

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

JEANETTE DOOLEY,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, POLICE	:	
DEPARTMENT OF THE CITY OF	:	
PHILADELPHIA, JOHN F. TIMONEY,	:	
RICHARD ZAPPILE, ROBERT SMALL,	:	
JOHN NORRIS,	:	
	:	
Defendants.	:	NO. 99-2764

Reed, S.J.

August 30, 2002

M E M O R A N D U M

Presently before the court is the motion of plaintiff for attorney's fees and expenses, the response of defendants and the reply thereto. Plaintiff seeks \$362,542.20 in attorneys' fees, \$17,149.00 in expenses and \$43,146.62 in delay enhancement, for a total of \$422,837.82.¹ Defendants object to plaintiff's request, arguing that plaintiff's counsel has requested an unreasonable hourly rate, billed excessive and redundant hours, lacked specificity in their time and costs entry descriptions, billed for unsuccessful claims, and failed to prove their entitlement to a delay enhancement. For the reasons stated below, the motion for fees and costs is granted in part, and plaintiff will be awarded attorneys' fees in the amount of \$311,730.82 and costs in the amount of \$9,779.17.

¹ Additionally, the reply brief filed by plaintiff further requests \$7,568.00 in fees and \$281.27 in expenses incurred after March 4, 2002. Furthermore, a motion to enforce settlement filed by plaintiff in August 2002 requests \$6,108.00 in fees incurred in connection with efforts to enforce the settlement after April 22, 2002. That brings the total requested fees and costs to \$436,795.09.

Background

Plaintiff Jeanette L. Dooley, a police captain for the City of Philadelphia, filed this action in June of 1999, claiming she was illegally suspended, transferred and effectively demoted because her superiors disapproved of her testimony on behalf of the defendant at the criminal trial of former fellow police officer, Michael Vasallo. She sought relief pursuant to 42 U.S.C. §§ 1983, 1985, and 1986, alleging that her constitutional rights to freedom of expression were violated. She also asserted state law claims under Article 1 of the Pennsylvania Constitution, Section 4953 of the Pennsylvania Criminal Code, and for intentional infliction of emotional distress. On June 4, 2001, this Court granted partial summary judgment to plaintiff on her Section 1983 retaliation claim against the City of Philadelphia and former Police Commissioner John Timoney for Dooley's 5-day suspension in violation of her First Amendment rights. The Court then granted partial summary judgment to defendants on plaintiff's section 1983 retaliation claim for Dooley's reprimand and denial of her request to transfer as well as on all state law claims asserted, and further granted summary judgment to defendants Robert Small and the Police Department as to all claims. The remaining claims survived the motions for summary judgment, and trial was scheduled to begin January 22, 2002. On January 15, 2002, the parties entered into a settlement agreement, preserving the ancillary claim for attorney fees and expenses, and providing this Court with continuing jurisdiction to enforce the settlement.

Plaintiff filed the instant motion on March 4, 2002, requesting fees and costs for nine of her counsel: John Morris, Steve Coren, Howard Kaufman, Esther Hornik, Bruce Bellingham, Bruce Bodner, Colleen Garrity, Michael Noone and David Dormont. Defendants filed their

response to the motion for attorneys' fees, vigorously contesting the request on various grounds. The parties have agreed pursuant to the settlement agreement that this Court's decision on the matter of attorneys' fees and costs would be final and binding.

Legal Standard

A prevailing party in a section 1983 action may recover a "reasonable attorney's fee as part of the costs" pursuant to 42 U.S.C. § 1988(b). In assessing the reasonableness of a claimed fee, courts use the "lodestar" formula, which requires multiplying the number of hours reasonably expended on successful claims by a reasonable hourly rate. See Hensley v. Eckerhart, 461 U.S. 424, 433, 76 L. Ed. 2d 40, 103 S. Ct. 1933 (1983); Maldonado v. Houstoun, 256 F.3d 181, 184 (3d Cir. 2001). The party seeking attorney's fees has the burden of proving that its request is reasonable. Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 92 L. Ed. 2d 439, 106 S. Ct. 3088 (1986). The objecting party has the burden to challenge, through affidavit or brief, with sufficient specificity to provide notice to the fee applicant the portion of the fee petition which must be defended. Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990). A district court may only decrease a fee based on factors raised by an adverse party, but has a great deal of discretion to adjust fees in light of the objections. Id.

