

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JAMES OBERGEFELL and
JOHN ARTHUR,

Plaintiffs,

vs.

JOHN KASICH, et al,

Defendants.

: Case No. 1:13-cv-501

:

: Judge Timothy S. Black

:

: DECLARATION OF JENNIFER L.

: BRANCH IN SUPPORT OF

: REQUEST FOR ATTORNEY FEES

:

:

:

I, Jennifer L. Branch, pursuant to 28 U.S.C. §1746, declare under the penalty of perjury that the following is true and correct.

1. I was an attorney who worked on this case for Plaintiffs.
2. The fees requested comport with and are reasonable in light of the factors contained in Ohio Rules of Professional Conduct 1.5 insofar as they accurately reflect the time and labor required in the prosecution of this matter, the difficulty of the questions involved, the skill required to perform the work properly, comport with the fees customarily charged by others for similar legal services, and are appropriate in light of the results obtained.
3. I am a 1984 graduate of New York University. In 1987 I graduated cum laude from Case Western Reserve University School of Law and was admitted to practice that same year. I practiced with the Legal Aid Society of Cincinnati for nine years, focusing my practice in complex litigation, housing rights, and prisoner rights. I served as a Senior Attorney at the Legal Aid Society of Cincinnati from 1992 – 1996

and as a staff attorney for that same organization from 1987-1992. I co-counseled six class actions or complex cases at Legal Aid.

4. In July 1997 I joined the private law firm of Laufman & Gerhardstein, as an attorney. Laufman & Gerhardstein concentrated its practice in civil rights litigation. I co-counseled with Alphonse Gerhardstein and Robert Laufman on several dozen civil rights cases. In January 2005 I became a partner in the firm. I have litigated civil rights cases in federal and state court and have argued in the Ohio Supreme Court, the Ohio First and Tenth District Courts of Appeal, the Sixth Circuit Court of Appeal, and tried cases to the bench and to the jury in the U.S. District Courts in the Northern and Southern Districts in Ohio and in numerous Ohio Common Pleas Courts and Municipal Courts. (Branch resume Exhibit 1).
5. In the vast majority of my cases and Mr. Gerhardstein's cases, including this case, our fee is contingent or dependent on success.
6. My billing rate was \$300 per hour from January 2007 until April 2012. It increased to \$350 in April 2012. My rate increased to \$385 in September 2013. We have settled cases at these rates, had clients pay us at these rates, and been awarded fees at these rates. I was awarded fees at the requested rate in *Hunter v. Hamilton Cnty. Bd. of Elections*, 1:10CV820, 2013 WL 5467751 (S.D. Ohio Sept. 30, 2013) at *17.
7. The market rates in the Cincinnati market are comparable to the rates being charged by Plaintiff's attorneys. Other Cincinnati litigators with similar years of experience as the lead attorneys in this case bill at higher rates:

| Attorney Name (date of admission) | Awarded rate (year of award) |
|--------------------------------------|--|
| David Altman (1974) | \$390 (2004) ¹ |
| Jim Helmer (1975) | \$420 (2004) ² \$498 (2010) ³ |
| Paul Martin (1979) | \$375 (2004) ⁴ |
| Julie Popham (1992) | \$425 (2010) ⁵ |
| Frederick Morgan, Jr. (1983) | \$500 (2010) ⁶ |
| Jennifer Verkamp (1996) | \$450 (2010) ⁷ |
| David M. Cook (1978) | \$450 (2008) ⁸ |

8. The chart below summarizes the current rates compared to Judge Rubin's rubric using his committee's 1983 rates updated for 2013 by increasing the rate by 4% per year since 1983.

| Name | Hourly Rate | Year Admitted | Years in Practice | Rubin Rate as of 2013 |
|-------------------------|-------------|---------------|-------------------|-----------------------|
| Al Gerhardstein | \$450 | 1976 | 37 | 415 |
| Jennifer Branch | \$385 | 1987 | 26 | 415 |
| Lisa Meeks | \$350 | 1993 | 20 | 366 |
| Jacklyn Gonzalez Martin | \$225 | 2010 | 3 | 200 |
| Paralegals | \$80-95 | | | 122 |
| Law Clerk | \$85 | | | 77 |

9. I exercised billing judgment at the time the work was recorded and did not record every short assignment, email, conversation, or phone call. I have reviewed each time entry and made a good faith effort to exclude hours that are excessive, redundant, or otherwise unnecessary. Thus, compensation is not sought for all the

¹ Opinion and Order awarding fees (Judge Spiegel Aug. 23, 2005) in *Unites States of America v. Sierra Club*, Case No. C-1-02-107 and affidavit of Helmer in support thereof (Aug. 6, 2004).

