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

RAYMOND A. BRENNAN	:	CIVIL ACTION
v.	:	
SPRINGFIELD TOWNSHIP, SGT. VAUGHAN, AND DET. DEVANEY	:	No. 97-5217

Ludwig, J. **November 10, 1998**

M E M O R A N D U M

Plaintiff Raymond A. Brennan moves for attorney's fees of $34,125 and for expenses of $1,423.45, having prevailed in a § 1983 bench trial against the individual defendants, Sgt. Vaughan and Det. Devaney.[1]

I.

In a civil rights action, "the court, in its discretion, may allow the prevailing party, other than the United States, a

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1. Plaintiff prevailed on three liability issues: (1) whether Sgt. Vaughan lacked probable cause to arrest plaintiff; (2) whether Det. Devaney properly completed a post-arrest investigation; and (3) whether plaintiff was unlawfully detained and imprisoned. He was awarded damages in the amount of $10,000. A decision was entered against plaintiff in favor of Springfield Township as to municipal liability. Decision at 22-23.

Plaintiff meets the threshold standard of "prevailing party" for fee purposes. Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S. Ct. 1933, 1939, 76 L. Ed.2d 40 (1983)(standard met if party "succeed[s] on any significant issues in the litigation which achieves some of the benefit...sought in bringing suit") (citation omitted).

reasonable attorney's fee as part of the costs." 42 U.S.C. § 1988(b). Here, defendants Sgt. Vaughan and Det. Devaney challenge the hours claimed, the hourly rate, and the alleged degree of success.[2]

In 1990, our Court of Appeals summarized the evidentiary burdens in attorney fees cases:

> The party seeking attorney's fees has the burden to prove that its request for attorney's fees is reasonable. To meet its burden, the fee petitioner must "submit evidence supporting the hours worked and rates claimed." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983) . . . . In a statutory fee case, the party opposing the fee award then has the burden to challenge, by affidavit or brief with sufficient specificity to give fee applicants notice, the reasonableness of the requested fee. Bell v. United Princeton Properties, Inc., 884 F.2d 713 (3d Cir. 1989). The district court cannot "decrease a fee award based on factors not raised at all by the adverse party." Id. at 720; see Cunningham v. City of McKeesport, 753 F.2d 262, 267 (3d Cir. 1985).

Rode v. Dellarciprete, 892 F.2d at 1177, 1183 (3d Cir. 1990).

Whether the requested rate is reasonable "is to be calculated according to the prevailing market rates in the relevant community." Rode, 892 F.2d at 1183, citing Blum v. Stenson, 465 U.S. 886, 895-96 n. 11, 104 S. Ct. 1541, 1547 n.11, 79 L. Ed.2d 891 (1984). Consideration is to be given to the attorney's experience and skill compared to that of other attorneys performing similar services in the same community. Id., citing Student Public Interest Research Group (S.P.R.I.G.) v. AT&T Bell Laboratories, 842 F.2d 1436, 1442 n.3 (3d Cir. 1988). Furthermore, "[t]he prevailing

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2. The challenge concerning plaintiff's status as a prevailing party is rejected. See note 1, supra. The degree of success is discussed in more detail below. See infra at 10-11.

party has 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." Washington v. Philadelphia Court of Common Pleas, 89 F.3d 1031, 1035 (3d Cir. 1996) (citing Blum, 454 U.S. at 895 n. 11, 104 S. Ct. at 1547 n.11)).

II.

Plaintiff's fee claim included the services of three attorneys - primary counsel and two associates - and contained an itemization of dates worked, time spent, and work performed. For primary counsel's services prior to and following trial, the requested hourly rate is $250, plus a lump sum of $7,500 for the trial itself. For the associates, the requested hourly rate is $180. Pl. app. at 1. In support of the $250 rate, primary counsel submitted only his own affidavit. Pl. app. exh. A. There was no proffer for the hourly rate of the two associates other than their experience - both members of the bar "in excess of 10 years." Id.

Defendants object to both the rates and quantity of hours. According to defendants, "the rates charged by Defendants' law firm are $100.00 per hour for a partner and $85.00 for an associate....these rates are reasonable hourly rates." Def. mem. at 8. Additionally, defendants' position is that time claimed by plaintiff's attorneys is not sufficiently documented and is "extremely excessive and questionable." Id. Defendants attach a

"summary of unreasonable hours" specifying numerous objections.[3] Also offered to the same effect is an affidavit of an attorney - employed by defense counsel's law firm - who, as in-house counsel with an insurance company, had reviewed bills for legal services from outside counsel. Def. mem. exh. D.

