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

Michael X. HURLEY, on behalf of himself and all others similarly situated, Class-Plaintiffs,
and
Khalil A. RAHMAN, and Shu-Aib A. Raheem, on behalf of themselves and all others similarly situated, Subclass-Plaintiffs,
v.
Philip COOMBE, Commissioner of the Department of Correctional Services of New York State, Joseph Keenan, Director of Special Housing Units (Punitive Segregation), William Gard, Deputy Commissioner for Security of the New York State Department of Correctional Services, Robert Henderson, Superintendent of Auburn Correctional Facility, Eugene Reynolds, Deputy Superintendent for Security of Auburn Correctional Facility, Individually and in their official capacities, Defendants.

No. 77 Civ. 3847 (RLC). | Feb. 6, 1996.

Attorneys and Law Firms

Prisoners' Legal Services Of New York New York City (David Leven, Tom Terrizzi, Sarah Betsy Fuller, of counsel), for plaintiffs.

Washington Square Legal Services, New York City (Claudia Angelos, of counsel), for plaintiffs-intervenors.

Dennis C. Vacco, Attorney General of the State of New York, New York City (Vincent Leong, of counsel), for defendants.

Opinion

OPINION

ROBERT L. CARTER, District Judge.

***1** Plaintiffs, a class consisting of all inmates presently in the custody of the New York State Department of Correctional Services (DOCS), and plaintiffs-intervenors, the subclass of Muslim inmates, entered into a Consent Decree on July 21, 1983, with the DOCS and state officials regarding procedures for strip searches and strip frisks. Plaintiffs and plaintiffs-intervenors subsequently moved for contempt, alleging that defendants had violated the terms of the agreement. After the court found numerous violations of the Consent Decree, the parties entered into an agreement over a monitoring system, embodied in a Stipulation and Order signed by the court in January 1994. Plaintiffs and plaintiffs-intervenors now move pursuant to Rule 54(d), F.R. Civ. P., and 42 U.S.C. § 1988 for an award of interim attorneys' fees to compensate for their time and expenses spent monitoring defendants' compliance with the Consent Decree, preparing and arguing the contempt motion, negotiating the monitoring system, and preparing the fee application.

I. Background

This lengthy, ongoing litigation addresses what constitutes permissible procedures for strip searches and strip frisks performed on individuals incarcerated by the state of New York. For extensive factual and procedural background to the case, see *Hurley v. Ward,* 584 F.2d 609 (2d Cir. 1978); *Hurley v. Coughlin,* 158 F.R.D. 22 (S.D.N.Y. 1993) (Carter, J.); *Hurley v. Ward,* 549 F. Supp. 174 (S.D.N.Y. 1982) (Carter, J.); *Hurley v. Ward,* 451 F. Supp. 930 (S.D.N.Y. 1978) (Carter, J.); and *Hurley v. Ward,* 448 F. Supp. 1227 (S.D.N.Y. 1978) (Carter, J.), with which familiarity is assumed. Briefly, the parties entered into a Consent Decree on July 21, 1983, which governs when, where, and how such searches may be performed by DOCS personnel. Subsequently, the court found defendants in contempt of the Consent Decree and ordered remedial relief. *See Hurley v. Coombe,* No. 77 Civ. 3847, slip op. of July 28, 1993. Presently before the court is plaintiffs' and plaintiffs-intervenors' motion for interim attorneys' fees to compensate for the time and costs expended in litigation of the contempt motion and prior and subsequent monitoring efforts.

II. Attorneys' Fees

Attorneys' fees may be awarded as part of the costs of litigation in a case brought pursuant to 42 U.S.C. § 1983. 42 U.S.C. § 1988 (1994). Only plaintiffs deemed prevailing parties are entitled to fees. *Hensley v. Eckerhart,* 461 U.S. 424, 433 n.7 (1982). Since defendants do not contest plaintiffs' status as prevailing parties, the court will move directly to a computation of the fees to be awarded.

