| 6/13/01 (Cohen) | 1.0 | Vague |
| 7/24/01 (Cohen) | 1.6 | Excessive/ Unnecessary |
| 8/13/01 (Cohen) | 0.15 | Vague |
| 8/14/01 (Cohen) | 0.3 | Unrelated/ Vague |
| 8/18/01 (Cohen) | 1.0 | Vague |
| 8/25/01 (Cohen) | 1.3 | Unrelated |
| **TOTAL HOURS DEDUCTED FOR COHEN (pre-judgment)** | **9.65 hours** | |

| | | |
|---|---|---|
| 9/1/01 (Cohen) | 3.0 | Unnecessary |
| **TOTAL HOURS DEDUCTED FOR COHEN (post-judgment)** | **3.0 hours** | |
| 6/6/00 (Rambo) | 0.4 | Duplicative |
| 7/24/00 (Rambo) | 1.5 | Excessive/ Unnecessary |
| 10/6/00 (Rambo) | 0.3 | Unrelated |
| **TOTAL HOURS DEDUCTED FOR RAMBO** | **2.2 hours** | |
| 7/18/00 (Baldo) | 1.5 | Excessive/ Unnecessary |
| 10/16/00 (Baldo) | 0.1 | Vague |
| **TOTAL HOURS DEDUCTED FOR BALDO (pre-judgment)** | **1.6 hours** | |

Defendant argues that much of paralegal Yankus's time was actually non-compensable secretarial overhead, as opposed to compensable professional time. After a thorough and careful review of the time entries submitted by Ms. Yankus, the court concludes that 30.9 hours should be deducted as secretarial overhead. With respect to many of these entries, Ms. Yankus, for example, typed letters, scheduled meetings, made copies, confirmed hotel reservations and forwarded copies of documents to other individuals. Similarly, the court will deduct five hours of time from Ms. Yankus's time entries post-judgment.

Accordingly, the court will allow the Cohen Firms fees and costs in the following amounts:

| **Attorney** | **Hours Requested** | **Hours Allowed** | **Total Compensation** |
|---|---|---|---|
| Martin Cohen | 296.35 | 286.70 (pre-judgment) | $ 100,345.00 |
| Martin Cohen | 12.00 | 9.00 (post-judgment) | $ 2,700.00 |
| Kelly Rambo | 39.80 | 37.60 | $ 5,640.00 |
| Barbara Baldo | 154.80 | 153.20 (pre-judgment) | $ 22,980.00 |
| Barbara Baldo | 7.50 | 7.50 (post-judgment) | $ 843.75 |
| Joseph Pulcini | 13.60 | 13.60 | $ 1,530.00 |

| | | | |
|---|---|---|---|
| Michael Ryan | 32.00 | 32.00 | $ 3,600.00 |
| Terri Yankus | 178.20 | 142.30 (pre-judgment) | $ 3,735.38 |
| Terri Yankus | 30.00 | 25.00 (post-judgment) | $ 656.25 |
| | | **TOTAL FEES** | **$ 142,030.38** |

(Pl.'s Supp. Mot. for Fees at 4.)

Costs shall be allowed in the amount requested of $15,047.69, for a total award of fees and costs of: $157,078.07.[4]

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[4] Defendant contends that the lodestar calculation should be further reduced because the plaintiff, while a prevailing party, achieved only partial success. Specifically, plaintiff failed to succeed on his claim against the City of Easton relating to its policy, custom and training of police officers. This claim was dismissed by stipulation of the parties prior to trial. In his affidavit, Mr. Cohen stated that he had not "separated in any way, or made any deduction, for the fact that the City of Easton was let out of this case because all of the work that was involved that included the City of Easton was also required to be done for Mr. Cameron." (Pl.'s Supp. Mot. for Fees Ex. I.)

Even though the lodestar is presumed to be the reasonable fee, the court may adjust the lodestar downward if it is not reasonable in light of the results obtained. Rode, 892 F.2d at 1183 (citing Hensley, 461 U.S. at 434-37). This general reduction accounts for time spent litigating wholly or partially unsuccessful claims. Id. Under the analysis proscribed by the Supreme Court in Hensley and Texas State Teachers Ass'n, 489 U.S. at 789, the court must first decide whether the failed claim was unrelated to the successful claim or whether the claims involve a common core of facts or are based on related legal theories. Where it is difficult to apportion the attorney hours spent between or among various claims, the Supreme Court has instructed that the court should "focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." Hensley, 461 U.S. at 434. The party seeking the downward adjustment bears the burden of proving that the adjustment is necessary. Rode, 892 F.2d at 1184.

This court concludes that the successful claim against Officer Cameron and the unsuccessful claim against the City of Easton involve a common core of facts. The jury was instructed that the "particular use of force in this case must be judged from the perspective of a reasonable officer on the scene . . .." The jury was further instructed that "the 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officer's actions are 'objectively reasonable' in light of the facts and circumstances confronting him . . .." Thus, in determining how a reasonable officer would have acted, it was relevant for the jury to consider the policies, customs and training of the Easton Police Department regarding the use of force by its officers.

This court declines to make a general downward adjustment to the lodestar to reflect plaintiff's failed claim against the City of Easton. In calculating the lodestar above, the court scrutinized the time entries and made deductions for services: (1) unrelated to the

## III. CONCLUSION

For all the reasons set forth above, attorneys' fees and costs shall be awarded in the following aggregate amounts:

| | |
|---|---|
| Cohen Firm: | $ 157,078.07 |
| Tucker Firm: | $ 4,304.68 |
| Alan D. Williams | $ 1,835.60 |

An appropriate order follows.

BY THE COURT:

_____
THOMAS J. RUETER
United States Magistrate Judge

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successful claim, and (2) which did not involve a common core of facts with the successful claim. Consequently, an additional deduction is not required.