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

ADMINISTRATRIX OF THE ESTATE OF STEVEN CONWAY, deceased,	)	
Plaintiff,	)	
vs.	)	Civil Action No. 8-823
FAYETTE COUNTY CHILDREN AND YOUTH SERVICES, *et al.,*	)	
Defendants.	)	

AMBROSE, Senior District Judge

OPINION
AND
ORDER OF COURT

OPINION

I. BACKGROUND

On June 16, 2008, Plaintiff, then John Doe,[1] first brought this action initially against Fayette County Children and Youth Services ("FCCYS") and David L. Madison as administrator of FCCYS. (ECF No. 1). On August 22, 2008, Plaintiff filed an Amended Complaint naming as Defendants, FCCYS, David L. Madison, as administrator of FCCYS, and adding Renee Coll, Brian Davis and Kim Schuessler as FCCYS caseworkers. (ECF No. 18). The Amended Complaint set forth the following four counts: 1) 14th Amendment procedural due process claim against Defendants for failure to provide Plaintiff a hearing, either before or after the children were placed with his parents; 2) 14th Amendment substantive due process claim for violating his right to the custody, care and control of his children via the policy and Defendants' alleged threats to place the children in protective custody if he had any contact with them; 3) 1st

[1] The case was initiated by John Doe, now known as Steven Conway. (ECF No. 1). Steven Conway passed away in November of 2010. On February 1, 2011, The Administratrix of the Estate of Steven Conway was substituted as Plaintiff. (ECF No. 68).

Amendment claim for violating his right to associate with his children via the policy; and 4) 5th Amendment claim for violating his privilege against self-incrimination.

The parties filed cross motions for summary judgment. (ECF Nos. 41 and 44). On November 22, 2010, I denied Defendant's Motion for Summary Judgment and granted in part and denied in part Plaintiff's Motion for Summary Judgment. Plaintiff's Motion for Summary Judgment was granted in the following respects:

a. summary judgment was granted in Plaintiff's favor as to his substantive due process claims as they relate to FCCYS' Protocol, Ms. Schuessler, and Ms. Coll;

b. summary judgment was granted in Plaintiff's favor as to his procedural due process claims;

c. summary judgment was granted in favor of Plaintiff holding that he did not waive his substantive and procedural due process rights; and

d. summary judgment in favor of Plaintiff was granted as to Plaintiff's First Amendment claim.

(ECF No. 61). Plaintiff's Motion for Summary Judgment was denied in all other respects. Thus, claims against both Brian Davis and David Madison as well as FCCYS, Coll and Schuessler remained.

Prior to trial, Plaintiff, now the Administratrix of the Estate of Steven Conway, voluntarily withdrew her claims against Brian Davis and David Madison. (ECF Nos. 74 and 114). As a result, the case proceeded to trial against FCCYS, Renee Coll and Kim Schuessler on damages only.

A jury trial was held from April 26 – April 29, 2011. On May 2, 2011, the jury awarded Plaintiff $0.00 as compensatory damages as a result of Renee Coll's acts. (ECF No. 128). The jury awarded Plaintiff $0.00 as compensatory damages as a result of Kim Schuessler's acts. *Id.* The jury awarded Plaintiff $105,000.00 as compensatory damages as a result of FCCYS's acts. *Id.*

On May 17, 2011, Plaintiff filed a Petition for Attorneys' Fees pursuant to Rule 54(d) of the Federal Rules of Civil Procedure and 42 U.S.C. §1988 seeking an award of $445,060.60 in

attorneys' fees and costs. (ECF No. 131). Defendants filed Objections thereto on June 7, 2011. (ECF No. 132). On July 7, 2011, Plaintiff filed a Response to Defendants' Objections. Therein, Plaintiff's counsel acknowledges that $5,650.00 should be deducted from the total for Mr. Walczak's attendance at two depositions that Ms. Rose conducted. (ECF No. 135, pp. 12 and 30). Counsel, however, seeks an additional $10,187.50 for time for preparing the Reply. *Id.* at p. 30. As a result, Plaintiff's counsel are seeking a total award of $448,348.10 (fees + costs).

