

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEORGIA ADVOCACY OFFICE, INC.,

Plaintiff,

v.

FRANK SHELP, M.D., in his
official capacity as
Commissioner, Georgia
Department of Behavioral
Health and Developmental
Disabilities,

Defendant.

CIVIL ACTION

NO. 1:09-CV-2880-CAP

O R D E R

This action is before the court on the plaintiff's motion for attorneys' fees and expenses [Doc. No. 83].

I. Background

The background of this case is set out in detail in the court's summary judgment order [Doc. No. 53] and does not need to be repeated here. Following the court's denial of summary judgment, the parties successfully mediated almost all outstanding issues in this case and entered into a stipulated agreement. Only one substantive issue remained: whether, and to what extent, the plaintiff was entitled to access peer review records kept by the Department of Behavioral Health and Developmental Disabilities. Additionally, the stipulated agreement settled all fees disputes to that point but reserved the plaintiff's right to "seek fees and costs that arise from the litigation of the claim of access to peer

review records under the P&A Acts and regulations" [Doc. No. 63, ¶ 36].

Following briefing of the plaintiff's motion for final injunction, which consisted almost entirely of arguments on the issue of access to peer review records, the court granted the defendant's request for a hearing and then issued the permanent injunction on the terms the plaintiff requested [Doc. No. 65]. The plaintiff has now moved to recover attorneys' fees in the amount of \$51,990.50 under 42 U.S.C. § 1988.

II. Legal standard and analysis

Pursuant to 42 U.S.C. § 1988, prevailing parties in civil rights actions are entitled to an award of attorneys' fees. Hensley v. Eckerhart, 461 U.S. 424 (1983). In this case, it is undisputed that the plaintiff was the prevailing party. Accordingly, the plaintiff is entitled to an award of attorneys' fees.

In calculating a reasonable attorneys' fee award, the court must multiply the number of hours reasonably expended on the litigation by the customary fee charged in the community for similar legal services to reach a sum commonly referred to as the "lodestar." Hensley, 461 U.S. at 433-34; Norman v. Housing Authority, 836 F.2d 1292, 1299 (11th Cir. 1988). The court may then adjust the lodestar to reach a more appropriate attorneys' fee, based on a variety of factors, including the novelty or difficulty

of the question presented and the time and labor required. Ass'n of Disabled Ams. v. Neptune Designs, Inc., 469 F.3d 1357, 1359 n.1 (11th Cir. 2006).

The defendant here objects to the reasonableness of the fees requested based on the rate charged by Paula Rafferty Miller and claims certain billed tasks were overstaffed, insufficiently documented, redundant, or unnecessary.

A. Hourly Rate

"A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." Norman, 836 F.2d 1292, 1299. The Eleventh Circuit provided the following instruction for determining a reasonable hourly rate for the attorneys involved in a case:

[O]rdinarily there are no quotations for the prevailing market rate for a given attorney's services. Instead, the best information available to the court is usually a range of fees set by the market place, with the variants best explained by reference to an attorney's demonstrated skill. It is the job of the district court in a given case to interpolate the reasonable rate based on an analysis of the skills . . . which were exhibited by the attorney in the case at bar

Id. at 1301.

In this case, the defendant's objection to the rate charged by Paula Rafferty Miller, \$400 per hour, is based on a comparison with that charged by Joshua Norris, \$330 per hour. According to the

defendant, Ms. Miller's rate is unreasonable because she is classified as a staff attorney, while Mr. Norris is the plaintiff's Director of Legal Advocacy [Doc. No. 92 at 11].

Inspection of the declarations of Ms. Miller and Mr. Norris reveals that Ms. Miller's higher rate is based largely on the fact that she has nine more years of experience than Mr. Norris. The court finds that \$400 per hour is a reasonable hourly rate for attorneys of similar skills, experience, and reputation as Ms. Miller in the Atlanta area. Likewise, the court finds that the rates for Mr. Norris and Ms. Kegley (\$295 per hour) are also reasonable.

B. Hours Expended

The next step in computing the lodestar is the ascertainment of reasonable hours. Norman, 836 F.2d at 1301. Excessive, redundant or otherwise unnecessary hours should be excluded. Id. "This must necessarily mean that the hours excluded are those that would be unreasonable to bill to a client and therefore to one's adversary irrespective of the skill, reputation or experience of counsel." Id. (emphasis omitted). Exclusions for excessive or unnecessary work on given tasks must be left to the discretion of the court. Id. While there is nothing inherently unreasonable about a client having multiple attorneys, which may all be compensated if they are

not unreasonably doing the same work, the court is charged with deducting redundant hours. Id.

In this case, the defendant argues that several charges are unreasonable. The court addresses each in turn.

(1) The defendant first argues that the plaintiff's attorneys unreasonably billed for two attorneys to attend and prepare for a court-ordered status conference. According to the billing sheets attached to plaintiff's counsels' affidavits, they billed 3.2 hours in total to prepare for the status conference, including .5 hour of research. The court finds this time reasonable and compensable. On the other hand, the court finds billing a total of 4.0 hours of attorney time for a 25 minute status conference is unreasonable. Accordingly, Kegley's fees will be reduced by the equivalent of 2.0 hours, or \$590.