Analysis

A. Excessive Hourly Rate

"Generally, a reasonable rate is calculated according to the prevailing market rates in the relevant community." Maldonado, 256 F.3d at 184 (citing Blum v. Stenson, 465 U.S. 886, 895, 79 L. Ed. 2d 891, 104 S. Ct. 1541 (1984)). In support of her request for attorney's fees, plaintiff has attached an opinion letter from Alan Lerner, a University of Pennsylvania law professor and

former practicing attorney in the area, who states that upon review of the work of plaintiff's counsel, their professional summaries, and their billing records, he believed their requested fees were reasonable. (Lerner Opinion, Pl. Exh. E.) As support for his opinion, Lerner cites to a survey conducted by Altman, Weil, Pensa of hourly rates charged by private law firms and solo practitioners in Philadelphia ("Altman Survey"). Plaintiff also attaches an attorneys' fee schedule composed by Community Legal Services, Inc. ("CLS Schedule") in October 1, 2001, that lists the market range of hourly rates for attorneys in the Philadelphia area according to their years of experience. (Pl. Exh. I.) A declaration by Alan White, staff attorney at CLS, affirms that the CLS Schedule is based upon the Altman survey. (Id.) The Third Circuit Court of Appeals noted in Maldonado, 256 F.3d at 187 that the CLS schedule was a fair reflection of market rates in the city, but did so in the absence of objections to the hourly rate requested therein.

Defendants contend that because plaintiff's counsel was part of a small firm of only eight attorneys,² plaintiff relied upon the incorrect Altman survey. Specifically, they argue that the proper guide to market rates for attorneys in the position of plaintiff's counsel was a companion Altman survey covering a cross-section of small firms and solo practitioners in the Philadelphia area ("Small Firm Survey"). The Small Firm Survey reflects lower hourly rates for attorneys of corresponding experience in firms of 6 to 12 attorneys than the rates requested by attorneys Morris, Coren, Kaufman, and Dormont. (Def. Exh. I.) Plaintiff's counsel has provided no reasons as to why the Court should not rely upon a survey conducted by the same firm cited by

² Defendants cite to Martindale-Hubble and counsel's stationary letterhead for their argument that Mr. Coren's firm has 8 attorneys and should therefore fall within the Small Firm Survey rate. Mr. Coren does not dispute the defendants' characterization of the size of his firm.

plaintiff's own expert, and which provides a more specific guide to rates of firms in the smaller size range of plaintiff's counsel. Consequently, the rates for Morris, Coren, Kaufman and Dormont will be reduced to reflect the upper quartile rates of attorneys with similar years of experience under the Small Firm Survey.

The Court will therefore grant attorneys fees to plaintiff's counsel at the following adjusted rates: (1) Morris: \$225;³ (2) Coren: \$211 for 1998-2000, \$225 for 2001-2002; (3) Kaufman: \$225; and (4) Dormont: \$183. The requested rates of the remaining attorneys are either on a par with, or less than, the upper quartile rates for attorneys of corresponding experience, and will remain unadjusted.⁴

B. Excessive and Redundant Hours

Plaintiff asserts that her attorneys invested a total of 2,193.48 hours in preparing and litigating her case. Specifically, they spent their time on the following: 110.65 hours on pre-filing case evaluation and assessment; 91 hours on preparing and filing the pleadings; 905 hours on discovery; 248 hours on preparing and responding to the motions for summary judgment; 107 hours on settlement efforts; 562.55 hours on preparing for trial; and 167.9 hours on the counsel fee petition. Defendants contend that the hours expended in each stage of the litigation were excessive and unreasonable and should therefore be reduced.

³ Although Morris is a solo practitioner rather than an attorney at a small firm, in light of the close working relationship between Morris and the remaining attorneys during the course of this litigation, in the Court's view Morris was part of the law firm for purposes of the attorneys' fee petition.

⁴ Defendants' attempt to rely on Simmons v. City of Philadelphia, C.A. 99-4204, 2001 WL 15958, at *1 (E.D. Pa. Jan. 4, 2001) to reduce the requested fees further, must fail; the Court in Simmons merely approved the fees requested therein as reasonable, and did not set any maximum reasonable market rate for attorneys.

