

1997 WL 778753

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United States District Court, E.D. Washington.

Donald W. MINIKIN, Plaintiff,

v.

Kay WALTER and David Buss, Defendants.

No. CS-96-407-JLQ. | Oct. 15, 1997.

Opinion

ORDER DIRECTING ENTRY OF JUDGMENT, STAYING REQUEST FOR PUNITIVE DAMAGES, AND AWARDING REASONABLE ATTORNEY FEES

QUACKENBUSH, Senior J.

*1 On August 25, 1997, the court entered a Memorandum Opinion and Order Granting Plaintiff's Motion for Summary Judgment and Denying Defendants' Motion for Summary Judgment in the above-entitled matter (Ct.Rec.55). The court entered a permanent injunction against the Defendants "from prohibiting delivery of an inmate's paid-for subscription to a profit or nonprofit publication based only on the fact that it is mailed to the inmate by 'standard mail' ". The court directed the parties to file statements as to an appropriate damage award, and further directed Plaintiff to file a statement setting forth the hours expended and the reasonable fee per hour to litigate this case. The parties have not complied with that directive. Michael W. Gendler represents Plaintiff. Assistant Attorney General Colleen B. Evans represents Defendants.

DAMAGES

Plaintiff seeks \$30.00 in compensatory damages representing the cost of a 2 year subscription to Prison Legal News, which he was denied, nominal damages in the amount of \$1.00 for the violation of his right to procedural due process because he received no mail rejection notice, and punitive damages in the amount of \$250.00 for each issue of Prison Legal News that was thrown away by prison officials without notice to the Plaintiff. Plaintiff does not state how many issues of Prison Legal News were thrown away by prison officials. Defendants do not object to the \$31.00 but do object to the request for punitive damages. Therefore, the court

finds that Plaintiff is entitled to recover the sum of \$31.00 in compensatory and nominal damages. However, the court further finds that Plaintiff's request for punitive damages should be stayed pending the appeal pending with the Ninth Circuit Court of Appeals.

REASONABLE ATTORNEY FEES

42 U.S.C. § 1988 provides in pertinent part that the court, in its discretion, may allow the prevailing party in a § 1983 action a reasonable attorney's fee. Defendants do not dispute that Plaintiff's attorney reasonably spent 56 hours on this case. However, Defendants do dispute that \$187.50 per hour is a reasonable hourly rate pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997e(d)(3).

42 U.S.C. § 1997e(d)(3) authorizes a fee award to be made at an hourly rate which is 150 percent of the fees authorized under 18 U.S.C. § 3006A for court-appointed counsel. Plaintiff argues that courts have authorized payment to court-appointed counsel in capital criminal cases at a maximum rate of \$125.00 per hour. However, this is not a capital criminal case. Rather, the rate allowed in the Eastern District of Washington under § 3006A for court-appointed attorneys is \$45.00 for out-of-court time, and \$65.00 for in-court time.

Here, counsel for the Plaintiff expended 56 hours of out-of-court time. Therefore, Plaintiff is entitled to a reasonable attorney fee of \$3,780.00 (56 hours times \$67.50 an hour or 150% of \$45.00 an hour), under 18 U.S.C. § 3006A and 42 U.S.C. § 1997e(d)(3).

PARALEGAL FEES

*2 Again, Defendants do not object to the 8.6 hours requested for paralegal fees, but do object to the \$65.00 hourly rate of calculation. The Prison Litigation Reform Act does not speak to the maximum amount allowable for paralegal fees. The court finds that \$65.00 an hour is not unreasonable. Therefore, Plaintiff is entitled to recover \$559.00 in paralegal fees (8.6 hours times \$65.00 an hour).

COSTS

Eastern District of Washington Local Rule 54.1 provides in pertinent part that the party in whose favor a judgment

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is rendered, and who is entitled to claim his costs, shall within ten days after the entry of judgment, serve on the attorney for the adverse party and file with the Clerk of the Court a verified bill of costs on a form which will be furnished by the Clerk of the Court upon request.

Defendants state that they have no objection to the \$1,332.70 originally claimed by the Plaintiff as out-of-pocket costs. Plaintiff has now filed a request for an additional \$194.60. Plaintiff must submit these costs to the Clerk of the Court on the proper form in order to recover costs. Defendants may file any objections with the Clerk in accordance with the Local Rule.

IT IS HEREBY ORDERED:

1. The Clerk is directed to enter a Judgment in favor of the Plaintiff against the Defendants awarding Plaintiff \$31.00 in damages and \$4,339.00 in reasonable attorney and paralegal fees for a total judgment of \$4,370.00.

2. Plaintiff's request for punitive damages is STAYED pending the appeal filed by the Defendants with the Ninth Circuit Court of Appeals.

IT IS SO ORDERED. The Clerk is directed to enter this Order and forward copies to counsel.