

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

SYLVIA DIFFENDERFER,
et al.,

Plaintiffs,

v.

RAMON E. GÓMEZ-COLÓN,
et al.,

Defendants.

Civil No. 08-1918 (JAF)

OPINION AND ORDER

Plaintiffs, Sylvia Diffenderfer and Robert McCarroll, brought this action on behalf of themselves and as representatives of a class of eligible voters in Puerto Rico who do not speak Spanish, against Defendants, Ramón Gómez-Colón, President of the State Electoral Commission of Puerto Rico (SEC); Gerardo Cruz-Maldonado, Electoral Commissioner of the Popular Democratic Party (PDP); Juan Dalmau-Rodríguez, Electoral Commissioner of the Puerto Rican Independence Party (PIP); Nelson Rosario-Rodríguez, Electoral Commissioner of the Puerto Ricans for Puerto Rico Party (PPR); and Walter Vélez-Rodríguez, Secretary of the State Electoral Commission of the Commonwealth of Puerto Rico, challenging Puerto Rico's Spanish-only ballot system under 42 U.S.C. 1983. Docket No. 1. On September 2, 2008, following a hearing, we issued an Opinion and Order granting the injunctive relief sought by Plaintiffs and requiring Defendants to print the ballots in both English and Spanish. Docket No. 49. On September 4, 2008, the First Circuit denied Cruz-Maldonado's appeal. Docket No. 56. We subsequently held two more hearings on September 5

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1 and 10, 2008, to enforce compliance with our injunction. Docket
 2 Nos. 61, 62, 77.

3 Plaintiffs now seek compensation for \$122,988.75 in attorney's
 4 fees based on 663.5 hours of work. Docket Nos. 81, 82. Cruz-Maldonado
 5 opposes, Docket No. 86, Gómez-Colón and Vélez-Rodríguez oppose,
 6 Docket No. 93, and Plaintiffs reply, Docket No. 96.

7 I.

8 Analysis

9 **A. Gómez-Colón and Vélez-Rodríguez' Opposition**

10 Gómez-Colón and Vélez-Rodríguez argue that Plaintiffs have
 11 sought attorney's fees for duplicative and excessive hours.¹ Docket
 12 No. 93-1. Plaintiffs counter that this was a complex case, and that
 13 they are entitled to full compensation for all time spent by their
 14 six attorneys, Eliezer Aldarondo-Ortiz, Claudio Aliff-Ortiz, Iván
 15 Castro-Ortiz, Michael Craig McCall, Sheila Torres-Delgado, and
 16 Eliezer Aldarondo-López, in litigating before the District Court and
 17 the Court of Appeals. Docket No. 96.

¹ Gómez-Colón and Vélez-Rodríguez do not challenge the billing rates used by Plaintiffs' counsel. See Docket No. 93-1. Plaintiffs have presented prima-facie evidence of the reasonableness of their counsel's fees as compared to other attorneys practicing in the District of Puerto Rico. Because Gómez-Colón and Vélez-Rodríguez do not present any evidence or arguments to counter this showing, we do not reduce the rates. However, we do not express an opinion as to the ultimate reasonableness of Plaintiffs' counsel's fees in the Puerto Rico legal community. Accordingly, we award fees at the following rates:

Aldarondo-Ortiz: \$310/hour in court and \$285/hour out of court
 Aliff-Ortiz: \$230/hour in court and \$210/hour out of court
 Castro-Ortiz: \$210/hour in court and \$190/hour out of court
 McCall: \$205/hour in court and \$185/hour out of court
 Torres-Delgado: \$160/hour in court and \$140/hour out of court
 Aldarondo-López: \$150/hour in court and \$130/hour out of court.

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1 Plaintiffs seek attorney's fees pursuant to 42 U.S.C. § 1988,
2 which provides that in an action to enforce § 1983, we may allow the
3 prevailing party "a reasonable attorney's fee." We have "great
4 discretion in deciding what claimed legal services should be
5 compensated." Brewster v. Dukakis, 3 F.3d 488, 492 (1st Cir. 1993).
6 Plaintiffs who substantially prevail may not necessarily recover the
7 totality of their requested fees. See Culebras Enters. Corp. v.
8 Rivera-Ríos, 846 F.2d 94, 102 (1st Cir. 1988). Instead, we must
9 calculate a reasonable fee award using the "lodestar" method. Id.
10 "In implementing this lodestar approach, the judge first calculates
11 the time counsel spent on the case, subtracts duplicative,
12 unproductive, or excessive hours, and then applies prevailing rates
13 in the community (taking into account the qualifications, experience,
14 and specialized competence of the attorneys involved)." Gay Officers
15 Action League v. Puerto Rico, 247 F.3d 288, 295 (1st Cir. 2001). Once
16 calculated, "the lodestar represents a presumptively reasonable fee,
17 although it is subject to upward or downward adjustment in certain
18 circumstances." Lipsett v. Blanco, 975 F.2d 934, 937 (1st Cir. 1992).