Hours billed that are excessive, redundant or unnecessary are not reasonably expended and should be excluded from the calculation. Hensley, 461 U.S. at 434. Nevertheless, objections must be specific for the Court to reduce the hours requested. See United States v. Eleven Vehicles, 200 F.3d 203, 211-12 (3d Cir. 2000) (citing Cunningham v. City of McKeesport, 753 F.2d 262, 266 (3d Cir. 1985), vacated on other grounds, 478 U.S. 1015 (1986), and reinstated, 807 F.2d 49 (3d Cir. 1986)). The general objections posed to the hours expended as a whole are insufficient to provide notice to Dooley of the portion of the fee petition which must be defended. See Rode, 892 F.2d at 1183.

Additionally, my review of the hours billed shows that the work billed on its face appears reasonable. The duties were properly divided, with the bulk of the assignments given to junior associates at lower billing rates. (Lerner Opinion, Pl. Exh. E at 4.) Specifically, Morris, Coren and Kaufman billed 521 hours as compared to the 1672.28 hours billed by the junior associates. Moreover, it is clear that the majority of hours billed were devoted to discovery and trial preparation. Plaintiff undertook 17 depositions, primarily devoted to determining the veracity and reliability of plaintiff's disputed testimony at the Vasallo trial, which was the alleged reason for plaintiff's disciplinary action. The Court relied upon much of the deposition testimony in finding for the plaintiff on her partial summary judgment. Dooley v. City of Philadelphia, 153 F. Supp. 2d 628, 644-45 (E.D. Pa. 2001) (citing to the "impressive array of depositions" in which nine officers corroborated Dooley's version of events). The depositions themselves appeared to have been accomplished in an efficient amount of time; the longest deposition took only four and one quarter hours. Plaintiff also required two separate court orders to facilitate the production of requested documents from defendants. Defendants cannot successfully complain of the hours

devoted to discovery disputes in which they themselves were less than cooperative. Nor indeed may defendants successfully complain of the total hours billed to trial preparation; until the week before trial, defendants significantly failed to engage in serious settlement talks in the six months after the issuance of the summary judgment opinion determining that plaintiff's First Amendment rights had been violated as a matter of law.

In addition to the difficulties posed by defendants in the document production and time-frame of settlement negotiation, defendants failed to answer the complaint until almost three months after its service, more than one month after their requested extended deadline. Their delay necessitated the opening of the default that had been entered. Similarly, despite the agreement in principle of both parties to settlement in late January 2002, defendants failed to execute the settlement agreement or honor their payment and non-monetary obligations under the agreement until the end of June 2002. Plaintiff was forced to file a motion to enforce settlement in March 2002, and withdrew it in April 2002 upon the agreement of parties to negotiate. The argument of defendants that the motion was unnecessary is untenable, as evidenced by the recent motion to enforce the settlement filed by plaintiff on August 21, 2002. While counsel for plaintiff may have engaged in aggressive litigation tactics, defendants themselves significantly and consistently contributed to the unnecessary delays and subsequent increased expenses. The general objections posed by defendants to what they characterize as an excessive total number of hours billed is thus unpersuasive absent more specific grounds for their objections.

The Court will nevertheless sustain a number of the more specific objections posed by defendants. For example, defendants object to the 8 hours billed by Coren, 34.9 hours billed by Hornik, and 13.5 hours billed by Bellingham to monitor and attend the labor arbitration and

lawsuit by Lamont Fox, Vasallo's former colleague and co-defendant.⁵ Plaintiff provide no explanation for why so much time was necessary to monitor the developments, nor why counsel personally attended the proceedings rather than simply order a copy of the transcript. Dooley further fails to respond to defendants' contention that she improperly seeks to reimburse Coren for the 8 hours spent defending her deposition in the Fox lawsuit. I thus find that the hours billed were unnecessary and excessive, and consequently will reduce them by 8 hours for Coren, 17.4 hours for Hornik and 6.75 hours to Bellingham.

Similarly, defendants object to the 0.7 hours billed by Coren and 20.8 hours billed by Hornik in the unsuccessful attempt to compel the FBI to produce documents related to the Vasallo investigation. As defendants observe, and as Judge Angell determined at the time, the dictates of the Privacy Act make clear that the FBI was prohibited from producing certain requested files to plaintiff. They further object to the 16 hours billed by Hornik in monitoring and discussing the Vasallo lawsuit and 7 hours by Hornik to draft a motion for protective order against her deposition in the Vasallo lawsuit. Although the Court appreciates the underlying role Vasallo played in the events at issue in Dooley's litigation, Vasallo's subsequent lawsuit was unrelated to Dooley's claims in this action. Plaintiff has provided no reasons as to why the time billed was necessary to monitor Vasallo's lawsuit. Consequently, I find the hours billed by Hornik on this matter were excessive, and will reduce them by 24 hours.

