

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

JANE ROE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 05-4333-CV-C-DW
	)	
LARRY CRAWFORD, et al.,	)	
	)	
Defendants.	)	

ORDER

Before the Court is Plaintiff Class' Motion for Attorneys' Fees (Doc. 89) and Plaintiffs' Bill of Costs (Doc. 90). Parties have fully briefed this matter.

Attorneys' Fees

42 U.S.C. § 1988 authorizes attorneys' fees for prevailing parties on claims brought under 42 U.S.C. § 1983. Defendants do not dispute that Plaintiffs were a prevailing party on a § 1983 claim. Instead, Defendants argue that this Court should hold the Motion in abeyance until the currently pending appeal is resolved.

The Comments to Federal Rule of Civil Procedure 54(d)(2)(B) specifically provide that if an appeal on the merits is taken, "the court may rule on the claim for fees..." By ruling on the fee motion at this juncture, rather than waiting until the appeal's resolution, the Court reviews the claimed services "while they are freshly in mind." Comment Fed. R. Civ. Proc. 54. Further, given that the appeal has not yet been briefed, parties may seek to consolidate this Order with the pending appeal.

In assessing the amount recoverable under a Congressionally authorized award of attorneys' fees, "the district court should determine 'the number of hours reasonably expended on

the litigation multiplied by a reasonable hourly rate.” Simpson v. Merchs. & Planters Bank, 441 F.3d 572, 580 (8th Cir. 2006), *quoting* Hensley v. Eckerhart, 461 U.S. 424, 433 (U.S. 1983).

A reasonable hourly rate under § 1988 “is calculated according to the prevailing market rates in the relevant community, regardless of whether plaintiff is represented by private or non-profit counsel.” Blum v. Stenson, 465 U.S. 886, 895 (U.S. 1984). Plaintiffs, the moving party on the motion, carry the burden of proving that their “requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” *Id.* at 896. The Court may rely on its experience and knowledge of prevailing market rates. Hanig v. Lee, 415 F.3d 822, 825 (8th Cir. 2005)

Plaintiffs’ class claims attorneys’ fee rates varying from \$200.00 to \$350.00. The Court finds \$200 an hour reasonable for Kansas City attorneys of the caliber of Plaintiffs’ counsel in a case involving Constitutional rights. The Court also finds reasonable, given her 21 years of legal assistant experience, the \$95.00 per hour rate requested for Ms. Blumenthal’s service.

The Court must then determine if the number of hours claimed by Plaintiffs’ counsel are reasonable. Plaintiffs’ counsel claims fees for approximately 800 hours. This Court reviewed the records and found the number of attorneys and the number of hours generated by seven attorneys excessive. This was not a complex case and the issues were straight-forward. Two attorneys would have been sufficient. Accordingly, the Court will only award Plaintiffs’ class fees resulting from the hours billed by Thomas M. Blumenthal, Missouri counsel, and Diana Kasdan. Together, Mr. Blumenthal and Ms. Kasdan billed 412.8 hours.

Ms. Hutchings, Mr. Blumenthal’s legal assistant, properly billed time for items including deposition coordination and preparation, review of document production and motion exhibit preparation. Missouri v. Jenkins ex rel. Agyei, 491 U.S. 274, 288 (1989). Plaintiffs’ counsel may

recover the 56.3 hours billed by Ms. Hutchings.

Plaintiff Class' has also proven their right to 100% of the hours determined as reasonable. Plaintiff Class was successful as to every issue prevailing before the Court and the Court's fee appropriately reflects that success. Hensley v. Eckerhart, 461 U.S. 424, 440 (U.S. 1983) ("We hold that the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees under 42 U. S. C. § 1988.").

The Court thus awards \$87,908.00 in attorneys' fees.

Costs

Parties may obtain reasonable out-of-pocket costs and expenses as part of a statutory award of attorneys' fees. Neufeld v. Searle Laboratories, 884 F. 2d 335, 342 (8th Cir. 1989). Plaintiffs enumerated and provided support for the fees arising from this case, including conference call fees and photocopying costs. See Kelly v. Bowen, 862 F.2d 1333, 1336 (8th Cir. 1988) (listing "long-distance telephone expenses, attorney travel expenses, postage, and photocopying costs" as reasonable expenses). The Court accordingly approves Plaintiffs' request for \$3,197.95 in non-taxable costs and \$4,181.10 in the verified bill of costs.

IT IS SO ORDERED.

Date: October 17, 2006

/s/ DEAN WHIPPLE
Dean Whipple
United States District Court