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United States District Court, N.D. Illinois, Eastern Division.

Glenn KOSKI, et al., Plaintiffs,
v.
Terrance GAINER, et al., Defendants.

No. 92 C 3293. | Aug. 27, 1999.

Opinion

MEMORANDUM OPINION AND ORDER

LEINENWEBER, J.

*1 This ruling is intended as a supplement to the court's memorandum opinion and order of June 22, 1999 and the court will presume familiarity with that opinion. *See Koski v. Gainer*, No. 92 C 3293, 1999 WL 438910 (N.D. Ill. June 22, 1999). In the June 22 opinion the court ruled on the plaintiffs' petition for an award of attorney's fees. The court did not rule on the merits of the supplement to the fee petition, but rather ruled that the supplement would be ruled on at a later date. In this ruling the court will address the supplement. The court notes, as it did in its June 22 opinion, that it appears that the bill of costs remains unresolved despite efforts by the parties to negotiate a settlement on that issue.

DISCUSSION

The plaintiffs claim 221.1 hours billed at \$200 an hour, totaling \$44,220.00, for time spent by attorney Kimberly A. Sutherland. All of these hours reflect time spent on long-distance telephone calls. The court notes that the plaintiffs also claim \$2,935.23 in telephone bills as costs. As it is the court's understanding that the parties are attempting to negotiate a settlement on the costs issue, the court will not rule on the telephone bills in this ruling. The court also notes that in its June 22 opinion the court determined Sutherland's reasonable hourly rate to be \$200, and so the issue of the reasonable hourly rate is no longer a subject of dispute.

Sutherland provides the following description of the calls:

All of the calls to Rockford, Peoria, and Joliet were made to plaintiffs in this case and relate to this case. The calls to Rockford were made to plaintiff Glenn Koski, the calls to Peoria were made to plaintiffs Fred Winterroth and Jesse Bean, and the calls to Joliet were made to plaintiffs Jeffrey Hanford, Lester Robert, and James Bolerjack. The calls were for the purpose of informing the plaintiffs about the case and gathering information from them. Most of the calls were to plaintiff Koski, who chiefly assisted his counsel [Sutherland] with the discovery and the strategy in this case, and who was the conduit for transmitting information to the other plaintiffs.... The telephone calls were between plaintiffs' counsel and plaintiffs in this case, and were reasonable and necessary to this litigation. Plaintiffs' counsel, a solo practitioner, handled this case by herself, without assistance from associates or paralegals. This case required specialized knowledge of the workings of the Illinois State Police. The plaintiffs themselves were of great assistance in deciding on the content of the pleadings and discovery requests, in evaluating documents produced in discovery, and in preparing for trial.

Plaintiffs' Amended First Supplement to Petition for Attorneys' Fees and Costs at 1-2.

Sutherland does not provide any descriptions relating to the subject matter of individual telephone calls. Sutherland asserts

Koski v. Gainer, Not Reported in F.Supp.2d (1999)

that to provide such descriptions would violate the attorney-client privilege.

*2 Attached to Sutherland's petition are approximately 200 pages of photocopied telephone bills. The bills are redacted so that the telephone numbers called and the times of day when the calls were made are blacked out. Sutherland asserts that the redaction of the telephone numbers was necessary because the plaintiffs are police officers and the phone numbers on the bills are their home telephone numbers. She provides no explanation for why the times of day were blacked out. The bills indicate that some of the calls were an hour or more in length, *e.g.*, a 62-minute call on March 12, 1994 and a 94-minute call on February 16, 1995, while other calls were only a minute or two in duration.

"A district court may deny a fee request where the claim for fees is not supported by accurate and detailed records." *FMC Corp. v. Varonos*, 892 F.2d 1308, 1316 (7th Cir.1990). Here Sutherland's claim for 221.1 hours of work is supported by approximately 200 words of description. Except for the phone bills themselves, she provides no contemporaneous records relating to the telephone calls. As noted above, some of the calls were an hour or more in length. The court finds that the lack of documentation of the subject matter of even these lengthy telephone calls prevents the court from making an informed assessment of their reasonableness.

As noted previously, Sutherland asserts that if she had provided individual descriptions of the subjects of the phone calls she would have violated the attorney-client privilege. The court finds this argument unpersuasive. Although the court recognizes that protection of the attorney-client privilege is a legitimate concern, the court finds that under the facts of this case this concern is outweighed by the need for detailed contemporaneous records from which to judge the reasonableness of the fees. *Reed v. Rhodes*, 934 F.Supp. 1492, 1507 (N.D.Ohio 1996), *In re Riker Industries, Inc.*, 122 B .R. 964 (N.D.Ohio 1990). Sutherland could have provided general descriptions of the subjects of the calls (*e.g.* "discussion regarding trial strategy" or "discussion regarding discovery requests"), which would have provided the court with a basis for assessing the reasonableness of the fees without sacrificing the attorney-client privilege.

As defendants have pointed out, Sutherland often claims time for lengthy telephone calls on days in which the time records submitted with her original fee petition showed no time charges. For example, Sutherland claims a 41-minute phone call on June 16, 1992 and a 57-minute call on August 31, 1992 even though her previously submitted time records indicated that she billed no time on those days. Sutherland's lack of contemporaneous documentation of these time charges combined with the redaction of the telephone numbers and the times of day leads to the inference that at least some of these charges may not be valid.

CONCLUSION

The court therefore finds that the plaintiffs' supplemental fee petition is not supported by accurate and detailed records, and so denies the entire \$44,200.00 in fees requested in the supplemental fee petition.

*3 IT IS SO ORDERED.