Docket No. 11-1399

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Reaching Hearts International, Inc. .....Appellee,

v.

Prince George's County
County Council of Prince George's County..... Appellants.

On Appeal From The United States District Court
For The District Of Maryland

BRIEF OF APPELLANTS

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JURISDICTIONAL STATEMENT

This litigation involved claims under the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc to 2000cc-5, and the Equal Protection Clause, U.S. Const. amend. XIV. The present appeal concerns the district court's award of attorneys' fees and expenses under 42 U.S.C. § 1988. Accordingly, the district court had federal question jurisdiction under 28 U.S.C. § 1331.

On March 21, 2011, the district court entered a final order awarding attorneys' fees to Appellee Reaching Hearts International, Inc. Appellants Prince George's County, Maryland and the County Council of Prince George's County timely filed a notice of appeal on April 21, 2011. Accordingly, this court has jurisdiction under 28 U.S.C. § 1291.

ISSUES PRESENTED FOR REVIEW

I. Did the district court err in awarding fees at counsel's customary hourly rates, rather than applying the prevailing market rate for civil rights litigation in the District of Maryland?

II. Did the district court improperly circumvent the holding in *Perdue v. Kenny A.*, 130 S. Ct. 1662 (2010), by increasing counsel's hourly rates as an alternative to a prohibited enhancement?

III. Did the district court err in refusing to exclude from the award time that was duplicative, excessive, or otherwise improper?

IV. Did the district court err in awarding $24,733.60 for online legal research and in-house photocopying, when those expenses were wholly undocumented?

STATEMENT OF THE CASE

Appellee Reaching Hearts International, Inc. ("Reaching Hearts") filed this action in June 2005, alleging that Prince George's County, Maryland and the County Council of Prince George's County (collectively, "the County") violated its rights under the Equal Protection Clause and the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc to 2000cc-5. In April 2008, a jury found in favor of Reaching Hearts and awarded roughly $3.7 million in damages. In November 2008, the district court denied the County's motion for judgment as a matter of law and granted Reaching Hearts' request for injunctive relief. Later that month, Reaching Hearts moved for an award of attorneys' fees and expenses pursuant to 42 U.S.C. § 1988, J.A. 94-96, and filed a bill of costs pursuant to Federal Rule of Civil Procedure 54(d)(1), J.A. 97-99. The district court stayed the fee motion and the bill of costs pending resolution of the County's appeal to the Fourth Circuit. J.A. 133.

The Fourth Circuit affirmed the judgment on March 3, 2010. J.A. 135. Thereafter, Reaching Hearts renewed its motion for attorneys' fees. J.A. 145. On March 11, 2011, the clerk of court entered an order on the November 2008 bill of costs, awarding $7,348.23 of the $28,201.91 claimed. J.A. 149-50. On March 14, 2011, the district court conducted a hearing on the motion for attorneys' fees, at the conclusion of which it directed Reaching Hearts to recalculate its fee request using March 2011 hourly rates for all timekeepers. J.A. 199. Following the submission of the recalculation, the district court entered an order awarding attorneys' fees of $838,722.00 and expenses of $33,400.17. J.A. 202. The County timely noted its appeal. J.A. 203.

STATEMENT OF FACTS

A. The Underlying Litigation

Reaching Hearts is a congregation of the Seventh Day Adventist Church, formed in 2000. In 2002, Reaching Hearts purchased 17 acres of land abutting the Rocky Gorge Reservoir in Prince George's County, Maryland, on which it planned to build a church, a school, and other facilities. J.A. 20. In July 2003, the County denied Reaching Hearts' application for an upgrade of the water and sewer classification of portions of the property, the consequence of which was that 13 of the 17 acres were effectively undevelopable. J.A. 21-23. Reaching Hearts' development of the remaining four acres was hindered by the September 2003 enactment of a zoning ordinance that prohibited owners of property within 2,500 feet of the Reservoir from developing more than 10 percent of the land. J.A. 23-24.

In June 2005, Reaching Hearts filed this action alleging that the County's denial of the water and sewer reclassification and its enactment of the zoning ordinance violated the Equal Protection Clause by discriminating on the basis of religion (Count I) and race (Count II), and that the County had violated RLUIPA by imposing a substantial burden on Reaching Hearts' exercise of its religion (Count III). Reaching Hearts abandoned the race discrimination claim after summary judgment but before trial.