A hearing on Plaintiff's Motion was held on August 23, 2011.

II. LEGAL ANALYSIS

Section 1988 of Title 42 permits a district court to award reasonable attorney's fees to prevailing parties in civil rights litigation. In cases such as this, a court uses the lodestar formula which requires multiplying the number of hours reasonably expended by a reasonable hourly rate. *Hensley v. Eckerhart,* 461 U.S. 24, 433 (1983); *Loughran v. Univ. of Pittsburgh,* 260 F.3d 173, 176 (3d Cir. 2001). "A District Court has substantial discretion in determining what constitutes a reasonable rate and reasonable hours, but once the lodestar is determined, it is presumed to be the reasonable fee." *Lanni v. New Jersey,* 259 F.3d 146, 148 (3d Cir. 2001). Thereafter, a district court may adjust the fee for a variety of reasons, the most important factor being the "results obtained" by the plaintiff. *Public Interest Research Group of New Jersey, Inc. v. Windall,* 51 F.3d 1179, 1185 (3d Cir. 1995).

A prevailing party is not automatically entitled to compensation for attorney's fees in their entirety; rather the party seeking such attorney's fees bears the burden to prove the reasonableness of its requests.[2] *Interfaith Community Organization v. Honeywell,* 426 F.3d 694, 712 (3d Cir. 2005); *Rode v. Dellarciprete,* 892 F.2d 1177, 1183 (3d Cir. 1990). Where documentation is inadequate, a prevailing party's hours may be reduced. *Hensley,* 461 U.S. at 433. If the opposing party makes specific objection then the court must "go line by line through

[2] Defendants do not contest that Plaintiff is a prevailing party for purposes of §1988, but they do challenge the level of success Plaintiff has obtained. *See* ECF No. 132. The level of success argument is addressed more fully later in this opinion.

the billing records." *Evans v. Port Auth. of N.Y. and N.J,* 273 F.3d 346, 362 (3d Cir. 2001).

Here, the parties disagree both as to what constitutes reasonable rates in this case, as well as what constitutes the number of hours reasonably expended. (ECF No. 132). Additionally, Defendants submit that due to Plaintiff's lack of complete success, a reduction of the lodestar is appropriate. *Id.* I will address each challenge *seriatim.*

A. Reasonable Hourly Rates

Defendants first object to the hourly rates requested by Plaintiff's attorneys. (ECF No. 132, pp. 1-7). In assessing the reasonableness of hourly rates I must determine what constitutes a "reasonable market rate for the essential character and complexity of the legal services rendered...." *Lanni,* 259 F.3d at 149, *citing, Smith v. Philadelphia Hous. Auth.,* 107 F.3d 223, 225 (3d Cir. 1997). I do this by "assessing the experience and skill of the prevailing party's attorneys and compare the rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Loughner v. Univ. of Pittsburgh,* 260 F.3d 173, 180 (3d Cir. 2001). The starting point is the hourly rate usually charged by the attorney, but this is not dispositive. *Public Interest,* 51 F.3d at 1185. Of importance, the Third Circuit noted that there is a distinction between the rate that a private client may be willing to pay and the appropriate amount that can be charged to an adversary. *See, Daggett v. Kimmelman,* 811 F.2d 793, 799-800 (3d Cir. 1987); *see also, Pennsylvania v. Delaware Valley Citizens' Council for Clean Air,* 478 U.S. 546, 565 (1986)(fee shifting "statutes were not…intended to replicate exactly the fee an attorney could earn through a private fee arrangement with his client"). Plaintiff bears the burden of establishing the reasonable current[3] market rate. *Id.; Evans,* 273 F.3d at 361.

