

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAMES R. ADAMS,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 1:17-cv-00181 (VAC-MPT)
)	
THE HON. JOHN CARNEY,)	
Governor of the State of Delaware,)	
)	
Defendant.)	

**PLAINTIFF'S MOTION FOR AN AWARD OF FEES AND COSTS
PURSUANT TO 42 U.S.C. §1988 AND
FEDERAL RULE OF CIVIL PROCEDURE 54(d)**

Plaintiff James R. Adams hereby moves, pursuant to 42 U.S.C. §1988(b) and Fed. R. Civ. P. 54(d), for an award of attorney's fees and costs, and in support thereof states as follows:

1. On February 21, 2017, Adams filed his Complaint seeking Declaratory and Injunctive Relief Under 42 U.S.C. §1988.

2. On March 21, 2017, Gov. Carney filed a Motion to Dismiss and a supporting brief. While briefing was underway in connection with that motion, Adams filed an Amended Complaint on April 10, 2017. Gov. Carney filed an Answer to the Amended Complaint on April 24, 2017.

3. On September 29, 2017, the parties, in accordance with the Scheduling Order entered by the Court on May 22, 2017, filed cross-motions for summary judgment.

4. On December 6, 2017, the Court issued a Memorandum Opinion and an Order granting Adams' Motion for Summary Judgment and denying Gov. Carney's Motion for Summary Judgment.

5. "In any action or proceeding to enforce a provision of section[]...1983..., the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." 42 U.S.C. §1988.

6. "A plaintiff 'prevails,'...when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff"... "[A]n injunction or declaratory judgment, like a damages award, will usually satisfy that test." *Lefemine v. Wideman*, 568 U.S. 1, 4 (2012).

7. The ruling of the Court was a complete victory for Adams, as he is no longer ineligible for any State judicial opening (he recently applied for the seat being vacated by the Hon. Jane Brady of the Delaware Superior Court, which otherwise would have been open to Republican candidates only). There is simply no reasonable argument that Adams is not the prevailing party.

8. Having established that Adams is the prevailing party, thus eligible for fees, courts look to the "lodestar" method of determining an appropriate fee. This method determines a reasonable hourly rate, judged by prevailing market rates in the relevant community (in this case, Delaware) and multiplies that rate by a reasonable amount of time spent on the case. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 551 (2010). "[T]he lodestar method produces an award that roughly approximates the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable case." *Id.*

9. A "reasonable fee" is "a fee that is sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case." *Id.* at 552.

10. As the Declaration of David L. Finger (attached hereto as Exhibit 1) indicates, his standard rate is \$400.00 per hour.¹ Recent decisions of this Court have established that this rate is well within the range of market rates in Delaware for civil rights cases. *See, e.g., Robinson v. First State Community Action Agency*, 2017 WL 3730362 at *4 (D. Del. Aug. 29, 2017) (\$410 per hour deemed reasonable); *Bethea v. Rash*, 2015 WL 4477693 at *3 (D. Del. July 22, 2015) (\$450 per hour is

¹¹ The affidavit reflects that counsel took on this case on a type of contingent basis, accepting as payment only such award as the Court may make under 42 U.S.C. §1988. The risk of loss assumed as a result of a contingent fee agreement justifies upward enhancement of the award. *See Hall v. Borough of Roselle*, 747 F.2d 838, 842-43 (3rd Cir. 1984).

"commensurate with those charged by Wilmington counsel of similar stature in similar matters"); *Foltz v. Delaware State University*, 70 F.Supp.3d 699, 704 (D. Del. 2014) (hourly rates of \$420 and \$505 deemed reasonable).

11. Counsel spent 57.3 hours on this case, which includes:

i. 14.0 hours preparing a response to defendants' motion to dismiss;

ii. 4.0 hours in preparing interrogatory responses and preparing for

and attending Adams' deposition;

iii. 0.2 of other discussions with Adams;

iv. 0.1 in preparation of initial disclosures; and

v. 36.5 hours doing legal research and drafting an opening and reply

brief in support of Adams' motion for summary judgment and an answering brief in opposition to Gov. Carney's motion for summary judgment;

vi. 5.5 in preparation of the fee petition.²

12. The hours recorded are reasonable. *Compare Lee v. City of Chicago*, 2008 WL 5377798 at * (N.D. Ill. Dec. 8, 2008) (136.1 hours of lawyer time and 34.7 hours of paralegal time where plaintiff accepted defendants' offer of judgment while the parties were still responding to written discovery requests and had only taken one deposition-plaintiff's, and before conducting significant discovery, filing

² Time spent preparing and litigating a fee petition is compensable. *Planned Parenthood v. Attorney General of the State of N.J.*, 297 F.3d 253, 268 (3d Cir.2002).

motions for summary judgment or preparing for trial); *Wade v. Colaner*, 2010 WL 5479625 at *7 (D.N.J. Dec. 28, 2010) (71.1 hours to prepare five motions in limine is reasonable); *Styers v. Pennsylvania*, 621 F.Supp.2d 239, 244-45 (M.D. Pa. 2008) (48 hours reasonable for one summary judgment brief).³

13. Thus, 57.3 hours x \$400 per hour equals \$22,920.00.

14. Adams also seeks to recover costs, reflected on the invoice, consisting of the initial filing fee, the service of process fee (using Parcels)⁴, and the cost of photocopying and delivery of the Court's copy of documents (again, using Parcels). This amounts to \$534.70.

CONCLUSION

Wherefore, for the foregoing reasons, plaintiff James R. Adams respectfully requests that the Court award attorney's fees in the amount of at least \$22,920.00 and costs in the amount of \$537.00.

³ The recorded time does not include time spent on matters such as short telephone calls and emails, as it is counsel's practice and custom not to charge for such brief actions.

⁴ 28 U.S.C. §1920.

Respectfully submitted,

/s/ David L. Finger

David L. Finger (ID #2556)

Finger & Slanina, LLC

One Commerce Center

1201 N. Orange St., 7th fl.

Wilmington, DE 19801

(302) 573-2525

Attorney for plaintiff James R. Adams

Dated: December 19, 2017