(2) The defendant complains that the plaintiff's attorneys failed to adequately document which tasks each performed in drafting the permanent injunction brief. The billing sheets reflect that Norris billed for 6.8 hours spent drafting the permanent injunction brief and that Miller billed for 4.0 hours spent drafting and revising the motion and brief. The court finds these time expenditures reasonable and compensable.

(3) The defendant complains that the plaintiff's attorneys failed to adequately document which tasks each performed in

drafting the reply brief for the permanent injunction motion. The defendant points out that Norris billed 4.2 hours, Miller billed 15.3 hours, and Kegley billed 6.5 hours for research, drafting, reviewing, and editing the reply brief. The court agrees that these amounts of time are unreasonable in the aggregate and are most likely redundant; the also court notes that the descriptive entries are too vague to show that any particular hours are not redundant. Accordingly, the court agrees with the defendant, and plaintiff's attorneys' respective fees will be reduced as follows: Norris's fees will be reduced by the equivalent of 2.5 hours, or \$825; Miller's fees will be reduced by the equivalent of 9.3 hours, or \$3,720; Kegley's fees will be reduced by the equivalent of 2.5 hours, or \$737.50.

(4) The defendant complains of unnecessary and irrelevant research done in several categories prior to the permanent injunction hearing, including 0.3 hours Kegley billed for emails with outside attorneys about their P&A access, 4.0 hours she billed for collecting peer review requests and denials while the facts relevant to the hearing were stipulated to, and 1.0 hour Norris billed for reviewing "DOJ findings letters in US v. GA re: protections from harm." The plaintiff's attorneys do not justify these hours, and the court agrees that they are unreasonable. Accordingly, the plaintiff's counsels' respective fees will be

reduced as follows: Norris's fees will be reduced by the equivalent of 1.0 hour, or \$330, and Kegley's fees will be reduced by the equivalent of 4.3 hours, or \$1268.50.

(5) The defendant complains that the plaintiff's attorneys billed 24.6 hours preparing their witness, Ms. Moore, for the permanent injunction hearing. The billing sheets reveal 8.2 hours billed by Norris, 12.1 hours billed by Miller, and 0.4 billed by Kegley for meeting or preparing witness examination. While the plaintiff's attorneys argue that their entries also reflect planning for cross examination of Dr. Shelp, the descriptions are simply too vague. The court agrees with the defendant that, in any case, the total time billed for preparing for the hearing was unreasonable. Accordingly all the fees billed by Miller and Kegley for witness preparation, in amounts of \$4,840 and \$118, respectively, will be disallowed.

(6) The defendant complains that both Norris and Kegley billed for drafting the proposed remedy, as ordered by the court. The court finds these time expenditures reasonable and compensable.

(7) The defendant complains that the plaintiff's attorneys billed a combined 13.1 hours preparing its attorney's fees request. The court finds the time expenditures for the fees request reasonable and compensable. Moreover, a prevailing plaintiff is

entitled to attorney's fees for litigating its fee claim. Cruz v. Hauck, 762 F.2d 1230, 1233-34 (5th Cir. 1985).

C. Adjustment to the Lodestar

Once the lodestar is obtained, the court may then adjust it upwards or downwards. Hensley, 461 U.S. at 434; Blum v. Stenson, 465 U.S. 886, 897 (1984); Barnes, 168 F.3d at 427; Norman, 836 F.2d at 1302. The Supreme Court and Eleventh Circuit have stated that while the adjustment may be based on a number of factors, the most important factor is the results obtained. Hensley, 461 U.S. at 434; Norman, 836 F.2d at 1302. The Supreme Court has warned, however, that upward adjustments are rarely warranted because the factors on which a prevailing party typically seeks an enhancement already have been considered by the court in determining the reasonable hourly rate:

Expanding on our earlier finding in Hensley that many of the Johnson[v. Georgia Highway Express, Inc.], 488 F.2d 714 (5th Cir. 1974) factors "are subsumed within the initial calculation" of the lodestar, we specifically held in Blum that the "novelty [and] complexity of the issues," "the special skill and experience of counsel," the "quality of representation," and the "results obtained" from the litigation are presumably fully reflected in the lodestar amount, and thus cannot serve as independent bases for increasing the basic fee award.

Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 565 (1986).

The plaintiff in this case does not seek an enhancement of the lodestar, and the court finds no basis for such enhancement. However, the court does find that the degree of success and benefit to the public as a result of this case do warrant the award of the full lodestar amount.

IV. Conclusion

For the reasons set forth above, the plaintiff's motion for attorney's fees [Doc. No. 83] is GRANTED in the reduced amount of \$39,561.50. The defendant is DIRECTED to remit payment on or before November 15, 2012. Failure to do so will result in contempt sanctions.

SO ORDERED, this 12th day of September, 2012.

/s/Charles A. Pannell, Jr.
CHARLES A. PANNELL, JR.
United States District Judge