Plaintiff has failed to respond to defendants' objections to the 13 hours billed by Hornik and 2.5 hours by Bellingham to deal with an "Evelyn Heath" file. Plaintiff has provided no

⁵ Where the hours objected to by defendants do not correspond with the hours billed by plaintiff's counsel on the specific date in the time entries cited in defendants' response, the Court acknowledges defendants' objections only to the hours accounted for in the time entries. Thus, where defendants object to 24 hours billed, but the time entries for the date cited reflect only 16 hours, the Court entertains the objection to only the latter number of hours.

explanation as to why the Evelyn Heath file was relevant to her litigation. Hornik has also charged 7 hours to talk with other “plaintiff’s” counsel and call John Jay College, yet plaintiff has provided no explanation of who was the other plaintiff or why Hornik called John Jay College. Without an explanation, the Court must find these hours to be unreasonable, and will therefore eliminate them from the fee award.

Defendants also present a litany of objections to various discovery-related hours billed by Hornik as excessive. Specifically, defendants object to the following: 5 hours to review “self-executing disclosure rules;” 13.5 hours to draft self-executing disclosure; 7 hours to prepare for and attend a 1 hour discovery conference in December 1999; 11 hours to prepare for and attend a 1 hour discovery conference in April 2000; 10 hours to meet with plaintiff and review documents to prepare discovery response; 4 hours to read a police report; 2 hours to discuss the schedule of plaintiff’s deposition; and 2 hours to discuss with plaintiff the transition of her case to other counsel. Although it is always difficult in the absence of the relevant context to assess the reasonableness of time taken to accomplish a task, plaintiff has provided no response to these specific objections, and in light of the tasks for which the hours were expended, the Court finds that the hours billed are excessive. I will therefore reduce the hours by 27.25.

Defendants also contest the following hours billed by Hornik: 8 hours to draft an ultimately unfiled motion to reinstate default and to strike objections; 16 hours to research and draft a confidentiality stipulation that plaintiff never signed; and 7 hours to research for a police administration expert never named or used. Although the nature of litigation renders inevitable the exertion of efforts to accomplish tasks that remain unaccomplished, plaintiff has not provided reasons as to why these hours were reasonable and necessary, or why they were not reduced

when the determination was made to abort the assignments. I therefore find the 31 hours billed to be unreasonable, and will eliminate them from the fee award.

Finally, defendants object to the 4.3 hours billed by Coren and 20.7 hours billed by Bellingham to the motion for reconsideration filed by plaintiff. The 10-page motion sought to reopen claims of retaliation by defendants in the form of several alleged adverse actions that the Court had previously determined were insufficiently supported by plaintiff's brief and the record. Plaintiff succeeded on only one claim on which the Court had inadvertently granted summary judgment for the defendants; the motion was otherwise a rehash of plaintiff's previous unsuccessful arguments in response to the motion of defendants for summary judgment. Consequently, I find that the hours billed were unreasonable, and will reduce them by 3.3 hours for Coren and 15.7 hours for Bellingham.

The Court finds that the remaining hours to which defendants have posed specific objections were reasonable or were reasonably reduced by plaintiff in her fee petition. Consequently, the Court will award plaintiff fees for the hours requested, less 11.3 hours for Coren (2000: 8 hours; 2001: 3.3 hours), 119.65 hours for Hornik (1999: 59.15 hours; 2000: 60.5 hours), and 24.95 hours by Bellingham (2000: 9.25 hours; 2001: 15.7 hours).⁶

C. Objections Based on Lack of Success

Defendants argue that the fee request should be further reduced for plaintiff's failure to succeed on many of the claims initially asserted. By multiplying the 9 causes of action asserted by the 6 defendants named, defendants calculated a total of 54 separate claims brought by plaintiff. Defendants note that plaintiff won only 3 of the claims on summary judgment and that

⁶ Allocation of the reduction of hours was set according to the year in which the opposed billing activity took place.

only 8 claims survived the motion of defendants for summary judgment; they therefore argue that the fee should be reduced by at least 40%.