The litigation was vigorously contested by the parties but was not exceptionally protracted. The district court denied the County's motion to dismiss the complaint and, following discovery, its motion for summary judgment. J.A. 38. The court denied Reaching Hearts' attempt to depose the County Executive and members of the

County Council. J.A. 37. The case was tried to a jury over the course of seven days in April 2008. The jury found in favor of Reaching Hearts and awarded $3.7 million in damages, substantially less than the $4.6 million claimed by Reaching Hearts. The district court thereafter awarded injunctive relief.

The County appealed. With this court's permission, both parties filed briefs that exceeded the word-count limitation of Federal Rule of Appellate Procedure 32(a)(7)(B).[1] A panel of the court heard oral argument in January 2010 and in March issued a decision affirming the district court. J.A. 135-43. The court denied the County's subsequent petition for rehearing. J.A. 144.

B. Reaching Hearts' Motion for Attorneys' Fees

Attorney Ward B. Coe, III has represented Reaching Hearts throughout this litigation. When the complaint was filed, Coe was a partner with the firm of Whiteford, Taylor & Preston LLC ("Whiteford"). J.A. 207. Coe remained with Whiteford until July 2007, and during that time Whiteford timekeepers billed 1054.1 hours to the litigation.[2] Coe personally billed 89.9 hours, or approximately 8.5 percent of the total time billed by Whiteford timekeepers. J.A. 211. Whiteford associate Ranak Jasani billed 657.9 hours, or approximately 62 percent of the total time. In July 2007, Coe left Whiteford and became a partner with the firm of Gallagher, Evelius & Jones LLP ("Gallagher"). J.A. 208. Jasani and her institutional knowledge of the litigation

[1] The County's brief contained 17,696 words, and Reaching Hearts' brief contained 19,045 words.

[2] In its renewed motion for attorney's fees, Reaching Hearts claimed 1063.3 hours for Whiteford timekeepers. During district court proceedings, Reaching Hearts conceded that 9.2 of these hours were improperly billed, resulting in an adjusted total of 1054.1. The adjustments included omission of 3.8 of Coe's hours and 2.6 of Jasani's hours.

remained with Whiteford. Her role as the lead associate on the case was assumed by Gallagher associate Brian Tucker.

At the beginning of the representation, Mr. Coe and Reaching Hearts agreed to a "blended, discounted" fee structure, under which Reaching Hearts paid an hourly rate of $250 to all attorneys and an hourly rate of $130 for all paralegals. J.A. 206. (The record does not indicate the rate charged to Reaching Hearts for work by law school student interns, who collectively billed over 150 hours to the case.) Between June 2005 and August 2010, Reaching Hearts paid $560,975.15 in attorneys' fees and expenses. J.A. 206. Reaching Hearts has continued to pay its attorneys during these fee proceedings. J.A. 164. In its Renewed Motion for Attorney's Fees, Reaching Hearts sought compensation for 29 partners, associates, paralegals, and law clerks at each timekeeper's "customary hourly rate"—which in many cases is substantially higher rather than the rate actually paid by Reaching Hearts—for 2,635 hours billed, resulting in a total claimed fee of $724,934.00. J.A. 206. Reaching Hearts additionally argued that the fee should be enhanced by 15 percent on the basis of counsel's degree of success and (although counsel had been paid all along) to compensate for a delay in payment. Finally, Reaching Hearts also sought reimbursement of $40,252.99 in costs, including $3,918.44 for in-house photocopies and $20,815.16 for online research. J.A. 347-49, 352-54.

The County agreed that Reaching Hearts was entitled to an award of reasonable attorneys' fees under 42 U.S.C. § 1988 but argued that the fee request was unreasonable in certain respects. Among other things, the County argued that some of the hourly rates requested by counsel were not consistent with the prevailing market

rate for civil rights litigation in the District of Maryland; that some of the hours claimed were for work that was duplicative, excessive, or otherwise improper; and that enhancement of the award was improper under *Perdue v. Kenny A.*, 130 S. Ct. 1662 (2010). The County also challenged Reaching Hearts' claims for computerized research and in-house photocopying, arguing that these expenses were inadequately documented.

