

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO.: 2:03-CV-237-PRC
	)	
U.S. BELL CORPORATION, LINK	)	
TECHNOLOGIES, CORP., d/b/a U.S. BELL,	)	
BUZZ TELECOM, CORP.,	)	
	)	
Defendants.	)	

**MEMORANDUM OF OPINION AND ORDER**

This matter is before the Court on Defendants’ Petition for Payment of Attorney Fees and Court Reporter Fees [DE 132], filed by the Defendants on March 11, 2005. The Plaintiff, Equal Employment Opportunity Commission (“EEOC”) filed a Response on March 15, 2005, and the Defendants filed a Reply on March 28, 2005.

On January 28, 2005, the Court ordered counsel for the Defendants to provide a verified certification of their attorney fees incurred resulting from the continuation of the deposition of Kelly Adwell Cripe. On March 11, 2005, the Defendants filed their Petition for Attorney Fees requesting a total of \$11,150.00 in attorney fees and \$1,394.96 in payment of fees charged by the court reporter. The Defendants request compensation at the rate of \$250 an hour for 8.4 hours spent researching and drafting the Defendants’ Motion to Exclude Kelly Adwell Cripe as a Witness and the Reply to the EEOC’s Response thereto, 1.0 hours spent preparing and/or revising required pleadings, notices, subpoenas and letters rescheduling the continued deposition of Kelly Adwell Cripe, 17.1 hours spent reviewing and preparing for the continuation of the deposition of Kelly Adwell Cripe, 16.1 hours spent deposing Kelly Adwell Cripe, and 2.0 hours spent preparing the petition. In addition, the

Defendants indicate that they were charged \$1394.96 for the services performed by the court reporter utilized for the continuation of the deposition. In the Response Brief, the EEOC challenges aspects of the fee request regarding the number of hours but does not challenge the hourly rate requested.

The district court has broad discretion to award attorneys' fees based on its "superior understanding of the litigation." *Fenster v. Tepfer and Spitz, Ltd.*, 301 F.3d 851, 860 (7th Cir. 2002) (citing *Jaffee v. Redmond*, 142 F.3d 409, 412-13 (7th Cir.1998)). "The party seeking the fee award bears the burden of proving the reasonableness of the hours worked and the hourly rates claimed." *Spegon v. Catholic Bishop of Chicago*, 175 F.3d 544, 550 (7th Cir. 1999). "Counsel for the prevailing party should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The Court will review each aspect of the fee petition in turn.

First, the Court considers the "8.4 hours spent reviewing, researching, drafting and/or editing the defendants' Motion to Exclude Kelly Adwell Cripe as a Witness and Reply to plaintiff's Response thereto." The Motion did not constitute a request that the deposition of Ms. Cripe be continued and concluded. The Court's January 28, 2005 Order awarded costs and reasonable attorney fees incurred to complete the remainder of Ms. Cripe's deposition. The Order did not award fees for the preparation of the underlying Motion. Accordingly, the Court denies the request for these 8.4 hours.

Second, the Court denies the request for 1.0 hours noticing the deposition of Ms. Cripe, in part because both Attorney Johnson and Attorney Rappa indicate they each spent .5 hours noticing

the deposition, which appears on its face excessive, and, in part, because the Court did not award the EEOC fees for noticing the deposition of Michael Norvil.

Next, the EEOC objects to paying fees for the preparation and presence of a second attorney (Attorney Steven Johnson), who was present at the deposition but asked no questions of the deponent. It is not clear from the Defendants' petition or their Reply Brief how Attorney Johnson's preparation for and presence at the deposition was reasonably necessary in light of the Court's January 28, 2005 Order. Accordingly, the Court denies the request for preparation and attendance fees by Attorney Johnson.

