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

JOSEPH A. ARIETTA; DONALD EARL CUMMINGS; JOSEPH F. O'HARA; EDWARD J. KUCHAR; KATHLEEN R. KUHNS; PHILLIP T. PONGRACZ; KAREN PONGRACZ and MARY ANN YORINA, Plaintiffs vs. CITY OF ALLENTOWN; JOSEPH BLACKBURN, Individually and in his Official Capacity as Police Chief of the City of Allentown; RONALD MANESCU, Individually and in his Official Capacity as Assistant Police Chief of the City of Allentown; and ROY AFFLERBACH, Individually and in his Official Capacity as Mayor of the City of Allentown, Defendants	)	Civil Action No. 04-CV-00226

* * *

APPEARANCES:

DENIS V. BRENAN, ESQUIRE
CHRISTOPHER A. FERRARA, ESQUIRE
On behalf of Plaintiffs

THOMAS C. ANEWALT, ESQUIRE
On behalf of Defendants

* * *

M E M O R A N D U M

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on plaintiffs' Motion for Award of Counsel Fees and Costs Pursuant to 42 U.S.C. Section 1988(b), originally filed on August 20, 2004 and amended on January 12, 2006. A hearing on plaintiffs' motion was held before the undersigned on August 18 and 25, 2006. For the reasons stated below, we grant plaintiffs' motion in part and award counsel fees and costs in the amount of $51,387.96.

JURISDICTION AND VENUE

Jurisdiction is based upon federal question jurisdiction pursuant to 28 U.S.C. § 1331. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the events giving rise to plaintiffs' claims allegedly occurred in Allentown, Lehigh County, Pennsylvania, which is located in this judicial district.

PROCEDURAL HISTORY

Plaintiffs initiated this action by filing a Complaint against defendants on January 20, 2004. Plaintiffs are eight individuals who protest against abortion at or near abortion clinics and who urge expectant mothers to seek alternatives to abortion. Arietta v. City of Allentown, 2004 WL 1774623 at *1 (E.D.Pa. 2004)(J.M. Kelly, J.). Plaintiffs advocate their

pro-life message through "counseling, leafleting, praying and picketing." Id. Plaintiffs sought to engage in these activities at the entrance to the Allentown Women's Center, a facility that provides medical services, including abortions, to women.

The City of Allentown has enacted a special events Ordinance which requires any group seeking to conduct a special event upon any street or public area to first obtain a special events permit from the Mayor or his designee. Codified Ordinances of the City of Allentown §§ 311.01 through 311.99 ("the Ordinance"). Plaintiffs raised both facial and as-applied challenges to the Ordinance under the First Amendment to the United States Constitution.

On August 9, 2004 former Senior Judge James McGirr Kelly[1] issued a Memorandum and Order in this case. Senior Judge Kelly presided over this case and conducted a hearing at the James A. Byrne United States Courthouse in Philadelphia, Pennsylvania. Senior Judge Kelly's Memorandum and Order addressed plaintiffs' Motion for Temporary Restraining Order, which had been converted to a Motion for Preliminary Injunction and subsequently to a Motion for Permanent Injunction. 2004 WL 1774623 at *12. Plaintiffs' request was granted in part and denied in part.

Specifically, plaintiff's request was granted to the

[1] On April 1, 2005, subsequent to Senior Judge Kelly's death, the within matter was reassigned to the calendar of the undersigned.

extent that defendants were permanently enjoined from enforcing sections 311.01 to 311.13 of the Codified Ordinances of the City of Allentown against plaintiffs. That is, the Ordinance would not be applied to plaintiffs, who protest as individuals unaffiliated with any group. 2004 WL 1774623 at *1, *12. Plaintiffs' Motion for Permanent Injunction was denied in all other respects.

On August 20, 2004 plaintiffs filed their Motion for Award of Counsel Fees and Costs Pursuant to 42 U.S.C. Section 1988(b) ("Motion for Counsel Fees"). In response, defendants filed Defendants' Motion for Hearing on Plaintiffs' Request for Attorney's Fees and Defendants' Brief in Opposition to Plaintiffs' Motion for Award of Counsel Fees and Costs Pursuant to 42 U.S.C. Section 1988(b) on September 2, 2004.