In this case, Plaintiff was represented by attorney Vic Walczak and attorney Sara Rose

[3]"When attorney's fees are awarded, the current market rate must be used. The current market rate is the rate at the time of the fee petition, not the rate at the time the services were performed." *Lanni,* 259 F.3d at 149 (citations omitted).

during this case. Plaintiff urges that the following represents reasonable current market rates for them:

Attorney Walczak	$500.00 per hour
Attorney Rose	$325.00 per hour

(ECF No. 131). Additionally, Plaintiff was represented by attorney Ilene Fingeret and paralegal Linda Sikora in connection with her Petition to Allow Register of Wills Grant Letters of Administration to her in the estate of John Doe, the original Plaintiff in this action. (ECF No. 131). Plaintiff urges that the following represents reasonable current market rates for the attorney and paralegal that performed work in this regard:

Attorney Fingeret	$250.00 - $275.00 per hour
Paralegal Sikora	$145.00 per hour

Id. I note that Defendants do not challenge the reasonableness of the fees charged by attorney Fingeret and paralegal Sikora. *See,* ECF No. 132. I have reviewed their declarations and attorney Fingeret's CV submitted in support thereof. I find that attorney Fingeret's hourly rate of $250.00 and paralegal Sikora's hourly rate of $145.00 are reasonable for estate work.

Defendants, however, do object to the reasonableness of attorney Walczak's and attorney Rose's hourly rate. As a result, I will address these attorneys separately.

1. Attorney Walczak

Defendants object to attorney Walczak's requested rate of $500 per hour. (ECF No. 132, pp. 2-5). Defendants point out that no other attorney in the Western District of Pennsylvania has ever been awarded $500 per hour by a court. In support, Defendants cite various cases suggesting that the reasonable rate of a skilled attorney in complex federal matters is $350-$400 per hour. (ECF No. 132, pp. 3-4). For example, in *Lining v. Temporary Personnel Services, Inc.*, the court rejected a requested hourly rate of $425 per hour for an employment attorney, Sam Cordes, and found $400 to be a more accurate depiction of the attorney's current market rate given his skill, experience and reputation. Civ. Action No. 07-1724, 2008 WL 2996871 (W.D. Pa. July 31, 2008). Therein, Judge Fischer noted that sworn

statements of other attorneys in the market are not helpful and are no more than "opinions." *Id.* at 5, *citing, Williams v. City of Pittsburgh,* 2000 U.S. Dist. LEXIS 6739, at *5 (W.D. Pa. 2000).

Defendants acknowledge that Mr. Walczak has been awarded $450 per hour in *Codepink Women Peace v. U.S. Secret Service,* 2010 WL 2196262 (W.D. Pa. June 1, 2010), but suggests that the case is distinguishable because, as the court noted, the work was compressed into a relatively short period of time while in this case there were no time constraints. (ECF No. 132, p. 4). Additionally, Defendants argue that there is no justification for a $50 increase in such a short period of time. *Id.* at 4-5.

In response, Mr. Walczak provided affidavits from four attorneys, Robert Cindrich, Tim O'Brien, Michael Malakoff, and Ellen Doyle, to support his position that $500 per hour is a reasonable rate in this market. (ECF No. 135, pp. 3-6).

Mr. Walczak also specifically points to a case before this court where I awarded an attorney $475 per hour. *See*, *Choike v. Slippery Rock Univ.,* No. 6-622, 2010 WL 4614610, *4 (W.D. Pa. Nov. 5, 2010). In that case, I pointed out that there was no conflicting evidence submitted to challenge the rate or Ms. Fletman's education, skill or reputation. *Id.* In this case, however, as set forth above, there is conflicting evidence on the issue, which makes this case distinguishable.

There is no question that Mr. Walczak has an excellent reputation in this legal community. He graduated *cum laude* from Boston College Law School in 1986. In 2003, he was the Federal Lawyer of the Year for the Western District of Pennsylvania Federal Bar Association. He is a fellow of the American College of Trial Lawyers and a member of the Academy of Trial Lawyers of Allegheny County. He is the Legal Director for the ACLU of Pennsylvania.

Based on all of the above, however, I am still not persuaded that $500.00 per hour is a reasonable fee in this market. Such a dramatically high fee of $500 per hour is not consistent with the current economic downturn of the country or this market region. Rather, based on the

evidence, I find $425 per hour is a reasonable rate in this market in light of Mr. Walczak's education, experience, and reputation.