A. Reasonable Hourly Rate

An attorney's fee petition unaccompanied by proper affidavits is insufficient for an award of claimed rates.[4] See S.P.R.I.G., 842 F.2d at 1450 (the prima facie burden to establish a reasonable fee under the community market rate rule requires "a number of representative affidavits from attorneys in the community who possess comparable qualifications and skill."). This means more than the movant attorney's own affidavit. See, e.g., Hall v. Harleysville Insurance Co., 943 F. Supp. 536, 541 (E.D. Pa. 1996).

Because plaintiff's burden has not been met, the setting of an appropriate rate becomes a matter of broad discretion, independent of the asserted amount. See Washington, 89 F.3d at 1036-37 (citation omitted). "In doing so, the Court considers the evidence before it and may draw upon its personal knowledge of the

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3. Defendants object to $21,562.50 in fees in their chart of "unreasonable hours." Exh. C.

4. This is true even though defendants' evidence is not particularly helpful. Defense counsel's suggested hourly rate - those its own firm charges - are not necessarily relevant or representative. The law firm specializes in defense and is located in a suburb - whereas plaintiff's firm is in the city. Plaintiff attorneys risk winding up with no fee and having to advance and then absorb costs.

facts and issues in the litigation." Tobin v. The Haverford School, 936 F. Supp. 284, 289 (E.D. Pa. 1996) (citing Bell v. United Princeton Properties, Inc., 884 F.2d 713, 720 (3d Cir. 1989)). In addition, the skill, experience and reputation of the attorneys, and the complexity of the case and tasks performed are factors in deciding on a reasonable hourly fee. Becker v. Arco Chemical Co., No. 95-7191, 1998 W.L. 420701 at * 7 (E.D. Pa. July 22, 1998)

A review of recent actions in this district shows a range of $150-$250 per hour for attorneys representing plaintiffs in civil rights cases. Id. at * 6 (collecting cases). Here, according to his affidavit, plaintiff's primary counsel has been practicing law since 1967 and, as an experienced trial lawyer, specializes in police misconduct litigation. Regarding the nature of the practice, he notes that "cases involving allegations of police misconduct are highly contingent and the rate of recovery for plaintiffs in this area is substantially lower than tort cases in general." Pl. app. exh. A.

The defense does not specifically object to the claims of plaintiff's counsel as to his experience and reputation.[5] As to the elements of counsel's skill and the degree of complexity of the case, the arrest, detention, and imprisonment issues were hotly

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5. Defendants object that primary counsel is caught in a "double bind," in that he asserts his experience to justify a high rate, but also claims more time than would be needed by an experienced lawyer. Def. mem. at 8-9. Defendants also object that some of the work performed by the plaintiff's three attorneys was duplicative, and that there is no evidentiary basis at all for the two associates' rates. Id. at 10.

controverted and were factually somewhat novel.[6] Nevertheless, this was not a difficult case to present on plaintiff's behalf. After considering the relevant factors in the context of the entire record, a general hourly rate of $200 for primary counsel and $125 for each of the two associates is deemed to be reasonable. In addition, primary counsel's trial time rate shall be $250 per hour. See infra at 10.

B. Number of Hours Expended

Next, the "number of hours reasonably expended" must be calculated. Rode, 892 F.2d at 1183, citing Hensley, 461 U.S. at 433. "Hours are not reasonably expended if they are excessive, redundant, or otherwise unnecessary," or not sufficiently documented. Moreover, those hours 'spent litigating claims on which the party did not succeed and were distinct in all respects from claims on which the party did succeed'" may be reduced. Id. (citations omitted). Defendants object to the following items:

8/14/97	**AHS**[7]	**Filing complaint**	**.25 hours**

While it may not be economical for the most expensive lawyer to perform the least complicated task, the time claimed to

6. Although defendants argue that the legal issues in the action were not complex, def. mem. at 10, their testimony and that of their expert witness was sharply at odds with plaintiff's theories of the case and plaintiff's expert. See Decision at 12-13.

7. Primary counsel - (AHS); associates - (JDS) and (JDN).

do so, fifteen minutes, is not unreasonable and the cost differential amounts to $18.50 - using hourly rates of $200 and $125. Defendants' objection is overruled.