In contrast to the protestations of defendants, the United States Supreme Court has rejected “a mathematical approach comparing the total number of issues in the case with those actually prevailed upon.” Hensley v. Eckerhart, 461 U.S. 424, 435 n. 11, 76 L. Ed. 2d 40, 103 S. Ct. 1933 (1983). Although counsel should not be awarded fees for an unsuccessful claim that was based on different facts and distinct legal theories from successful claims, where the claims are related, the focus of an attorneys’ fee application should be on the “overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.” Id. at 435; see also West Virginia Univ. Hosps. v. Casey, 898 F.2d 357, 361-62 (3d Cir.), cert. denied, 496 U.S. 936, 110 L. Ed. 2d 661, 110 S. Ct. 3213 (1990).

[A] plaintiff who has won substantial relief should not have his attorney’s fee reduced simply because the district court did not adopt each contention raised. But where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained.

Hensley, 461 U.S. at 440.

By order dated January 15, 2002, this Court observed that the parties had agreed that plaintiff was a “prevailing party,” entitling her to reasonable attorneys fees. (Doc. No. 52.) Plaintiff had succeeded on a motion for partial summary judgment on her claim that she had been suspended in retaliation for testifying in the criminal trial of former police officer Michael Vasallo. The majority of the federal claims for civil rights deprivations that plaintiff asserted remained for trial. The finding and conclusion that the Commissioner had deliberately retaliated against plaintiff for exercising her First Amendment right was a considerable victory for plaintiff.

The jury would have been informed of this conclusion during the trial. The decision of defendants to settle was clearly impacted by the Court's determination. Plaintiff gained a cash settlement amount of \$380,000 for all of her remaining claims as well as the claim on which she was granted summary judgment, and was further provided with an assurance of a promotion to Inspector and the removal of negative information from her records. This was "substantial relief" for plaintiff. That the fees and expenses sought are greater than the cash settlement is not a bar to their award; the degree of plaintiff's success rather than the amount of cash settlement is the "most critical factor." Farrar v. Hobby, 506 U.S. 103, 114, 121 L. Ed. 2d 494, 113 S. Ct. 566, 574 (1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 76 L. Ed. 2d 40, 103 S. Ct. 1933 (1983) (rejecting rule of proportionality between damages award and attorneys' fee award)).⁷

The claims on which summary judgment was granted to defendants were based on the same facts and similar legal theories as the claim on which plaintiff succeeded, and should therefore not be separated out for purposes of an attorneys' fee analysis. The possible exception to this might be the state law claims, which were based on the same facts but different legal theories. Nevertheless, plaintiff has already reduced the fee request for the hours spent litigating the unsuccessful claims of intentional infliction of emotional distress, the criminal code violation under 18 Pa.C. S. § 4953, and the claims asserted under the Pennsylvania Constitution and the supremacy clause of the U.S. Constitution. Specifically, the plaintiff's fee request was voluntarily reduced by \$3,075 for the unsuccessful state and federal law claims pursued, based on

⁵ The Third Circuit Court of Appeals has determined that attorneys fees granted under fee-shifting statutes should not be diminished to maintain proportionality between the fees and the damages. See Washington v. Philadelphia County Court of Common Pleas, 89 F.3d 1031, 1041-42 (3d Cir. 1996). This ensures that attorneys who act as a "private attorney general" can be adequately compensated for their labor in civil rights cases that may have a small monetary award but important social benefits. Id. at 1041 (citing Riverside v. Rivera, 477 U.S. 561, 575 (1986)).

20.5 hours billed at \$150 per hour, and \$3,300 for the adverse employment actions that failed to survive summary judgment, based on 22 hours billed at \$150 per hour. The Court finds this a fair and adequate reduction.

Defendants further posit that because defendants Small and the Philadelphia Police Department were granted summary judgment outright, one-third, or 33% of the fee should be reduced. Although attorneys should not be compensated for hours devoted to claims against defendants found to be not liable, attorneys hours “fairly devoted” to one defendant that also support the claims against other defendants are compensable. Rode v. Dellarciprete, 892 F.2d 1177, 1185 (3d Cir. 1990). My review of the fee petition and hours billed reveals no distinct hours devoted to defendant Smalls or the Police department as distinct from the City of Philadelphia or other remaining defendants. The hours spent on prosecuting claims against Smalls and the Police Department may be said to have been “fairly devoted” to support the claims against the remaining defendants. I thus conclude that the hours billed by plaintiff’s counsel will not be reduced for any lack of success.