² Opinion and Order awarding fees (Judge Spiegel Aug. 23, 2005) in *Unites States of America v. Sierra Club*, Case No. C-1-02-107 and affidavit of Helmer in support thereof (Aug. 6, 2004).

³ *U.S. ex rel. Ellison v. Visiting Physicians Association, P.C.* 2010 WL 2854137(S.D. OH 2010).

⁴ Doc. 177, Order granting fees (Judge Black June 1, 2004) in *Estate of Roger Owensby, Jr. v. City of Cincinnati* (and Doc. 133, Declaration of Paul Martins in support thereof).

⁵ *U.S. ex rel. Ellison v. Visiting Physicians Association, P.C.* 2010 WL 2854137(S.D. OH 2010).

⁶ *U.S. ex rel. Ellison v. Visiting Physicians Association, P.C.* 2010 WL 2854137(S.D. OH 2010).

⁷ *U.S. ex rel. Ellison v. Visiting Physicians Association, P.C.* 2010 WL 2854137(S.D. OH 2010).

⁸ *Bailey v. AK Steel Corp.*, 2008 WL 553764 (S.D. OH 2008).

work performed. All staff is instructed to exercise billing judgment at the time the work is recorded and are supervised by me in this regard. Not all time worked on the case has been billed. All time is entered on the case contemporaneous with the work done.

/s/ Jennifer L. Branch

Date: February 5, 2014

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EDUCATION

May 1987 **CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW**
Cleveland, Ohio
J.D. Degree; *cum laude*
Health Law Journal Editor; Moot Court Board
Honors: Order of the Barrister; American Jurisprudence Awards for
Trial Practice, Administrative Law, and Conflict of Laws
Publication: “The Right to Withdraw Life-Sustaining Medical Treatment,”
 Health Matrix Vol. III, No. 4 (1986)

May 1984 **NEW YORK UNIVERSITY**
New York, New York
B.A. Degree with Honors in Politics
Majors: Politics and Philosophy

LEGAL EMPLOYMENT

Jan. 2005- present **PARTNER**
 GERHARDSTEIN & BRANCH CO. LPA (Aug. 2006 – present)
 GERHARDSTEIN BRANCH & LAUFMAN CO. LPA (Jan. 2005-Aug. 2006)
Gerhardstein & Branch Co. LPA is a private civil rights litigation firm. We
represent plaintiffs discriminated against on the basis of age, race, gender,
sexual orientation, and disability in the areas of private and public
employment. We also litigate prisoner civil rights cases, police misconduct
cases, and women’s reproductive rights issues.

June 1997- 2005 **ATTORNEY**
 LAUFMAN & GERHARDSTEIN

Sept. 1992-June 1996 **SENIOR ATTORNEY**
Sept. 1987-Sept. 1992 **STAFF ATTORNEY**
 LEGAL AID SOCIETY OF CINCINNATI
Represented low income clients in prison litigation, subsidized and private
housing cases, utility rate cases, race, gender, handicap and familial
discrimination, special education, and benefits.

LITIGATION

I have litigated cases in federal and state court trial courts, Ohio Courts of Appeals, Ohio Supreme Court, Sixth Circuit Court of Appeals, and Ohio administrative agencies. Below is a partial list of significant cases:

Mark Broach v. City of Cincinnati (September 2013) (Magistrate Judge Bowman), \$224,522.41 jury verdict for Fire Lieutenant based on employment claims for retaliation based on opposition to race discrimination, retaliation based on participation, and hostile work environment.

Parrish v. City of Mason (March 2013) (Judge Spiegel) summary judgment denied in case filed by estate of man tased by police who died after multiple tasings in less than two minutes. Appeal pending.

Howard v. Haas (settled 2013) family of young man tased by U.C. police officer settled claims for \$2,000,000, reforms, and a memorial on the U.C. campus.

Hunter v. Hamilton County Board of Elections (settled May 2012) (Chief Judge Dlott), Equal Protection challenge to provisional voting process resulted in additional ballots being counted and judicial candidate Hunter declared winner of election by 73 votes. *Hunter v. Hamilton County Board of Elections et, al.* 635 F.3d 219 (6th Cir. 2011); *Hunter v. Hamilton County Board of Elections et, al.*, 850 F. Supp.2d 795, 2012 WL 404786 (permanent injunction); *Hunter v. Hamilton County Board of Elections et, al.*, ___ F. Supp.2d ___, 2013 WL 5467751 (attorney fees).