2. Attorney Rose

In support of her request for a rate of $325 per hour, Ms. Rose submits her resume. (ECF No. 131-2). Ms. Rose has been out of law school and practicing law for seven years. She is a 2004 *cum laude* graduate of the Georgetown University Law Center and is a salaried employee of the American Civil Liberties Union of Pennsylvania. Additionally, Ms. Rose submits a declaration suggesting that associates in complex federal litigation command hourly rates of $300-$400 per hour. (ECF No. 135, p. 5).

Furthermore, Ms. Rose cites two cases in support of her request: *Choike* and *Sowers v. Freightcar America, Inc.,* No. 7-201 (W.D. Pa. Nov. 20, 2008). (ECF No. 135, p. 7). In neither of those cases, however, was there any evidence to contest the rate requested.

Defendants object to attorney Rose's requested rate of $325 per hour. (ECF No. 132, pp. 5-7). The objections are the same as for attorney Walczak. *Id.* Defendants submit that the rates of associates, with more experience than Ms. Rose, in the market are between $175 - $180 per hour. *Id.* While Defendants acknowledge that attorney Rose was awarded $275 per hour in *Codepink,* they argue that the case is distinguishable and offers no basis for a $50 hour rate increase.

Based on the above, I am not persuaded that $325 per hour is a reasonable fee for Ms. Rose in this market. Such a high fee for an associate with only seven years of experience is not consistent with the current economic downturn of the country or this market region. Rather, based on the evidence, I find $250 per hour is a reasonable rate in this market in light of Ms. Rose's education, experience, and reputation.

B. <u>Hours Reasonably Expended</u>

The next step in the analysis is to determine the hours reasonably expended. *Hensley,* 461 U.S. at 433. As to those issues raised by the party opposing the fee request, a "court must

be careful to exclude from counsel's fee request 'hours that are excessive, redundant or otherwise unnecessary....'" *Holmes v. Millcreek Township School Dist.,* 205 F.3d 583, 595 (3d Cir. 2000), *quoting, Hensley,* 461 U.S. at 434. To be appropriately awarded, attorneys' fees must be "'useful and of the type ordinarily necessary' to secure the final result obtained from the litigation." *Planned Parenthood of Central New Jersey v. The Attorney General of the State of New Jersey,* 297 F.3d 253 (3d Cir. 2002), *quoting, Pennsylvania v. Del. Valley Citizens' Council,* 478 U.S. 546, 561 (1986); *Loughner,* 260 F.3d at 178. "Hours that would not generally be billed to one's own client are not properly billed to an adversary." *Public Interest,* 51 F.3d at 1188. "Where an opposing party lodges a sufficiently specific objection to an aspect of a fee award, the burden is on the party requesting the fees to justify the size of its award. In determining whether the moving party has met its burden, we have stressed that 'it is necessary that the [District] Court 'go line, by line, by line' through the billing records supporting the fee request.'" *Interfaith Community Organization v. Honeywell Intern., Inc.*, 426 F.3d 694, 713 (3d Cir. 2005), *quoting, Evans*, 273 F.3d at 362.

Defendants make various objections to the reasonableness of the hours billed by Plaintiff's counsel. (ECF No. 132, pp. 7-21). I will deal with each separately.

1. Attendance by two attorneys

Specifically, Defendants object to Plaintiff's counsels' billing for two attorneys to accomplish the same task. (ECF No. 135, pp. 7-9). The Third Circuit has held that "in many cases, the attendance of additional counsel representing the same interests as the lawyer conducting" the litigation is "wasteful and should not be included in a request for counsel fees." *Halderman v. Pennhurst State Sch. & Hosp.,* 49 F.3d 939, 943 (3d Cir. 1995). After a review of the record, I agree with Defendants that the attendance of two counsel at the same proceeding may, in some instances, warrant a reduction. In fact, upon review of Defendants' objection, Plaintiff's counsel has agreed that only one attorney was necessary for the depositions on November 17 and 23, 2009. (ECF No. 135, p. 12). As a result Plaintiff is willing to deduct 11.3

hours from her fee petition for Mr. Walczak's time spent in those depositions.