19 We address Gómez-Colón and Vélez-Rodríguez' arguments for
20 downward reductions in the fee award in turn. We note that Gómez-
21 Colón and Vélez-Rodríguez have helpfully provided us with a breakdown
22 of hours and fees devoted to each task that they challenge. See
23 Docket No. 93. Because Plaintiffs have not questioned the particulars
24 of this breakdown, we use it as a basis for calculating the fee
25 award.

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1 **1. "Fees on Fees"**

2 Gómez-Colón and Vélez-Rodríguez argue that both the hourly rate
3 and hours billed for the fee application are excessive. Docket
4 No. 93-1. We may award attorney's fees for time reasonably expended
5 in connection with fee applications; however, since these
6 applications require less legal analysis, we may fairly apply a
7 reduced rate. Brewster, 3 F.3d at 493-94. Therefore, we award time
8 for the fee application at 75% of the attorney's regular billing
9 rate. We also find that Torres-Delgado's claimed time for this work
10 was excessive. Her time sheet lists 25.25 hours worth of work for the
11 task of "review of time sheets and files for petition of attorneys
12 fees." See Docket No. 93-2. This appears excessive, and we reduce it
13 by 50%. We find the time otherwise spent in preparation of the fee
14 application to be reasonable.

15 Accordingly, we award \$2,493.75² for Torres-Delgado's time and
16 \$427.5³ for Aldarondo-Ortiz' time, for a total of \$2,921.25. This is
17 a reduction of \$2,723.75 from the claimed fee of \$5,645 for these
18 services.

19 **2. Researching and Drafting Complaint and Brief**

20 Gómez-Colón and Vélez-Rodríguez further argue that the time
21 spent researching and drafting the complaint and brief are excessive.
22 Docket No. 93-1. However, we find that the issues involved in the
23 suit were both novel and complex and it was, therefore, appropriate
24 for Plaintiffs' counsel to spend a substantial amount of time

² (.75 * \$140) * (11 + .5 * 25.5)

³ (.75 * \$285) * 2

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1 conducting legal research. We, therefore, permit \$33,630.25 in fees
 2 for the drafting of the complaint and brief.

3 **3. Meeting Among the Attorneys**

4 Gómez-Colón and Vélez-Rodríguez argue that we should not award
 5 fees for the 32.75 man-hours spent in meetings among Plaintiffs' five
 6 attorneys. Docket No. 93-1. As stated above, we believe that this
 7 case presented novel and complex issues, rendering it appropriate for
 8 Plaintiffs' counsel to spend a substantial amount of time in strategy
 9 meetings. We, therefore, do not find the 32.75 man-hours in meetings
 10 to be inappropriate and, accordingly, award \$7,082.50 in attorney's
 11 fees for the time spent in strategy meetings.

12 **4. Meeting with Plaintiffs**

13 Gómez-Colón and Vélez-Rodríguez argue that we should reduce the
 14 fees sought for the twenty-nine man-hours in meetings between counsel
 15 and Plaintiffs. Docket No. 93-1. Counsel for Plaintiffs spent six
 16 man-hours in an initial interview with Plaintiffs, 7.5 man-hours in
 17 a second interview, three man hours in a third interview, and 12.5
 18 man-hours in preparation of testimony. See Docket No. 93-2. As the
 19 facts in this case were clear and uncontroverted, we find that only
 20 the initial interview and the preparation of testimony are
 21 compensable. Accordingly, we award \$2,777.50⁴ for the meetings with
 22 Plaintiffs. This represents a \$3,132.50 reduction from the claimed
 23 fee of \$5,910 for these services.

