

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

N. ANN PIWINSKI,

Plaintiff,

v.

Civil Action 2:10-cv-01087

Judge George C. Smith

Magistrate Judge E.A. Preston Deavers

WELLS FARGO BANK NA, et al.,

Defendants.

ORDER

Following his failure to appear for a Court-ordered properly noticed pretrial conference, on March 25, 2011, the Court directed Plaintiff's counsel, pursuant to Federal Rule of Civil Procedure 16(f), to pay the reasonable expenses incurred by Defendants, including attorneys' fees, associated with their attendance at the Preliminary Pretrial Conference. (*See* ECF No. 18.) Two attorneys appeared for Defendants at the Conference. Since that time, Defendants submitted an affidavit from counsel detailing their expenses and attorneys' fees associated with attending the Conference. Senior counsel for Defendants billed at a rate of \$365.00 per hour for a period of 3.1 hours. The other attorney, an associate, billed Defendants at a rate of \$285.00 per hour for 0.7 hours. Counsel also incurred travel expenses totaling \$79.44. Defendants submit fees and expenses totaling \$1,530.50 for attendance at the Conference,¹ which Plaintiff's counsel neglected to attend. Plaintiff has not objected or otherwise responded to this matter.

Under Rule 16(f), the Court has wide latitude in imposing sanctions. *Estes v. King's Daughters Med. Ctr.*, 59 F. App'x 749, 753 (6th Cir. 2003) ("The district court has discretion to

¹ The Court finds, having calculated the hours and rates at issue, that the actual amount of fees and expenses Defendants request comes to a total of \$1410.44.

impose whatever sanction it feels is appropriate, under the circumstances.”); *see also Fuhr v. Sch. Dist. of City of Hazel Park*, 364 F.3d 753, 762 (6th Cir. 2004) (“A district court has broad discretion to determine what constitutes a reasonable hourly rate for an attorney.”). To calculate attorneys fees the Court generally considers “ ‘the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.’ ” *Sykes v. Anderson*, Nos. 08–2088, *et al.*, 2011 WL 1380250, at *2 (6th Cir. 2011) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). The United States Court of Appeals for the Sixth Circuit has further noted, “[t]he appropriate rate . . . is not necessarily the exact value sought by a particular firm, but is rather the market rate in the venue sufficient to encourage competent representation.” *Gonter v. Hunt Valve Co.*, 510 F.3d 610, 618 (6th Cir. 2007); *see also Coulter v. Tennessee*, 805 F.2d 146, 149 (6th Cir. 1986) (“[H]ourly rates for fee awards should not exceed the market rates necessary to encourage competent lawyers to undertake the representation in question.”).

As this Court has noted, “[o]n several occasions, the Sixth Circuit has approved of the use of a state bar survey of hourly billing rates in determining a reasonable hourly rate.” *Doe v. Ohio*, No. 2:91-cv-464, 2010 WL 2854106, at *4 (S.D. Ohio July 17, 2010) (citing *Gonter v. Hunt Valve Co., Inc.*, 510 F.3d 610, 618 n. 6 (6th Cir.2007)). Moreover, this Court has considered the complexity of the work involved in determining the reasonableness of billing rates. *See Northeast Ohio Coalition for Homeless v. Brunner*, 652 F. Supp. 2d 871, 885 (S.D. Ohio 2009) (finding hourly rates reasonable in part because of the complexity of the litigation).

Although Plaintiff does not object to Defendants’ account of fees and expenses, based on the circumstances of this case, the Court finds a reduction from Defendants’ requested attorney

fees to be appropriate.² Specifically, the Court emphasizes that these sanctions involve failure to attend a preliminary pretrial conference, a proceeding that generally does not involve complex legal issues. The Court notes that according to a recent Ohio State Bar Association survey the mean hourly billing rate for Ohio attorneys was \$211.00 in 2010.³ *The Economics of Law Practice in Ohio*, The O.S.B.A. Solo, Small Firm & General Practice Section 7 (2010) available at www.ohiobar.org/.../pub/2010_Economics_of_Law_Practice_Study.pdf. Given the relatively limited nature of the proceedings that led to Plaintiff counsel's sanction, the Court finds that such a rate is sufficient to encourage competent representation.

Accordingly, the Court determines, under the facts of this case, that \$211.00 represents a reasonable hourly rate. Applying this rate to the 3.8 hours Defense counsel billing, Defendants are entitled to attorneys' fees of \$801.80. Additionally, Defendants are entitled to the represented expenses of \$79.44. Therefore, in accordance with the Court's March 25, 2011 Order, Plaintiff's Counsel is **DIRECTED** to pay Defendants **\$881.24** in reasonable expenses, including attorneys' fees.

IT IS SO ORDERED.

Date: May 5, 2011

/s/ Elizabeth A. Preston Deavers

Elizabeth A. Preston Deavers
United States Magistrate Judge

² This Order should not be construed as a determination that Defense counsels' general billing rates in this case are unreasonable. Rather, the Court simply finds, in its discretion and due to the nature of the proceedings involved, that for sanction purposes a reduced rate is appropriate.

³ The Court recognizes that a number of factors, including experience and ability, influence a lawyers billing rate. Once again, however, because of the nature of the sanctions involved, the Court finds that applying this general attorney mean is appropriate in this case.