The amount of attorneys' fees granted is within the discretion of the district court. *Hensley,* 461 U.S. at 437; *Clarke v. Frank,* 960 F.2d 1146, 1153 (2d Cir. 1992). In calculating a fee award, the court begins by multiplying the hours counsel has reasonably spent on the case by a

reasonable hourly rate. *Hensley,* 461 U.S. at 433; *Cohen v. West Haven Bd. of Police Commissioners,* 638 F.2d 496, 505 (2d Cir. 1980); *Burr v. Sobol,* 748 F. Supp. 97, 99 (S.D.N.Y. 1990) (Carter, J). The resulting "lodestar" figure is then subject to downward or upward adjustments, depending on a variety of factors. *Burr,* 748 F. Supp. at 99-100.

***2** It is important to note at the outset that courts should not "become enmeshed in a meticulous analysis of every detailed facet of the professional representation." *Seigal v. Merrick,* 619 F.2d 160, 164 n.8 (2d Cir. 1980), quoting *Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp,* 540 F.2d 102, 116 (3d Cir. 1976). As this court has held, it is

> less important that judges attain exactitude (which may be impossible) than that they use their experience with the case, as well as their experience with the practice of law, to assess the reasonableness of the hours spent and rates charged in a given case.

Bowne of New York City, Inc. v. AmBase Corp., 161 F.R.D. 258, 267 (S.D.N.Y. 1995) (Carter, J.), citing *Clarke v. Frank,* 960 F.2d 1146, 1153 (2d Cir. 1992).

A. Hours

The court's first step is to determine the reasonableness of the hours billed by counsel. Defendants' challenges to plaintiffs' and plaintiffs-intervenors' hours are addressed in turn.

1. *Time expended by counsel for plaintiffs-intervenors*

Defendants first dispute the time expended by counsel for plaintiffs-intervenors, the subclass of DOCS inmates who are Muslim. This subclass sought similar relief to the plaintiff class but on different grounds. Plaintiffs challenged the DOCS strip search procedures as violating rights secured by the fourth, eighth, and fourteenth amendments. Plaintiffs-intervenors, on the other hand, were concerned primarily with their first amendment rights to free exercise of their religion.

Plaintiffs-intervenors have been involved with every step of the litigation, including negotiation of the Consent Decree, monitoring compliance, institution of contempt proceedings, and negotiation of the Stipulation and Order. Claudia Angelos, counsel for the subclass, has skillfully represented her clients' unique interests throughout. She continues to do so to the present day. Defendants claim that because the subclass has earned no relief on the contempt motion separate from that obtained by the class as a whole, Angelos's time should be disallowed. Defendants cite no case law in support of this argument, however, and I see no reason why they should prevail. A grant of attorneys' fees to Angelos should not be contingent on the attainment of unique and separate relief for her clients. Such a grant should spring instead from her expenditure of time in reasonable and effective representation of her clients' interests and in furtherance of their prevailing claims. I am satisfied that Angelos has spent her time appropriately and is entitled to compensation.

2. *Time spent following Stipulation and Order*

Defendants next contend that plaintiffs and plaintiffs-intervenors should not be compensated for hours expended following January 3, 1994, the date of the Stipulation and Order, other than those spent on activities reasonably necessary to monitor enforcement of that order. Defendants further argue that plaintiffs have failed to provide sufficient detail for the court to determine whether these hours were reasonably necessary to monitor enforcement.

***3** Defendants cite no case law and fail to provide a persuasive argument as to why any attorneys' hours should be disallowed for this time frame in particular. Obviously, the court will exclude all hours not reasonably expended in furtherance of prevailing claims in this litigation. However, the court will not apply more stringent guidelines to time spent following the entry of the Stipulation and Order. The enforcement procedures followed by plaintiffs were created under the terms of the Consent Decree and Stipulation and Order themselves. The history of this litigation shows that active and ongoing monitoring by counsel for plaintiffs is necessary to ensure defendants' compliance with the Consent Decree, which remains in force, as well as with any subsequent contempt orders. Thus, plaintiffs' counsel's tasks endure. So long as these tasks are reasonable and are performed in necessary furtherance of the litigation, and in the absence of any persuasive legal arguments to the contrary, they will be compensated.