On March 11, 2011, the Clerk of Court entered an order concerning Reaching Hearts' November 2008 bill of costs. The Clerk taxed costs of $7,348.23 against the County but denied $20,853.68 in costs. J.A. 149. As is relevant here, the Clerk denied Reaching Hearts' claim for in-house photocopying because Reaching Hearts had failed to provide documentation of the expense. J.A. 150.

The district court conducted a hearing regarding attorneys' fees on March 14, 2011. The court approved the rates requested by counsel and rejected the County's challenges to the hours claimed. Noting that Reaching Hearts sought "an enhancement for spectacular results" and "something that would give them the benefit of lost time and value of money," J.A. 194, the court directed Reaching Hearts to recalculate its attorneys' fees using March 2011 rates for all timekeepers for "the entirety of the litigation," J.A. 195, unless the timekeeper's actual hourly rate was less than the rate actually paid by Reaching Hearts, J.A. 199. To the extent this hourly rate was "too generous," the district court concluded that the rate increase was proper as an enhancement for "really superior attorney performance." J.A. 197.

The district court rejected the County's challenge to the claimed expenses for computerized research and in-house photocopying. J.A. 193-94. The court

disregarded the clerk's order denying copying costs for inadequate documentation, saying that it was "done under completely different authority with completely different restrictions." J.A. 196.

Reaching Hearts thereafter submitted a supplemental affidavit by Coe applying the greater of (1) the timekeeper's current hourly rate[3] or (2) the hourly rate under the agreed-upon fee structure with Reaching Hearts. The result was that the total fees claimed by Whiteford timekeepers were increased by 24.2 percent, and Reaching Hearts' overall fee request increased by 12.4 percent.

On March 22, 2011, the district court entered an order awarding Reaching Hearts $838,722.00 in attorneys' fees and $33,400.17 in expenses—every penny requested by Reaching Hearts, plus a 12 percent enhancement of the fee. The County timely filed this appeal.

[3] In the case of timekeepers no longer with Whiteford or Gallagher, the timekeeper's last hourly rate was applied.

SUMMARY OF THE ARGUMENT

A reasonable fee is the product of the prevailing market rate in the community for the type of work performed, multiplied by the number of hours appropriately spent on the litigation. The district court, having the greatest familiarity with the litigation, must scrutinize a fee request and make adjustments necessary to limit a fee award to these parameters. Unfortunately, the district court here abandoned its gatekeeping role. The result is a fee award that compensates counsel at hourly rates far above the prevailing rates for civil rights litigation in the District of Maryland and that includes hours that should have been excluded. In addition to incorrectly calculating the lodestar, the court ignored Supreme Court precedent by directing application of up-to-the minute rates for all timekeepers, effectively awarding a 12 percent enhancement of the fee. And, the award of expenses is flawed in that the district court failed to exclude inadequately documented electronic research and copying charges.

Attorneys' fee awards are not supposed to result in a second major litigation. Had the district court exercised appropriate discretion over Reaching Hearts' fee request, this appeal likely would not have been filed. But the County cannot be expected simply to knuckle under and pay the exorbitant amount awarded by the district court. Neither should the award be remanded to the district court for yet another round of litigation. The County asks this court to identify the appropriate hourly rate and the number of hours reasonably expended by Reaching Hearts' counsel, and to rule on the propriety of the challenged expenses, so that the purposes of § 1988 can be fulfilled and this litigation can finally end.

ARGUMENT

The purpose of an award of "a reasonable attorney's fee" under 42 U.S.C. § 1988 "is to ensure effective access to the judicial process for persons with civil rights grievances without simultaneously producing windfalls to the attorneys." *Trimper v. City of Norfolk*, 58 F.3d 68, 74 (4th Cir. 1995). Fee-shifting provisions "were not designed as a form of economic relief to improve the financial lot of attorneys, nor were they intended to replicate exactly the fee an attorney could earn through a private fee arrangement with his client." *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986).

