

1999 WL 592693

Only the Westlaw citation is currently available.
United States District Court, N.D. New York.

JOHN S. and John R., by their next friend, Bonnie H. Shoultz, and Patricia R., by her sister Mary Alice B., Individually, and on behalf of all other similarly situated individuals, Plaintiffs,

v.

Mario CUOMO, as Governor of the State of New York; Richard C. Surles, as Commissioner of the New York State Office of Mental Health; Ms. Elin Howe, as Commissioner of the New York State Office of Mental Retardation and Developmental Disabilities; Richard M. Heath, as Director of the Mohawk Valley Psychiatric Center; Dwight Rhodes, as Director of the Binghamton Psychiatric Center; and John R. Scott, as Director of Hutchings Psychiatric Center, Defendants.

No. 90-CV-294 (NPM). | July 29, 1999.

Attorneys and Law Firms

Syracuse University College of Law Public Interest Law Firm II, Syracuse, New York, for Plaintiffs (Sarah Betsy Fuller, of Counsel)

Legal Services of Central New York, Inc., Syracuse, New York, for Plaintiffs (Susan M. Young, Paul F. Kelly, of counsel).

Frederick M. Stanczak, Haddonfield, NJ, for Plaintiffs.

Honorable Eliot Spitzer, Attorney General of the State of New York, Albany, New York, for Defendants, (Richard J. Freshour, assistant Attorney General, of counsel.

Opinion

MEMORANDUM-DECISION AND ORDER

MCCURN, Senior J.

INTRODUCTION

*1 Plaintiffs move for attorney’s fees as the prevailing party. The Public Interest Law Firm (“PILF”) seeks \$124,306 in attorney’s fees comprised of 204.7 hours of supervising attorney work at \$175 per hour, 1,152.1 hours

of student attorney work at \$75 per hour, and 34.6 hours of research assistant work at \$60 per hour.¹ PILF also requests costs of \$377.92. Legal Services of Central New York (“LSCNY”) seeks \$116,031.75 in attorney’s fees comprised of 724.17 hours of attorney work at \$150 per hour, and 98.75 hours of attorney travel at \$75 per hour. LSCNY also requests costs of \$10,215.98. Attorney Fred Stanczak seeks attorney’s fees for hours he expended in furtherance of this litigation while not employed by either PILF or LSCNY in the amount of \$3,658.75 comprised of 17.05 hours of work at \$175 per hour, and 9 hours of travel at \$75 per hour.² Defendants oppose a limited amount of the fees sought, mainly the work of law students in PILF, and complain of billing redundancy by LSCNY attorneys. Defendants also object to the hourly rates sought for both law students and attorneys, arguing that students are only entitled to \$30 per hour and attorneys are only entitled to \$150 per hour. Oral argument was held in Utica, New York on July 13, 1999.

DISCUSSION

I. STANDARD FOR ATTORNEY’S FEES

In an action brought pursuant to 42 U.S.C. § 1983, “the court, in its discretion, may allow the prevailing party ... a reasonable attorney’s fee as part of the costs[.]” 42 U.S.C. § 1988(b) (West Supp.1999). Defendants concede that plaintiffs fall within the meaning of the term “prevailing party.”

To determine the reasonable fee, the court first calculates the “lodestar” amount by multiplying the attorney’s reasonable hourly rate by the number of hours reasonably expended. *See Blanchard v. Bergeron*, 489 U.S. 87, 94, 109 S.Ct. 939, 944, 103 L.Ed.2d 67 (1989); *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 1939, 76 L.Ed.2d 40 (1983). In making such a determination, “the district court does not play the role of an unformed arbiter but may look to its own familiarity with the case and its experience generally as well as to the evidentiary submissions and arguments of the parties.” *Gierlinger v. Gleason*, 160 F.3d 858, 876 (2d Cir.1998) (citation omitted). “If the court determines that certain claimed hours are ‘excessive, redundant, or otherwise unnecessary,’ the court should exclude those hours in its calculation of the lodestar.” *Id.*