Although defendants do not contest this time specifically, the court notes that time spent on preparing the fee application itself is compensable. According to the Second Circuit, "[t]he fee application is a necessary part of the award of attorney's fees. If the original award is warranted, we think that a reasonable amount should be granted for time spent in applying for the award." *Donovan v. CSEA Local Union 1000, Amer. Fed'n of State, County & Municipal Employees, AFL-CIO,* 784 F.2d 98, 106 (2d Cir.), *cert. denied sub nom CSEA Local Union 1000, Amer. Fed'n of State, County & Municipal Employees, AFL-CIO v. Brock,* 479 U.S. 817 (1986).

Defendants further argue that plaintiffs' attorneys' time records are not sufficiently specific to allow the court to determine whether or not the activities described were appropriate for compensation. The Second Circuit has held that time records must at a minimum "specify, for each attorney, the date, the hours expended, and the nature of the work done." *New York Ass'n for Retarded Children, Inc. v. Carey,* 711 F.2d 1136, 1148 (2d Cir. 1983). This information enables the court to determine the need for such work and the reasonableness of the time spent on it. Plaintiffs need not describe in meticulous detail the particularities of every task, however. As the United States Supreme Court has noted, "[p]laintiff's counsel, of course, is not required to record in great detail how each minute of his time was expended. But at least counsel should identify the general subject matter of his time expenditures." *Hensley,* 461 U.S. at 437 n.12. I am satisfied that plaintiffs have done so in the present application.

3. *Overstaffing, duplication of effort*

Defendants next argue that plaintiffs' counsel engaged in a duplication of effort. Specifically, they contend that more than two attorneys appeared at various conferences among the parties, and they complain that more than one attorney travelled to DOCS facilities to review compliance reports on July 20, 1994, August 10, 1994, and March 13, 1995. Plaintiffs respond with a detailed breakdown of the division of tasks and responsibilities among the various attorneys involved. They argue as well that defendants and their attorneys consistently outnumbered counsel for plaintiffs and plaintiffs-intervenors at conferences among the parties.

***4** The Second Circuit has left determination of redundancy in fee applications to the discretion of the district court:

> prevailing parties are not barred as a matter of law from receiving fees for sending a second attorney to depositions or an extra lawyer into court to observe and assist.... Of course, a trial judge may decline to compensate hours spent by collaborating lawyers or may limit the hours allowed for specific tasks, but for the most part such decisions are best made by the district court on the basis of its own assessment of what is appropriate for the scope and complexity of the particular litigation.

Carey, 711 F.2d at 1146 (citation omitted). While it is true that redundant work should not be billed, many tasks in fact require or benefit from the attention of more than one attorney. Such is the case in the present litigation, for example, when Angelos represented the interests of the subclass, leaving the broader interests of the plaintiff class to the other attorneys.

I find only minor redundancies in plaintiffs' and plaintiffs-intervenors' fee applications. Counsel have provided a detailed and persuasive accounting of their various priorities and the breakdown of their responsibilities: broadly speaking, Claudia Angelos represents the interests of her client subclass and provides the experience and strategic insight of one who has been involved with the case from the beginning; Sarah Betsy Fuller and Tom Terrizzi in turn have performed the bulk of the investigative and legal legwork as well as the client contact required to litigate and monitor this action; and David Leven provides consultation and direction from the perspective of a seasoned litigator and prisoners' rights expert. Although this breakdown of tasks appears generally to have functioned efficiently, I am not convinced that it was entirely necessary to have four attorneys participate in various conferences among the parties and with the court.[1] There were three occasions of such redundancy: a conference call with defendants regarding monitoring issues on July 11, 1994; a conference with the court on October 18, 1994; and a conference with defendants regarding compliance on March 27, 1995. For ease of computation, I will disallow Terrizzi's time for these meetings.

Defendants also complain that plaintiffs' attorneys travelled together to review compliance records at DOCS facilities.[2] Plaintiffs counter that counsel reviewed separate records during these visits. I have no reason to disbelieve plaintiffs' accounting of the time. This time will be allowed.