D. Lack of Specificity

Defendants further contest the hours billed for lack of specificity in the descriptions. The Third Circuit Court of Appeals has explained, “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.’” Washington, 89 F.3d at 1037 (quoting Rode v. Dellarciprete, 892 F.2d 1177, 1190 (3d Cir. 1990)).

[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.

Rode, 892 F.2d at 1190 (internal quotation marks and citations omitted). In Rode, the submitted petition included records specifying the “general nature of the activity and the subject matter of the activity where possible, e.g. T (Dusman), CF (client), R (re appeals), the date the activity took place and the amount of time worked on the activity.” Rode, 892 F.2d at 1191. Similarly, in Washington, the petition included “records specifying the date when the work was performed, the attorney performing the work, the nature of the work (e.g. ‘Prepare complaint,’ ‘Conference with [co-counsel] regarding liability issue’), the amount of time spent and the hourly rate charged for that particular task.” Washington, 89 F.3d at 1037. In both cases, the court of appeals reversed a district court finding that the petition did not provide adequate descriptions of the services rendered. Under this standard, I find that the time entries in Dooley’s petition are sufficiently specific. I thus conclude that reduction based on lack of specificity is not warranted.

E. Expenses

Defendants further object to the request for expenses based on lack of specificity. In her fee petition and reply brief, plaintiff has requested \$17,430.27 in expenses that include duplicating, postage, filing fees, medical reports, expert fees, travel expenses (including parking, mileage and tolls), court reporter fees, witness fees and expenses, miscellaneous, telecopier charges and Westlaw charges. Courts may award under section 1988 “litigation expenses that are incurred in order for the attorney to be able to render his or her legal services.” Abrams v. Lightolier, Inc., 50 F.3d 1204, 1225 (3d Cir. 1995). With the exception of the \$496.10 in miscellaneous charges, I find that the items requested are sufficiently specific, and represent

routine and regularly necessary expenditures for maintenance of cases of this nature; I further find that the expenditures were modest for a case of this size. Nevertheless, defendants correctly observe that expert fees are not compensable for successful section 1983 claims under the fee-shifting provisions of section 1988. See West Virginia Hosps., Inc. v. Casey, 499 U.S. 83, 102, 113 L. Ed. 2d 68, 111 S. Ct. 1138 (1991); Abrams, 50 F.3d at 1225; see also 42 U.S.C. § 1988 (c).⁸ Thus, the \$7,155.00 requested for expert fees, as well as the \$496.10 in miscellaneous charges, will be excluded from the award.

E. Delay Multiplier

Dooley further requests a delay enhancement of \$43,146.62, to compensate for lost use of money during the time before counsel fees are awarded. (Pl. Exh. L.) Defendants argue that plaintiff has not proven that she is entitled to a delay enhancement. Courts may make “an appropriate adjustment for delay in payment.” Missouri v. Jenkins, 491 U.S. 274, 284, 105 L. Ed. 2d 229, 109 S. Ct. 2463 (1989). The burden is on the petitioning party to establish the need for delay enhancement. See Keenan v. City of Philadelphia, 983 F.2d 459, 476 (3d Cir. 1992). A plaintiff should provide evidence that documents the costs of receiving delayed payment of fees. Id.

Dooley’s memorandum in support of her petition provides that over time the law firm of her attorneys, Kaufman, Coren, & Ress, P.C., borrowed money at varying interest rates above the prime rate, from Progress Bank and First Republic Bank. (Pl. Mem. at 17-18.) Coren attests

⁸ Section 1988 (c) provides, in relevant part:

In awarding an attorney’s fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or section 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney’s fee.

There is no parallel provision allowing a court to award expert fees for enforcement of section 1983.

to the veracity of this statement in his attached declaration. Nevertheless, plaintiff has not provided any documentary evidence as to the necessity for the loans, the period of time over which the loans were made, or the approximate amount of interest paid on the loans taken during the period in question. Cf. Blum v. Witco Chem. Corp., 888 F.2d 975, 982 (3d Cir. 1989) (“Blum II”) (affirming delay enhancement award where party produced market interest rates and certification of law firm loans and interest payments made on loans), nor shown that the firm took out its loans as a result of plaintiff’s case. See Student Public Interest Research Group v. Monsanto Co., 727 F. Supp. 876, 883-84 (D.N.J.), aff’d without opinion, 891 F.2d 283 (3d Cir. 1989). Accordingly, I find that plaintiff has failed to sustain her burden of documenting the factual basis for a delay adjustment.