By Order of the undersigned dated September 27, 2005, plaintiffs' Motion for Counsel Fees was denied without prejudice for plaintiffs to file an amended motion. In particular, the Order noted that plaintiffs' materials did not provide sufficient specificity with regard to the tasks performed by plaintiffs' attorney Denis V. Brenan or the amount of time Mr. Brenan spent on each task.[2] Accordingly, plaintiffs' Motion for Counsel Fees was denied without prejudice for plaintiffs to file an amended

[2] Plaintiffs were represented by two attorneys, Denis V. Brenan, Esquire and Christopher A. Ferrara, Esquire. The September 27, 2005 Order noted that Mr. Ferrara's records were sufficiently precise.

motion containing a more specific explanation of the work done by counsel.

On January 12, 2006, plaintiffs filed their Amended Motion for Award of Counsel Fees and Costs Pursuant to 42 U.S.C. Section 1988(b) ("Amended Motion for Counsel Fees"). Subsequently, on May 17, 2006 defendants filed Defendants' Motion for Hearing in Opposition to Plaintiffs' Amended Motion for Award of Counsel Fees and Costs Pursuant to 42 U.S.C. Section 1988(b). Plaintiffs filed their Answer to Defendants' Motion for a Hearing on Plaintiffs' Amended Motion for Award of Counsel Fees and Costs on May 22, 2006.

We granted defendants' request for a hearing by Order dated June 16, 2006. A hearing was held on plaintiff's Amended Motion for Counsel Fees on August 18 and 25, 2006.

STANDARD FOR AWARD OF COUNSEL FEES

With regard to the award of counsel fees, 42 U.S.C. § 1988(b) provides, in pertinent part, that

> In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title...the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs....

42 U.S.C. § 1988(b).

The standard for awarding counsel fees pursuant to 42 U.S.C. § 1988 is explained in Hensley v. Eckerhart,

461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1982). As a preliminary matter, a plaintiff must be a "prevailing party" to recover counsel fees under this statutory provision. Hensley, 461 U.S. at 433, 103 S.Ct. at 1939, 76 L.Ed.2d at 50.

The Supreme Court holds in Hensley that various tests may be applied in determining whether a plaintiff is a prevailing party entitled to attorney's fees. One such test, cited by the Court in Hensley, looks to whether plaintiffs "succeed on any significant issue in litigation which achieves some benefit the parties sought in bringing suit." 461 U.S. at 432, 103 S.Ct. at 1939, 76 L.Ed.2d at 50 (citing Nadeau v. Helgemoe, 581 F.2d 275, 278-279 (1st Cir. 1978).[3]

If a plaintiff is the prevailing party, a court may determine a reasonable fee for plaintiff's attorneys based upon the hours reasonably spent on the litigation multiplied by a reasonable hourly rate, sometimes referred to as the "lodestar" amount. The party seeking award of fees bears the burden of establishing the hours worked and rates claimed. Hensley,

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[3] The United States Court of Appeals for the Third Circuit has interpreted Hensley as setting out one possible formulation of the prevailing party test. The Third Circuit found that Hensley did not invalidate the earlier test for prevailing party status employed by the Third Circuit in NAACP v. Wilmington Medical Center, Inc., 689 F.2d 1161 (3d Cir. 1982). Institutionalized Juveniles v. Secretary of Public Welfare, 758 F.2d 897 (3d Cir. 1985). In NAACP v. Wilmington, the Third Circuit stated that "the standard used in this circuit for determining a plaintiff's prevailing party status is whether plaintiff achieved 'some of the benefit sought' by the party bringing the suit." 689 F.2d at 1167 (citing Bagby v. Beal, 606 F.2d 411, 415 (3d Cir. 1979), *cert. denied*, 460 U.S. 1052, 75 L.Ed.2d 930, 103 S.Ct. 1499 (1983)).

461 U.S. at 433, 103 S.Ct. at 1939, 76 L.Ed.2d at 50.

Next, the district court may adjust the fee based upon the results obtained. In doing so, the court should consider two issues: 1) whether plaintiffs failed to prevail on claims that were unrelated to their successful claims; and 2) whether plaintiffs achieved a level of success that makes the hours reasonably expended a satisfactory basis for determining an award. Hensley, 461 U.S. at 434, 103 S.Ct. at 1940, 76 L.Ed.2d at 51.

DISCUSSION

Plaintiffs argue that they are the prevailing parties in the underlying action brought pursuant to 42 U.S.C. § 1983. They argue that they are therefore entitled to the award of reasonable counsel fees pursuant to 42 U.S.C. § 1988(b). In addition, plaintiffs aver that they prevailed with respect to their core constitutional claim and that their fees should not be reduced to reflect the failure of alternative theories or minor claims.