"In calculating an award of attorney's fees, a court must first determine a lodestar figure by multiplying the number of reasonable hours expended times a reasonable rate." *Robinson v. Equifax Information Services, LLC*, 560 F.3d 235, 243 (4th Cir. 2009). In determining what constitutes a "reasonable" number of hours and hourly rate, courts are guided by the following twelve factors:

> (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Id. at 243-44 (citing *Barber v. Kimbrell's Inc.*, 577 F.2d 216, 226 n.28 (4th Cir. 1978). The district court must scrutinize the fee application and delete time that is "excessive,

redundant, or otherwise unnecessary," bearing in mind that "[h]ours that are not properly billed to one's *client* are not properly billed to one's *adversary*." *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983) (emphasis in original). The resulting lodestar figure is strongly presumed to be fully compensatory. *See Perdue*, 130 S. Ct. at 1673; *Trimper*, 58 F.3d at 74. It is the fee applicant's burden to prove the reasonableness of the claimed hourly rates and hours billed. *Hensley*, 461 U.S. at 437. In making a fee award, the court must bear in mind that "fees are paid in effect by state and local taxpayers, and because state and local governments have limited budgets, money that is used to pay attorney's fees is money that cannot be used for programs that provide vital public services." *Perdue*, 130 S. Ct. at 1677.

A district court's award of attorneys' fees is reviewed for abuse of discretion, but "the judge's discretion is not unlimited." *Perdue*, 130 S. Ct. at 1676. A district court abuses its discretion "when it acts arbitrarily or irrationally," or when it refuses to acknowledge or apply "judicially recognized factors constraining its exercise of discretion." *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 226-27 (4th Cir. 2009) (internal quotation marks omitted).

I. THE DISTRICT COURT ABUSED ITS DISCRETION BY AWARDING FEES AT AN HOURLY RATE FAR ABOVE THE PREVAILING MARKET RATE FOR CIVIL RIGHTS LITIGATION IN THE DISTRICT OF MARYLAND

This Court has observed that "determination of the hourly rate will generally be the critical inquiry in setting the 'reasonable fee.'" *Plyler v. Evatt*, 902 F.2d 273, 277 (4th Cir. 1990). To meet its burden of proof, Reaching Hearts must produce, "[i]n addition to the attorney's own affidavits, … satisfactory 'specific evidence of the prevailing market rates in the relevant community' for the type of work" performed.

Id. (quoting *Spell v. McDaniel*, 824 F.2d 1380, 1402 (4th Cir. 1987)). Such evidence may include rates approved for the same attorneys in prior litigation of the same type; affidavits from attorneys familiar with hourly rates charged for civil rights litigation in the District of Maryland, and attorneys' fee awards in other civil rights cases in the District of Maryland. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 290 (4th Cir. 2010) (vacating fee award because the fee applicant failed to provide evidence of the prevailing market rate for black lung cases); *see Robinson*, 560 F.3d at 245-46 (holding that the district court abused its discretion in awarding fees at counsel's customary hourly rates in the absence of evidence that those rates were consistent with the prevailing market rate for consumer-rights litigation in the Eastern District of Virginia).

This Court has repeatedly emphasized the importance of proof that the claimed hourly rate is consistent with the market rate for the specific type of litigation involved. *See, e.g.*, *Holiday*, 591 F.3d at 227 ("[W]e have said that an attorney identifies the appropriate hourly rate by demonstrating what similarly situated lawyers would have been able to charge *for the same service*." (emphasis added)). For example, in *Depaoli v. Vacation Sales, L.L.C.*, 489 F.3d 615, 622 (4th Cir. 2007), this court rejected the rate claimed by counsel because of "an absence of evidence in the record to support a market rate of $305 and $325 per hour for charges by a plaintiff's Title VII attorney *in Title VII cases*." This court has also held that a district court abused its discretion in approving requested hourly rates when the fee applicant "offered no specific evidence that the hourly rates sought for his attorneys coincided with the then prevailing market rates of attorneys in the Eastern District of Virginia of similar skill and for

similar work, which our case law required him to do." *Grissom v. Mills Corp.*, 549 F.3d 313, 323 (4th Cir. 2008). In contrast, *Plyler v. Evatt* approved counsel's requested hourly rates when those rates were supported by evidence of hourly rates charged in other civil rights cases in the District of South Carolina. *Plyler*, 902 F.2d at 278.

A. Reaching Hearts has offered no evidence to prove that the requested hourly rates are consistent with the prevailing market rate for civil rights litigation in the District of Maryland.

