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United States District Court, E.D. Missouri,
Southeastern Division.

ALONZO PATTERSON, Individually and on behalf of a class similarly situated, Plaintiff,
v.
GEORGE RAFFERTY, et al., Defendants.

No. S 82–31 C(D) | Oct. 24, 1985.

Attorneys and Law Firms

Michael J. Hoare, Chackes and Hoare, St. Louis, Missouri.

Richard Goldstein, Cape Girardeau, Missouri.

David Blanton and Terry Ottinger, Blanton, Rice, Gilmore, Sidwell and Ottinger, Sikeston, Missouri.

Opinion

ORDER

WANGELIN, District Judge.

***1** In accordance with the Memorandum filed this date and incorporated herein,

IT IS HEREBY ORDERED that plaintiff's motion for attorney's fees be and is GRANTED; and

IT IS FURTHER ORDERED that defendant pay plaintiff's counsel Twenty One Thousand Eight Hundred Thirty Three Dollars and Fifty Cents ($21,833.50) as attorney's fees, to be divided as indicated in the above-referenced Memorandum; and

IT IS FURTHER ORDERED that defendants pay the firm of Michael J. Hoare, a Professional Corporation, its litigation expenses in the amount of One Thousand Seven Hundred Fifty Three Dollars and Thirty Three Cents ($1,758.33); and

IT IS FURTHER ORDERED that defendants pay Richard Goldstein his litigation expenses in the amount of Two Hundred Sixty Five Dollars and Three Cents ($265.03).

MEMORANDUM

This matter is before the Court upon plaintiff's motion for attorney's fees. Plaintiff is the prevailing party and as such is entitled to an award of attorney's fees pursuant to 42 U.S.C. § 1988 even though a consent decree was entered. Maher v. Gange, 448 U.S. 122 (1980); Liddell v. State of Mo., Nos. 83–1957–EM (8th Cir., decided June 25, 1984) (en banc).

Previously this Court reviewed plaintiff's motion and ordered both sides to submit supplemental briefs because Attorney Goldstein had been involved in an apparently similar case and received a smaller fee than that requested here. Mr. Goldstein also provided legal services in that case without the aid of St. Louis counsel as is the case in the above-styled matter. All parties have complied with this Court's Order and have filed supplemental briefs which clarify the issues.

Defendants initial contention was that the instant case is similar to Gray v. Ferrell where Mr. Goldstein accepted Two Thousand Five Hundred Dollars ($2,500.00) for three hundred forty and one-half (340.5) hours work. Defendant, therefore, contends that plaintiff's award of fees in this case should be based upon the figure accepted in Gray.

The Court finds this argument to be untennable. The fee in Gray was not court ordered. It was part of a settlement agreement and amounts to less than Seven and One Half Dollars ($7.50) an hour. Consequently, the Two Thousand Five Hundred Dollar ($2,500.00) figure will not play a role in determining the appropriate fee in the instant case.

Plaintiff has calculated a 'loadstar' figure by multiplying various hourly rates by the number of hours expended. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). Plaintiff's local counsel seeks compensation for work performed at the rate of Sixty Dollars ($60.00) per hour; plaintiff's lead counsel in St. Louis seeks compensation at the average rate of Ninety Three Dollars and Eighty Two Cents ($93.82).

The final breakdown of plaintiff's 'loadstar' figures are as follows:

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The Court notes that all hours claimed are documented by plaintiffs, and defendants do not contend that the hours were not expended.

***2** Plaintiffs do not seek to have the Court enhance their fee award as is permissable. Blum v. Stenson, 465 U.S. 886, 79 L.Ed.2d 891 (1984). Instead, plaintiffs request that their risk of nonpayment combined with exceptional

success be weighed in their favor and that they be awarded only their 'loadstar' figure.

Defendants contend that the retention of St. Louis consel was unnecessary. In support defendants cite Gray v. Ferrell, in which Mr. Goldstein played a prominent roll. Gray was a prisoners' rights case involving conditions at the Scott County jail and Mr. Goldstein did not require St. Louis consel for Gray.

Plaintiffs suggest that the instant case is distinguishable from Gray in that Gray was not certified as a class action. However, in Gray, as can be seen by the consent judgment, the case was treated as a class action, the same as the present case. Based upon the relief granted, the Court finds that the problems and conditions leading to the filing of the petition in each case were much the same.