Specifically, plaintiffs argue that attorney Ferrara is entitled to $25,725 in counsel fees, or 85.75 hours at a rate of $300 per hour. Attorney Brenan, in plaintiffs' view, is entitled to $42,870 in fees, or 142.9 hours at a rate of $300 per hour. Plaintiffs also claim $446.71 in costs. Thus, plaintiffs request

$69,041.71 in counsel fees and costs.

Plaintiffs' counsel Attorney Ferrara[4] argues that the relevant community for purposes of determining the customary attorney's fee is the entire area of the United States District Court for the Eastern District of Pennsylvania. Plaintiffs' counsel Attorney Brenan contends that the relevant community is the Delaware Valley, Pennsylvania, not Philadelphia.[5]

In support of their bill of costs, plaintiffs provided unsworn declarations by both attorney Ferrara and attorney Brenan with their Amended Motion for Counsel Fees. On August 18, 2006 Mr. Ferrara and Mr. Brenan each took the stand and swore to the accuracy of their submitted claims for counsel fees. Plaintiffs provided no further evidence.

Defendants dispute plaintiffs' fee petition on the basis of both the hourly rate and the number of hours claimed. Defendants also contend that plaintiffs' partial victory entitles them to only a portion of their enumerated expenses. However, defendants apparently concede that plaintiffs qualify as a prevailing party and are therefore entitled to counsel fees in a reduced amount pursuant to 42 U.S.C. §1988(b).

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[4] Attorney Ferrara is a full-time employee of the American Catholic Lawyers Association, Inc. His offices are in Fairfield, New Jersey and he has never before tried a case in Pennsylvania. He testified without any significant substantiation that the hourly rate in Philadelphia is $300.

[5] Attorney Brenan's legal office is in his home in Berwyn, Delaware County, Pennsylvania. He testified that when he retired as a partner from the law firm of Morgan, Lewis and Bockius in 2002 his hourly rate was $425 for all types of cases.

With regard to the reasonableness of plaintiffs' claimed hourly rate, defendants argue that $300 per hour is unreasonably high. In particular, defendants allege that reasonableness is to be gauged by comparing the hourly rate claimed to the rate charged by attorneys of similar experience practicing in the community in which the claim arose, in this case, Allentown, Pennsylvania.

Defendants presented testimony from two witnesses, James T. Huber, Esquire and Nicholas Noel, III, Esquire, both of whom are experienced civil rights attorneys practicing in the Lehigh Valley area. Mr. Huber testified that he generally bills $150-200 per hour, and Mr. Noel testified that in 2004 he billed at a rate of $200 per hour. Defendants allege that plaintiffs' counsel are in fact less experienced than Mr. Huber or Mr. Noel, and are therefore unreasonable in requesting a higher hourly rate.

Defendants also allege that plaintiffs present an unreasonable bill of costs to the extent that they request reimbursement for unnecessary and duplicative tasks. Defendants aver that plaintiffs' counsel are not entitled to reimbursement at the full hourly rate for tasks that could have been performed by paralegals, for tasks which did not affect the outcome of plaintiffs' case, or for time spent traveling. Further, defendants argue that both Mr. Brenan and Mr. Ferrara should not

be able to submit claims for completion of the same task.

Moreover, defendants object to perceived inaccuracies and discrepancies between the two bills submitted by plaintiffs' counsel. Defendants argue that plaintiffs' accounting contains suspicious entries, mathematical irregularities and chronological errors. Further, in comparing Mr. Brenan's initial claim to his amended bill of costs, defendants contend that Mr. Brenan's second bill adds time to some of the tasks performed on behalf of his clients, contains additional entries and alters the dates and descriptions of tasks performed.[6]

Finally, defendants argue that plaintiffs should not be awarded the full amount of fees requested because plaintiffs failed to achieve a resounding victory. In this regard, defendants contend that plaintiffs failed in their facial challenge to the Ordinance and in their claim for monetary

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[6] We note that Mr. Brenan's original bill, submitted with plaintiffs' Motion for Counsel Fees, purports to claim compensation for 121.5 hours of work performed. Mr. Brenan's second bill, submitted with plaintiffs' Amended Motion for Counsel Fees, lists 142.9 hours of work performed. Although comparison of these two totals indicates an increase of more than twenty hours, the discrepancy is in fact due to a mathematical error in the original fee petition. The individual entries in Mr. Brenan's original bill of costs, when added, yield a total of 150.4 hours. Accordingly, the Amended Motion for Counsel Fees claims 7.5 fewer hours than the original motion, not 21.5 additional hours.