II. REASONABLE HOURLY RATE

John S. v. Cuomo, Not Reported in F.Supp.2d (1999)

To calculate the reasonable hourly rate, the court uses the prevailing rate of the Northern District of New York for the types of services rendered by lawyers with reasonably comparable skill, experience and reputation. *See Cruz v. Local Union No. 3 of the Int'l Bhd. of Elec. Workers*, 34 F.3d 1148, 1159 (2d Cir.1994). In protracted and lengthy litigation, as here, courts often divide an award into separate phases, and apply a current, higher rate for more recent work, and a historic rate for work completed during an earlier phase. *See Saulpaugh v. Monroe Comm. Hosp.*, 4 F.3d 134, 146 (2d Cir.1993); *Grant v. Martinez*, 973 F.2d 96, 100 (2d Cir.1992), *cert. denied*, 506 U.S. 1053, 113 S.Ct. 978, 122 L.Ed.2d 132 (1993); *New York Ass'n for Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1153 (2d Cir.1983); *Berry v. New York State Dep't of Correctional Servs.*, 947 F.Supp. 647, 650 (W.D.N.Y.1996); *Walker v. Coughlin*, 909 F.Supp. 872, 878 (W.D.N.Y.1995); *Macko v. General Motors Corp.*, 1988 WL 73446, at *3 (N.D.N.Y.1988). As this case has been litigated over a nine year period, the court will use a historic rate for work done prior to this year.

*2 As far back as 1988, courts in this district have awarded an hourly rate of \$150 for experienced attorneys. *See Schenectady News, Inc. v. City of Schenectady*, 1988 WL 50653, at *1 (N.D.N.Y.1988); *Macko*, 1988 WL 73446, at *3. From 1988 until March of this year, this rate has prevailed. *See TM Park Ave. Assocs. v. Pataki*, 44 F.Supp.2d 158, 166–167 (N.D.N.Y.1999). The vast majority of work done by PILF and LSCNY attorneys took place between 1990 and 1998. As such, and because each of the attorneys working on the case during this period was experienced, the court sets the historic rate for this work at \$150 per hour. As the prevailing rate in this district for experienced attorneys has recently increased to \$175 per hour, *see id.*, the court sets this higher rate for work performed after January 1, 1999.

The court next discusses the hourly rate for law students. PILF argues it is entitled to \$75 per hour for student attorney work; defendants claim \$30 per hour is the proper amount.³ Neither party is correct. Courts in this district have been awarding student attorneys, law students and paralegals \$50 per hour for quite some time.⁴ *See TM Park Ave. Assocs.*, 44 F.Supp.2d at 167; *Carroll v. DeBuono*, 48 F.Supp.2d 191, —, 1999 WL 288593, at *1 (N.D.N.Y.1999); *Ellis v. Apfel*, 1998 WL 480861, at *2 (N.D.N.Y.1998); *Hannigan v. Board of Educ.*, 1997 WL 10971, at *3 (N.D.N.Y.1997). This amount has not changed despite the recent increase in the prevailing hourly rates for some attorneys. *See TM Park Ave Assocs.*, 44 F.Supp.2d at 167.

PILF urges the court to award a higher hourly rate to student attorneys than to other law students or paralegals because of the added responsibility student attorneys are allowed to undertake. *See N.D.N.Y. General Order No. 33. General Order No. 33* allows student attorneys