Before he had gained experience in prisoners' rights cases, at the beginning of the Gray case, Mr. Goldstein determined that he did not need Mr. Hoare's services; he and expert Buchanan alone obtained the same relief for a class of county jail prisoners which Mr. Goldstein, expert Buchanan, and six St. Louis attorneys obtained in the instant case.

Plaintiffs are entitled to select whomever they choose to represent them. Further, there is no doubt that Mr. Hoare and his firm performed with a high degree of skill and learning. But this Court's task is to fix a reasonable fee and, in doing so, to be mindful of Congress's purpose to encourage the enforcement of constitutional rights by awarding fees which are adequate to attract competent counsel, but which do not produce windfalls to attorneys. S. Rep. No. 94–1011, U. S. Code Cong. & Admin. News 1976, p. 5913.

In general, a reasonable hourly rate would be the ordinary fee for similar work in the community. Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 718 (5th Cir. 1974), cited with approval in Allen v. Amalgamuted Transit Union Local 788, 554 F.2d 876 (8th Cir.), cert. denied, 434 U.S. 891 (1977). Since this Court can find no reason why local counsel could not have obtained the same result without the assistance of St. Louis counsel, the appropriate fee is that which prevails in the community. Avalon Cinima Corp. v. Thompson, 689 F.2d 137 (8th Cir. 1982). The following hourly rates are reasonable and should be allowed for plaintiff's counsel.

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Additionally, defendants contend that they should not be responsible for the travel time expended by St. Louis counsel. This contention is without merit.

> When a lawyer travels for one client he incurs an opportunity cost that is equal to the fee he would have charged that or another client if he had not been traveling. That is why lawyers invariably charge their clients for travel time, and usually at the same rate they charge for other time . . .. And if they charge their paying clients for travel time they are entitled to charge the defendants for that time in a case such as this where the plaintiffs have shown statutory right to reasonable attorney's fees . . . the presumption . . . should be that a reasonable attorney's fee includes reasonable travel time billed at the same hourly rate as the lawyer's normal working time.

***3** Craik v. Minnesota State University Board, 738 F.2d 348, 350 (8th Cir. 1984),citing Henry v. Webermeier, 738 F.2d 188 (7th Cir. 1984). The Craik court concluded that counsel retained by clients who pay on a regular hourly basis customarily charge for travel time and civil rights counsel should be no worse off. Craik, supra at 350.

Defendants' contention that the total number of hours expended in the instant case was unreasonable in light of the similarities with Gray also fails. Counsel Goldstein, Payne, and Siebert expended three hundred thirty five and three-fourth hours (335.75) in the Gray case. In the instant case, plaintiffs have expended three hundred sixty four hours (364).

Plaintiff in the present case worked to solve problems inherent in the Mississippi County jail. As such, plaintiff was dealing with the physical plant and administrative policies of the Mississippi County jail. In fact, this Court finds no time expended in this case that could or should have been avoided because of work done in Gray v. Ferrell.

Finally, defendants argue that the fact that they only expended one hundred forty hours (140) counsels in favor of a reduction in allowed time.

> Certainly the amount of time spent by defendants is a relevant factor, and in some cases can result, when considered with other circumstances, in a reduction of the time for which plaintiffs' counsel are entitled to be compensated.

Craik, supra at 349.

However, such is not the case here. A familiar maxim, applicable to trials, is potior est condition defendants.

Plaintiffs at trial have a more difficult task and must bear the burden of proof and forrage for evidence to prove the elements of their complaint. Thus, it is not unlikely that plaintiffs will expend more time in preparation for trial than will defendants. By defendant's own calculations, defendants spent one hundred ninety six point nine hours (196.9) on Gray compared with three hundred forty hours (340) expended by plaintiffs in Gray's. While the differences are one hundred forty (140) versus three hundred sixty (360) in the instant case. The Court finds that there is not a significant difference in the hours spent by any of the parties to warrant a reduction in the instant case.

Defendants have also requested reasonable expenses in addition to the attorney's fees. Plaintiff has raised no objection to the amounts requested. Consequently, this Court will issue an Order granting plaintiff's motion for both attorney's fees and expenses.