9/26/97	**AHS**	**Letter to defense counsel**	**.10 hours**
11/21/97	**AHS**	**Correspondence with court**	**.10 hours**
12/24/97	**AHS**	**Correspondence with counsel**	**.10 hours**
1/5/98	**AHS**	**Correspondence with court**	**.10 hours**
1/15/98	**AHS**	**Correspondence with counsel**	**.10 hours**
1/28/98	**AHS**	**Correspondence with counsel**	**.10 hours**

According to defendants, these charges - a total of .6 hours of correspondence with defense counsel and the court - are insufficiently documented. Exh. C.[8] However, the petition is specific enough to allow a determination whether the hours claimed are reasonable for the work performed - i.e., "some fairly definite information as to the hours devoted to various general activities." Rode, 892 F.2d at 1190. Here, plaintiff's fee petition meets this burden.[9]

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8. Defendants do not itemize these objections; rather, they challenge a total of ".6 hours" of correspondence generally. The itemization above represent each of plaintiff's requested items of correspondence, totaling .6 hours.

9. Defendants' request for discovery and an evidentiary hearing prior to a ruling on plaintiff's fee petition will not be granted. Def. mem. at 2. They had an opportunity to contest each item, and a prolongation of this proceeding is unnecessary.

12/24/97	**AHS**	**Reply to defendants' request for admissions**	**1.0 hours**

One hour is not an unreasonable amount of time to spend on this task.

1/20/98	**JDS**	**Review of defense motions and request for a enlargement of time**	**1.25 hours**

These motions were to compel discovery responses upon a default, and to preclude the testimony of plaintiff's expert, belatedly retained and apparently not anticipated by defendant. Defendants' motion to compel was granted, see order of Jan. 22, 1998, and the problems regarding the expert were resolved by telephone conference with the court. Given the dispute raised by these motions, the time claimed is not unreasonable.

2/3/98 and 2/4/98	**JDS**	**Research of law for response to defendants' motion for summary judgment**	**5 hours total**

Considering the unusual factual aspects of the issues - including qualified immunity, probable cause to arrest, and the questionability of continued detention - the hours claimed for legal research are not unreasonable.

2/5/98-2/12/98	**AHS**	**Review of case law and preparation of response to motion for summary judgment**	**18 hours total**

As an exercise in discretion, taking into account the research work done by associate counsel, and the overall quality of the work product, these hours will be reduced by one-third, to twelve.

2/19/98	**AHS**	**Response to defendants' supplemental memorandum of law**	**3 hours**

Three hours is not an excessive amount of time to reply to a supplemental memorandum in support of a motion for summary judgment.

2/26/98-2/27/98	**AHS**	**Trial of case**	**$7,500**

The trial lasted one and one-half days. Dividing the $7,500 by primary counsel's requested hourly rate of $250, "trial" compensation would consume 30 hours. The actual time spent on trial was approximately eight and one-half hours, including recess periods.[10] Plaintiff's request will be reduced to ten hours trial time at $250 per hour or $2,500. This is in addition to trial preparations, for which sixteen hours are claimed.

10. The Clerk's office minute sheets state that trial occurred on February 26, 1998 from 10 a.m. to 5 p.m.; and February 27, 1998, 10 a.m. to approximately 11:30 a.m.

5/11/98-5/13/98; 5/20/98	**JDN**	**Research in response to defendants' post-trial brief; research[11]**	**5 hours total**

On an important liability issue that was not fully developed until nearly the end of the trial, the parties were asked to make post-trial argument. The issue involved the mens rea element of the crimes for which plaintiff was arrested and its relationship to probable cause. In these circumstances, five hours of research was not duplicative or unreasonable.

5/11/98-5/21/98	**AHS**	**Preparation of plaintiff's post-trial brief**	**19 hours**

Making an allowance for the five hours of research and considering the issue involved, these hours will be reduced to twelve.

In addition to these specific objections, defendants also argue that plaintiff's counsel should not be compensated for hours spent litigating unsuccessful issues. Def. mem. at 11-12. Plaintiff's fee petition does not allocate - i.e., subtract - any time spent on the claim against Springfield Township. "It is well established that 'the court can reduce the hours claimed by the number of hours "spent litigating claims on which the party did not succeed and that were 'distinct in all respects from' claims on

11. Plaintiff identified only three hours of post-trial brief research from May 11, 1998 through May 13, 1998. The subject of the two hours of research on May 20, 1998 was not specified. Defendants, however, apparently assumed that the research was also in response to defendants' post-trial brief.

which the party did succeed."'" Washington, 89 F.3d at 1044 (quoting Rode, 892 F.2d at 1183) (affirming district court's reduction of hours claimed hours by 50% to account for plaintiff's prevailing on only one of two central issues).