P.C. and W.C. v. Milford Schools, 2013 WL 209478 (S.D. Ohio 2013) (Judge Spiegel), Ohio Department of Education administrative decisions denying private reading service to disabled junior high student overturned because school predetermined student's education placement and thus committed a procedural violation of IDEA.

Logan v. Sycamore Schools, 2012 WL 2011037 (S.D. Ohio 2012) (Judge Spiegel), Title IX case sought damages against school district for estate of high school student who was bullied and sexually harassed before she committed suicide. Summary judgment denied.

McCullum v. Butler County (S.D. Ohio settled 2012) (Judge Black) estate of 19 year old jail detainee sued for failure to treat mental health needs, which led to his suicide. Settlement of \$300,000 from various defendants after summary judgment denied. *McCullum v. Tepe*, 693 F.3d 696 (6th Cir. 2012).

Tana Cross v. Pickaway County (S.D. Ohio settled 2012) (Judge Smith) Settlement of \$200,000 after summary judgment was denied for estate of woman who committed suicide in local jail after being denied medical treatment.

B.H. v. West Clermont Schools (S.D. Ohio settled 2011) (Judge Black) successful appeal of administrative decision denying special education student services and settlement of 1983 claims for restraining student for \$70,000 plus fees awarded.

Darla Jennings v. City of Lima, OH, et al. (N.D. Ohio settled 2010) (Judge Carr) \$2.5 million settlement for woman killed and children injured in SWAT raid.

Aldini v. Johnson, et al., (S.D. Ohio settled 2010) (Magistrate Judge Merz) \$125,000 settlement after appeal *Aldini v. Bodine*, 609 F.3d 858 (6th Cir. 2010) for detainee at Montgomery County Jail who sued jail corrections officers for injuries from beating, tasing, and being held in a restraint chair.

Meyer v. Nichols (S.D. Ohio verdict 2009) (Magistrate Judge King) \$40,000 jury verdict plus fees for failure to protect inmate injured by inmate assault.

Fredericks v. Potter, (S.D. Ohio Verdict 2008) (Magistrate Judge Hogan) \$382,000 jury verdict for disabled postal worker for disability discrimination, plus attorney fees.

Probst v. Central Ohio Youth Center, 511 F.Supp.2d 862 (summary judgment denied to Consolidated Care, Inc); (Judge Marbley) private non-profit corporation and its social worker held to be state actors while performing contract to provide mental health care at juvenile correctional facility; 2008 WL 320148 (S.D. Ohio 2008) (summary judgment denied to Central Ohio Youth Center.) juvenile who committed suicide stated a claim against the juvenile correctional facility.

Fossyl v. Watson, 317 Fed. Appx. 467 (S.D. Ohio 2009) (Judge Watson) \$1 million jury verdict for family of Cheryl Fossyl for wrongful death affirmed ; settlement with Brown County, Ohio for unconstitutional law enforcement services from the time of Cheryl's death in 1977 until 2001.

E.M. and D.M. on their behalf and on behalf of their son R.M v. Sycamore Community Schools, (S.D. Ohio resolved 2008), parents of student receiving special education reading services Sycamore High School filed due process complaint seeking private school reading services for son with disabilities.

Benaugh v. Ohio Civil Rights Commission, 278 Fed. Appx. 501 (6th Cir. 2008) (Verdict 2006) (Magistrate Judge Black) jury verdict for disabled employee for \$68,000 against employer who failed to accommodate her disability (asthma) affirmed.

Riggins v. Hunt, (S.D. Ohio, Verdict 2006) (Judge Barrett) jury verdict for Plaintiff for \$125,000 in prisoner civil rights action against state prison corrections officers for using excessive force plus attorney fees (2007 WL 433303).

Cundiff v. Mueller, (S.D. Ohio settled 2006) excessive force case against New Vienna police officer who shot and killed client and against Village and officers for covering up his crime. Case settled for \$950,000.

Kemper v. City of Milford, (S.D. Ohio settled 2005), substantive due process case on theory of state created danger against police officer who sent husband to home of man sleeping with the husband's wife. Summary judgment denied; case settled for \$200,000.

Jack Doe v. Butler County, Ohio (S.D. Ohio settled 2005), prisoner civil rights case for failure to protect boy raped at the Butler County Juvenile Detention Center; case settled for \$250,000.