Defendants are aware that Mr. Brenan's bill, taken in the aggregate, has decreased. Their objection in this regard avers that in comparing the two fee petitions, they found that in some cases, Mr. Brenan assigns more time to the performance of a particular task in his amended bill than was originally listed. He is able to do so and still yield a lower total overall because he has eliminated some tasks which could have been adequately performed by non-lawyers. See Unsworn Declaration of Denis V. Brenan, Esq., in Support of Amended Motion for Award of Counsel Fees and Costs, filed January 12, 2006.

damages.

Reasonableness of Hourly Rate

The calculation of reasonable counsel fees pursuant to 42 U.S.C. § 1988 is based on "the prevailing market rates in the relevant community". Blum v. Stenson, 465 U.S. 886, 895, 104 S.Ct. 1541, 1547, 79 L.Ed.2d 891, 900 (1984). The United States Court of Appeals for the Third Circuit has held that the "relevant community" should be defined as the litigation forum. Interfaith Community Organization v. Honeywell International, Inc., 426 F.3d 694, 705 (3d Cir. 2005). The fees awarded to a prevailing party should be in conformity with the fees charged in the community by attorneys "of reasonably comparable skill, experience, and reputation." Blum, 465 U.S. at 896, 104 S.Ct. at 1547, 79 L.Ed.2d at 900.

The party seeking counsel fees bears the initial burden of establishing the reasonableness of the hourly rate claimed. Blum, 465 U.S. at 896, 104 S.Ct. at 1547, 79 L.Ed.2d at 900 n. 11; Interfaith, 426 F.3d at 703 n.5. Establishing a prima facie case requires the production of evidence beyond an attorney's own affidavit in support of the requested rate. Blum, 465 U.S. at 896, 104 S.Ct. at 1547, 79 L.Ed.2d at 900 n. 11. If the party seeking fees makes a prima facie case for the reasonableness of the requested rate, the burden shifts to the

opposing party to produce evidence to the contrary. Washington v. Philadelphia County Court of Common Pleas, 89 F.3d 1031, 1036 (3d Cir. 1996).

If the party seeking fees does not make out a prima facie case, however, the district court will "exercise its discretion in fixing a reasonable hourly rate." Washington, 89 F.3d at 1036. In contrast, a district court has no discretion to reduce the hourly rate established by the party seeking fees where the party seeking fees has satisfied its burden and the opposing party fails to refute the prima facie case. Washington, 89 F.3d at 1036.

In this case, we find that plaintiffs have failed to meet their burden in establishing the reasonableness of the claimed rate of $300 per hour. The only evidence presented by plaintiffs in support of the claimed rate were the unsworn declarations of counsel and, at the hearing, the testimony of counsel. It is clear from Blum that more is required to satisfy plaintiffs' burden.

Thus, we exercise our discretion in determining a reasonable fee. In doing so, we consider the fees charged by attorneys of similar skill, experience and reputation in the Eastern District of Pennsylvania.[7] We note that while

[7] We note that the relevant community, as stated above, is the litigation forum. The relevant community is not the community in which the

(Footnote 7 continued):

Mr. Ferrara has considerable experience in civil rights litigation, Mr. Brenan's extensive experience lies primarily in other areas of litigation.

Accordingly, we find that it is appropriate to award counsel fees to Mr. Brenan and Mr. Ferrara at two separate rates. A reasonable fee in the Eastern District of Pennsylvania for Mr. Ferrara, in light of his experience in this type of litigation, is $275 per hour. Mr. Brenan's reasonable fee in this area of litigation is $200 per hour.[8]

Reasonableness of the Number of Hours Billed

As stated above, defendants object to plaintiffs' accounting on a number of separate grounds. Specifically, defendants argue that counsel for plaintiffs are not entitled to payment at their full rate for time spent traveling or performing

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(Continuation of footnote 7):

claim arose, as argued by defendants. Therefore, we find that defendants' argument with regard to the rates charged by attorneys practicing in Allentown as compared to Philadelphia attorneys is inapposite.

[8] In establishing two separate rates of payment, we do not in any way denigrate the quality of representation provided by Mr. Brenan. We merely note that because Mr. Brenan has spent his career practicing primarily in other areas of litigation, he may not have brought the same base of knowledge regarding civil rights litigation to this case as did Mr. Ferrara.

