

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

BETA UPSILON CHI, et al.,

Plaintiffs,

v.

CASE NO.: 1:07-CV-135-SPM/GRJ

J. BERNARD MACHEN, et al.,

Defendants.

ORDER

THIS CAUSE comes before the Court upon Plaintiffs' Motion for Attorney's Fees and Nontaxable Expenses and Supporting Memorandum of Law (doc. 295), Defendants' response (doc. 299), and Plaintiff's reply (doc. 310).

This Court previously denied Plaintiffs' application for a preliminary injunction. On appeal, the Eleventh Circuit entered an Order (doc. 288) indicating that an administrative panel of that court "had granted, in the form of an injunction pending appeal, the relief the district court had denied them."¹ The Appellate court went on to find that Plaintiffs were the prevailing parties under § 1988 and were therefore entitled to a reasonable attorney's fee. Accordingly, Plaintiffs' motion for attorney's fees and nontaxable expenses will be granted in part, to the extent that Plaintiffs are entitled to

¹ This Court denied Plaintiffs' request for a preliminary injunction pending appeal in the Order at docket entry 138.

reasonable attorney's fees and costs for work performed in this Court on Plaintiffs' motion for injunction pending appeal. The application will otherwise be denied.

Plaintiffs have sought attorney's fees for all of the work performed in this Court – not just the work performed on the request for an injunction pending appeal. Previously, Plaintiffs also went to the Eleventh Circuit seeking fees for all of the work performed in that Court (after the appellate court dismissed its appeal for mootness). However, the Eleventh Circuit determined that Plaintiffs were only entitled to fees for work performed on the injunction pending appeal (doc. 235). The Eleventh Circuit transferred the matter to this Court for the purpose of determining a reasonable attorney's fee. Ultimately, the parties agreed on an award in the amount of \$7,081.44. This Court finds no reason to handle this matter any differently from the Eleventh Circuit and determines that Plaintiffs are entitled to reasonable attorney's fees for the work performed in this Court on the motion for an injunction pending appeal. Accordingly, it is hereby ORDERED AND ADJUDGED:

1. Plaintiffs' motion for attorney's fees and nontaxable expenses (doc. 295) is **granted in part**, to the extent that Plaintiffs are entitled to reasonable attorney's fees for work performed in this Court on Plaintiffs' motion for injunction pending appeal. The application is otherwise **denied**.
2. The Parties are directed to confer within fourteen days regarding a reasonable amount of attorney's fees to be awarded to Plaintiffs and shall attempt to agree upon an amount.
3. On or before August 15, 2012, Plaintiffs shall file a motion setting forth the

amount agreed upon by the Parties. If the Parties are unable to reach an agreement, Plaintiffs shall file a motion for an amount of attorney's fees for work performed in the District Court on the motion for injunction pending appeal, to which the Defendants shall have fourteen days to respond.

SO ORDERED this 24th day of July, 2012.

S/ Stephan P. Mickle

Stephan P. Mickle
Senior United States District Judge