

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

NAZARETH GATES, ET AL, Plaintiffs

UNITED STATES OF AMERICA, Plaintiff-Intervenor

V.

NO. GC 71-6-K

JOHN COLLIER, ET AL, Defendants

ORDER

Attorneys for the plaintiff class have moved for an interim award of attorney fees for legal services rendered in this cause on behalf of the state inmates. In their initial application for fees, Attorney Ronald Reid Welch claims nearly 4,000 hours for services from August 18, 1975, through January 1982, and his co-counsel Mary Henkel claims an additional 1,142.5 hours for work from October 30, 1979, to September 25, 1981. Plaintiffs' counsel assert that fair compensation due them for all services for the entire period aggregates \$494,150.63. Also, they seek reimbursement of \$155,828.60 for alleged expenses related to their work in this case. State defendants vigorously contest the allowance of fees claimed by plaintiffs' counsel, and take issue with not only the propriety of any award but also the number of compensable hours and the hourly rate for legal services. Defendants assert that the

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have been previously allowed to other counsel who represented the plaintiff class prior to 1975, and who were successful in establishing constitutional rights for penitentiary inmates under pre-1975 orders of this court. Present counsel for plaintiff inmates, who have been employed as staff attorneys by the Mississippi Prisoners' Defense Committee, have participated in a number of hearings in the cause and have monitored the state's compliance with this court's orders, and have performed other services compensable under 42 USC § 1988. *Miller v. Carson*, 628 F. 2d 346, 348-49 (5 Cir. 1980); *Robinson v. Kimbrough*, 652 F. 2d 458, 464 (5 Cir. 1981).

Moreover, the court finds that plaintiffs' present counsel have in several important respects enlarged and strengthened the rights of the plaintiff class. It is unnecessary for the court to presently make a precise determination of a proper fee, based upon the number of compensable hours, the rate to be assigned to such hours of work and other factors enumerated in *Johnson v. Georgia Highway Express, Inc.*, 488 F. 2d 714 (5 Cir. 1974). It is sufficient for us to hold, as we do, that under the Johnson formula Mr. Welch and Miss Henkel have at a minimum 1000 hours of compensable time invested in this case, for which they are due to be compensated at the rate of \$50 per hour. It is reasonable to defer strict application of all Johnson criteria until final order regarding fees and expenses. An interim allowance of \$50,000 is


partial only and does not foreclose the claim of plaintiffs' counsel for additional recovery upon final fee determination. The court notes, however, that time invested by plaintiffs' counsel in dealing with state legislative committees and lobbying with public officials to secure penal reform, though such may be admirable and civic minded, is not effort compensable as legal services rendered in this cause, and no allowance will be made in that regard. Also, the court withholds consideration as to the very considerable sums demanded by counsel for reimbursement of expenses, and plaintiffs' counsel must, to recover expenses, document all outlays with reasonable certainty.

It is, therefore

ORDERED

That the state defendants shall pay to Ronald Reid Welch, Mary Henkel and Mississippi Prisoners' Defense Committee the sum of \$50,000 as an interim award for attorney fees. Said sum must be paid within 30 days from this date. In event of appeal, defendants shall, in order to obtain a stay of this order, deposit the sum of \$50,000 into the registry of this court.

This, 6th day of January, 1983.


United States District Judge