Spencer v. Blackwell, (S.D. Ohio 2004) (Judge Dlott) elections case enjoining Republican challengers to democratic voters in African American precincts in Cincinnati in the presidential 2004 election and challenging the constitutionality of Ohio's challenger law. Injunction stayed on appeal 388 F.3d 547 (6th Cir.), stay affirmed *Spencer v. Pugh*, 125 S.Ct. 305 (2004)(Justice Stewart)

Meyers v. Booher, (Hamilton County Common Pleas Court 2004) (Judge Martin) bench verdict of \$130,000 for parents and teenage daughter who was seduced by her boss and harbored from her parents.

Herbert v. Milford Towing, (S.D. Ohio 2003) (Judge Hogan) jury trial on behalf of male employee sexually harassed by male supervisor (settled before verdict).

Johnny Roe v. Butler County, Ohio (S.D. Ohio 2003) (Judge Beckwith) settlement for \$200,000 in prisoner civil rights case on behalf of 11 year old boy raped at the Butler County Juvenile Detention Center.

Women's Professional Medical Corp. v. J. Nick Baird, 277 F. Supp.2d 862 (S.D. Ohio 2003) (Judge Marbley), Permanent Injunction obtained for abortion provider who was ordered by the Ohio Department of Health to cease and desist operations. ODH was undue burden on a woman's right to choose and a violation of due process. Attorney fees awarded. *Affirmed in part* 438 F. 3d. 595 (6th Cir. 2006)

Pancake v. McGowan, 64 Fed. Appx. 464 (6th Cir. 2003) (Judge Dlott), due process challenge to Lawrence County, Ohio judge's practice to grant *ex parte* TROs granting marital residence and property to first party in divorce case to file motion. Case was dismissed on *Rooker-Feldman* abstention grounds.

Philecia Barnes formerly known as Phillip Barnes v. City of Cincinnati, jury verdict for plaintiff (\$150,000 compensatory damages, \$30,000 back pay and \$120,000 front pay) February 26, 2003(S.D.OH) (Judge Dlott), for employment discrimination against transsexual police officer. Jury found City discriminated against transsexual police officer in violation of Title VII because of gender stereotyping and in violation of the Equal Protection clause for discrimination based on perceived sexual orientation, cross dresser, transgender, or non conformity with sex stereotypes. Attorney fees with 1.75 multiplier for extraordinary results awarded. *Affirmed* 401 F.3d 729 (6th Cir. 2005), rehearing en banc denied (June 8, 2005), *cert. denied* 126 S.Ct. 624; summary judgment denied at 2002 U.S. Dist. LEXIS 26207.

In re Founder's Women's Health Center v. Ohio Department of Health, 2002-Ohio-4295 (10th Dist. Court of Appeals 2002), 2002 WL 1933886 (Ohio App. 10 Dist.). Administrative challenge to ODH requirement that doctor owned abortion clinics must be licensed as Ambulatory Surgical Facilities.

Greene v. Bowles, case settled after summary judgment for warden reversed by 361 F.3d 290 (6th Cir. 2004); jury verdict for defendant April 2002 (S.D.OH) (Judge Beckwith), transsexual prisoner beaten by inmate lost at trial on claim against officer for failure to protect her from harm. Qualified immunity denied to officers. *Doe v. Bowles*, 254 F.3d 617 (6th Cir. 2001).

Riester v. Riverside Community School, charter school teacher sued for violation of her first amendment rights, court held charter school and charter school principal are state actors reported at 257 F.Supp.2d 968 (S.D.OH 2002) (Judge Spiegel). Case settled for an undisclosed amount.

Women's Medical Professional Corporation v. Taft, trial 2001, successful constitutional challenge to Ohio House Bill 351, the "partial birth abortion" law reversed on appeal. Decisions reported at 199 F.R.D. 597 (S.D. Ohio 2001) (Judge Rice) (extending TRO); 114 F. Supp.2d 694 (S.D.OH 2000) (preliminary injunction); 162 F. Supp.2d. 929 (S.D. OH 2001) (permanent injunction); 353 F.3d 436 (6th Cir 2003) reversed.

Culberson v. Doan, 1997 – 2001, civil rights claim against police chief and village for violating parent's property rights by failing to secure the scene where their daughter's body was hidden. Jury verdict for \$3.75 million February 1, 2001. Case settled after trial for \$2 million. Pre-trial decisions: 65 F.Supp.2d 701 (S.D. OH 1999) (Judge Spiegel) (motion to dismiss denied); 72 F.Supp.2d 865 (S.D. OH 1999); 125 F. Supp.2d. 252 (S.D. OH 2000) (summary judgment denied).