I make only the reductions noted above in plaintiffs' requested hours. The records are contemporaneous and in sufficient detail to enable a determination that the time was reasonably expended. The expenditure of 1,648.6 hours over a period of six years is eminently reasonable in light of the time-consuming nature of this litigation. As Angelos points out, "[t]he consent order specifically contemplates a very active role for the lawyers for the plaintiffs." (Affirmation of Claudia Angelos in Reply on Interim Att'y Fees at 12.) Furthermore, plaintiffs' attorneys have themselves trimmed their hours before submitting this fee application: they exclude numerous discussions of the case held with other staff members at Prisoners' Legal Services ("P.L.S."), they do not bill for the time of ten attorneys and legal assistants who conducted many of the client interviews necessary for this litigation, and they exclude all time spent prior to 1989.

B. Hourly rate

***5** Having determined the total number of hours plaintiffs are entitled to bill, the court turns to a consideration of the rates at which these hours may be billed. A reasonable rate is one which is "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stenson,* 465 U.S. 886, 895 n.11 (1984). The relevant legal community is the judicial district in which the trial court sits. *In re Agent Orange Product Liability Litigation,* 818 F.2d 226, 232 (2d Cir. 1987), *cert. denied,* 484 U.S. 926 (1987).

Plaintiffs have the burden of demonstrating the reasonableness of their hourly rate. Here, they have supplied various reports showing the rates charged by large private law firms in New York City in 1994; these range from $100 to $500 per hour for partners, and from $100 to $385 for associates. Plaintiffs themselves request rates of $275 per hour for Leven, Angelos, and Terrizzi and $250 per hour for Fuller. They also request rates of $90 per hour for law student time and $60 per hour for legal assistants.

In calculating attorneys' fees for cases that stretch over many years, it has been the practice in this Circuit to divide the litigation into two phases and use a historic rate for the early phase and a current rate for the later phase. *Carey,* 711 F.2d at 1153; *Grant v. Martinez,* 973 F.2d 96, 100 (2d Cir. 1992), *cert. denied sub nom Bethlehem Steel Corp. v. Grant,* -- U.S. --, 113 S. Ct. 978 (1993). However, it is within the court's discretion to compensate counsel for the delay in receiving fees by using current rates throughout. *Missouri v. Jenkins,* 491 U.S. 274, 283-84 (1989); *Grant v. Martinez,* 973 F.2d at 100. As the Supreme Court has stated,

> [c]learly, compensation received several years after the services were rendered--as it frequently is in complex civil rights litigation--is not equivalent to the same dollar amount received reasonably promptly as the legal services are performed, as would normally be the case with private billings. We agree, therefore, that an appropriate adjustment for delay in payment--whether by the application of current rather than historic hourly rates or otherwise--is within the contemplation of [42 U.S.C. § 1988].

Missouri v. Jenkins, 491 U.S. at 283-84.

In the present case, defendants argue that historic rates should apply to hours expended prior to May 5, 1992, which is three years before the date of the current motion. They further argue that current rates should apply from May 5, 1992, to January 3, 1994, the date of the Stipulation and Order. For all time following that date, they argue that plaintiffs should be compensated at a reduced rate, due to the less complex nature of the tasks counsel was called on to perform.

The court will apply current rates to all counsel's time, in order to compensate them for the delay in receiving payment for services performed in some instances more than six years ago. Furthermore, I see no reason to reduce rates across the board for time following the Stipulation and Order. Defendants have not demonstrated why plaintiffs' attorneys' tasks would have suddenly become easier following the entry of the contempt order; it is defendants' own record of violations of the Consent Decree that made such an agreement necessary, and makes continuing monitoring essential.

***6** The court will allow the requested rates: $275 per hour for Angelos, Leven, and Terrizzi and $250 for Fuller. These rates are reasonable in light of the significant experience levels of each attorney and the prevailing rates for comparable legal services in New York City. Fuller has more than 20 years of experience as a litigator and law professor focussing on clinical work and advocacy; she has worked for the United States Department of Justice, Division of Civil Rights, as well as for various legal services offices and Cornell Law School. Terrizzi is the Associate Director of P.L.S. He has more than 20 years of experience litigating in federal and state courts, largely on behalf of prisoners, and he serves on the adjunct faculty of Cornell Law School. Leven, the Executive Director of P.L.S., has been practicing law as a legal services attorney for more than 25 years. He has litigated extensively in both state and federal courts, and has served as Executive Director of P.L.S. for 16 years. Angelos worked for six years as a legal services litigator before her 1980 appointment to the faculty of the New York University School of Law. She teaches in the Civil Rights Clinic at N.Y.U. and continues to litigate extensively; she has nearly two decades of experience as a prisoners' rights attorney.

