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United States District Court, S.D. New York.

Dennis REYNOLDS, Plaintiff,
v.
G. GOORD, Commissioner, D.O.C.S.; Christopher C. Artuz, Supt., Green Haven Correctional Facility; Norman Selwin, MD, Faculty Health Service Director; Larry Zwilliger, Regional Health Service Administrator; Catherine Metzer, RN II; and Don Stevens, Nurse Administrator, Defendants.

No. 98 Civ. 6722(DLC). | Feb. 13, 2001.

Attorneys and Law Firms

Daniel J. Beller, Lynn B. Bayard, Hillel C. Neuer, Paul, Weiss, Rifkind, Wharton & Garrison, New York, NY, for the Plaintiff.

Rebecca Ann Durden, Assistant Attorney General, New York, NY, for the Defendants.

Opinion

OPINION AND ORDER

COTE, J.

***1** The plaintiff Dennis Reynolds ("Reynolds") filed this action *pro se* on June 3, 1998. On March 16, 2000, at the request of the Court, the firm of Paul, Weiss, Rifkind, Wharton & Garrison ("Paul Weiss") through its partner Daniel J. Beller entered an appearance on the plaintiff's behalf. Having won a permanent injunction for the plaintiff, Paul Weiss now moves for recovery of costs and attorney's fees in this Section 1983 action. As discussed below, its motion is granted.

Reynolds filed this action to challenge the policy of the New York State Department of Correctional Services ("DOCS") which places inmates who refuse to submit to a Mantoux skin test—a test designed to detect whether the inmate is infected with the bacterium that causes tuberculosis ("TB")—into a restrictive confinement known as Tuberculin Hold ("TB Hold") for one year. On February 28, 2000, the Court granted in part defendants' motion for summary judgment, leaving Reynolds' First Amendment claim as the sole claim to be tried. *Reynolds v. Goord,* No. 98 Civ. 6722(DLC), 2000 WL 235278 (S.D.N.Y. Mar. 1, 2000). As a Rastafarian, Reynolds objected to taking the skin test.

Paul Weiss entered an appearance on Reynolds' behalf on March 16, 2000. At an April 14 conference, on consent of the parties, Reynolds' pending motion for injunctive relief was deemed moot since Reynolds was neither in TB Hold nor to counsel's knowledge scheduled to have the skin test. A schedule was set to allow for the full development of the issues at stake: discovery was to conclude by the end of October 2000, and a summary judgment motion was to be fully submitted by mid-January, 2001.

Nonetheless, on May 12, 2000, DOCS placed Reynolds in TB Hold for refusing to submit to the skin test. The Court ordered Reynolds to be released from TB Hold. Ultimately DOCS agreed to allow Reynolds to remain in the prison's general population pending the preliminary injunction hearing that began on July 10, 2000. Through an Opinion and Order of July 13, 2000, the Court granted the plaintiff's motion for a preliminary injunction. *Reynolds v. Goord,* 103 F.Supp. 316 (S.D.N.Y.2000). On November 27, 2000, the parties entered into a Settlement Agreement that included consent to entry of a permanent injunction against DOCS ever requiring Reynolds to submit to the skin test during his current term of incarceration, with one limited exception which required DOCS to obtain either the consent of the plaintiff or prior permission of this Court. The plaintiff agreed to the dismissal of his claim for damages. In the Settlement Agreement, the defendants stipulated that Reynolds is a "prevailing party" for purposes of Title 42, United States Code, Section 1988.

Although the parties have agreed that Reynolds is the "prevailing party" and entitled to fees and costs, the defendants have made the objections described below to the fees and costs sought by Paul Weiss. To determine reasonable attorney's fees, the court calculates a lodestar figure by multiplying the reasonable hours spent by a reasonable rate. *Cruz v. Local Union No. 3 of the International Brotherhood of Electrical Workers,* 34 F.3d 1148, 1159 (2d Cir.1994). A "strong presumption" exists that the lodestar figure "represents a reasonable fee." *Quaratino v. Tiffany & Co.,* 166 F.3d 422, 425 (2d Cir.1998) (internal quotation omitted). The reasonable hourly rate is ordinarily determined by the rates prevailing in the community for similar services by lawyers with similar skill, experience and reputation. *Cruz,* 34 F.3d at 1159. The prevailing community is ordinarily the district in which the court sits. *Id.* Determining the reasonable hours requires the district court to "exclude excessive, redundant or otherwise unnecessary hours, as well as hours dedicated to severable unsuccessful claims" although fees are allowed for work on those unsuccessful claims which are "inextricably intertwined" with successful ones. *Quaratino,* 166 F.3d at 425 (internal quotation omitted). The Second Circuit has noted that use

of the lodestar method comports with the principal expressed by the Supreme Court that " 'a civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued solely in monetary terms' " as well as with the congressional intent to attract "effective legal representation" even to those claims where monetary compensation is small. *Id.* at 426 (quoting *Blanchard v. Bergeron,* 489 U.S. 87, 96 (1989)).

