

**United States District Court
Northern District of Indiana
Hammond Division**

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| PERCY PERRY, |) | |
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| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 2:08-CV-280 JVB |
| |) | |
| THE CITY OF GARY, INDIANA, |) | |
| CORPORAL ANTHONY BLOOD, |) | |
| and OFFICER IRVING GIVENS, |) | |
| |) | |
| Defendants. |) | |

OPINION AND ORDER

This matter is before the Court on Plaintiff Percy Perry’s Motion for Attorneys’ Fees and Costs [DE 113], filed on May 13, 2011. Defendants City of Gary, Indiana and Corporal Anthony Blood responded to the motion on June 10, 2011. Plaintiff replied on June 28, 2011.

Plaintiff filed his Complaint on September 29, 2008, alleging that Defendant Blood, a member of Gary’s police force, used excessive force against him during an arrest. The action was brought under 42 U.S.C. § 1983, and Plaintiff alleged that the Defendants violated his Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment rights. The case proceeded to trial on April 11, 2011. Evidence presented at trial established the following facts when viewed in the light most favorable to Plaintiff: On June 24, 2007, Plaintiff tried to remove a window from an abandoned building in Gary, Indiana. A concerned citizen called the police, and Defendant Blood and another officer responded to the call. Plaintiff ran from the officers. Plaintiff fell down shortly thereafter and gave himself up, but Defendant Blood struck him in the eye with his baton.

The force of the beating knocked Plaintiff unconscious, and when he woke up his face was bloody and he could not see. Plaintiff was transported to the hospital, and doctors examining him discovered that his eye was knocked out of its socket. The eye was eventually removed.

The jury returned a verdict in Plaintiff's favor, awarding \$750,000 in compensatory damages and \$100,000 in punitive damages against Defendant Blood. As the prevailing party, Plaintiff filed his request for attorneys' fees pursuant to 42 U.S.C. § 1988, requesting \$178,125 for 593 hours of work and \$15,553 in costs. In their response, Defendants do not dispute that Plaintiff is entitled to reasonable attorneys' fees and costs, but they contest Plaintiff's counsel's hourly rates, as well as an expense pertaining to the representation of Plaintiff in a criminal matter. Defendants contend that the prevailing standard for Plaintiff's counsel's hourly rates should be that of civil rights attorneys practicing in Northwest Indiana.

A. Standard

Title 42 U.S.C. § 1988(b) gives discretion to the court in awarding attorneys' fees: "In any action or proceeding to enforce a provision of [42 U.S.C. § 1983] . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs." The court determines the amount of a reasonable fee by calculating "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate," also known as the lodestar. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

An award of attorney's fees is entrusted to the court's sound discretion. *Mercer v. Espy*, 883 F. Supp. 300, 302 (N.D. Ind. 1995). "The party requesting fees has the burden of substantiating the reasonableness of the hours expended and the hourly rate." *McNabola v.*

Chicago Transit Auth., 10 F.3d 501, 518 (7th Cir. 1993) (citation omitted). Furthermore, an attorney's reasonable hourly rate "must be based on the market rate for the attorney's work." *Id.* at 518. "The market rate is the rate that lawyers of similar ability and experience normally charge their paying clients for the type of work in question." *Id.* at 519. But the Supreme Court has held that the reasonable hourly rate should be "the prevailing market rate in the relevant community." *Blum v. Stevenson*, 465 U.S. 886, 895 (1984). In its discretion, a court may adjust an out-of-town attorney's hourly rate to that of a local attorney:

We think that a judge, in allowing an attorney's fee . . . , has discretion to question the reasonableness of an out of town attorney's billing rate if there is reason to believe that services of equal quality were readily available at a lower charge or rate in the area where the services were to be rendered.

Chrapilwy v. Uniroyal, Inc., 670 F.2d 760, 769 (7th Cir. 1982).

B. Analysis

Defendants object to Plaintiff's request for attorney's fees and costs in two respects. First, Defendants concede that the number of hours Plaintiff's counsel spent on the litigation are warranted, but they object to the rate at which Plaintiff's counsel seeks to be compensated. Second, Defendants object to a \$1,500 charge in Plaintiff's bill of costs for Andrea Bonds's criminal representation of Plaintiff. The Court will address each objection in turn.