practicing under an order of the court to appear as counsel in court or at other proceedings and to prepare and sign legal papers in connection with their representation of clients. *See General Order No. 33 (4)(a) and (b). General Order No. 33*, however, makes clear that the ultimate responsibility for a case belongs to the supervising attorney, not the student, as the supervising attorney must appear with the student in all proceedings before the court, *see General Order No. 33 (2)(d)*, sign all documents prepared and signed by the student, *see General Order No. 33 (4)(b)*, and “[a]ssume personal professional responsibility for the student’s work.” *General Order No. 33 (2)(b)*. Consequently, while student attorneys may be able to perform certain functions that other law students and paralegals cannot, in every matter before this court an admitted attorney bears full responsibility for the work of student attorneys, law students and paralegals. As such, the court declines to award a higher hourly rate for student attorney work as compared to the work of other law students or paralegals. In doing so, the court adheres to both its own prior decision awarding a Cornell Law School Clinic student attorney the same rate as other law students, *see Ellis*, 1998 WL 480861, at *2 (\$50 per hour), and a decision of Judge Scullin involving the Albany Law School Clinic, *see Hannigan*, 1997 WL 10971, at *3 (same).

*3 This \$50 rate has been awarded since approximately the inception of this litigation. *See Abou-Khadra v. Bseirani*, 971 F.Supp. 710, 718–19 (N.D.N.Y.1997) (“[T]he historic rate for paralegals and law clerks in this district from 1991 ... is \$50 per hour[.]”). Thus, \$50 per hour is warranted as the historic rate of compensation for student attorneys who worked on this case from years 1990 to 1998. As to law student work performed after January 1, 1999, the court has been persuaded by PILF that \$50 per hour no longer represents the prevailing hourly rate. Recently, Chief Judge McAvoy found that an increase in the rates of experienced and mid-level attorneys was warranted, but declined to increase the rate for non-lawyers, where plaintiffs there failed to offer evidence that this rate should be increased. *See TM Park Ave Assocs.*, 44 F.Supp.2d at 167. In the matter at hand, PILF has supplied evidence that four law firms in the Syracuse area currently bill law student work to clients at rates between \$60 and \$90 per hour. *See Fuller Aff. Ex. 2*. On the basis of these affidavits, a review of the prevailing rates in nearby districts, and the court’s familiarity with the rates charged by law firms in this district, the court agrees that the rate of \$50 per hour is no longer appropriate. Thus, the court awards \$65 per hour for law student work completed after January 1, 1999.

Finally, as LSCNY and Stanczak note, attorneys and law students will not be reimbursed at their normal hourly rate for travel. *See McLaughlin v. State of New York*, 1998 WL 915431, at *2 (N.D.N.Y.1998); *TM Park Ave Assocs.*, 44 F.Supp.2d at 167. Rather, in the absence of a showing

John S. v. Cuomo, Not Reported in F.Supp.2d (1999)

by the fee applicant that travel time was productive, the court allows one-half the usual hourly rate for travel.⁵ *McLaughlin*, 1998 WL 915431, at *2.

The court next considers the amount of hours reasonably expended in the furtherance of this case. As part of its review, the court specifies which hours claimed by PILF are attributable to travel, as it failed to do so.

III. HOURS REASONABLY EXPENDED

A. PILF STUDENTS

Student Cunningham:

Cunningham's entry for 9/30/93 must reflect 2 hours travel. Likewise, his 2/23/94 entry must reflect .5 hours travel.

Student Eckstein:

Eckstein's entry of 12/20/94 must reflect 2 hours travel. As properly objected to by defendants, Eckstein bills an unreasonable amount of hours researching attorney's fees. Consequently, the 18 hours spent researching this subject are reduced to 4.5 hours.

Student Edwards:

Edwards' entry of 9/22/93 must reflect 2 hours travel. Her other entries are deserving of reduction because of their particularly vague descriptions. Accordingly, her 9/28/93, 10/26/93, 11/2/93, 11/9/93, 11/16/93, 11/23/93 and 11/29/93 entries, or 4.6 hours, are disregarded in calculating the lodestar.