Defendants list multiple other examples of both Ms. Rose and Mr. Walczak billing for the same tasks at conferences and depositions. (ECF No. 132, pp. 8-9). I will address each *seriatim.*

Both Ms. Rose and Mr. Walczak billed 3.5 hours for a May 4, 2009, Harrisburg meeting at DPW with MMJ and Madison. (ECF No. 132, p. 8). Plaintiff argues that both counsel were necessary because they were attempting to develop new policy and as legal director of the ACLU of Pennsylvania, Mr. Walczak's attendance was necessary, while Ms. Rose had more substantive knowledge of the facts of the case. In other words, Plaintiff suggests that both counsel made contributions to the meeting. I do not disagree with Plaintiff that both counsel may have been necessary at this stage of the litigation to accomplish the task. Therefore, no reduction is warranted in this regard.

Next, both counsel billed twice for attendance at two different status conferences with this court (3/1/10 and 12/2/10) for a total of 3.9 hours. (ECF No. 132, pp. 8-9). In response, Plaintiff suggests that it was important for both counsel to attend "out of respect for the Court's time" to make sure they answered all of the court's questions. (ECF No. 135, p. 14). While there may be instances where both attorneys would be necessary, Plaintiff did not raise anything specific. I also note that the other counsel could have participated by telephone if a question was posed that the present counsel could not answer. Consequently, I disagree with counsel that both counsel were necessary for the routine conferences. Thus, I find the double charge to be excessive and unnecessary, and should be disallowed. Therefore, a 3.9 hour deduction from Mr. Walczak's time is warranted.

Furthermore, when an objection is brought to the attention of this court, I must 'go line, by line, by line' through the billing records supporting the fee request.'" *Interfaith Community Organization v. Honeywell Intern., Inc.*, 426 F.3d 694, 713 (3d Cir. 2005), *quoting, Evans*, 273 F.3d at 362. In reviewing the bills in this case, there are two additional instances when both

counsel billed for attendance at routine conferences before me: 1/20/09 (2.4 hours) and 4/8/11 (1.7 hours). For the same reason, a 4.1 hour deduction from Mr. Walczak's time is warranted.

Defendants next object to both counsel traveling to Plaintiff and meeting with Plaintiff and her husband on April 13, 2011 and April 15, 2011. (ECF No. 132, pp. 8-9). In response, Plaintiff states that it was necessary to prepare Mr. and Mrs. Conway for trial. I note that Mr. Walczak performed the direct examination of Mr. Conway and Ms. Rose conducted the direct examination of Mrs. Conway at trial. As a result, I do not find the billing to be duplicative. Therefore, a deduction is not warranted in this regard.

Defendants also object to both counsel's participation at trial. (ECF No. 135, pp. 8-9). Absent more, I do not find it patently objectionable that there were two counsel at trial. Both counsel participated equally in trial. As a result, I do not believe a reduction in this regard is warranted.

2. Internal conferences and strategy meetings

Defendants argue that Plaintiff's counsel, Mr. Walczak billed an excessive amount of time for conferences and strategy meetings with Ms. Rose. (ECF No. 132, pp. 9-10). In so doing, Defendants only argue that Mr. Walczak's time should be disallowed. *Id.* Additionally, they do not seek to disallow every conference or meeting between counsel *(compare* ECF No. 132, pp. 10-11 *with* ECF No. 131, pp, 10-14), nor do they argue that Ms. Rose's entries for the same meetings should deducted. *Id.*

I note that there is value in holding internal conferences and strategy meetings in the preparation and daily management of a case. There are also times when such conferences and meetings can get out of control. After a review of this record, I do not find that the amount of time billed by Mr. Walczak for internal conferences and strategy meetings is excessive. Therefore, a disallowance in this regard is not warranted.