Reaching Hearts requested compensation at all timekeepers' customary hourly rates, which ranged from $335 to $470 for partners, from $215 to $290 for associates, and up to $250 and $190 for law clerks and paralegals, respectively. The evidence offered in support of these claimed rates, however, does not satisfy the well-established requirements of Fourth Circuit law. First, Coe's affidavit, in which he attested that the requested rates were the "customary hourly billing rates" for all timekeepers and were "consistent with those customarily charged by law firms, attorneys and other professionals with similar experience, competency, and reputations in the Baltimore-Washington Community," J.A. 208-10, says nothing about the "customary or prevailing rates for civil rights … litigation in" Maryland. *Plyler*, 902 F.2d at 278. Reaching Hearts also offered affidavits from attorneys Benjamin Rosenberg and Timothy Maloney, both of whom attested that the requested rates were consistent with rates charged by "law firms, attorneys and other professionals with similar experience, competency, and reputations in the prevailing Baltimore-Washington metropolitan market." J.A. 511 (Rosenberg); J.A. 515 (Maloney). Neither Rosenberg nor Maloney attested that the requested rates were

consistent with the prevailing market rate for civil rights litigation in the District of Maryland.

The inadequacy of this evidence is plain in light of *Buffington v. Baltimore County*, 913 F.2d 113 (4th Cir. 1990). In *Buffington*, the plaintiffs in an action under 42 U.S.C. § 1983 were represented by partners in a prominent Baltimore law firm. Like Reaching Hearts' counsel, plaintiffs' attorneys were highly experienced litigators, but they had no particular experience in civil rights cases. The district court awarded fees at the attorneys' customary hourly rates based upon "affidavit evidence that [the attorneys'] hourly rates were in line with market rates charged private clients for complex civil litigation in the Baltimore community." *Id.* at 129. This court rejected the district court's analysis, holding that experience in civil litigation generally does not justify an award of fees at the attorney's usual hourly rate "without some other evidence corroborating those rates as reasonable for § 1983 litigation in the relevant community." *Id.* at 130.[4] Noting "the Supreme Court's direction in *Blum v. Stenson*, 465 U.S. 886, 895 (1984), that private firms and nonprofit legal services organizations should be treated equally in setting hourly rates under § 1988," this court admonished that it is "impermissible" to consider counsel's ability "as partners in a leading local firm, … [to bill] at the high end of the private market rates." *Id.* at 129 (parallel

[4] The court explained that "high-end hourly rates for experienced counsel in § 1983 litigation" may be justified by counsel's resulting efficiency, such as "their lack of need for extensive background legal research." *Buffington*, 913 F.2d at 130; *see id.* at 130 & n.13 (urging the district court to reconsider whether counsel reasonably expended more than 300 hours on legal research on § 1983 that was "necessitated by these undoubtedly fine lawyers' lack of experience in this field."). In this case, counsel's time records indicate that more than 350 hours were devoted to research. *See infra* Part III.A.

citations omitted). The evidence offered in support of the claimed hourly rates was insufficient because "the affidavits do not provide specific information about market rates in Baltimore for *comparable civil rights cases*." *Id.* (emphasis added).

Here as in *Buffington*, Reaching Hearts offered no "specific corroborating evidence of rates charged for civil rights litigation in" the District of Maryland. *Id.* at 130. Coe attested that his rate and the rates of other timekeepers were their "customary hourly billing rates." J.A. 208-09. But Coe is not a civil rights attorney; he is "known for his defense work in high profile class action cases." J.A. 483. The supporting affidavits of Maloney and Rosenberg are no more probative than Coe's. Maloney's affidavit does not even mention civil rights litigation, much less discuss typical hourly rates for such litigation in the District of Maryland. Rosenberg's affidavit is telling for what it does *not* say. Although Rosenberg discusses his role as counsel in a RLUIPA case, J.A. 510, he does not state what his rate was in that litigation, nor does he state that the rates of Reaching Hearts' attorneys are reasonable *for RLUIPA cases*.[5] The Maloney and Rosenberg affidavits thus do not support Reaching Hearts' claim that the requested rates are market rates for civil rights litigation. *See Norman v. Housing Auth.*, 836 F.2d 1292, 1299 (11th Cir. 1988) ("[E]vidence necessarily must speak to rates actually billed and paid in similar lawsuits.