Student Ginsberg:

Ginsberg's entry of 9/22/93 must reflect 2 hours travel. Likewise, her 12/1/93 entry must reflect 2.5 hours of travel. As properly objected to by defendants, Ginsberg spent an excessive amount of hours researching "who our experts can talk to." Accordingly, her 10/27—11/8/93 entries on this subject, 24.4 hours, are reduced to 6.1 hours. Moreover, several of Ginsberg's entries are unduly vague, and as such, are disregarded in calculating the lodestar. Thus, her 11/9/93, 2/10/94, 2/17/94 and 3/03/94 entries for "supervision," 2.6 hours, are not considered.

Student Harrington:

*4 Defendants do not object to any of Harrington's

entries, nor do any of these entries appear to be for travel.

Student Jain:

Jain's entry of 9/29/92 must reflect 2.5 hours of travel. As defendants properly note, Jain's billing of 27 hours on "burdensome discovery under Second Circuit" is not proper billing judgment. This amount is reduced to 6.75 hours.

Student Jun:

Defendants object to 6 hours of Jun's billing for discovery matters. PILF agrees this time should be reduced. *See* Fuller Reply Aff. at ¶ 3. Defendants also object to 21 hours of Jun's other research; the parties disagree as to whether this amount should be reduced. These entries will be reduced when all student hours, as a whole, are reduced by a percentage at the end of this subsection. Jun's 5/25/94 entry of 2 hours, however, "prepared for presentation" is disallowed as vague.

Student Kahn:

Though defendants have no specific objection to Kahn's billing, her 11/8/91, 11/25/91 and 3/11/92 entries must reflect 2 hours travel each, or 6 hours total.

Student Krieger:

Defendants first challenged Krieger's billing of 14.5 hours for preparation of a "case presentation memorandum" and educating herself on discovery techniques. PILF no longer seeks fees for these hours. *See* Fuller Reply Aff. at ¶ 3. Defendants also properly contest excessive and redundant billing for Krieger's research of attorney's fees. Krieger's entries of 9/13/90,⁶ 9/14/90, 9/15/90 and 9/16/90 are reduced as follows: first, the 9/13 entry is reduced by 5.05 hours, as stated in the footnote below. The remainder of the amount, 10.25 hours, is reduced to 2.56 hours. Defendants also object to 11 hours billed for researching and writing a lawyer's affidavit, and 13.5 hours devoted to researching regulations and revising interrogatories. While these amounts seem extravagant, they will be reduced when all student hours, as a whole, are reduced. Krieger's entries for 3/26/91 and 5/8/91 must reflect .5 and 2 hours travel respectively.

Student Levi:

Defendants object to approximately 37 hours spent by Levi on the issue of conflict of interest. This amount will be reduced when all student hours, as a whole, are

John S. v. Cuomo, Not Reported in F.Supp.2d (1999)

reduced. Levi's entries of 9/29/92 and 10/20/92 must reflect 5 hours travel.

Student Mentor:

Defendants object to 35.5 hours spent by Mentor on an interrogatories memorandum, and 10 hours spent researching expert witnesses. These amounts will be reduced when all student hours, as a whole, are reduced.

Student Sovie:

Sovie's entry of 6/4/93 must reflect 2 hours travel. Defendants do not object to any billing by Sovie.

Student Stern:

Defendants challenge 28.3 hours billed to prepare a second set of interrogatories and object to 107.5 hours billed to research damages, the right to treatment, and consent. These hours will be reduced when all student hours, as a whole, are reduced. Stern must have his billing entries of 11/8/91, 11/19/91 and 11/25/91 reflect a total of 6 hours travel.

Student Zlon:

*5 Defendants claim Zlon unreasonably billed 21 hours for various projects. These hours will be reduced when all student hours, as a whole, are reduced.

Research Assistant Skylakos:

Defendants do not object to any billing by Skylakos.

