

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

DENNIS EARL FULBRIGHT,)	
)	
Plaintiff,)	
)	
vs.)	No. CIV-03-99-W
)	
JUSTIN JONES,)	
)	
Defendant.)	
)	
JON ANDREW COTTRIEL,)	
)	
Plaintiff,)	
)	
vs.)	No. CIV-03-125-W
)	
JUSTIN JONES,)	
)	
Defendant.)	
)	
JERRY HARMON,)	
)	
Plaintiff,)	
)	
vs.)	No. CIV-03-1465-W
)	
JUSTIN JONES,)	
)	
Defendant.)	

ORDER

Judgment was entered in these three consolidated matters on February 28, 2006, in favor of the plaintiffs, Dennis Earl Fulbright, Jon Cottriel and Jerry Harmon, and against the defendant, Justin Jones. In the Judgment, the Court ordered Jones as Director of the Oklahoma Department of Corrections ("DOC") to provide to the plaintiffs, at no cost, Kosher diets that complied with all nutritional requirements and standards currently

applicable to the diets served to all other inmates in DOC custody. The Court found that these plaintiffs, who had sought relief under title 42, section 1983 of the United States Code, were entitled to such prospective injunctive relief to remedy a violation of their rights to freely exercise their Orthodox Jewish religion as guaranteed by the first amendment to the United States Constitution.

The matter now comes before the Court on the plaintiffs' Motion for Attorney Fees. Jones has challenged not only the plaintiffs' entitlement to an award of fees, but also the amount requested. The plaintiffs, at the Court's direction, have filed a reply. Based upon the record, the Court makes its determination.¹

Title 42, section 1988(b) of the United States Code provides that "[i]n any action or proceeding to enforce a provision of section[] . . . 1983, . . . the [C]ourt, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee" 42 U.S.C. § 1988(b). Because the plaintiffs succeeded on the significant issues in these lawsuits and achieved the benefits they sought in commencing the actions, the Court finds the plaintiffs are "prevailing parties" for purposes of section 1888(b) and thus, are entitled to an award of fees.

In determining the amount of legal fees to be awarded in these cases, "the . . . [C]ourt must arrive at a "lodestar" figure by multiplying the hours plaintiffs' counsel reasonably spent on the litigation by a reasonable hourly rate." Case v. Unified School District No. 233, 157 F.3d 1243, 1249 (10th Cir. 1998)(quoting Jane L. v. Bangerter, 61 F.3d

¹While evidentiary hearings on the issue of attorney's fees may be generally preferred, they are not always required. Under the instant circumstances, the Court in its discretion finds that a hearing is unwarranted in these cases.

1505, 1509 (10th Cir. 1995)). The plaintiffs, who "bear[] the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates," Mares v. Credit Bureau of Raton, 801 F.2d 1197, 1201 (10th Cir. 1986)(quoting Hensley v. Eckerhart, 461 U.S. 424, 437 (1983)), have submitted for the Court's review the hourly rate of \$250.00 charged by their counsel, Rand C. Eddy.

However, as Jones has correctly pointed out, when a litigant is incarcerated, such as the plaintiffs in these cases, the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e, controls. The PLRA provides that attorney's fees in suits brought by prisoners "shall be based on an hourly rate [not] greater than 150 percent of the hourly rate established under . . . [the Criminal Justice Act, 18 U.S.C. § 3006A] for payment of court-appointed counsel." 42 U.S.C. § 1997e(d)(3). Jones has argued that application of the PLRA to this case results in an hourly rate of \$92.00.

The plaintiffs have conceded that any fees awarded in these cases are limited by the PLRA, but they have argued that Jones' calculations are flawed. The Court agrees.

As of January 1, 2006, the compensation rate for attorneys appointed to represent persons eligible under the Criminal Justice Act, 18 U.S.C. § 3006A, was \$92.00 in non-capital cases and \$163.00 in federal capital prosecutions and post-conviction proceedings. Although the plaintiffs have contended that the higher of the two amounts should be allowed in this case, the Court finds in the absence of authority for the same that 150 percent (150%) of \$92.00, or \$138.00, is the hourly rate which is applicable in this case.

Having determined the hourly rate, the Court must now ascertain the number of hours reasonably spent by counsel and, again, the plaintiffs have "the burden of proving [the reasonableness of the] hours [expended]" Case, 157 F.3d at 1250.

This burden is met by the submission of "meticulous, contemporaneous time records that reveal . . . all hours for which compensation is requested and how those hours were allotted to specific tasks." *Id.* (citation omitted). Recognizing that "'block billing' [or] . . . lumping multiple tasks into a single entry of time," Cadena v. Pacesetter Corporation, 224 F.3d 1203, 1214 (10th Cir. 2000), is highly discouraged, if not forbidden, the Court nevertheless finds the billing records submitted by the plaintiffs are sufficiently precise in most instances for the Court to determine "all hours for which compensation is requested and how those hours were allotted to specific tasks" Robinson v. City of Edmond, 160 F.3d 1275, 1281 (10th Cir. 1998)(quoting Ramos v. Lamm, 713 F.2d at 546, 553 (10th Cir. 1983)).

The Court has discounted those hours claimed by the plaintiffs that are associated with telephone conversations with R. Manning² and with the issue of class certification,³ and after having done so, the Court finds the remaining hours claimed by the plaintiffs to have been expended by their counsel are neither excessive nor unreasonable. Accordingly, the Court finds 378.10 to be the number of hours reasonably spent by plaintiffs' counsel in litigating these matters, which results in an award of legal fees in the amount of \$52,177.80 (\$138.00 x 378.10).

The Court is mindful that in certain non-PLRA cases "of exceptional success an enhanced fee award may be justified." Hensley, 461 U.S. at 435. "Exceptional success'

²E.g., Case v. Unified School District No. 233, 157 F.3d 1243, 1252 (10th Cir. 1998)(time disallowed for billing entries that do not describe subject matter of telephone conversations).

³The Court finds the hours spent in extensive research of this issue were not "directly and reasonably incurred in proving an actual violation of the plaintiff[s]' rights" 42 U.S.C. § 1997e(d)(1)(A).

justifying an enhanced fee may be based upon the performance of counsel . . . or upon the result achieved" Ramos, 713 F.2d at 557.


In this case, an important constitutional right was vindicated, and the plaintiffs achieved their success "while facing strong resistance and tenacious defense . . . by the State [of Oklahoma]." Skinner v. Uphoff, 324 F. Supp.2d 1278, 1286 (D. Wyo. 2004). Acknowledging the complexity of the issues and logistical difficulties in representing incarcerated individuals and "[g]iven the low hourly rate allowed under the PLRA, this Court cannot make a fair award without granting an enhancement of the fee," id.; e.g., Ginest v. Board of County Commissioners, 2006 WL 856199 (D. Wyo. March 9, 2006), and finds that a fifty percent (50%) enhancement will be awarded in these consolidated cases.

Accordingly, the Court

(1) GRANTS the Motion for Attorney Fees filed by the plaintiffs in each of these cases; and

(2) hereby AWARDS legal fees in the amount of \$52,177.80, with a fifty percent (50%) multiplier of \$26,088.90, for a total fee award of \$78,266.70.

ENTERED this 10 day of April, 2006.



LEE R. WEST
UNITED STATES DISTRICT JUDGE