In Re: Northeast Ohio Correctional Center, (N.D. OH 1997 – 2001) (Judge Polster) federal class action litigation on behalf of Washington D.C. inmates housed in a private for-profit prison in Youngstown, Ohio on Eighth Amendment medical, use of force, and failure to protect claims. Case settled for \$1.75 million to be distributed to all 2,000 inmates and a three year agreement to monitor prison conditions. Prison closed in July 2001.

Jane Roe v. Simon Leis, trial 2000, assisted female incarcerated at the Hamilton County Jail in obtaining right to have an abortion in jail by securing injunction in federal Court (S.D. OH) (Judge Dlott) and obtaining written policy change.

Jane Doe v. River City Correctional Center, (S.D. OH 1999) (Judge Dlott), assisted female prisoner in obtaining right to have an abortion by securing TRO in federal court for client to be transported from local correctional center to abortion clinic. Decision at 92 F. Supp.2d 694 (S.D. OH 1999).

McIntyre v. Shea, jury verdict 2000 (S.D. OH) (Judge Perelman), jury did not find that corrections officer watched and failed to protect inmate while he was stabbed several times by another inmate.

Morrison v. Davis, jury verdict 1999, (N.D. OH) (Judge Marbley), Eighth Amendment excessive force case where jury returned \$15,000 verdict for prisoner against corrections officers who beat prisoner. PLRA fee decision reported at 195 F.Supp.2d 1019 (SD. OH 2001).

Glover v. Williamsburg Local School District, trial 1998, federal court trial decision found plaintiff school teacher was fired because of his sexual orientation and ordered reinstatement as a teacher

and \$75,000 in compensatory damages. Decision reported at 20 F. Supp.2d 1160 (S.D. OH 1998) (Judge Dlott).

Weil v. Postmaster General, jury trial 1998, (S.D. OH) (Judge Hogan), co-counseled jury trial in sexual harassment case where jury found plaintiff was discriminated against and awarded \$175,000 in compensatory damages.

Partridge v. Fath, jury trial 1994, (S.D. OH) (Judge Rubin), federal race discrimination jury trial on behalf of African-American tenants.

Daugherty v. Wallace, 1992-1993, statewide class action in state court against Ohio Department of Human Services to reinstate General Assistance benefits.

In Re Cincinnati Gas & Electric Co. 1991 & 1993, administrative litigation on behalf of low-income ratepayers in electric rate increase cases. Appeal reported at 67 Ohio St.3d 531, 1993.

Henry v. Korte, 1989-1991, state court class action on behalf of subsidized housing tenants against landlord for violation for substandard housing conditions, and *In Re Korte*, 1991-1993, bankruptcy class action on behalf of class of subsidized tenants to obtain security deposits and new management.

Wells v. CMHA, 1989-1991, (S.D. OH) (Judge Spiegel), obtained consent decree in class action against the metropolitan housing authority to provide federally mandated grievance hearings to tenants.

Heath v. De Courcy, 1989 – 1996, (S.D. OH) (Judge Weber), class action on behalf of local jail prisoners on Eighth Amendment claims and enforcement of consent decree.

OTHER LEGAL EXPERIENCE

Summer 1986 **Law Clerk for S.D.N.Y. U.S. Attorney's Office (Rudolph Giuliani)**
Civil Rights and Appellate Divisions

Summer 1985 **Law Clerk for Federal Magistrate Ila Jean Sensenick (W.D.PA)**
Worked on prisoner rights and social security cases

Summer 1982 **Congressional Intern**
Congressman Austin J. Murphy (S.W. PA)

BAR ADMISSIONS

U.S. Supreme Court (2005)

Ohio Supreme Court (1987)

U.S. Court of Appeals for the Sixth Circuit (1991)

U.S. District Court for the Southern District of Ohio (1988)

U.S. District Court for the Northern District of Ohio (2004)

PROFESSIONAL MEMBERSHIPS

Cincinnati Bar Association Grievance Committee (2004-2012)

Cincinnati Employment Lawyer's Association

ACLU Southwest Ohio Chapter Board Member 1993-1996

CIVIC ACTIVITIES

Cincinnati Women's Political Caucus Board Member and Treasurer (1996-1999)

Community Shares Board Member (2005)

Democratic Precinct Executive Cincinnati (1998-2010)

Hamilton County Democratic Forum Board Member, Steering Committee Member, Secretary,
and President (1992-1998)

Kennedy Heights Citizens on Patrol (2001-2005)

Woman's City Club Board Member (1989-1991)