As stated above, experience is one of the critical factors in determining reasonable fees. Although Mr. Brenan's work in other areas of law undoubtedly contributed to his skill level and his reputation, we cannot treat experience in other areas of law in the same way as experience in the particular niche of plaintiffs' litigation. In this regard, we also note that plaintiffs first contacted Mr. Ferrara to take on their case, and Mr. Ferrara subsequently secured Mr. Brenan's involvement.

delegable tasks. In addition, defendants argue that plaintiffs cannot be reimbursed for time spent by counsel on tasks which did not affect the outcome of the case. Finally, defendants argue that both Mr. Ferrara and Mr. Brenan cannot be reimbursed for performing the same task.[9]

In addition to their substantive objections, defendants lodge a number of complaints to the manner of plaintiffs' accounting. In particular, defendants aver Mr. Brenan's revised time log, as compared to his original time log, contains a number of new entries, additional time for the completion of the same tasks previously listed, altered descriptions and changed dates. In addition, defendants contend that Mr. Brenan's time log includes suspicious entries, mathematical irregularities and chronological errors.

Travel

Time spent traveling is "an out-of-pocket expense under § 1988 that is generally recoverable 'when it is the custom of attorneys in the local community to bill their clients separately for it.'" Planned Parenthood of Central New Jersey v. Attorney General of the State of New Jersey, 297 F.3d 253, 267

[9] In closing argument defense counsel also argued that the 49.5 hours billed by Attorney Ferrara for drafting a Complaint and a memorandum of law concerning the request for a temporary restraining order were excessive. However because defense counsel did not support this contention with any testimony, nor otherwise indicate what number of hours would be reasonable for those tasks, we reject that contention.

(3d Cir. 2002)(quoting Abrams v. Lightolier Inc., 50 F.3d 1204, 1225 (3d Cir. 1995). Because neither plaintiffs nor defendants presented evidence on the issue of whether it is customary in this district to bill separately for travel, we exercise our discretion in determining this issue.

We begin by noting that the courts in this district have taken conflicting views with respect to this issue. Although the district courts apparently agree that travel is compensable at some rate, there does not seem to be consensus as to whether time spent traveling should be paid at an attorney's full rate or at some reduced rate in recognition of the fact that travel does not constitute legal work or require the exercise of legal skill. Compare Rush v. Scott Specialty Gases, 934 F.Supp. 152 (E.D.Pa. 1996)(approving reimbursement of attorney travel time at the attorney's full hourly rate) with Haberern v. Kaupp Vascular Surgeons, Ltd., 855 F.Supp. 95, 100 (E.D.Pa. 1994)(awarding reimbursement of attorney travel time at a 50% reduced hourly rate), vacated in part on other grounds, 24 F.3d 1491 (3d Cir. 1994).

We conclude that the Rush approach (that travel time should be compensable at the full rate) is the more appropriate one under the circumstances of this case. This is particularly true because in Rush one of plaintiff's counsel spent her commuting time working on plaintiff's file. Because an attorney

who is traveling may not meet with other clients or perform other legal work, we find that it is appropriate that the attorney should be able to bill at his standard hourly rate. Of course, if an attorney is able to perform work while traveling, he may not collect more than his standard rate by billing for both the travel and the legal work performed.

We note as well that the travel time at issue in this case is relatively minor as compared to the bill as a whole. Mr. Ferrara claims 2.5 hours of travel time, while Mr. Brenan claims approximately 10 hours of travel time.[10] Given that plaintiffs' counsel claim 228.65 hours in total, the 12.5 hours claimed for travel are not unreasonable in light of the total amount of work performed.

Moreover, Mr. Brenan testified that he often worked while traveling. Although Mr. Brenan did not provide a specific enumeration of those hours spent working on this case while traveling as compared to the hours spent traveling only, we are satisfied that he worked when he was able and did not double bill.

In light of the reasoning above, defendants' dispute of the hours claimed by plaintiffs' counsel for travel is unavailing.

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[10] We note that the precise amount of Mr. Brenan's travel time is difficult to ascertain because his time log occasionally assigns numerous activities, including travel, to a single, undivided period of time.

Delegable Tasks

An experienced attorney may not charge his full hourly rate for hours spent performing tasks which could easily have been delegated to less experienced attorneys or to non-lawyers. Ursic v. Bethlehem Mines, 719 F.2d 670, 677 (3d Cir. 1983). As the Third Circuit has observed, "[a] Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn." Id.