I further note that based on the contingency fee relationship common in cases of this nature, and the need to establish plaintiff as a prevailing party, payment to plaintiff’s counsel would generally be delayed until the resolution of the matter. Thus, “a delay multiplier is not automatically necessary to provide a reasonable compensation.” Hall v. Harleysville Ins. Co., 943 F. Supp. 536, 546 (E.D. Pa. 1996) (quoting Peters v. Delaware River Port Authority, 1993 U.S. Dist. LEXIS 3722, *2 (E.D. Pa. March 9, 1993) (“Delay between the rendering of services and the receipt of payment is not uncommon throughout the profession”). I conclude that a delay multiplier is not warranted in this action.

F. Calculation

Based upon the reduced hours and hourly rate as set forth above, and with the additional hours and costs charged since the filing of the petition as set forth in plaintiff's reply brief and motion to enforce settlement, the fees will be adjusted as follows:

Attorney	1998-99 (hours x rate)	2000	2001	2002	Lodestar
Coren	47.5 x \$211 = \$9969.75	134.7 x \$211 = \$28330.97	98 x \$225 = \$22050.00	105.7 x \$225 = \$23782.50	\$84,133.22
Morris	48.15 x \$225 = \$10833.75	8.3 x \$225 = \$1867.50	16.45 x \$225 = \$3701.25	20.8 x \$225 = \$4680.00	\$21,082.50
Kaufman	12.6 x \$225 = \$2835	16.9 x \$225 = \$3802.50	16.3 x \$225 = \$3667.50	11.9 x \$225 = \$2677.50	\$12,982.50
Hornik	365.05 x \$150 = \$54757.50	138 x \$155 = \$21390			\$76,147.50
Bellingham		214.38 x \$140 = \$30013.20	193.05 x \$150 = \$28957.50		\$58,970.70
Bodner			159.8 x \$140 = \$22372	214.2 x \$160 = \$34272	\$56,644.00
Garrity			94.3 x \$125 = \$11787.50	107.6 x \$130 = \$13988	\$25,775.50
Noone			49 x \$125 = \$6125	22.6 x \$130 = \$2938	\$9,063.00
Dormont				4.3 x \$183 = \$786.90	\$786.90
Total Fees					\$345,585.82
Less Billing Deduction					-\$33,855
Net Fees					\$311,730.82
Costs					\$9,779.17
Total Net Fees & Costs					\$321,509.99

Conclusion

For the foregoing reasons, I will grant plaintiff's petition for the requested fees, but will reduce the hourly rate for attorneys Coren, Morris, Kaufman and Dormont to the upper quartile of the hourly rates of attorneys in small firms with corresponding years of experience. I will further reduce the hours of Coren by 11.3 hours, of Hornik by 119.65 hours, and of Bellingham by 24.95 hours. I will also reduce the expenses awarded by \$7,651.10. Taking into account the billing judgment deductions already calculated by plaintiff, I will thus award plaintiff attorneys' fees in the amount of \$311,730.82 and costs in the amount of \$9,779.17, for a total award of \$321,509.99.

An appropriate Order follows.

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

JEANETTE DOOLEY,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, POLICE	:	
DEPARTMENT OF THE CITY OF	:	
PHILADELPHIA, JOHN F. TIMONEY,	:	
RICHARD ZAPPILE, ROBERT SMALL,	:	
JOHN NORRIS,	:	
	:	
Defendants.	:	NO. 99-2764

ORDER

AND NOW, this 30th day of August, 2002, upon consideration of the motion of plaintiff for attorney's fees and expenses (Doc. No. 55), the response of defendants (Doc. No. 59) and the reply thereto (Doc. No. 61), and for the reasons set forth in the foregoing memorandum, it is hereby **ORDERED** the motion is granted in part, and plaintiff is awarded attorneys' fees in the amount of \$311,730.82 and costs in the amount of \$9,779.17.

It is **FURTHER ORDERED** that defendant City of Philadelphia shall pay the total sum of \$321,509.99 to John W. Morris, Esquire and Kaufman, Coren & Ress, P.C. no later than September 27, 2002.

It is **FURTHER ORDERED** that upon praecipe and certification that the full sum remains unpaid after September 27, 2002, this Court will enter judgment on the award.

LOWELL A. REED, JR., S.J.