

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM I. KISNER,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 7-788
)	
PETER R. DEFAZIO, <i>et al.</i> ,)	
)	
Defendants.)	

AMBROSE, District Judge

MEMORANDUM ORDER

In this civil rights action, a jury entered a verdict in Defendant's favor. Defendant Mullen has filed a Motion for Attorney Fees and costs (Docket No. 334), in which the other Defendants join. Defendant Mullen has also filed a Motion to Clarify Motion for Attorney Fees (Docket No. 343), in which Defendant Mullen seeks to clarify that the Motion for Attorney Fees is brought against William I. Kisner, Adrian Roe, Adrian N. Roe, P.C., Eric Springer, Charles Watkins, and Barnes, Dulac & Watkins formerly Watkins, Dulac & Roe. The Motion for Clarification (Docket No. 343) is granted.

With regard to the Motion for Attorney Fees, under 42 U.S.C. § 1988, "[i]f the prevailing party is the defendant, attorney's fees may be awarded if the plaintiff's complaint was frivolous, unreasonable, or groundless, or if the plaintiff continued to litigate after it was found so." Brown v. Borough of Chambersburg, 903 F.2d 274, 277 (3d Cir. 1990). Similarly, under 28 U.S.C. § 1927, a defendant may be awarded fees if the action was frivolous from the start, and plaintiff pursued litigation despite legal or factual infirmities. Deyo v. St. Luke's Hosp. & Health Network, No. 6-3712, 2010 U.S. Dist. LEXIS 39014, at *4 (E.D. Pa. Apr. 16, 2010). Here, Defendants claim entitlement to fees, on the basis that the litigation was frivolous, vexatious, and improperly or in bad faith pursued and multiplied. I have carefully considered each of Defendants' contentions, and find that no such award is warranted in this case.

AND NOW, this 7th day of June, 2010, the Motion for Clarification (Docket No. 343) is granted and the Motion for Attorney Fees (Docket No. 334) is hereby DENIED.

BY THE COURT:

/s/ Donetta W. Ambrose
Donetta W. Ambrose
United States District Judge