Total:

Reducing hours as noted above, PILF student attorneys put in 1043.11 hours of work and 35 hours of travel. This number does not reflect the reasonable amount of hours spent on this litigation, however. "Working on this action constituted part of these students' law school education. The Court heartily approves of providing students with this valuable learning experience. *It would be inequitable, however, to ask defendant to subsidize this portion of the students' education.*" *Jones v. Kreisel Co., Inc.*, 1995 WL 681095, at *4 (S.D.N.Y.1995) (emphasis supplied) (court reduced Brooklyn Law School legal clinic's claimed hours by approximately 66%). The court finds a great deal of the remaining 1043.11 hours of work completed by PILF student attorneys vague, excessive, redundant or otherwise unnecessary. Having laboriously reviewed the

time sheets submitted by PILF, the court finds that a further reduction of 40% is warranted to the hours PILF claims for student attorney work. Accordingly, PILF may properly claim fees for 625.87 hours of reasonable student attorney work, and 35 hours for student attorney travel. A similar reduction of 40% is necessary to the hours PILF seeks for Skylakos, bringing her reasonable hours billed to 20.76.

At \$50 per hour for 625.87 hours of reasonable student attorney work, and half this rate for 35 hours of student attorney travel time, PILF is entitled to \$32,168.50. At \$50 per hour for .18 hours of Skylakos' reasonable work (performed prior to January 1, 1999) and \$65 per hour for 20.58 hours of reasonable work (performed after January 1, 1999), PILF is entitled to an additional \$1,346.70.

B. PILF FACULTY

Defendants only dispute 11.5 hours of one faculty member's billings. PILF has agreed to reduce this amount. *See Fuller Reply Aff.* at ¶ 3. Several other billing entries must be adjusted, however. Fuller's entry of 3/26/99 must reflect travel of .3 hours. Goldenberg's entry of 7/2/94 must reflect 3 hours travel. Hoft's entry of 11/17/94 must reflect 2 hours travel. Similarly, Kanter's entries on 5/8/91, 11/25/91 and 3/11/92 must reflect 2 hours each for travel. Further, Kanter bills 11.7 hours, presumably including travel, for a "tour of Mohawk Valley Psychiatric Center." This entry is vague, and the court is not able to discern the necessity of such a tour. The court thus disallows the entry.

After the above reductions, PILF attorneys put in 181.7 hours of work,⁷ and 11.3 hours of travel. The court finds a further reduction of 20% is necessary to make the amount of hours sought by PILF reasonable. Many of the hours billed by PILF attorneys were to supervise students, review student work, and facilitate group meetings with students. In a law school environment, this is completely acceptable, but defendants should not bear the burden, and expense, of educating law students. After the 20% reduction, PILF may properly seek compensation for 145.36 hours of reasonable attorney work. These hours, as discussed above, are broken into two periods; PILF is awarded \$150 per hour for work completed prior to January 1, 1999, and \$175 per hour for work completed after this date. At \$175 per hour for 20 hours of work, .3 hours of travel at half this rate, \$150 per hour for 125.36 hours of work and 11 hours of travel at half this rate, PILF is entitled to \$23,155.25.

C. PILF COSTS

*6 PILF moves for costs of \$377.92. The court declines to award \$265.42 of this amount, which appears to be for

milage on four case-related trips. While PILF sets forth the amount of money sought for each trip, and who traveled, neither the amount of miles, nor the amount per mile sought are specified to the court. Moreover, the court notes that PILF attorneys and students made far more than four trips to various psychiatric centers and court hearings. PILF supplies no documentation, explanation or affidavit to the court explaining these travel expenses. As PILF has not established its entitlement to this amount, the court disallows it. The remainder of the costs sought, \$112.50, for long distance telephone calls and photocopying, is properly recoverable. *See LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 763 (2d Cir.1998).

D. LSCNY

Defendants object to three billing entries of LSCNY attorneys, where on 7/25, 7/26 and 7/27/94 each attorney claimed 23 hours for engaging in similar activities. The court agrees these hours are unreasonable, and allows the billing of only one attorney on these dates. Thus, the court reduces 46 hours billed for work, and 11 hours billed for travel. The remainder of hours billed by LSCNY attorneys appear reasonable.

