UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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| PRISON LEGAL NEWS,<br>Plaintiff,<br>v.<br>FULTON COUNTY, GEORGIA and MYRON FREEMAN, individually and in his official capacity as Fulton County Sheriff,<br>Defendants. | CIVIL ACTION<br>NO. 1:07-CV-2618-CAP |

O R D E R

This action is before the court on the plaintiff's motion for attorneys' fees and expenses [Doc. No. 88].

**I. Statement of Facts**

The plaintiff in this matter is an independent, monthly magazine, Prison Legal News ("PLN") that has subscribers who are incarcerated in the Fulton County Jail ("Jail"). PLN filed this lawsuit challenging the Jail's mail policy. According to PLN, the policy that was in effect at the time the lawsuit was filed ("old mail policy"), which was declared unconstitutional by this court in a 2002 ruling,[1] prevented inmates from receiving its publication. The defendants filed an answer to the lawsuit denying that the old mail policy was unconstitutional [Doc. No. 4 at 5-6].

[1] See Daker v. Barrett, No. 1:00-CV-1065-RWS (N.D. Ga. July 22, 2002).

On December 18, 2007, PLN moved for a preliminary injunction to enjoin the defendants from continuing to enforce the mail policy. On December 20, 2007, Defendant Freeman modified the mail policy ("new mail policy"), which defendants contend is constitutional. See Freeman Aff. at ¶ 4[Ex. A to Doc. 11]. Thus, the defendants argued that the motion for preliminary injunction became moot upon the adoption of the new mail policy.

The court conducted a hearing on the motion for preliminary injunction at which the defendants conceded that the old mail policy that was in effect when this lawsuit was filed was unconstitutional. Despite this admission, the defendants continued to argue that no injunction should be issued. The plaintiff argued and the court agreed that an injunction was necessary to prevent the defendants from returning to the old mail policy. Accordingly, the motion for preliminary injunction was granted [Doc. No. 16].

The parties then engaged in discovery and eventually summary judgment motion practice. After the denial of their motion for summary judgment and the indication by the court that trial was imminent, the defendants settled this case in mediation. The case has been closed and all that remains for the court to consider is the plaintiff's request for attorneys' fees and expenses. In sum, the defendants forced the plaintiff to litigate a case for nearly 2 years, when the central issue of the cause of action, the

validity of the Jail's mail policy, had already be determined by this court years earlier.

**II. Attorneys' Fees**

Pursuant to 42 U.S.C. § 1988, prevailing parties in civil rights actions are entitled to an award of attorneys' fees. Hensley v. Eckerhart, 461 U.S. 424 (1983). In this case, it is undisputed that the plaintiff was the prevailing party. Accordingly, the plaintiff is entitled to an award of attorneys' fees and expenses.

In calculating a reasonable attorneys' fee award, the court must multiply the number of hours reasonably expended on the litigation by the customary fee charged in the community for similar legal services to reach a sum commonly referred to as the "lodestar." Hensley, 461 U.S. at 433-34; Norman v. Housing Authority, 836 F.2d 1292, 1299 (11th Cir. 1988). The court may then adjust the lodestar to reach a more appropriate attorneys' fee, based on a variety of factors, including the novelty or difficulty of the question presented and the time and labor required. Association of Disabled Americans v. Neptune Designs, Inc., 469 F.3d 1357, 1359 n.1 (11th Cir. 2006).

**A. Hourly Rate**

The Eleventh Circuit provided the following instruction for determining a reasonable hourly rate for the attorneys involved in a case:

> [O]rdinarily there are no quotations for the prevailing market rate for a given attorney's services. Instead, the best information available to the court is usually a range of fees set by the market place, with the variants best explained by reference to an attorney's demonstrated skill. It is the job of the district court in a given case to interpolate the reasonable rate based on an analysis of the skills enumerated above which were exhibited by the attorney in the case at bar . . . .

Norman, 836 F.2d at 1301.

In this case, attorneys Brian Spears and Gerald Weber assert an hourly rate of $350 and $410, respectively. Additionally, the plaintiff indicates the use of a paralegal, Teresa Knight, whose hourly rate is asserted to be $95. Other than to point out that the two attorneys agreed to represent PLN without compensation, the defendant does not challenge the reasonableness of the hourly rates sought by the plaintiff.

