UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BAHAA E. ISWED, #272102, Plaintiff, -v- PATRICIA CARUSO, MARY BERGHUIS, WRIGHT WADE, and G. RILEY, Defendants.	)	No. 1:08-cv-1118 HONORABLE PAUL L. MALONEY

OPINION AND ORDER
GRANTING PLAINTIFF'S APPLICATION FOR ATTORNEYS' FEES AND COSTS

On December 10, 2012, this court entered judgment against Defendants in this matter. (ECF No. 161.) Before the court today are Plaintiff's bill of costs (ECF No. 162) and his motion for attorneys' fees and costs. (ECF No. 164.)

I. BACKGROUND

On November 28, 2008, Plaintiff Bahaa E. Iswed filed suit *pro se* against Patricia Caruso, then-director of the Michigan Department of Corrections; Embarq Payphone Services Inc.; and a number of MDOC employees. (ECF No. 1.) Mr. Iswed raised a number of causes of action, all based on the defendants' refusal to allow him to make telephone calls to his family in Romania and Jordan. (*Id.*)

This court dismissed Mr. Iswed's case on its initial review, finding that he had failed to state a claim on which relief could be granted. (ECF No. 4.) On appeal, the Sixth Circuit affirmed most of this ruling, but held that Mr. Iswed had sufficiently pleaded a First Amendment claim. (ECF No. 14.) On remand, this court ordered service of the complaint on four defendants: Director Caruso and three MDOC employees alleged to have been directly involved in refusing Mr. Iswed's request to

call Jordan and Romania. (ECF Nos. 16–17.)

In September 2011, after Mr. Iswed had survived a motion for summary judgment, the court appointed attorney Daniel E. Manville, of the Michigan State University College of Law Civil Rights Clinic, to represent Mr. Iswed going forward. After proceeding through additional discovery and another motion for summary judgment, the case went to trial. Mr. Manville and two MSU law students, Dorian George and Jesse Miller, presented the case for Mr. Iswed. After three days of trial, the jury found in Mr. Iswed's favor, but while it concluded that each Defendant had violated Iswed's constitutional rights, it awarded him only one dollar in damages from each Defendant. (ECF No. 137.) The court, however, granted Defendants the protection of qualified immunity and found even these damages improper. (ECF No. 160.) The court then granted Mr. Iswed's request for injunctive relief, entering judgment against Defendants, in their official capacity, on December 10, 2012. (ECF No. 161.)

On December 16, Mr. Iswed filed a bill of costs (ECF No. 162), and on December 23, he filed a motion for attorneys' fees (ECF No. 164). Defendants filed no objections to the bill of costs, but they argue that the requested attorneys' fees are excessive and, in the case of George and Miller, improper under local rules. (ECF No. 170.) Plaintiff's requests are now ripe for this court's review.

II. ANALYSIS

A. Attorneys' Fees

As the prevailing party in a section-1983 suit, Mr. Iswed would normally be granted attorneys' fees. *See* 42 U.S.C. § 1988(b) ("In any action or proceeding to enforce a provision of section[] . . . 1983 . . . of this title, the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs."); *Gregory v. Shelby Cnty.*, 220 F.3d 433, 447 (6th Cir.

2000) ("Although discretionary, a district court should award fees to a plaintiff if that plaintiff prevails."). Defendants do not dispute that Plaintiff is entitled to some fees, and the court agrees. Nothing about this case suggests that attorneys' fees would be inappropriate or unjust. Plaintiff's counsel obtained injunctive relief for their client, and they are therefore entitled to a reasonable fee for their services.

1. Fees for Law Students Practicing Under Supervision

Before the court addresses the question of whether Plaintiff's requested fees are reasonable, it has to determine whether it can award fees for the work done by Messrs. George and Miller, the MSU law students who worked on this case. Defendants argue that it cannot. In support, they cite Local Rule 83.1(h), which governs law student practice in this district. Specifically, Defendants point to subsection (vi), which states in part, "An eligible law student may neither solicit nor accept compensation or remuneration *of any kind* for services performed pursuant to this rule from the person on whose behalf services are rendered." W.D. Mich. LCivR 83.1(h)(vi) (emphasis added).