Defendants also argue that billing for status conferences between Ms. Rose and her intern/volunteer attorney are not appropriate. (ECF No. 132, pp. 11-12). After a review of the

record, I agree with Defendants that such billing is inappropriate. As a result, 2.7 hours of Ms. Rose's time will be disallowed.[4]

3. Excessive billing for drafting of certain documents by Ms. Rose

Defendants object to excessive billing for drafting of certain documents by Ms. Rose. (ECF No. 132, pp. 12-15). For example, Ms. Rose billed 41.4 hours for drafting a TRO memorandum. (ECF No. 131-2, pp. 5-6). Given counsel's experience and expertise in this area of the law, I find 41.4 hours to be excessive to bill for drafting a TRO memorandum. I find 16 hours to be reasonable for the drafting of the same. Therefore, 25.4 hours of Ms. Rose's time will be disallowed.

Defendants object to the excessiveness of the time billed for the drafting of a protocol. (ECF No. 132, pp. 13). A review of Ms. Rose's time indicates that she billed a total of 11.7 hours for drafting a protocol. (ECF No. 131-2, pp. 9-10). Given counsel's experience and expertise in this area of the law, I agree that 11.7 hours is excessive. I find 8.0 hours to be reasonable. Therefore, 3.7 hours of Ms. Rose's time will be disallowed.

Defendants object to the hours Ms. Rose billed for drafting position statements for the court on the basis of excessiveness. (ECF No. 131-2, p. 10). After a review of Ms. Rose's time, I agree that 7.0 hours is excessive for a 5 page letter and 5.7 hours to draft a 3½ page letter that only I see is excessive. Given her experience and expertise in this area of the law and her knowledge of the case, I would have expected more efficient letter writing. I find a total of 3.5 hours to be reasonable. Therefore, 9.2 hours of Ms. Rose's time will be disallowed.

Defendants also object to the excessiveness of Ms. Rose's time for the drafting of the summary judgment motion and related documents. (ECF No. 132, pp. 14-15). A review of Ms. Rose's time indicates that she billed a total of 218.7 hours for the drafting of the same. (ECF No. 131-2, pp. 10-11). Given counsel's experience and expertise in this area of the law, I agree

[4] Included in Defendants' objection is time spent by Ms. Rose for drafting a pre-trial statement. (ECF No. 132, pp. 11-12). I do not understand the inclusion of these entries in the category of billing for intern conferences. As a result, a disallowance for these entries is not warranted on this basis.

with Defendants that 218.7 hours is excessive. I find 125.0 hours to be reasonable. Therefore, 93.7 hours of Ms. Rose's time will be disallowed.

I find the time for the remaining specifically objected to items not to be excessively billed. (ECF No. 132, pp. 13-15). As a result, no further time will be disallowed on the above basis.

4. Excessive rewriting of Mr. Walczak

Defendants object to excessive rewriting of certain documents billed by Mr. Walczak. (ECF No. 132, pp. 15-17). Considering Mr. Walczak's experience, expertise and reputation concerning civil rights litigation and the fact that I have awarded him $425 an hour, a review of his time in rewriting/revising Ms. Rose's documents seems excessive. For example, while Ms. Rose billed 41.4 hours for drafting a TRO memorandum (ECF No. 131-2, pp. 5-6), Mr. Walczak took an additional 6.0 hours rewriting the document. (ECF No. 131-1, p. 10). This is excessive. I find 2.5 hours to be reasonable for revising of the same. Therefore, 3.5 hours of Ms. Walczak's time will be disallowed.

Defendants object to Mr. Walczak billing 8.1 hours for revising the complaint. (ECF No. 132, p. 15; ECF No. 131-1, p. 10). I agree and find 4.0 hours to be reasonable. Therefore, 4.1 hours of Mr. Walczak's time will be disallowed.

I also agree with Defendants' objection that 1.5 hours is excessive for revising a 3 ½ page position statement that only I see. (ECF No. 131-1, p. 10). I find .3 hours to be reasonable to revise a 3 ½ page letter. Therefore, 1.2 hours of Mr. Walczak's time will be disallowed.

Defendants object to the excessiveness of Mr. Walczak's revising time for the drafting of the summary judgment motion and related documents. (ECF No. 132, p. 16). A review of Mr. Walczak's time indicates that he billed a total of 37.6 hours for revising of the same. (ECF No. 131-1, pp. 12). Given counsel's experience and expertise in this area of the law, I would have expected more efficient writing. Thus, I agree with Defendants that this is excessive. I find 20 hours to be reasonable. Therefore, 17.6 hours of Mr. Walczak's time will be disallowed.