The court has reviewed the affidavits of Spears and Weber as well as the affidavit of Phillip E. Friduss. Given the relative skill of counsel and the prevailing rates in the Atlanta area at the time services were rendered, the court finds that the rates charged to plaintiff were reasonable. Also, the court finds the hourly rate of $95 for Ms. Knight to be reasonable. Accordingly,

the court will utilize these rates to calculate the fee award in this case.

**B. Hours Expended**

The plaintiff has set forth exhibits documenting the time expended by both attorneys and the paralegal who worked on this case. These totals are:

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| Brian Spears | 198.75 hours |
| Gerald Weber | 219.0 hours |
| Teresa Knight | 53.33 hours |

See Exs. A & B to Spears Dec. [Doc. No. 89]; Ex. B to Weber Dec. [Doc. No. 90]; Second Weber Dec. [Doc. No. 97-3]; Supp. Spears Dec. [Doc. No. 97-4].

As to the work performed, compensable activities include pre-litigation services in preparation of filing the lawsuit, background research and reading in complex cases, productive attorney discussions and strategy sessions, negotiations, routine activities such as making telephone calls and reading mail related to the case, monitoring and enforcing the favorable judgment, and even preparing and litigating the request for attorney's fees. See City of Riverside v. Rivera, 477 U.S. 561, 573 n.6 (1986) (allowing compensation for productive attorney discussions and strategy conferences); Webb v. Board of Education of Dyer County, Tenn., 471 U.S. 234, 243 (1985) (allowing compensation for pre-litigation

services in preparation of suit); Cruz v. Hauck, 762 F.2d 1230, 1233-34 (5th Cir. 1985) (allowing compensation for preparing and litigating fee request); Adams v. Mathis, 752 F.2d 553, 554 (11th Cir. 1985) (holding that measures to enforce judgment are compensable); New York State Association for Retarded Children, Inc. v. Carey, 711 F.2d 1136, 1146 & n.5 (2d Cir. 1983) (allowing compensation for background research and reading in complex cases); Brewster v. Dukakis, 544 F.Supp. 1069, 1079 (D.Mass. 1982) (compensating for negotiation sessions), aff'd as modified, 786 F.2d 16, 21 (lst Cir. 1986); In re Agent Orange Product Liability Litigation, 611 F.Supp. 1296, 1321-48 (E.D.N.Y. 1985) (compensating routine activities such as telephone calls or reading mail that contribute to the litigation).

Reasonable travel time of the prevailing party's attorneys ordinarily is compensated on an hourly basis, although the rate may be reduced if no legal work was performed during travel. Johnson, 706 F.2d at 1208. As with attorneys' work, the hours expended by paralegals, law clerks, and other paraprofessionals are also compensable to the extent these individuals are engaged in work traditionally performed by an attorney. Missouri v. Jenkins by Agyei, 491 U.S. 274, 285 (1989); Jean v. Nelson, 863 F.2d 759, 778 (11th Cir. 1988). In short, "with the exception of routine office overhead normally absorbed by the practicing attorney, all

reasonable expenses incurred in case preparation, during the course of litigation, or as an aspect of settlement of the case may be taxed as costs under section 1988" and "the standard of reasonableness is to be given a liberal interpretation." N.A.A.C.P. v. City of Evergreen, Alabama, 812 F.2d 1332, 1337 (11th Cir. 1987) (quoting Dowdell v. City of Apopka, Florida, 698 F.2d 1181, 1192 (11th Cir. 1983)).

The Eleventh Circuit has stated that its decisions regarding attorney's fees "contemplate a task-by-task examination of the hours billed" and that applicants should "show the time spent on the different claims." ACLU v. Barnes, 168 F.3d 423, 427, 429 (11th Cir. 1999). The Eleventh Circuit has also stated that where a fee application and supporting documents are voluminous, a district court is not required to engage in an hour-by-hour analysis of the fee award. Loranger v. Stierheim, 10 F.3d 776, 783 (11th Cir. 1994). In such cases, it is sufficient for the district court to determine the total number of hours devoted to the litigation and then reduce that figure by an across-the-board percentage reduction if such a reduction is warranted. Id. The Eleventh Circuit has even intimated that such a method may be the preferred course with a voluminous fee request to avoid waste of judicial resources. Id.