⁴ 2 * (\$285 + \$150 + \$210) + 4 * \$210 + 3.5 * \$185

1 **5. Meeting with Attorney Meléndez**

2 Gómez-Colón and Vélez-Rodríguez argue that we should reduce the
3 fee sought for the sixteen man-hours spent by Plaintiffs' counsel in
4 preparing Attorney Meléndez, an electoral commissioner, to testify.
5 Docket No. 93-1. We agree. Meléndez' testimony, including the cross-
6 examination, lasted only one and one-half hours, and did not require
7 sixteen hours of preparation. We, therefore, award fees for eight
8 total man-hours, for a total of \$1700.⁵ This represents a reduction
9 of \$1,785 from the claimed fee of \$3,485.

10 **6. Reviewing Documentary Evidence**

11 Gómez-Colón and Vélez-Rodríguez argue that the nineteen man-
12 hours spent reviewing documentary evidence is excessive. However,
13 they do not explain why nineteen hours is excessive for reviewing
14 fifteen exhibits. Accordingly, we grant \$4,965⁶ in fees for the time
15 spent reviewing documentary evidence.

16 **7. Court Time**

17 Gómez-Colón and Vélez-Rodríguez argue that the 40.5 man-hours
18 spent on the day of the hearing were excessive. Docket No. 93-1.
19 Specifically, they argue, not all five attorneys needed to be present
20 at the hearing. Id. Courts "should ordinarily greet a claim that
21 several lawyers were required to perform a single set of tasks with
22 healthy skepticism." Lipsett v. Blanco, 975 F.2d 934, 938 (1st Cir.
23 1992); see Grendel's Den, Inc., v. Larkin, 749 F.2d 945, 953 (1st
24 Cir. 1984). We agree with Gómez-Colón and Vélez-Rodríguez that two

⁵ 4 * \$285 + 4 * 140

⁶ 13 * \$285 + 6 * \$210

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1 attorneys would have sufficed. Accordingly, we grant fees for the
2 highest-billing two attorneys, Aldarondo-Ortiz and Aliff-Ortiz, for
3 a total of \$4,417.50.⁷ This represents a \$4,060 reduction from the
4 claimed fee of \$8,477.50.

5 **8. Monitoring the Media**

6 Gómez-Colón and Vélez-Rodríguez argue that time spent monitoring
7 the media is not time spent in litigation and is, therefore, not
8 compensable. Docket No. 93-1. However, given the public nature of
9 this case, public statements by Defendants might reveal information
10 about their legal strategies. We, therefore, permit recovery of \$140
11 in fees for media monitoring.

12 **9. Opposing the Appeal**

13 Gómez-Colón and Vélez-Rodríguez argue that we should not award
14 attorney's fees for time spent opposing the appeal. Docket No. 93-1.
15 Federal Rule of Appellate Procedure 38 provides that the court of
16 appeals may award attorney's fees as "just damages" for frivolous
17 appeals. See Cronin v. Town of Amesbury, 81 F.3d 257, 261 (1st Cir.
18 1996). "Under Rule 38 the district court is not empowered to award
19 fees for proceedings before [the Court of Appeals.]" Flip Side
20 Prods., Inc. v. Jam Prods., Ltd., 843 F.2d 1024, 1037 (7th Cir.
21 1988). Plaintiffs may be entitled to damages if they can demonstrate
22 that the appeal to the First Circuit was frivolous; however, those
23 fees must be granted by the Court of Appeals. See Fed. R. App. P. 38.
24 Accordingly, we deny the \$26,150 claimed in attorney's fees based on
25 the appeal.

⁷ 1.5 * \$285 + 7 * \$310 + 1 * \$210 + 7 * \$230

1 **10. Preparing for and Attending the Second Hearing**

2 Gómez-Colón and Vélez-Rodríguez argue that we should reduce the
3 fees requested in connection with the second hearing because
4 Plaintiffs overstaffed the hearing. Docket No. 93-1. Plaintiffs'
5 counsel spent 28.5 man-hours preparing for and attending the hearing
6 held on September 5, 2008. See Docket No. 93-2. Four attorneys
7 prepared for and attended the hearing, each spending 2.5 hours in
8 preparation and 2.5 hours in attendance. Id. Additionally, McCall
9 spent 3.5 hours drafting a motion on September 4, 2008, and McCall
10 and Aldarondo-Ortiz spent 2.5 hours in a meeting on September 5
11 discussing the motion. Id. We find that this constitutes overstaffing
12 and, accordingly, grant fees only for the time spent by Aldarondo-
13 Ortiz and McCall, for a total of \$4,285⁸ in fees. This represents a
14 reduction of \$1,425 from the claimed fee of \$5,710.