Case law supports an award of fees at the rates requested. *See, e.g., Loper v. New York City Police Dept.,* 853 F. Supp. 716, 720 (S.D.N.Y. 1994) (Sweet, J.) ($250 per hour is appropriate for a civil rights litigator with seven years experience in the field); *Monaghan v. SZS 33 Assocs., LP,* 154 F.R.D. 78, 85 (S.D.N.Y. 1994) (Sweet, J.) ($250 to $300 per hour is appropriate for experienced partners from 1990-93; $120 to $180 per hour is appropriate for associates in the same years); *Loler v. G & U, Inc.,* 801 F. Supp. 1056, 1066 (S.D.N.Y. 1992) (Tenney, J.) ($250 per hour is appropriate for experienced legal aid attorneys); *Jennette v. City of New York,* 800 F.

Supp. at 1169 (compensation of $200 per hour is reasonable for an experienced civil rights lawyer who is a solo practitioner); *Williams v. City of New York,* 728 F. Supp. 1067, 1071 (S.D.N.Y. 1990) (Patterson, J.) ($200 per hour is reasonable for a senior trial attorney in small to medium-size firm for work performed in 1984-85 and 1988-89); *Carrero v. New York City Housing Authority,* 685 F. Supp. 904, 908 (S.D.N.Y. 1988) (Sweet, J.), *rev'd in part on other grounds,* 890 F.2d 569 (2d Cir. 1989) ($175 per hour is reasonable for a 1978 Harvard graduate with "extensive and impressive" experience prosecuting civil rights claims; $150 per hour is reasonable for a less experienced attorney).

Defendants argue that less complex tasks such as conferences, telephone calls, and all time spent out of court should be compensated at a reduced rate. They also contend that the court should grant reduced rates for work performed by an attorney that could be performed by a paralegal or law clerk, such as reviewing reports. Plaintiffs argue in response that while secretarial tasks should not be billed at attorney rates, they have not submitted such hours. They assert that strategic consultation among attorneys, negotiation with defendants, and investigation of alleged violations are crucial tasks in this litigation, requiring the attention of attorneys.

***7** Defendants are correct that certain tasks, such as filing, delivery, and service of papers do not properly come under the heading of hours "expended on the litigation," and are not generally considered recoverable expenditures of time. *Soc'y for Good Will to Retarded Children v. Cuomo,* 574 F. Supp. 994, 999 (E.D.N.Y. 1983), *vacated on other grounds,* 737 F.2d 1253 (2d Cir. 1984). The reasoning behind this rule is that clerical and secretarial tasks are normally subsumed into an attorney's overhead expenses. *See id.* at 1002. Compensable expenses are those "which normally are charged separately to fee-paying clients and which are not incorporated as part of office overhead into the attorney's billing rates." *Americans United for Separation of Church and State v. School District of Grand Rapids,* 717 F. Supp. 488, 503 (W.D. Mich. 1989). Furthermore,

> [i]t is appropriate to distinguish between legal work in the strict sense, and investigation, clerical work, compilation of facts and statistics and other work which often can be accomplished by non-lawyers but which a lawyer may do because he has no other help available. Such non-legal work may command a lesser rate.

Missouri v. Jenkins, 491 U.S. 274, 288 n.10 (1989). It remains at the discretion of the trial court to determine the level of difficulty of compensated tasks and reasonable rates to apply.

Based on the nature and background of this litigation and an examination of time records submitted by counsel, I find their expenditure of hours to be generally compensable at full rates. This litigation is grounded in factual investigation; plaintiffs' counsel were required to evaluate countless allegations by class members and measures taken by defendants. The court agrees that it was not only necessary but generally more efficient for attorneys to do much of this evaluation, in light of the hotly contested legal issues involved. As plaintiffs point out, counsel minimized their time spent on legal research and routine discovery; much of this work was accomplished by law students and legal assistants. Furthermore, plaintiffs explain that when attorneys themselves conducted investigations at the facilities, it was often possible to discuss enforcement issues directly with state officials present at the time; this eliminated the need for much follow-up work.

