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WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANAUNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

GOVERNMENT OF IBERIA PARISH

CIVIL ACTION NO. 14-2985

VERSUS

JUDGE DOHERTY

SHANE ROMERO

MAGISTRATE JUDGE WHITEHURST¹**MEMORANDUM RULING AND ORDER**

Pending before this Court is a Report and Recommendation issued by the magistrate judge, in which the magistrate judge recommends the Motion for Attorney's Fees pursuant to 42 U.S.C. §1988 or, alternatively, pursuant to the Court's inherent authority to award same [Doc. 30], be granted in part. Both the Iberia Parish Government [Doc. 44] and Shane Romero [Doc. 45] have filed Objections to the magistrate judge's Report and Recommendation. After this Court's *de novo* review of the issues presented, this Court ADOPTS the findings of the magistrate judge and GRANTS IN PART AND DENIES IN PART the Motion for Attorney's Fees, with the following clarifications below.

I. Standard of Review

Pursuant to 28 U.S.C. § 636(b)(1), "[a] judge of the court shall make a *de novo* determination of those portions of the [magistrate judge's] report [and recommendation] or specified proposed findings or recommendations to which objection is made." Section 636(b)(1) further states "[a] judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter

¹ The Report and Recommendation in this matter was prepared by Magistrate Judge C. Michael Hill, who has since retired. Additional briefing associated with the Report and Recommendation can be found at Docs. 46 & 47.

to the magistrate judge with instructions.”

The magistrate judge concluded defendant Shane Romero is entitled to attorney’s fees on one claim asserted by the plaintiff – Count II – that claim having been determined by the magistrate judge to be “vexatious, frivolous, or brought to harass or embarrass” Romero. In making this recommendation, the magistrate judge made the following recommendation in light of his imminent retirement:

The Court recommends that Shane Romero be awarded those attorneys fees which relate to the defense of Count II of the complaint, and those fees which relate to drafting the motion and memorandum in support of the dismissal of Count II of the complaint, and only those fees.

Because of the short time that the undersigned has remaining on this Bench and because essentially all of the litigation in this case took place before the undersigned, and because the undersigned is, therefore, the judicial officer who may well be in the best position to judge the relative time spent in the defense of all three Counts in the complaint, the undersigned would note that it is difficult to conceive that more than one-third of the attorneys fees charged to Shane Romero in this case are related to Count II.²

The magistrate judge added the following footnote:

Obviously, the undersigned makes no ruling in this regard because the issue has not been briefed and is not before the undersigned for decision. Because of the peculiar situation caused by the undersigned’s impending retirement, and because the undersigned cannot conceive of a way that the attorneys fees issue could be referred to me in the event that this recommendation is accepted, the undersigned (albeit hesitantly), makes this observation.³

In his Objections, Shane Romero objects to the magistrate judge’s “suggestion” that only one-third of the attorneys’ fees are allocable to the dismissal of Count II as if it were a conclusion, ignoring the fact that the matter has not been referred to any judge for an actual

² See Report and Recommendation, Doc. 43, at pp. 9-10.

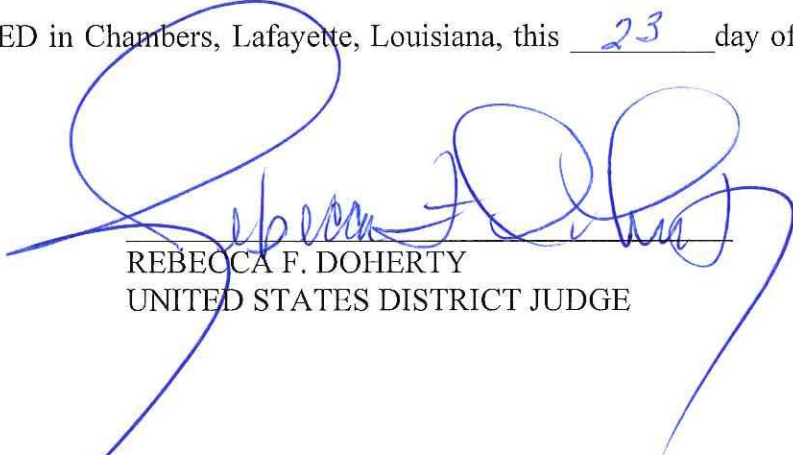
³ *Id.* at pp. 9-10 n.2.

assessment of fees. This Court notes a full assessment of fees will be undertaken by the newly-appointed magistrate judge, Magistrate Judge Carol Whitehurst, with full opportunity by all parties to present argument and evidence on all issues.

Considering the foregoing,

IT IS ORDERED that the Motion for Attorney's Fees [Doc. 30] is GRANTED IN PART and DENIED IN PART, as set forth in the magistrate judge's Report and Recommendation [Doc. 43]. IT IS FURTHER ORDERED that the amount of attorneys' fees to be awarded to Romero is hereby REFERRED to the magistrate judge for consideration and recommendation. The magistrate judge shall prepare a Report recommending the amount to be awarded to Romero in consideration of the appropriate standards and evidence to be submitted by the parties.

THUS DONE AND SIGNED in Chambers, Lafayette, Louisiana, this 23 day of September, 2015.



REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE

SENT
DATE 9-24-15
BY cg
TO (BW)