Defendants also object to the excessiveness of Mr. Walczak's time in revising the drafting of pretrial documents. (ECF No. 132, pp. 16-17). A review of Mr. Walczak's time indicates that he billed a total of 11.07 hours for discussing and revising of the same. (ECF No. 131-2, pp. 12-13). Given counsel's experience and expertise in this area of the law, I agree with Defendants that this is excessive. I find 5 hours to be reasonable. Therefore, 6.07 hours of Mr. Walczak's time will be disallowed.

I find the time for the remaining specifically objected to items not to be excessively billed. (ECF No. 132, pp. 15-17). As a result, no further time will be disallowed on the above basis.

5. Non-attorney work performed by lawyers

First, Defendants argue that Plaintiff's counsel has spent time billing for updating time sheets which should be stricken. (ECF No. 132, pp. 17-18). I agree that counsel cannot pass on to opposing counsel fees for keeping a time sheet. This clearly was not the intent of the applicable fee shifting statute. Such fees shall be disallowed. Therefore, .5 hours of Mr. Walczak's time and .8 hours of Ms. Rose's time will be disallowed.

Additionally, there are various time entries for Ms. Rose for tasks that are clerical in nature and should be disallowed entirely: 5/27/08 at .2; 6/4/08 at .5; 6/13/08 at .3; 6/16/08 at 2.0;[5] 6/17/08 at .2; 6/17/08 at .2; 7/8/08 at .2; 8/8/08 at .2; 9/4/09 at .5; 9/22/08 at .2; 2/4/09 at .1; 2/5/09 at .1; 2/24/09 at .1; 11/16/09 at .1; 11/24/09 at .1; 8/19/10 at .1; 1/31/11 at .1; 2/2/11 at .5; 2/23/11 at 1.7.[6] This totals 7.4 hours. Plaintiff argues that because the ACLU does not have a paralegal or secretary in its Pittsburgh office that it is not possible to delegate these duties. (ECF No. 135, p. 20). While I recognize that the ACLU's office is small, Defendants should not be forced to pay for clerical work billed at an attorney rate or any other rate. This would be

[5] I note that the entirety of this entry is not clerical in nature. However, Plaintiff block billed this entry. As a result, I cannot discern what amount should be billed for clerical work. Therefore, the entirety of the entry will be disallowed.

[6] There were certain hours that Defendants requested be deducted but I already reduced them in another section. Deducting them twice would be improper. As a result, I did not include them in this disallowance.

wholly inequitable and is contrary to the purpose of the fee shifting statute. Therefore, 7.4 hours of Ms. Rose's time will be disallowed.

6. Research performed by Mr. Walczak

Defendants object to 3.1 hours that Mr. Walczak billed for research on the basis that such a task should have been delegated to Ms. Rose and, thus, the rate for this research should be reduced to Ms. Rose's rate. (ECF No. 132, pp. 19-20). In response, Plaintiff argues that there are times when only he is available in his office to complete a specific task. (ECF No. 135, p. 21). This research was performed basically on the eve of trial. It is reasonable for lead counsel to perform research while in the midst of preparing for an imminent trial. Consequently, I will not reduce this rate.

7. Travel

Defendants object to the time sought to be charged for travel. (ECF No. 132, pp. 19-21). To that end, Defendants seek to have Plaintiff's counsel's travel time reduced by one half. *Id*. at 21. Plaintiff acknowledges that travel time in this district has been both at the full and reduced rates. (ECF No. 135, p. 22). I find that travel time billed at half the hourly rate is reasonable..

Mr. Walczak submitted a supplemental time log for travel time and according to said time sheet he traveled 19.3 hours during the course of the litigation. As a result, 19.3 hours of Mr. Walczak's total time will be billed at $212.50.