The court disagrees with Defendants' interpretation of this rule. The portion quoted above is narrower than Defendants claim. It plainly only prohibits the *client* ("the person on whose behalf services are rendered"), not the court or the opposing party, from paying practicing law students. Though Defendants argue that this language includes attorneys' fees because they are awarded through the client, this is a strained reading. Further, the rule expressly states in the next clause that "this rule will not prevent an attorney, legal aid bureau, law school or state or federal agency from . . . making such charges for services as may be proper." *Id.* This language would appear to allow MSU's law clinic, through Mr. Manville, to seek appropriate attorneys' fees ("charges for services") for the students' work on the case. Because these fees would go to the MSU clinic, rather than to

the law students themselves, this would not violate any prohibition on compensating students for their work. As other courts have noted, this result is consistent with the language and purpose behind section 1988. *See, e.g.*, *Siggers-El v. Barlow*, 433 F. Supp. 2d 811, 821 (E.D. Mich. 2006) ("In this case, the law students participated as competent and professional attorneys throughout discovery, dispositive motions, interlocutory appeal, and trial. The fact that they were supervised by an attorney and obtained course credit for their work does not diminish the clinic's entitlement to attorney's fees."). The court will therefore award fees for Mr. George and Mr. Miller's services.

2. Reasonableness of Fees

In determining whether an attorney's fees are reasonable, the courts apply a "lodestar" approach. Under this approach, "[t]he most useful starting point . . . is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). "There is a 'strong presumption' that this lodestar figure represents a reasonable fee," though other considerations may increase or decrease the ultimate fee award. *Bldg. Serv. Local 47 Cleaning Contractors Pension Plan v. Grandview Raceway*, 46 F.3d 1392, 1401–02 (6th Cir. 1995) (citing *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986)). "[T]here is no requirement that the amount of an award of attorneys' fees be proportional to the amount of the underlying award of damages." *Id.* at 1401.

Mr. Manville claims an hourly rate of $187.50 for himself[1] and a rate of $105 per hour for

[1] This is the maximum hourly rate allowed by 42 U.S.C. § 1997e(d)(3), which provides that attorneys' fees in a prisoner's case cannot be based on an hourly rate "greater than 150 percent of the hourly rate established under section 2006A of Title 18 for payment of court-appointed counsel." *Id.* The current hourly rate for court-appointed counsel is $125 per hour, making $187.50 the maximum hourly fee available in this case. *See Hadix v. Johnson*, 398 F.3d 863, 867 (6th Cir. 2005) (holding that section 1997e(d)(3)'s limit is to be determined by looking to "the hourly rate for court-appointed counsel that is authorized by the Judicial Conference,

each of the law students. Defendants do not dispute these rates, and they expressly agree that Mr. Manville's rate is reasonable. The court agrees. Mr. Manville has been licensed to practice law in Michigan for over 20 years, and he has extensive experience litigating prisoners' rights cases. According to a 2010 survey done by the State Bar of Michigan,[2] the median billing rate for Michigan attorneys with 3 to 5 years' experience was $175 per hour, and the 25th percentile billing rate for Michigan attorneys with 16 to 25 years' experience was $185. In Kalamazoo itself, the median attorney billing rate is $210, and the corresponding rate for Lansing is $200 per hour. In light of these statistics, the court finds that $187.50 per hour is eminently reasonable for an attorney of Mr. Manville's experience.

As for the law students, the Michigan Bar's 2010 survey found that the median billing rate for attorneys with less than one year of experience was $150; the 25th percentile rate was $125 per hour. The requested rate for Mr. George and Mr. Miller significantly discounts even this lesser figure, which is appropriate given that neither is yet a licensed attorney. Further, this court has previously noted the high quality of Mr. George and Mr. Miller's work. In light of these factors, the court finds the rate of $105 per hour for the law student practitioners' work to be reasonable.

Mr. Manville claims 134.5 billable hours for himself, 135.3 hours for Mr. George, and 101.8 hours for Mr. Miller. The court's review of counsel's time sheets shows them to be reasonable. In his declaration, Mr. Manville states that he did not record time spent instructing students, explaining background information, and other activities more related to the clinical program's educational goals

---

rather than on the rate that is actually paid to such counsel").

[2] *See* State Bar of Michigan, 2010 Economics of Law Practice: Attorney Income and Billing Rate Summary Report (January 2011), *available at* http://www.michbar.org/pmrc/articles/0000146.pdf.

than to this case itself. His time sheets appear to bear this out. Thus, although clinical programs necessarily involve some inefficiency and duplication of effort, the court finds that Mr. Manville has appropriately limited his claimed hours to account for these inefficiencies. Similarly, the time sheets of Mr. George and Mr. Miller appear reasonable, with little overlap and reasonable amounts of time allocated to their respective tasks. The only significant overlap on their time sheets include final client/witness meetings and trial itself, and the court finds that it was reasonable for all attorneys to attend both events. Both Mr. George and Mr. Miller contributed substantively to Mr. Iswed's presentation of his case, and they appear to have divided their duties efficiently. The court declines to hold that this trial should have been handled by a single attorney, given the effectiveness of Mr. George and Mr. Miller relative to their hourly rates.