Though LSCNY sought only \$150 per hour for its attorneys, it moved to amend its fee request to \$175 per hour at oral argument. As mentioned previously, however, the court awards the historic rate of \$150 per hour for work performed prior to January 1, 1999. The court awards \$175 per hour for the small amount of work performed after this date. Accordingly, LSCNY is entitled to attorney's fees for 14 hours of work at \$175 per hour, 664.17 hours of work at \$150 per hour, and 87.75 hours of travel at \$75 per hour (all travel took place prior to

January 1, 1999), or \$108,656.75.

LSCNY also moves for reimbursement of certain costs and expenses. Defendants do not object to these amounts, and the court holds them recoverable. Thus, the court awards LSCNY costs of \$10,215.98.

E. STANCZAK

Defendants do not dispute any of Stanczak's private billing. Having reviewed the hours billed and found them reasonable, Stanczak is entitled to attorney's fees for 11.6 hours of work completed after January 1, 1999 at \$175 per hour, 9 hours travel at half this rate, and 5.45 hours of work completed prior to January 1, 1999 at \$150 per hour, or \$3,635.

CONCLUSION

There is a strong presumption the lodestar calculations set forth above are the reasonable fees, and the court finds no reason to adjust the lodestar. *See City of Burlington v. Dague*, 505 U.S. 557, 561, 112 S.Ct. 2638, 2641, 120 L.Ed.2d 449 (1992). Consequently, plaintiffs' counsel are entitled to attorney's fees and costs of \$179,290.68. This is apportioned as follows: \$56,782.95 in fees and costs for PILF, \$118,872.73 in fees and costs for LSCNY, and \$3635 in fees for Stanczak.

IT IS SO ORDERED.

Footnotes

- 1 Originally, PILF sought compensation for a slightly larger amount of hours, but reduced thirty-two hours which were challenged by defendant. *See Fuller Reply Aff.* at ¶ 3.
- 2 Stanczak seeks attorney's fees for 17.85 hours of work. *See Stanczak Aff.* at ¶ 10. His calculations are not quite accurate, however, as the total number of hours he worked as reflected on his time sheets is 17.05 hours. *See Stanczak Aff. Ex. 1.*
- 3 Defendants do not distinguish between student attorneys and Skylakos, the research assistant. Presumably, defendants argue that the proper rate for all law students is \$30 per hour.
- 4 As defendants note, Judge Munson awarded only \$30 per hour to PILF student attorneys last year. *See Albro v. County of Onondaga*, 1998 WL 52013 (N.D.N.Y.1998). *Albro* is distinguishable, however, because in that case PILF merely monitored the County's compliance with a consent decree and higher compensation was unnecessary. *See id.* at *4 ("the court finds that a reduced rate for monitoring [] is applicable here").
- 5 LSCNY and Stanczak each set forth which hours billed were for travel as opposed to legal work. PILF failed to do this, leaving the court to wade through the voluminous time records of five supervising attorneys and fourteen student attorneys to determine how many of its claimed hours are attributable to travel. "The Court should not be obligated to scour the voluminous billing records submitted, pull out all time entries related to travel, and make the requisite calculations. Rather, this was plaintiffs [sic] duty, subject to a review by the Court for reasonableness." *TM Park Ave. Assocs.*, 170 F.Supp.2d at 170. Unlike in *TM Park Ave. Assocs.*, this court will not reduce PILF's claimed hours as a penalty for failing to set forth hours related to travel. In any future fee

John S. v. Cuomo, Not Reported in F.Supp.2d (1999)

application, however, the court expects PILF to diligently set forth its travel time.

- 6 Though PILF claims 7.8 hours for Krieger's work on September 13, 1990, a review of the time sheets reveals that just 2.75 hours were billed. Accordingly, the 5.05 hours improperly claimed by PILF is not considered.
- 7 Pursuant to Fuller's request in her reply affidavit, four hours are added to her billing to reflect time spent drafting a reply.