1. Plaintiff's Counsel's Billing Rate

In his petition, Plaintiff seeks attorney's fees of \$178,125, calculated as follows: Arthur Loevy, 19.5 hours at a rate of \$470 per hour; Russell Ainsworth, 257.75 hours at a rate of \$350 per hour; Elizabeth Wang, 143.75 hours at a rate of \$295 per hour; Pier Peterson, 146.25 hours at

a rate of \$230 per hour; and paralegals, 25.75 hours at a rate of \$105 per hour. Plaintiffs contend that an attorney's "actual billing rate for comparable work is 'presumptively appropriate' to use as the market rate," *People Who Care v. Rockford Bd. of Educ.*, 90 F.3d 1307, 1310 (7th Cir. 1996), and a court should not look to other evidence of the prevailing market rate unless "an attorney is unable to provide evidence of actual billing rates." *Mathur v. Bd. of Trustees of Southern Ill. Univ.*, 317 F.3d 738, 743 (7th Cir. 2003). Additionally, Plaintiff provides the court with citations to a handful of cases in which the courts accepted the hourly rates Plaintiff requests here, in support of the proposition that "rates awarded in similar cases are clearly evidence of an attorney's market rate." *People Who Care*, 90 F.3d at 1312. Finally, Plaintiff argues that the Laffey Matrix, devised by the United States Attorney's Office for the District of Columbia to provide an official guideline for what it deems to be reasonable rates in fee-shifting cases, should guide the Court in determining an appropriate hourly rate.

Defendants contend that Plaintiff's counsel, whose office is located in Chicago, should only be permitted to collect fees that are comparable to the rates of a civil rights attorney practicing in Northwest Indiana. In support of this proposition, Defendants submitted affidavits from civil rights attorneys practicing in Northwest Indiana who charge hourly rates significantly lower than Plaintiff's counsel. The first affidavit cites reasonable hourly rates for a civil rights attorney practicing in Northwest Indiana with twenty-five or more years of experience from about \$150 to \$250, and states that less experienced, associate attorney hourly rates range from \$90 to \$125. The second affidavit states that experienced local attorneys handling complex civil litigation charge around \$150 to \$180 per hour.

In the present case, the Court must decide the prevailing hourly market rate for a civil

right's attorney practicing in Northwest Indiana, the relevant community. While Plaintiff relies primarily on *People Who Care* to argue that his counsel's actual billing rates are presumptively appropriate, this presumption can be overcome. See *Gusman v. Unisys Corp.*, 986 F.2d 1146, 1150 (7th Cir. 1993) (an attorney's billing rate is a "presumptive rather than a dispositive figure"). To the extent that Plaintiff's counsel's hourly billing rates reflect a prevailing market rate, they are indicative of the market rates of Chicago, a major city. The hourly market rates of civil rights attorneys practicing in Northwest Indiana are significantly lower. Furthermore, the Court finds the Laffey Matrix to be unpersuasive in this case.

The Court agrees with Defendants that Plaintiff's counsel's hourly rates should be reduced to the market rates of Northwest Indiana, because "services of equal quality were readily available at a lower charge or rate" in Northwest Indiana. *Chrapilwy*, 670 F.2d at 769. In its discretion, and based on its many years of experience with civil rights litigation in Northwest Indiana, the Court has determined that the following hourly rates are appropriate in this case: Arthur Loevy, \$250 per hour; Russell Ainsworth, \$200 per hour; Elizabeth Wang, \$150 per hour; Pier Peterson, \$150 per hour; and paralegals, \$75 per hour. Therefore, because Defendants do not object to the amount of hours Plaintiff's counsel devoted to this case and because the Court agrees that those hours are reasonable, Plaintiff is awarded \$102,629 in attorneys fees.

2. Plaintiff's Costs

Additionally, Plaintiff requests compensation in the amount of \$1,500 for his representation in the related criminal charges to this case. Defendants contend that they should not be charged for this representation because Plaintiff never alleged that he was falsely accused

of a crime or that his rights were violated by the charges. Therefore, they request that the costs Plaintiff seeks be reduced by \$1,500, from \$15,553 to \$14,053. Plaintiff agrees that this cost should be stricken from his request. The Court will so reduce the costs attributable to Defendants.

C. Conclusion

For the foregoing reasons, Plaintiff's Motion for Attorneys Fees and Costs [DE 113] is GRANTED in part. Plaintiff is awarded \$102,629 in attorneys fees and \$14,053 in costs.

SO ORDERED on August 8, 2011.

s/ Joseph S. Van Bokkelen
JOSEPH S. VAN BOKKELEN
UNITED STATES DISTRICT JUDGE