Further, the time counsel spent on this case as a whole appears reasonable. In the time since Mr. Manville was appointed counsel, this case proceeded through a reasonable amount of discovery, as well as a number of substantive and procedural motions, including one dispositive motion, before going to trial. Parties had to argue the significance of a new decision from the Sixth Circuit, and the fact-specific nature of Mr. Iswed's claims prevented counsel from relying heavily on prior documents or templates. Given these circumstances, the court sees no reason to suspect that counsel's time sheets suffer from overclaiming or inefficiency.

Defendants specifically challenge only two timesheet entries: an entry of 0.8 hours for "reviewing file in preparation for visit with clinic" and an entry of 1.3 hours for drafting a sanctions motion that was never filed. Defendants seem to read the first entry as describing preparation for a discussion among clinic staff, which it claims was unnecessary, as "all involved should have been up to speed on [the] case" by that time. In reality, however, this entry appears to be only an

infelicitous way of saying that Mr. Manville was preparing for a visit with Mr. Iswed *on behalf of* the clinic. The two entries following this one make the point clearly. The day after this preparation, Mr. Manville "[d]rove to Prison," after which he spent time "[a]t prison for legal visit and to discuss possible settlement" before driving back to Lansing. With this context, the court finds this time entry reasonable.

As for the second entry, Defendants argue that the time spent preparing this motion for sanctions should not be rewarded, as Plaintiff never filed the motion. It is true that Plaintiff did not file the motion. He did, however, draft it and mail it to Defendants, as required under Fed. R. Civ. P. 11(c)(2)'s "safe-harbor." (*See* ECF No. 98.) Under these circumstances, the court is not inclined to rule that this work was improper or unrelated to Mr. Iswed's case simply because it was not ultimately filed. Such a rule would only give counsel incentives to file weak or unsupported motions that they otherwise would not. Similarly, it would fail to compensate a party's legal work that induced the opposing party to take action, mitigating the need for legal relief. Instead, attorneys should be encouraged to exercise judgment and discretion in selecting the issues and claims they make to the court. This is not to say that counsel should receive attorneys' fees for every dead-end theory and abandoned bit of research, but here, where the court did in fact partially strike Defendants' filing that appears to have triggered the sanctions motion (*see* ECF No. 112), the court finds that this time is reasonably included in Mr. Manville's fee award.

Defendants also dispute Plaintiff's fees calculation as a whole. They argue that because Mr. Iswed was ultimately granted only "half" of the relief he requested—injunctive relief, but not monetary damages—the court should only award fees for half of the hours spent. The courts have emphatically rejected this sort of automatic proportional recovery, however. *See Hensley v.*

Eckerhart, 461 U.S. 424, 435 (1983) ("[T]he fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters."). In some cases, counsel's work related to one claim can be accurately separated from work on other claims. But here, Mr. Iswed's requests for monetary damages and injunctive relief largely overlap and are not easily separated. "When claims are based on a common core of facts or are based on related legal theories, for the purpose of calculating attorney fees they should not be treated as distinct claims, and the cost of litigating the related claims should not be reduced." *Thurman v. Yellow Freight Sys., Inc.*, 90 F.3d 1160, 1169 (6th Cir. 1996), *amended in part*, 97 F.3d 833 (6th Cir. 1996).

In sum, the court finds that the hourly rates and time sheets submitted by Mr. Iswed's attorneys are reasonable. The court sees no reason to depart from this lodestar figure, and so it will award fees in the amount of $50,214.25.

3. Attorneys' Expenses

Mr. Manville also asks to recover $2,224.60 worth of expenses related to his representation of Mr. Iswed, including deposition costs, transcript costs, and various travel, room, and board expenses. (*See* ECF No. 166-1.) An award of attorneys' fees under section 1988 can include reimbursement for "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Northcross v. Bd. of Ed. of Memphis City Sch.*, 611 F.2d 624, 639 (6th Cir. 1979).

Defendants do not dispute that these expenses, in the abstract, may be properly awarded, but they do challenge a number of specific entries. First, Defendants argue that it was unnecessary for

counsel to charge for more than one hotel room on October 14, 2011 and September 12, 2012, or for more than one attorney's meals on October 13 and 14, 2011 and on September 21, 2012. Mr. Manville counters that it was reasonable to take one or more law students along with him on these trips; because they were Mr. Iswed's lawyers too, it stands to reason that they should meet Mr. Iswed and his witnesses. Further, Mr. Manville points out that their meals and accommodations were modest.