1. ***Hourly Rate***

***2** The Prison Litigation Reform Act ("PLRA"), signed into law by President Clinton on April 26, 1996, provides that

> [n]o award of attorney's fees in an action [by a prisoner] shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 30006A of Title 18, for payment of court-appointed counsel.

42 U.S.C. § 1997e(d)(3) (West Supp.1998). Under this cap, the plaintiff is limited to a maximum hourly rate of $112.50 (150% of $75).[1]

The defendants agree that Mr. Beller is properly compensated at the maximum rate allowed by statute, but contend that the two associates who assisted him should be compensated at lower rates since they are considerably less experienced than Mr. Beller. Because of the statutory cap, Mr. Beller will be reimbursed at a rate substantially below the rate at which his time is normally compensated. The PLRA does not require that attorneys with different experience levels be compensated at different rates. Nor is there a requirement under the statute or otherwise that the reimbursement rates for less experienced attorneys must be proportionately reduced in relation to the statutory cap because a more experienced attorney will receive far less than his market rate of reimbursement. The issue is, instead, whether the hourly rates provided by the PLRA are reasonable as applied to the particular attorney, and in the context of this action. Fee awards under Section 1988 are not intended to produce a windfall for attorneys. *Farrar v. Hobby,* 506 U.S. 103, 115 (1992).

The work performed by the two associates is customarily billed at rates far higher than the statutory cap. There is no evidence that those billing rates are not customary in New York City for comparable law firms. Based on that market rate as well as the Court's evaluation of the quality of their work on this litigation, it is appropriate to reimburse the firm for their work at the maximum rate allowed by the statute.

Law students working at the firm also made a substantial contribution to this litigation. They performed a variety of tasks to prepare for the hearing and two of them examined witnesses at the hearing. As the plaintiff points out, if they had been unavailable to perform this work, associates at the firm would have had to handle that work in their stead. It is reasonable to compensate their work at the rate established by the statutory cap. It is less than the rate at which their work is customarily billed and very little more than the rate found reasonable for work performed in 1998, by summer associates at another major New York City law firm.

The plaintiff seeks compensation for paralegals and other nonlegal support staff at an average hourly rate of $103.80; the defendants contend that the rate of reimbursement should be at $25 per hour. Although it is not appropriate to reduce arbitrarily the hourly rate for reimbursement of legal staff below the statutory cap, it is appropriate to set a separate cap on the hourly rate for reimbursement of non-legal staff. Even though Paul Weiss has provided evidence that its non-legal staff is billed at a greater rate, no member of the non-legal staff shall be paid at an hourly rate greater than $75.

2. ***Hours Worked***

***3** The second component of the lodestar calculation is the number of hours reasonably expended. The defendants argue for across the board reductions for an alleged unreasonable expenditure of hours. First, they argue that 5% of the claim should be reduced for duplicative claims and overlapping services in order to "trim the fat" for the fee request. To support this argument they point to only one item: that three attorneys reviewed the proposed order for a preliminary injunction submitted to this Court in mid-July 2000. They excuse supplying any other examples with the explanation that the "magnitude" of the fee request has made it "inefficient" for the defendants to provide more examples. They imply that excess effort has occurred because the work on a case customarily expands to fill the time available. In this case, however, the entire period of discovery and the hearing itself were conducted at an expedited pace since DOCS unexpectedly placed the plaintiff in "TB Hold" in mid-May 2000. As a consequence, the parties worked under extreme pressure to accomplish in eight weeks what they had expected to have over five months to do. Given this context, it is not surprising that the defendants are unable to find examples of duplicative work. The one example they proffer is not evidence of inefficient or duplicative work. It is customary and often necessary for more than one attorney to review a critical document like the proposed preliminary injunction order. One would hope that each of the trial attorneys for the defendants also reviewed the proposed order in order to render effective advice to the Court on its terms. This Court will reduce by one-half, however, the hours attributed to the law students to

compensate for inefficiencies that necessarily exist due to lack of experience.

Next, defendants contend that a 10% across-the-board reduction is appropriate to account for time entries that lack specificity. As an example of this the defendants complain of entries that detail each of the tasks done during a block of hours, but that do not separately assign the precise amount of time to each task. There is no requirement for such itemization so long as the work itself is compensable. Should the Court find, however, that the amount claimed is not reasonable or that any of the work should not be compensated, the failure to itemize may leave the applicant with no way to allocate and salvage some of the time charges.[2] Having reviewed the time charges here, however, it would be inappropriate to reduce the fees because of the quality of the record keeping. The records are detailed and reflect work reasonably necessary to prosecute the plaintiff's claim effectively.