The supporting documentation filed by the plaintiff does not allow the court to make a task-by-task analysis prescribed by the Eleventh Circuit. The time records submitted by the two attorneys and the paralegal are chronological listings of tasks performed by each. There are 684 individual entries in the time records. Many of the fee entries contain several different activities grouped together as one entry, making it nearly impossible for the court to decipher how much time was spent on each individual activity. There was no overall summary of the time counsel devoted to various stages of the litigation such as initial investigation, drafting the complaint, initiating discovery, responding to discovery, prehearing preparation, etc. Due to the lack of adequate summaries, the court cannot undertake a task-by-task analysis of the reasonableness of the hours recorded in the voluminous time records. Where a litigant submits a fee application that is too consolidated and vague to permit the district court to determine whether the hours claimed were reasonably spent, that applicant runs the risk that the fees sought will be reduced by the court. Louisiana Power & Light Co. v. Kellstrom, 50 F.3d 319, 327 (5th Cir.) cert. denied, 516 U.S. 862 (1995). In such cases, courts have reduced entire fee applications, or portions thereof, by a stated percentage to accommodate for the deficiencies contained in the application. Mallinson-Montague v. Pocrnick, 224 F.3d 1224,

1235 (10th Cir. 2000); George v. GTE Directories Corp., 114 F.Supp.2d 1281, 1292-93 (M.D. Fla. 2000).

In response to the motion for attorneys' fees, the defendants argue that the number of hours expended in this case is excessive. In particular, the defendants point out that many of the activities billed for by Spears and Weber are duplicative. Moreover, the defendants question the need for two attorneys of the experience level of those involved in this case.

The court agrees with the defendants that, in light of the extensive experience and expertise of the two attorneys representing the plaintiff here, the number of hours expended is excessive. Accordingly, the court finds that the fee request should be reduced by thirty percent. The court is forced to resort to a percentage reduction because the submissions by the plaintiff do not allow a task-by-task analysis without an unreasonable investment of further time and judicial resources in this matter. The final fee request is for $164,418.85. Therefore, the lodestar amount is $115,093.20.

**C. Adjustment to the Lodestar**

Once the lodestar is obtained, the court may then adjust it upwards or downwards. Hensley, 461 U.S. at 434; Blum v. Stenson, 465 U.S. 886, 897 (1984); Barnes, 168 F.3d at 427; Norman, 836 F.2d at 1302. The Supreme Court and Eleventh Circuit have stated that

while the adjustment may be based on a number of factors, the most important factor is the results obtained. Henslev, 461 U.S. at 434; Norman, 836 F.2d at 1302. The Supreme Court has warned, however, that upward adjustments are rarely warranted because the factors on which a prevailing party typically seeks an enhancement already have been considered by the court in determining the reasonable hourly rate:

> Expanding on our earlier finding in Hensley that many of the Johnson[v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974)] factors "are subsumed within the initial calculation" of the lodestar, we specifically held in Blum that the "novelty [and] complexity of the issues," "the special skill and experience of counsel," the "quality of representation," and the "results obtained" from the litigation are presumably fully reflected in the lodestar amount, and thus cannot serve as independent bases for increasing the basic fee award.

Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 565 (1986).

The plaintiff in this case does not seek an enhancement of the lodestar, and the court finds no basis for such enhancement However, the court does find that the degree of success and benefit to the public as a result of this case do warrant the award of the full lodestar amount.

**III. Expenses**

The plaintiff is seeking to recover expenses in the amount of $4,666.01. The only objection to this amount raised by the

defendants is that the amount listed as owing to Bay Mediation is more than the defendants were charged by Bay Mediation. In reply to the defendants' opposition, the plaintiff has provided the court with the invoice it received from Bay Mediation as well as a copy of the check paying the full amount of the invoice. Because this evidence supports the amount sought in the plaintiff's original motion, the court will not reduce the expense total. Accordingly, the plaintiff is entitled to an award of $4,666.01 as expenses incurred in litigating this action.

**IV. Conclusion**

For the reasons set forth above, the court hereby GRANTS the plaintiff's motion for costs, fees, and other expenses [Doc. No. 87]. Accordingly, the total amount awarded is $115,093.20 in attorneys' fees, plus expenses in the amount of $4,666.01.

SO ORDERED, this 17th day of March, 2010.

/s/ Charles A. Pannell, Jr.
CHARLES A. PANNELL, JR.
United States District Judge