It is certainly true that in some situations, taking more than one attorney to meet with a client or with witnesses would be reasonable. Where a task requires more than one person, or where multiple attorneys split up duties to become more efficient or effective, they have a strong argument that their charges are not duplicative—or at least, are less than fully so. The September 21, 2012 charges are therefore appropriate, as having all trial counsel present at the trial-preparation meeting with Mr. Iswed and his witnesses is a reasonable choice. The other charges do not fare so well. Mr. Manville's time sheet entries suggest that the October 13–14, 2011 hotel and meal charges are associated with a visit with Mr. Iswed in prison. But neither Mr. George nor Mr. Miller appears to have been working on this case at the time, and so it is unclear who the second person was and what role that person played in this meeting. The September 12, 2012 hotel charge is even less explicable, as it is not associated with any entries on counsel's time sheets. As there is no evidence that these charges served Mr. Iswed's case, the court declines to charge them to Defendants here. The court will therefore subtract from Plaintiff's request $32 for two dinners on October 13, 2011, $26.67 for two dinners and $111.99 for one hotel room on October 14, 2011, and $179.20 for two hotel rooms on September 12, 2012.

Next, Defendants dispute charges for meals on September 18, 2012 with an unnamed

"expert," as Plaintiff did not use any expert in their case. Plaintiff explains that this entry refers to Richard Stapleton, who testified at trial as a fact witness. The court declines to reimburse Plaintiff for Mr. Stapleton's meals. While a party may reasonably pay an expert witness's expenses, the expenses of a fact witness are less clearly proper. Even if such payments violate no ethical rule, they may raise concerns about influencing the witness's testimony. The court declines to create incentives for attorneys to pay fact witnesses' expenses by approving such costs here, and so it will subtract from Plaintiff's request $24.50 for lunch on September 18, 2012 and $8.93 for breakfast on September 29, 2012.

Finally, Defendants object to meal charges for more than one attorney during trial. As discussed above, the court finds that having Mr. George and Mr. Miller present at trial was reasonable, particularly given the rates at which their time was charged. Because they were both properly present during trial, their meal expenses during trial are also reasonable. Defendants also argue that Plaintiff should be limited to the state reimbursement rate for counsel's meals, but they provide no support for this claim. Plaintiff's meals were not unreasonably costly, and the court will award these expenses in full.

After taking out the unnecessary and duplicative charges discussed above, the court awards Plaintiff's counsel $1,841.31 in expenses.

B. Costs

As the prevailing party in this matter, Plaintiff is entitled to costs under Rule 54(d). The term "costs" is not given a broad meaning, however. Instead, the courts interpret the term to cover the categories of expenses outlined in 28 U.S.C. § 1920. *See Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441 (1987). This statute provides that a court may tax as costs (1) fees of the clerk

and marshal, (2) fees for printed or electronically recorded transcripts necessarily obtained or used in the case, (3) fees and disbursements for printing and witnesses, (4) fees for exemplification and the costs of making copies of materials where the copies are necessarily obtained for use in the case, (5) docket fees under 28 U.S.C. § 1923, and (6) compensation for court appointed experts and for interpreters. 28 U.S.C. § 1920; *Hadix v. Johnson*, 322 F.3d 895, 899–900 (6th Cir. 2003). If the cost falls under one of the authorized categories, the court must determine whether the cost was "reasonable and necessary." *BDT Prods. v. Lexmark, Int'l, Inc.*, 405 F.3d 415, 417 (6th Cir. 2005), *abrogated on other grounds by Taniguchi v. Kan Pacific Saipan, Ltd.*, ___ U.S. ___, 132 S. Ct. 1997, 2007 (2012).

Plaintiff's bill of costs seeks payment of a total of $1,507.01 for clerk fees ($805.00), printing fees ($679.50), and docket fees under 28 U.S.C. § 1923 ($22.51). Defendants do not object to this request. The court finds that these items are appropriately treated as "costs" and that Plaintiff adequately showed that they were reasonable and necessary for this case. The court will therefore grant Plaintiff costs of $1,507.01.

IV. CONCLUSION

The court finds that Plaintiff is entitled to an award of $52,055.56 in attorneys' fees (consisting of $50,214.25 in hourly fees and $1,841.31 in related expenses) and $1,507.01 in costs.

ORDER

For the reasons discussed herein, Plaintiff's Application for Attorneys' Fees and Costs (ECF No. 164) is **GRANTED**. Defendants are hereby **ORDERED** to pay to Plaintiff $52,055.56 in attorney's fees and $1,507.01 in costs.

IT IS SO ORDERED.

Date: February 14, 2013

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge