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United States District Court, N.D. Illinois, Eastern Division.

Glenn KOSKI, et al., Plaintiffs,
v.
Terrance GAINER, et al., Defendants.

No. 92 C 3293. | June 22, 1999.

Opinion

MEMORANDUM OPINION AND ORDER

LEINENWEBER, J.

***1** Plaintiffs Koski, et al. ("Koski") petition for an award of attorney's fees from defendants Gainer, et al. ("Gainer"). Koski first petitioned for attorney's fees in November, 1998. In February, 1999, Koski filed a supplement to the petition in which he claimed additional fees. In May, 1999, Gainer filed his response to the fee petition. In his response, Gainer addresses the original fee petition but does not appear to respond to the supplement. In June, 1999, Koski filed a reply in which he referred to the amounts requested in both the original petition and the supplement.

To simplify matters, the court will rule only on the original fee petition, disregarding the supplement. The supplement will be ruled on at a later date, after Gainer is given a chance to respond and Koski to reply. The court also notes that the bill of costs remains unresolved despite efforts by the parties to negotiate a settlement on that issue.

FACTUAL BACKGROUND

The underlying case involves claims of reverse discrimination brought pursuant to 42 U.S.C. § 1983 and Title VII against the Illinois State Police ("ISP"). The plaintiffs are white males who allege that they were unlawfully denied hiring or promotion by the ISP. The case was divided into a hiring case and a promotion case. The hiring case was certified as a class action with approximately 5,000 class members. The plaintiffs petitioned for a wide variety of injunctive relief relating to the ISP's hiring policies. In 1998, the court ordered that the class members be notified that they could proceed through the ISP entrance process without taking an entrance examination. This was the only class relief granted. Beginning in 1998, the ISP completely discontinued the use of the entrance examination for all applicants. No monetary relief was ordered for the class.

The promotion case involved thirteen plaintiffs, seven of whom succeeded in their claims. Each plaintiff's claim presented different issues of fact and was decided separately by the court. Of the seven prevailing plaintiffs, four received retroactive promotions with back pay and compensatory damages. Three received monetary damages but were not promoted. The total monetary award for the seven prevailing plaintiffs was roughly $200,000.00.

DISCUSSION

In determining a reasonable fee, the first step is to calculate a "lodestar figure." To do so, the court multiplies the hours reasonably spent on the case by each attorney's reasonable hourly rate. *Connolly v. National School Bus Service,* 992 F.Supp. 1032, 1036 (N.D.Ill.1998). The reasonable hourly rate must be based on the market price for that attorney's services. *McNabola v. Chicago Transit Authority,* 10 F.3d 501, 519 (7th Cir.1993). Since the beginning of this lawsuit in 1992 the plaintiffs have been represented by just one lawyer, Kimberly Sutherland. Sutherland is a solo practitioner and has been

practicing law since 1974. She states that she has extensive experience in reverse discrimination cases. In *Hillish v. City of Chicago,* 989 F.2d 890 (7th Cir.1993) Sutherland represented white Chicago firefighters claiming reverse discrimination and argued the case before the Seventh Circuit. Koski argues that Sutherland's reasonable hourly rate is $220.

***2** Gainer responds that the reasonable hourly rate is $150. Gainer offers three reasons in support of this lower rate. First, Gainer submits an affidavit from attorney Grace Newton, a solo practitioner practicing law since 1982, in which Newton states that her hourly rate is $175. Second, Gainer argues that a lawyer's hourly rate assumes unbilled overhead for secretarial help and the cost of maintaining an office. Gainer asserts that Sutherland maintains no office, was never directly reachable by phone, and appeared to operate entirely through an answering service which also accepted mail for her. Third, Gainer argues that the quality, competence and professionalism of Sutherland's work does not merit $220 an hour.

In her reply, Sutherland first challenges the validity of the Newton affidavit. Sutherland argues that Newton graduated from law school in 1982, while Sutherland graduated in 1974, and that the hourly rates should reflect Sutherland's 12 additional years of experience. Second, Sutherland states in an affidavit that she did not use an answering service, that her telephone was answered "by live secretaries," and that she obtained voice mail in 1997. Affidavit of Kimberly A. Sutherland, Exhibit to Plaintiffs' Reply at ¶ 3.