In addition, the EEOC objects to attorney preparation in this matter more generally because the purpose of the continuation of the deposition of Ms. Cripe was to complete the deposition that counsel for the Defendants had prepared for originally, an opportunity the Defendants were denied when the deposition was terminated by the EEOC. Having considered the briefs of both parties, the Court finds that it is difficult for the Court to attempt to determine somehow what preparation was necessary to "continue" the original deposition, as the Court ordered in its January 28, 2005 Order. The Court relies on the sworn affidavit of Attorney Rappa, that 8.8 hours were reasonably necessary for the preparation of the continuation of Ms. Cripe's deposition. To the extent that the EEOC requests that the Court reconsider its prior ruling awarding fees, the Court denies this request. Therefore, the Court grants 8.8 hours of preparation time by Attorney Rappa.

For the time Attorney Rappa spent deposing Ms. Cripe, the Court will award 5.5 hours. The Court reporter's bill indicates 5.5 hours for attendance at the deposition. The deposition was taken at the office of counsel for the Defendants, which necessarily implies that additional travel time was not a consideration; and counsel for the Defendants has not explained the basis for requesting hours

beyond the 5.5 indicated on the court reporter's invoice.

The Defendants also request 2.0 hours for the preparation of the Petition for Payment of Attorney Fees—1.4 hours by Attorney Johnson and .6 hours by Attorney Rappa. The Petition is approximately one page in length, and the Affidavits submitted by the attorneys are also each approximately one page in length. The Court finds that the 2.0 hours for the Petition is excessive, and the Court reduces the request to 1.0 hour.

Finally, the Court considers the \$1,394.96 that the Defendants request for fees charged by the court reporter for the deposition of Ms. Cripe. In the Response Brief, the EEOC objects to reimbursing the Defendants for the court reporter fee for the continuation of Ms. Cripe's deposition on March 1, 2005, because the court reporter already billed the EEOC directly in an amount of \$939.93 for 5.5 hours of attendance, 209 pages plus two pages of certified questions, 36 pages of exhibit photocopying, an ASCII disk, a certified mail signature, and postage/delivery charges. The March 9, 2005 court reporter invoice attached to the EEOC's Response Brief further indicates that "per the EEOC the sealed original will go to Mr. Rappa." In their Reply Brief, the Defendants represent that "the court reporter charged the Defendants with the cost of the original copy of the deposition (not the plaintiffs), and therefore, the Defendants have incurred \$1,394.96 in deposition costs related to the completion of Ms. Cripe's deposition." Def. Reply, p. 2. The Defendants further reason that "the Plaintiff, not the Defendants would have otherwise had to bear the cost of the original deposition had Ms. Cripe's deposition not been unilaterally terminated on November 8, 2004." Def. Reply, p. 3. It appears that the Defendants may be requesting \$1,394.96 in fees related in whole or in part to the initial deposition of Ms. Cripe on November 8, 2004; however, the Defendants have not provided a copy of a court reporter invoice setting forth the basis for this

request. The Court agrees that the Plaintiff EEOC should have been responsible for the court reporter cost for the original deposition on November 8, 2004, because the EEOC noticed that deposition, but it is not clear why the EEOC should pay for the Defendants' copy of the original November 8, 2004 deposition, a cost that would have been the Defendants' responsibility even if the EEOC had not terminated the deposition. Accordingly, the request for reimbursement of court reporter fees is denied without prejudice.

Having considered the Petition, the Court **ORDERS** the Plaintiff EEOC to pay to Defendants' attorneys, Johnson & Rappa, LLC, the total sum of \$3,825.00.<sup>1</sup> The Court further **ORDERS** that the payment shall be made within sixty (60) days of the entry of this Order.

SO ORDERED this 4th day of April, 2005.

s/ Paul R. Cherry  
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MAGISTRATE PAUL R. CHERRY  
UNITED STATES DISTRICT COURT

cc: All counsel of record

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<sup>1</sup> This total is comprised of 8.8 hours of preparation time by Attorney Rappa, 5.5 hours of deposition time by Attorney Rappa, and 1.0 hour spent preparing the Petition for Payment. The rate is calculated at \$250 an hour.