Ms. Rose submitted a supplemental time log for travel time and according to said time sheet she traveled 36.8 hours during the course of the litigation. As a result, 36.8 hours of Ms. Rose's total time will be billed at $125.00.

Accordingly, the following hours will be permitted at the following rates:

Counsel	Rate/hour	Hours	Total
Attorney Walczak	$425.00	228.78[7]	$ 97,231.50
Attorney Walczak	$212.50	19.3	$ 4,101.25

[7] This time includes 2.5 hours for preparing the response to the Defendants' Objections to Plaintiff's Petition for Attorneys' Fees. *See,* ECF No. 135, p. 30 and ECF No. No. 135-6, p. 5.

Attorney Rose	$250.00	677.78[8]	$169,445.00
Attorney Rose	$125.00	36.8	$ 4,600.00
Attorney Fingeret	$250.00	10.6	$ 2,787.50
Paralegal Sikora	$145.00	3.1	$ 449.50
TOTAL FEES			**$278,614.75**

Therefore, the lodestar is $278,614.75.[9]

C. Success Achieved

Having determined the basic lodestar amount does not end my inquiry. *Hensley,* 461 U.S. at 434. I may adjust the lodestar upward or downward based on a variety of reasons. "[T]he most critical factor is the degree of success obtained." *Id.* at 436; *Public Interest Research Group of N.J.,* 51 F.3d at 1185; *Spencer v. Wal-Mart Stores, Inc.,* 469 F.3d 311, 319 (3d Cir. 2006)(upholding a reduction in attorney's fees by 75%). "[W]here the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained." *Hensley*, 461 at 440. "There is no precise rule or formula for making these determinations. The district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success." *Id.* at 436-37.

In this case, Defendants request an adjustment to the lodestar of 40% because Plaintiff did not achieve complete success. (ECF No. 132, pp. 21-22). In support of the same, Defendants cite to the fact that Plaintiff did not obtain summary judgment against two of the five Defendants: David Madison and Brian Davis. Additionally, Defendants point out that while Plaintiff won on liability as to the remaining three Defendants, the jury returned no damage awards against the two individual Defendants. Finally, Defendants call attention to the fact that the Plaintiff is seeking attorneys' fees in an amount in excess of 4 times the amount awarded to Plaintiff by the jury against FCCYS. *Id.* at 22.

[8] This time includes 27.5 hours for preparing the response to the Defendants' Objections to Plaintiff's Petition for Attorneys' Fees. *See,* ECF No. 135, p. 30 and ECF No. No. 135-7, p. 5.
[9] Defendants do not contest the requested costs in the amount of $5.930.10. As a result, said costs will be awarded.

In response, Plaintiff argues that no reduction is necessary since she achieved "complete" success. (ECF No. 135, pp. 23-29). She argues that all of the claims involved a common core of facts and were based on related legal theories. *Id.* at 24-27. Additionally, they point out that John Doe's full parental rights were reinstated, they succeeded on all of summary judgment except as to Madison and Davis, and received a jury verdict of $105.000.00. *Id.* at 24-29.

I acknowledge that Plaintiff attained a great deal of success in this case. However, I disagree that it was "complete" success. She did not win her claims against Mr. Madison or Mr. Davis and only withdrew those claims after summary judgment and just prior to trial. As a result, I do believe that a reduction is in order, but not to the extent sought by Defendants because the claims were closely related. Given the particulars of this case, I believe a 15% reduction in the amount of $41,792.21 is in order. Accordingly, the downwardly adjusted lodestar for attorney fees is **$236,822.54.**

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

ADMINISTRATRIX OF THE ESTATE OF STEVEN CONWAY, deceased,	)	
Plaintiff,	)	
vs.	)	Civil Action No. 8-823
FAYETTE COUNTY CHILDREN AND YOUTH SERVICES, *et al.,*	)	
Defendants.	)	

AMBROSE, Senior District Judge

ORDER

AND now, this 31st day of August, 2011, Plaintiff's Petition for Attorneys' Fees (ECF No. 131) is granted in the following manner: Plaintiff is awarded $236,822.54 in attorneys' fees and $5,930.10 in costs.

BY THE COURT:

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