Mr. Brenan represents that his amended time log, unlike his original accounting, omits time spent on delegable tasks. We note that there are still a few time entries for administrative tasks such as sending facsimiles.[11] Nonetheless, the time spent on these tasks is de minimis and calls into question whether Mr. Brenan could have effectively delegated the task in less time than was required for him to perform the task himself.[12]

Because there are very few arguably delegable tasks listed on counsel's time logs and the savings to be realized by delegating these tasks was minimal if not nonexistent, we deny defendants' argument on this point.

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[11] We note five instances in which Mr. Brenan's time log includes a charge for facsimile transmission. Although Mr. Brenan does not provide an itemized account of how much time was spent on this task in every case, where he does do so, he apparently bills .10 hours, or 6 minutes. Accordingly, it is the sense of this Order that the total time spent on facsimile transmission was approximately one-half hour.

[12] Additionally, we note that had Mr. Brenan delegated certain tasks, he could then have billed for the performance of the task at a paralegal or secretary's rate. Accordingly, Mr. Brenan could bill his own time spent giving instructions and the delegee's time spent performing the task. Therefore, in some cases, delegating the task might have yielded a higher total than that claimed by Mr. Brenan.

Time Spent on Non-Essential Tasks

As stated above, defendants made a variety of arguments with regard to allegedly unnecessary tasks performed by plaintiffs' counsel. We agree with defendants that it was improper for Mr. Brenan to bill hours spent on zoning issues to this case.[13] Accordingly, we reduce Mr. Brenan's bill by .70 hours.

We also agree with defendants that the time logged by Mr. Brenan after the decision by Senior Judge Kelly is not compensable, as such time cannot be said to have been "reasonably expended" in the obtaining the relief sought in the litigation. See Hensley, 461 U.S. at 434, 103 S.Ct. at 1939, 76 L.Ed.2d at 50. Thus, we subtract 5.4 hours from Mr. Brenan's total fee request. Nonetheless, we do not subtract time spent preparing the fee petition, in this case .20 hours, because such time is compensable. Planned Parenthood, 297 F.3d at 268.

In all other respects, we deny defendants' arguments with regard to supposed non-essential tasks. In particular, we decline to second-guess the research and trial preparation decisions made by plaintiffs' counsel. We will not say that counsel should not have read newspaper articles or particular

[13] We note that a separate zoning case was brought by plaintiffs in state court.

cases, as defendants have suggested.[14] Defendants do not argue that the number of hours spent in research and trial preparation was unreasonable in the aggregate, and we will not use the benefit of hindsight to judge what plaintiffs' counsel should or should not have read in preparing their case.

Duplication of Work

Further, we reject defendants' argument that Mr. Ferrara and Mr. Brenan unnecessarily duplicated work. In this regard, the Third Circuit has held that a reduction in hours is appropriate only in cases in which attorneys unreasonably duplicate the same work. Rode v. Dellarciprete, 892 F.2d 1177, 1187 (3d Cir. 1990).

Counsel testified that Mr. Ferrara drafted the majority of the documents in this case, while Mr. Brenan reviewed those documents, communicated with plaintiffs, and appeared in court.[15] Although some inefficiencies may occur in the division of work between two attorneys, we find that plaintiffs' counsel managed

[14] In this regard, we note that in all likelihood, plaintiffs' counsel could have satisfied the specificity requirements of our Order of September 27, 2005 by providing entries detailing on the general parameters of the researched performed. We will not penalize counsel's greater specificity by scrutinizing the particular cases read and denying compensation based upon our assessment, aided by hindsight, of whether particular items of research were necessary or relevant.

[15] We do not find unreasonable, as defendants suggested, the fact that Mr. Brenan reviewed the drafts written by Mr. Ferrara. We believe that this is appropriate preparation and, moreover, that it likely reduced the amount of time Mr. Ferrara himself had to spend editing and revising his motions and briefs.

the division of labor appropriately and avoided duplicating work.[16]

Accounting Errors and Inconsistencies

With regard to defendants' allegations of errors, inaccuracies, and suspicious entries in Mr. Brenan's time logs, we are unpersuaded. Defendants are correct that there are discrepancies between the originally submitted time log and Mr. Brenan's amended time log, and the amended time log does contain some chronological errors.[17] However, we find credible Mr. Brenan's testimony that in revising his time log, he made certain revisions to more accurately reflect the way in which his time was spent. We also find credible Mr. Brenan's statement that he performed all of the work claimed and, in fact, that he performed work in excess of that reflected in his time log.