The time spent by Mr. Beller and the two associates accounts for more than half of the total amount in fees and costs for which Paul Weiss seeks reimbursement. It is reasonable to award this amount based on its share of the total award sought and based on the quality of the work performed. Mr. Beller is an exceptional attorney and the work performed by the two associates was of uniformly high quality. The plaintiff benefitted greatly by their efforts, and these efforts were of enormous assistance to the Court in the development and illumination of the issues. As reflected in the July 13, 2000 Opinion, the decision in this case has broad public health implications and can reasonably be expected to impact the manner in which correctional systems address the serious problem of TB among their inmate populations.

3. ***Disbursements***

a. ***Computerized Research***
***4** The parties debate whether the computerized research charges of less than $11,000 should be categorized as attorney's fees or a disbursement. However categorized, these charges are reasonable and recoverable.

b. ***Transcripts and Expert Fees***
The defendants contend that the transcript and expert fee charges sought here are noncompensable because of a failure to obtain prior Court approval for their expenditure. It was reasonable to obtain the transcripts in this case and the defendants do not suggest otherwise. The defendants do argue that it was unnecessary for the plaintiff to consult an expert since there was a Court Appointed Expert. The expert fees sought here are not extraordinary and there is no basis for contending that the expert was unnecessary. The plaintiff's highly qualified expert testified at the hearing and provided helpful information to the Court. To the extent the local rules require advance permission to allow reimbursement for either expenditure, the Court grants it *nunc pro tunc.*

c. ***Transportation***
The defendants contend that the plaintiff's use of cars should not be compensated. To the extent that the attorneys traveled to the courthouse by car when the volume of documents taken to court required use of a car or to Green Haven prison to interview their client and a witness for the hearing, those car expenses may be reimbursed. To the extent that cars were used to take attorneys home late at night, that is not a reimbursable expense.

d. ***Duplicating***
The defendants contend in summary fashion that the reimbursement of the duplicating charges should be substantially reduced since "convenience" copies are not properly taxed against the defendants, but have not pointed to any item as unreasonable. It appears that the billing rate for the copies is 15¢ per page. Paul Weiss may obtain reimbursement at a rate of 10¢ per page.

e. ***Overtime***
Although the defendants challenge in general the payment of any overtime charges, they do not challenge the reasonableness of any particular entry. The decisions made by the defendants in this case created the expedited schedule that required overtime work. Nonetheless, no attorney or member of the non-legal staff may be paid at a rate over the statutory cap or $75, respectively. To the extent overtime charges relate to the Paul Weiss policy of paying for taxis to take those working late home, it will not be reimbursed. Finally, it appears that various meal charges are listed in the category of overtime expenses. No meal charges are reimbursable, except for meals eaten during overtime work. They shall be reimbursed at a rate no greater than $10 per meal.

f. ***Other Expenses***
The defendants question whether certain other expenses for which reimbursement is claimed here are customarily billed to the firm's clients or more properly considered overhead. The reply papers sufficiently respond to these concerns and justify the inclusion of these expenses in the costs granted to the plaintiff.

4. ***Closing Comments***

***5** The cost of this litigation is directly attributable to decisions made by the Office of the Attorney General and DOCS. At several junctures the defendants had opportunities to evaluate their likelihood of success should a hearing go forward. It was evident from at least the time of the Court's February 2000 summary judgment decision that DOCS was having difficulty articulating a medical or public health justification for its TB Hold policy.

The fees and expenses granted through the Opinion are entirely reasonable given the scope of the issues presented by this litigation and the time table in which these issues had to be resolved. Essentially, the entire case was litigated within two months. By the end of the hearing, there was very little likelihood that the outcome at trial would be any different from the outcome of the hearing. Indeed, it was this realization that no doubt contributed to the decision of the parties to settle the litigation on terms that left the plaintiff the undisputed prevailing party.

Conclusion

Based on the rulings contained in this Opinion, plaintiff's counsel shall submit a revised application for fees and costs within ten days. Any further opposition, limited to contentions that the revised application does not conform to the rulings in this Opinion, shall be submitted within five days thereafter.

SO ORDERED:

Footnotes

1 As of January 5, 1990, the compensation of Criminal Justice Act attorneys in the Southern District of New York was $75 per hour.

2 The defendants also refer to entries redacted on account of privilege. These entries are relatively few in the context of the entire submission and do not, by themselves, cast doubt on the integrity of the records or interfere with the Court's ability to judge the reasonableness of the charges.