15 **11. Preparing for and Attending the Show-Cause Hearing**

16 Gómez-Colón and Vélez-Rodríguez argue that we should reduce the
17 fees requested in connection with the show-cause hearing held on
18 September 9, 2008. Docket No. 93-1. Plaintiffs' counsel spent
19 eighteen man-hours preparing for and attending the hearing held
20 September 9, 2008. See Docket No. 93-2. We agree that it was
21 unnecessary for four attorneys to prepare for and attend this
22 hearing. We grant fees only for the time spent by Aldarondo-Ortiz and

⁸ 3.5 * \$185 + 2.5 * (\$185 + \$285) + 2.5 * (\$185 + \$285) + 2.5 * (\$310 + \$205)

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1 McCall, for a total of \$2,362.50.⁹ This represents a \$1,222.50
 2 reduction from the claimed fee of \$3,585.

3 **12. Subtotal**

4 With deductions totaling \$40,498.75,¹⁰ Plaintiffs are entitled
 5 to \$82,490¹¹ in attorney's fees.

6 **13. Across-the-Board Reduction for Billing by the Quarter-Hour**

7 In reviewing Plaintiffs' time sheet, we find it necessary to
 8 make an additional adjustment to the fee award. Plaintiffs' counsel
 9 bills its time in quarter-hour increments, and bills a full quarter-
 10 hour for reading each docket entry, including line orders that should
 11 require no more than a few moments to read. For example, on
 12 August 27, 2008, Aldarondo-Ortiz billed six quarter-hour increments
 13 for reading six brief line orders. See Docket No. 93-1. Plaintiffs
 14 have billed at least fifty similarly menial items for a quarter-hour
 15 or half-hour, when they likely took a fraction of the time. See id.
 16 Billing in quarter-hour increments is an unreasonable practice that
 17 will tend to inflate Plaintiffs' total hours billed by adding time to
 18 each entry. Welch v. Metro. Life Ins. Co., 480 F.3d 942, 948-49 (9th
 19 Cir. 2007); Dzwonkowski v. Dzwonkowski, No. 05-0544-KD-C, 2008 WL
 20 2163916, *26 (S.D. Ala. May 16, 2008). To compensate for this
 21 inflation, we impose a 20% reduction in the total amount of

⁹ 1.5 * (\$210 + \$285) + 3 * (\$310 + \$230)

¹⁰ \$2,723.75 + \$3,132.50 + \$1,785 + \$4060 + \$26,150 + \$1425 + \$1222.50

¹¹ \$122,988.75 requested - \$40,498.75 in deductions

1 Plaintiffs' attorney's fee award. See Welch, 480 F.3d at 948-49
 2 (approving 20% across-the-board reduction on attorney's fee award
 3 because of firm's practice of billing in quarter-hour increments).

4 Accordingly, we grant Plaintiffs a total of \$65,992¹² in
 5 attorney's fees.

6 **B. Cruz-Maldonado's Opposition**

7 Cruz-Maldonado argues that we cannot assess attorney's fees
 8 against him because Plaintiffs did not prevail against him. Docket
 9 No. 86. Cruz-Maldonado notes that the First Circuit ruled against him
 10 on the appeal for lack of standing, and argues that if he lacked
 11 standing, he cannot be compelled to pay attorney's fees. Id.

12 "[L]iability on the merits and responsibility for fees go hand
 13 in hand; where a defendant has not been prevailed against . . .
 14 § 1988 does not authorize a fee award against that defendant."
 15 Kentucky v. Graham, 473 U.S. 159, 165 (1985). It would be improper to
 16 grant attorney's fees against Cruz-Maldonado based on District Court
 17 proceedings when the First Circuit has found that "Cruz-Maldonado has
 18 no personal stake in the outcome and no damages were awarded against
 19 him." Docket No. 90. Accordingly, we do not award attorney's fees
 20 against Cruz-Maldonado. We note that Plaintiffs may be entitled to
 21 attorney's fees from Cruz-Maldonado for the appeal, but, as stated
 22 above, those fees must be awarded by the First Circuit.

¹² .8 * \$82,490