It is not surprising that in accounting for time spent

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[16] We note in particular that although Mr. Ferrara and Mr. Brenan spoke by telephone on a number of occasions, they do not both claim time for these conversations in their logs. Mr. Ferrara recorded only one conversation in his accounting, on February 10, 2004, and Mr. Brenan has no corresponding entry on that date. Accordingly, the suggestion by defendants that plaintiffs' counsel inflated the bill by both billing for the same activity is not supported by the record.

One notable exception to the general lack of parallel billing is the claim by both attorneys for time spent in court at the hearing held on January 28, 2004. However, it is entirely appropriate for eight plaintiffs to hire two attorneys to represent them. It is also appropriate that co-counsel would both choose to attend this hearing.

[17] These errors are not substantive. Mr. Brenan has testified that he performed the work described on the dates given, but acknowledged that a few entries are out of order in his itemized bill.

over a period spanning nearly eight months, Mr. Brenan should have found certain minor mistakes in his original log, and it is appropriate that he corrected them prior to filing his amended time log. We do not think that such corrections reflect dishonesty or inaccurate accounting, as defendants suggested. Mr. Brenan acknowledged that he made corrections, and the overall total number of hours for which he has claimed compensation in fact decreased by 7.5.[18]

In sum, we find nothing particularly "suspicious" in Mr. Brenan's time log. We will not reduce his compensation on the basis of the minor corrections he made or the mathematical errors in the original petition. Therefore, defendants' objection on this point is denied.

Reduction of Fees for Partial Success

In cases in which the prevailing party has achieved only partial success, it may be appropriate to adjust the number of hours for which compensation is requested downward. There are two distinct situations in which a downward adjustment may be warranted. In both cases, the determination of whether to reduce counsel fees hinges on the results obtained. Hensley, 461 U.S. at 434, 103 S.Ct. at 1940, 76 L.Ed.2d at 51.

[18] As noted above, because of a mathematical error, Mr. Brenan's original time log indicated a total of 121.5 hours. However, the actual total number of hours listed was 150.4. Therefore, Mr. Brenan's amended time log total of 142.9 is in fact 7.5 hours less than he originally listed.

First, downward adjustment is warranted where the unsuccessful claims are unrelated to the claims on which the plaintiffs prevailed. In this case, the work expended by attorneys on unrelated claims cannot be said to have contributed to the ultimate result. Where plaintiffs' claims are based on a common set of facts or related legal theories, however, it is generally not possible to divide the case into discrete claims so as to determine whether the work performed by attorneys contributed to the plaintiffs' success. Hensley, 461 U.S. at 434-435, 103 S.Ct. at 1940, 76 L.Ed.2d at 51.

Even if the failing claims are related to plaintiffs' successful claims, they may nonetheless comprise such a substantial portion of plaintiffs' case that the requested counsel fees are excessive in light of the results obtained. In this regard, the critical inquiry is the reasonableness of the fee in relation to the ultimate result of the litigation. Hensley, 461 U.S. at 436, 103 S.Ct. at 1941, 76 L.Ed.2d at 52.

In this case, plaintiffs were awarded some of the relief sought by their Complaint.[19] Because plaintiffs' separate

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[19] Plaintiffs' Complaint contained four counts. Counts I through III were brought pursuant to 42 U.S.C. § 1983 and stated claims for deprivation of plaintiffs' rights under the First Amendment. Specifically, Count I related to free speech rights, Count II was based on freedom of assembly and Count III referred to free exercise of religion. Count IV set forth a supplemental state law claim for civil conspiracy.

Plaintiffs sought four specific forms of relief: 1) a declaratory judgment that defendants' conduct chilled and violated plaintiffs'

(Footnote 19 continued):

claims arose from a common nucleus of operative facts and presented alternative theories in contending that the Ordinance should not be applied to plaintiffs, we find that plaintiffs' unsuccessful claims cannot be separated from their successful claims. In addition, we find that counsel fees are reasonable in light of the relief obtained, and therefore that plaintiffs' counsel fees should not be reduced to reflect limited success for the reasons stated below.

Plaintiffs were successful in securing a permanent injunction prohibiting defendants from enforcing the Ordinance against plaintiffs as they engage in "counseling, leafleting, praying and picketing" near the entrance of the Allentown Women's Center. Arietta, 2004 WL 1774623 at *13. We note, however, that it appears that defendants requested, and plaintiffs did not oppose, a judgment on partial findings pursuant to Rule 52(c) of the Federal Rules of Civil Procedure following the permanent injunction hearing. Accordingly, it seems that plaintiffs did not pursue their claims for declaratory judgment or damages.