There are two areas of exceptions. First, Fuller expended 11.5 hours on proofreading various documents. This work could better have been performed by a legal assistant or law student, and will be compensated at $90 per hour.

Second, plaintiffs' attorneys offer their travel time for compensation. They contend that some of Fuller's and Terrizzi's travel time on common carriers was spent in discussion of the case and in preparation for upcoming meetings. They request full compensation for this time and offer to reduce the remaining travel time by 50%.

It is within the court's power to grant full hourly rates for travel time. *See Carrero,* 685 F. Supp. at 909. However, as one court noted, "[t]he time ... spent in transit may have been beneficial, but it probably was not as productive as time at the office or in court." *Soc'y for Good Will to Retarded Children v. Cuomo,* 574 F. Supp. at 998. The court will exercise its discretion and allow full compensation for the time spent discussing the case or preparing for meetings, and accept plaintiffs' offer to reduce the remaining time.

C. Adjustments

***8** Upward or downward adjustments from the lodestar calculations are not favored; there is a "'strong presumption' that the lodestar figure represents the 'reasonable' fee." *City of Burlington v. Dague,* 505 U.S. 557, 562 (1992) (citation omitted). Furthermore, "[t]he party advocating such a departure ... bears the burden of establishing that an adjustment is necessary to the calculation of a reasonable fee." *Grant v. Martinez,* 973 F.2d at 101 (citation omitted). Defendants make no

arguments that the lodestar amount should be adjusted across the board, and I find no reason to do so. Accordingly, the lodestar amount will be awarded.

III. Other costs and expenses

Reasonable attorneys' expenses may be recovered by the prevailing party in civil rights cases as a part of the attorneys' fees. *See, e.g., Soc'y for Good Will to Retarded Children v. Cuomo,* 574 F. Supp. at 1002; *Noble v. Herrington,* 732 F. Supp. 114, 118 (D.D.C. 1989). Plaintiffs must provide documentation to show that the costs were incurred in legitimate and necessary pursuit of their prevailing claims. Counsel attach adequate accounting of reasonable expenses; the requested amount of $6,560.58 will be allowed.

Conclusion

Having prevailed in litigation of their contempt motion before the court, plaintiffs and plaintiffs-intervenors are entitled to attorneys' fees in the amount of $336,237.50 and expenses in the amount of $6,560.58, for a total award of $342,798.08, according to the following calculations.

Sarah Betsy Fuller

total hours requested:	637.90
proofreading	–11.50
travel time	–57.40
hours granted at full rates:	569.00

569.00 hours at $250 per hour = $142,250.00

11.5 hours at $90 per hour = $1,035.00

57.40 hours at $125 per hour = $7,175.00

David Leven

total hours requested:	146.25

146.25 hours at $275 per hour = $40,218.75

Tom Terrizzi

total hours requested:	346.90
overstaffed conferences:	–18.70
travel time:	–47.70
hours granted:	280.50

280.50 hours at $275 per hour = $77,137.50

47.70 hours at $137.50 per hour = $6,558.75

Claudia Angelos

total hours requested:	121.40

121.40 hours at $275 per hour = $33,385.00

Legal assistants

total hours requested:	239.20

239.20 hours at $60 per hour = $14,352.00

Law students

total hours requested: 156.95

156.95 hours at $90 per hour = $14,125.50

IT IS SO ORDERED.

Footnotes

1 Defendants themselves appear to have had numerous counsel present at these meetings; while this fact does not provide free rein for plaintiffs to overstaff, it does enter into a determination of what is reasonable. *See Williamsburg Fair Housing Committee v. Ross-Rodney Housing Corp.,* 599 F. Supp. 509, 518 (S.D.N.Y. 1984) (Tenney, J.).

2 Defendants contest all expenditures of time for this purpose, arguing that the reports were sent to plaintiffs' attorneys and did not need to be reviewed at the institutions. Plaintiffs respond that inspection visits to DOCS facilities are an essential aspect of the Stipulation and Order; they argue that on-site visits were necessary to allow examination of the documentation underlying the reports, such as log books and strip frisk forms. I find plaintiffs' explanation reasonable.