

1991 WL 75128

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United States District Court, E.D. Pennsylvania.

Arthur LESTER, et al., Plaintiffs,  
v.  
COMMISSIONER OF PHILADELPHIA PRISONS,  
Defendant.

Civ. A. No. 87-5893. | April 29, 1991.

#### Attorneys and Law Firms

Arthur Lester, in pro. per.

Michael J. McCaney, Jr., Leonard B. Gordon, Gordon  
McCaney & Gordon, Philadelphia, Pa., for plaintiffs.

Guy Vilim, City Solicitor Office, Philadelphia, Pa., for  
defendants.

Bruce W. Drummer, Philadelphia, for City of  
Philadelphia.

#### Opinion

### MEMORANDUM

NEWCOMER, Senior District Judge.

\*1 Plaintiff is presently petitioning the Court for an award of attorney's fees pursuant to 42 U.S.C. § 1988. For the reasons that follow, I will grant plaintiffs' Petition.

#### I. Factual Background.

This class action was filed on January 20, 1988, by Arthur Lester and other inmates at the Philadelphia Industrial Correction Center against Edward Lyons, then Superintendent of the Philadelphia Prison, and other prison officials. The class alleged that there were unwarranted acts of violence against inmates by prison staff. The parties, however, reached a settlement agreement and a Consent Order was issued by this court on June 21, 1988 and subsequently modified on May 22, 1990.

Pursuant to the Consent Decree, the Pennsylvania Prison Society, ("the Prison Society"), through its employee/representative, Michael Hackman, investigates allegations of the use of physical force against inmates by prison officials and then forwards incident reports and

documents prepared in conjunction with the incident reports to specified agencies. The Consent Order requires that Defendant reimburse the Prison Society for these services. Defendant, however, despite repeated requests by the Prison Society, failed to reimburse the Prison Society for services rendered over a period of more than four months. In response, plaintiffs filed a Motion to Enforce the Consent Order. The motion was later withdrawn by plaintiffs after the Prison Society was reimbursed for the services provided over that period.

Plaintiffs' Petition for Attorneys' Fees encompasses the fees incurred in preparing and filing the Motion to Enforce the Consent Order as well as the fees incurred for the preparation of the instant Petition. Plaintiffs' counsel spent 10.7 hours preparing the Motion to Enforce and 2.6 hours preparing the instant Petition. At an hourly rate of \$140, plaintiffs seek recovery of fees totaling \$1862.00.

#### II. Discussion.

In civil rights actions, determination of attorney's fees is primarily a matter committed to the discretion of the district court. 42 U.S.C. § 1988. *See Blum v. Stenson*, 465 U.S. 886, 896-97 (1984). Post-judgment monitoring of a Consent Decree is a compensable activity for which counsel is entitled to a reasonable fee. *See Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 559 (1986). The defendant does not dispute that plaintiffs' counsel is entitled to fees for time reasonably spent monitoring the implementation of the Consent Order, nor does defendant dispute that plaintiffs' counsel's hourly rate or number of hours expended by plaintiffs' counsel are reasonable. Defendant does, however, contend that plaintiffs' counsel needlessly filed a motion instead of attempting to resolve the issues without court intervention.

Defendant had a duty to comply with the Consent Order. Defendant, however, failed to comply with that Order for over four months. It was therefore not unreasonable for plaintiff to petition this Court for a Motion to Enforce the Consent Order after this period of non-compliance. Accordingly, and in light of the low priority given to payment for the Prison Society's services, I conclude that defendant's contention that the motion was unnecessarily filed is without merit.

\*2 Pursuant to 42 U.S.C. § 1988, plaintiff is therefore entitled to compensation for the fees reasonably incurred for the preparation of the Motion to Enforce the Consent Order and for the fees incurred for the preparation of the instant Petition. Defendant will therefore be ordered to pay plaintiff a total of \$1862.00 for the fees incurred by plaintiff in attempting to enforce the Consent Order.

**Lester v. Commissioner of Philadelphia Prisons, Not Reported in F.Supp. (1991)**

An appropriate Order follows.

Response, and in accordance with the foregoing Memorandum Opinion, it is hereby Ordered that plaintiffs' Petition is GRANTED. Defendant is therefore Ordered to pay plaintiffs the amount of \$1862.00.

AND IT IS SO ORDERED.

***ORDER***

AND NOW, this 29th day of April, upon consideration of plaintiffs' Petition for Attorneys Fees and defendant's