

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION**

WILLIE RUSSELL, ET AL

PLAINTIFFS

V.

CIVIL NO. 1:02CV261-JAD

ROBERT L. JOHNSON, ET AL

DEFENDANTS

**ORDER AWARDING ATTORNEYS' FEES AND EXPENSES**

Before the court are plaintiffs' motion and renewed motion for attorneys' fees and expenses in this litigation. Having considered plaintiffs' attorneys' filings and defendants' objections, the court is prepared to rule.

**Background**

This request for fees and expenses is based on the findings of this court of certain constitutional violations in the housing and treatment of death row inmates at Parchman. The court entered its Final Judgment and Memorandum Opinion on May 21, 2003. The court will not reiterate all of its prior findings here. The Fifth Circuit Court of Appeals issued an opinion on June 28, 2004, vacating three of the injunctions issued by this court and limiting the injunctive relief in four other instances to Unit 32-C (Death Row) rather than the whole of Unit 32. For those reasons defendants argue that plaintiffs' request for fees and expenses should be significantly reduced. The court disagrees with the term "significantly."

Attorneys' Fees Under the  
Prison Litigation Reform Act (PLRA)

The PLRA authorizes attorneys fees under certain prescribed circumstances. 42 USC §1997e(d) provides:

In any action brought by a prisoner who is confined to any to any jail, prison or other correctional facility in which attorney's fees are authorized under section 1988 of this title shall not be awarded, except to the extent that - -

(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under Section 1988 of this title; and (B)(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or (ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violations.

Unquestionably, the plaintiffs incurred fees and expenses in proving actual violations of the rights of death row inmates. The question for the court is what amount of the fee request is "proportionately related to the court-ordered relief."

First, the hourly fee is limited to 150% of the hourly fee paid to Criminal Justice Act attorneys. The current hourly fee in this district is \$90 per hour for both in-court and out-of-court work. Accordingly, the maximum allowable rate is \$135 per hour under the PLRA. The court finds that the hourly rate for each attorney and paralegal representing the plaintiffs should be as follows:

1. Margaret Winter - \$135/hour
2. Stephen Hanlon - \$135/hour

3. Esme Caramello - \$125/hour
4. Amy Fettig - \$120/hour
5. Sandi Farrell - \$120/hour
6. Terrance Moore - \$60/hour

Turning to the hours expended by each attorney and paralegal in this case, the court finds that all the theories in this case derived from a common core of operative facts and that the minor relief granted on the appeal does not justify a reduction of the hours expended by counsel in this case. See, Hensley v. Eckerhart, 461 U.S. 424, 429 (1983). The court also rejects the defendants' arguments for reduction except where agreed by plaintiffs. The court finds that the hours spent on the trial of this case and the appeal were completely reasonable, especially considering the results. Therefore, the court finds that following hours reasonably expended in this litigation for each attorney and paralegal:

1. Margaret Winter - Trial - 596.7 hours  
Appeal- 240.0 hours
2. Stephen Hanlon - Trial - 77.9 hours
3. Esme Caramello - Trial - 88.0 hours
4. Amy Fettig - Trial - 283.4 hours
5. Sandi Farrell - Trial - 77.0 hours
6. Terrance Moore - Trial - 24.0 hours

Having determined the hourly rate and reasonable hours expended in

this litigation, the court determines the lodestar fee as follows:

|    |                 |               |   |                    |
|----|-----------------|---------------|---|--------------------|
| 1. | Margaret Winter | \$135 x 596.7 | = | \$80,554.50        |
|    | (Appeal)        | \$135 x 240.0 | = | \$32,400.00        |
| 2. | Stephen Hanlon  | \$135 x 77.9  | = | \$10,516.50        |
| 3. | Esme Caramello  | \$125 x 88.0  | = | \$11,000.00        |
| 4. | Amy Fettig      | \$120 x 283.4 | = | \$34,008.00        |
| 5. | Sandi Farrell   | \$120 x 77.0  | = | \$ 9,240.00        |
| 6. | Terrance Moore  | \$60 x 24.0   | = | <u>\$ 1,440.00</u> |
|    | TOTAL FEE       |               |   | \$179,149.00       |

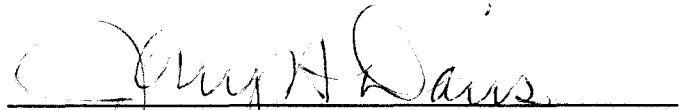
While the court is aware that senior attorneys like Ms. Winter and Mr. Hanlon have been awarded fees in this district of \$150/hr. for civil rights violations, the court is constrained by the limits of the PLRA. Moreover, under the circumstances, no adjustment to the lodestar pursuant to Johnson v. Georgia Highway Express, 488 F.2d 714 (5<sup>th</sup> Cir. 1974) is appropriate although the court recognizes that plaintiffs' attorneys achieved a great result in an undesirable case. The court finds that the hours approved because of the common core of facts adequately recognizes the results obtained.

Finally, the court finds the expenses claimed by plaintiffs (except for the inadvertent claim of \$78 for toiletries and clothing by Ms. Fettig on February 9, 2003) should be approved in their entirety. Defendants' objections are without merit. The expenses approved are as follows:

|    |                                 |   |                    |
|----|---------------------------------|---|--------------------|
| 1. | National Prison Project (Trial) | - | \$20,979.60        |
|    | (Appeal)                        | - | \$ 2,377.39        |
| 2. | Holland & Knight, LLP (Trial)   | - | \$18,143.61        |
| 3. | ACLU of Mississippi             | - | <u>\$ 1,484.38</u> |
|    | TOTAL EXPENSES                  |   | \$42,984.98        |

In summary, the court awards the total amount of \$146,749 for attorneys' fees and \$40,607.59 for expenses for the trial of this case. The court awards \$32,400 for attorneys' fees and \$2,377.39 for expense in the appeal of this case. The total award of \$222,133.98 shall be paid within sixty (60) days of this order.

SO ORDERED this 4th day of Feb., 2005.

  
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JERRY A. DAVIS  
UNITED STATES MAGISTRATE JUDGE