The municipal liability claim, on which plaintiff did not prevail, was in many respects closely related to the claims against the individual defendants. However, in some respects, it was sufficiently distinct to entail a separate fee calculation. As an exercise of discretion, the total number of hours claimed will be reduced by fifteen per cent. This reduction will not apply to the two and one-half hours spent preparing the fee petition since by that time a decision had been entered for Springfield Township.

III.

The "lodestar," which is the reasonable hourly rate times the reasonably necessary hours expended, "is presumed to be the reasonable fee." Rode, 892 F.2d at 1183 (citation omitted). Here, the lodestar, after the above adjustments, is as follows:

Primary counsel

non-trial time: 70.7 X $200/hr. = $14,140

trial time: 10 hrs. X $250/hr = $2,500

fee petition: 2.5 X $200/hr = $500

Two associate counsel

9.60 hrs. X $125/hr. = $1,200

Total lodestar = $18,340

A lodestar may be adjusted to conform with the results obtained. Rode, 892 F.2d at 1183. "The party seeking adjustment has the burden of proving that an adjustment is necessary." Id., citing Cunningham v. McKeesport, 753 F.2d at 262 (3d Cir. 1985). There is also a two-part analysis of the "results obtained":

> First, did the plaintiff fail to prevail on claims that were unrelated to the claims on which he succeeded? Second, did the plaintiff achieve a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award?

Hensley, 461 U.S. at 434, 103 S. Ct. at 1940. See also Northeast Women's Center v. McMonagle, 889 F.2d 466, 476-77 (3d Cir. 1989).

As to plaintiff's success, our Circuit has explained: "[W]hen . . . a litigant prevails on only a subset of a group of related claims, the fee award should be reduced if and only if the party did not receive full relief." Bell, 884 F.2d at 725; West Virginia University Hospitals, 898 F.2d at 361. Moreover, "[w]here a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee." Hensley, 461 U.S. at 435.

To the extent that plaintiff did not prevail as to his claims against the Township, this lack of success has already been accounted for by reducing the hours used in the lodestar calculation. A further downward adjustment to the fee award is not warranted as plaintiff did obtain full compensatory relief against the individual defendants.

IV.

Defendants object generally to the requested costs as not set forth with sufficient specificity, to the costs occasioned by the "dilatory tactic" of belatedly naming an expert to testify at trial and by the failure to respond timely to defendants' discovery requests. Def. mem. at 14-15. Defendants also object to plaintiff's request for reimbursement of the fee charged by his expert.

The specific costs submitted in plaintiff's application are:

Filing of complaint in District Court	**$150.00**
Deposition Transcripts	**$345.45**
Federal Express	**$ 15.00**
James McNesby (Expert Witness)	**$812.00**
Subpoenas	**$ 70.00**
Photocopies	**$ 31.00**

Plaintiff's request for reimbursement of the expert witness fee is denied. As observed in West Virginia University Hospitals, Inc. v. Casey, 499 U.S. 83, 88, 111 S. Ct. 1138, 1141, 113 L. Ed.2d 68 (1991), such fees are not recoverable under 42 U.S.C. § 1988; instead, § 1988 "costs" refers to taxable costs referred to in Fed. R. Civ. P. 54(d) and enumerated in 28 U.S.C. §

1920.[12] Aside from the expert fee, the balance of plaintiff's requested costs are recoverable under these provisions.

Defendants' argument that certain costs should be rejected for lack of specificity, def. mem. at 14, is unpersuasive. The costs are sufficiently documented and are not unreasonable.

Edmund V. Ludwig, J.

12. West Virginia University Hospitals was superseded in part in 1991 by statute providing that expressly that expert fees are recoverable under § 1988(b) in an action "to enforce a provision of section 1981 or 1981a." § 1988(c) (West 1994 & Supp.); see Hines v. Chrysler Corp., 971 F. Supp. 212, 215 (E.D. Pa. 1997). However, because this action was brought under § 1983, West Virginia University Hospitals remains controlling

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O R D E R

AND NOW, this 10th day of November, 1998, plaintiff's Application for Attorney's Fees and Costs is granted in part and denied in part.

Attorney's fees awarded - $18,340.00

Costs - $ 611.45

Edmund V. Ludwig, J.