Determining the market rate for Sutherland's services is difficult because Sutherland appears to use a contingency fee system rather than an hourly rate when billing her clients. Sutherland does not claim that she has ever actually billed a client at $220 an hour. Therefore, the court is obliged to estimate what Sutherland's hourly rate would be if she did bill by the hour. The court finds that, with regard to the Newton affidavit, that Sutherland's rate should be somewhat higher than Newton's $175 in order to reflect her 12 additional years of practicing law. With regard to the dispute over Sutherland's alleged use of an answering service, the court declines to reduce Sutherland's rate for this factor. In essence, Gainer is criticizing Sutherland for operating a low-overhead law practice. This court fails to understand why Sutherland should be punished for keeping her expenses low. Nevertheless, as will be explained in greater detail in the court's determination of the reasonable number of hours spent on the case, the court will not reimburse Sutherland at her normal hourly billing rate for time spent on clerical tasks.

The Seventh Circuit, ruling on a fee petition on a reverse discrimination case, upheld this court's finding that rates of $210 for lead counsel, $150 for other counsel, and $100 for the most junior members of the litigation team were "high" but nevertheless within the market range. *McNabola v. Chicago Transit Authority,* 10 F.3d 501, 519 (7th Cir.1993). McNabola filed his action in 1988 and the case went to trial in 1991. This case commenced in 1992 and has continued up to the present time. The court acknowledges that inflation between the 1988–1991 time frame of *McNabola* and the 1992–1999 time frame of this case complicates efforts to make direct comparisons between the two cases.

***3** Having considered all of the factors outlined above, as well as the court's own observation of Sutherland's performance over the seven years this case has been pending, the court finds that the reasonable hourly rate is $200.

Having determined the reasonable hourly rate, the court must next determine the number of hours reasonably spent on the case. Sutherland originally submitted a total of 1,216.4 hours and later reduced that number by 1 hour, to 1,215.4 hours, in order to correct a typographical error in the original fee petition.

Gainer has challenged a number of the individual time charges. This court has carefully reviewed all of Gainer's challenges. One of the challenges, the one-hour reduction referenced above, was agreed to by the plaintiff. Of the remaining challenges, the court finds that only one challenge merits a time reduction. That challenge is for 25 hours for filing pleadings. The court agrees with Gainer that filing pleadings is a clerical task and that Sutherland is not entitled to bill such work at $200 an hour. As discussed above, Sutherland's decision to operate a low-overhead office cannot be used as an excuse to bill clerical work at an attorney's rate. Therefore, the court finds that the reasonable time spent on the case is 1,190.4 hours. (1,216.4 minus one hour, minus 25 hours, equals 1,190.4 hours.) The lodestar amount is $238,080.00. (The $200 hourly rate multiplied by 1,190.4 equals $238,080.00.)

The court will now consider whether the lodestar amount should be reduced for limited success. *Hensley v. Eckerhart,* 461 U.S. 424, 439, 103 S.Ct. 1933, 1942 (1983). Gainer argues that the lodestar amount should be reduced by ten percent to reflect plaintiffs' limited success.

The plaintiffs did not achieve all they had asked for in their complaint. Nevertheless, "failing to obtain every dollar sought does not automatically mean a lawyer's fees should be reduced." *Bankston v. State of Illinois,* 60 F.3d 1249, 1256 (7th Cir.1995). Seven of the thirteen individual plaintiffs prevailed, winning approximately $200,000.00 in total damages. The

5,000 class members obtained modest injunctive relief in that they were ordered to be notified that they would not be required to take the entrance examination. The court finds that these results in terms of both injunctive and monetary relief are sufficient to preclude reduction of the lodestar amount.

Therefore, for the foregoing reasons, the plaintiffs' petition for attorneys' fees is GRANTED in the amount of $238,080.00.

IT IS SO ORDERED.