(Continuation of footnote 19):

constitutional rights; 2) a declaratory judgment finding the Ordinance unconstitutional both facially and as applied; 3) temporary and permanent injunctive relief prohibiting defendants from "unlawfully preventing plaintiffs and others from engaging in peaceful, constitutionally protected activity on Keats Street or any other public forum in the City"; 4) award of compensatory and punitive damages. In addition, plaintiffs sought fees, costs, and expenses pursuant to § 1988 and such other relief as the Court should find appropriate.

Given the limited scope of relief sought at the injunction hearing, there can be little doubt that plaintiffs have obtained "excellent results" entitling their counsel to "a fully compensatory fee." See Hensley, 461 U.S. 424, 103 S.Ct. at 1940, 76 L.Ed.2d at 52.

It is not appropriate to reduce plaintiffs' fee award on the ground that plaintiffs did not prevail on each issue raised in the original Complaint, particularly because plaintiffs did not litigate all of those issues. Accordingly, we deny defendants' objection to award of the full fee requested by plaintiffs' counsel.

Costs

Defendants make no objection to plaintiffs' claim for $446.71 for reimbursement of costs expended for filing and service fees and purchase of hearing transcripts. Accordingly, we award plaintiffs costs in that amount.

CONCLUSION

For the reasons stated above, we grant plaintiffs' Amended Motion for Counsel Fees and Costs as described below. We award counsel fees to Attorney Brenan for 136.8 hours of work at a rate of $200 per hour, for a total of $27,360. We award counsel fees to Attorney Ferrara for 85.75 hours of work at a

rate of $275 per hour, for a total of $23,581.25. We also award $446.71 costs to Attorney Ferrara, for a total award of $51,387.96 for counsel fees and costs.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH A. ARIETTA;	)	
DONALD EARL CUMMINGS;	)	Civil Action
JOSEPH F. O'HARA;	)	No. 04-CV-00226
EDWARD J. KUCHAR;	)	
KATHLEEN R. KUHNS;	)	
PHILLIP T. PONGRACZ;	)	
KAREN PONGRACZ and	)	
MARY ANN YORINA,	)	
	)	
Plaintiffs	)	
	)	
vs.	)	
	)	
CITY OF ALLENTOWN;	)	
JOSEPH BLACKBURN, Individually	)	
and in his Official Capacity	)	
as Police Chief of the	)	
City of Allentown;	)	
RONALD MANESCU, Individually	)	
and in his Official Capacity	)	
as Assistant Police Chief	)	

of the City of Allentown; and)

ROY AFFLERBACH, Individually)

and in his Official Capacity)

as Mayor of the City of)

Allentown,)

)

Defendants)

O R D E R

NOW, this 29th day of September, 2006, upon consideration of the Amended Motion for Award of Counsel Fees and Costs Pursuant to 42 U.S.C. Section 1988(b), which motion was filed January 12, 2006; upon consideration of Defendants' Brief in Opposition to Plaintiffs' Motion for Award of Counsel Fees and Costs Pursuant to 42 U.S.C. Section 1988(b), which response was filed September 2, 2004[20]; after hearing held August 18 and 25, 2006; and for the reasons expressed in the accompanying

[20] We note that plaintiffs' original Motion for Award of Counsel Fees and Costs Pursuant to 42 U.S.C. Section 1988(b) was filed August 20, 2004. Defendants opposed plaintiffs' motion at that time by their brief in opposition filed September 2, 2004. By our Order dated September 27, 2005 we denied plaintiffs' original motion for lack of specificity without prejudice for plaintiffs to file a more specific amended motion. Plaintiffs filed their within amended motion on January 12, 2006. By our Order of June 16, 2006 we granted defendants' motion for a hearing on plaintiffs' amended motion. In footnote 1 to our June 16 Order we clarified that we would consider defendants' substantive objections filed September 2, 2004 to plaintiffs' original motion for counsel fees and costs, as objections to plaintiffs' amended motion of January 12, 2006.

Memorandum,

IT IS ORDERED that plaintiffs' motion for counsel fees and costs is granted.

IT IS FURTHER ORDERED that defendants shall pay plaintiffs' counsel Denis V. Brenan, Esquire $27,360 in counsel fees, and shall pay plaintiffs' counsel Christopher A. Ferrara, Esquire $23,581.25 in counsel fees plus $446.71 in costs, for a total award of $51,387.96.

BY THE COURT:

/s/James Knoll Gardner

James Knoll Gardner

United States District Judge