[5] Rosenberg also attests that the verdict in this case was extraordinary because of "the fact that the matter was brought against a government entity." J.A. 510. But every land-use claim under RLUIPA is brought against a government entity. *See* 42 U.S.C. § 2000cc(a)(1) ("*No government* shall impose or implement a land-use regulation in a manner that imposes a substantial burden on … religious exercise ...." (emphasis added)).

Testimony that a given fee is reasonable is therefore unsatisfactory evidence of market rate.").

B. The hourly rates negotiated between Reaching Hearts and its attorneys are the best evidence of the reasonable hourly rate.

In the absence of evidence from Reaching Hearts to support its requested rates, this Court must look elsewhere to determine the reasonable hourly rates. One source of evidence is "the rate actually charged by the petitioning attorneys when it is shown that they have collected those rates in the past from the client." *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994). For example, in *Depaoli* the plaintiff and her attorney negotiated an hourly rate of $225 for representation in Title VII discrimination litigation. *Depaoli*, 489 F.3d at 622. After prevailing, the attorney applied for fees at higher "market rates" of $305-325. *See id.* Concluding that the attorney had failed to offer "evidence of what attorneys earn from paying clients for similar services in similar circumstances," this court looked to the "only … relevant evidence," namely, the agreed-upon rate of $225 per hour. *Id.* at 622. This court calculated the fee award using that rate. *Id.* at 622-23.

Here, just as in *Depaoli*, Reaching Hearts has offered no "specific evidence" supporting the claimed hourly rates of its attorneys. On the other hand (and again, just as in *Depaoli*), we do know the hourly rate actually negotiated with, agreed to, and paid by Reaching Hearts: $250 for all attorneys, $130 for paralegals. Compensation at these rates was a sufficient inducement for Coe to take on the representation, and thus these rates are reasonable for purposes of § 1988.

C. The requested hourly rates are unreasonable in light of other attorneys' fee awards in the District of Maryland.

In addition to evidence of what counsel actually charged their client, the court may look to other awards of attorneys' fees for similar cases in the relevant community. *See Trimper*, 58 F.3d at 75-76 ("[T]he district court properly awarded an hourly rate comparable to rates in similar cases, rather than relying on [the attorney's] bare assertion that he should be awarded a rate of $215 because that is his usual rate."). The court may also look to formal guidelines established by custom or local rule, such as the Laffey Matrix in the District of Columbia. *See Smith v. District of Columbia*, 466 F. Supp. 2d 151, 155-56 (D.D.C. 2006). In this case, both of these sources confirm the reasonableness of the rates actually charged by counsel.

1. Appendix B to the Local Rules for the District of Maryland sets forth presumptively reasonable hourly rates for attorneys' fee awards in civil rights cases.

In July 1997, the District of Maryland adopted the *Rules and Guidelines for Determining Lodestar Attorneys' Fees in Civil Rights and Discrimination Cases*. The *Rules and Guidelines* are codified as Appendix B of the Local Rules of the District of Maryland and are colloquially known as the "Appendix B" guidelines.[6] Appendix B sets forth certain mandatory rules for awards of attorneys' fees under federal fee-shifting legislation. Appendix B also sets forth a graduated scheme of hourly rates based upon an attorney's years of experience:

[6] The current version of Appendix B is attached as an addendum to this brief.

Years since admission	Hourly Rate
0 to 5	$150-190
5 to 8	$165-250
9 to 14	$225-300
15+	$275-400
Paralegals and law clerks	$95-115

See D. Md. R. Appendix B.[7]

Appendix B was adopted to resolve "specific, recurring issues that judges and lawyers routinely encountered when dealing with" fee applications. Hon. Catherine C. Blake, *Rules and Guidelines for the Management of Attorney's Fees*, 27 U. Balt. L. Rev. 1, 4 (1997). The Appendix B guidelines initially applied only to civil rights litigation but now apply to all fee awards based on the lodestar calculation method. The hourly rates set forth in Appendix B rates were formulated by a committee comprised of "a distinguished group of practitioners from a variety of geographical and career backgrounds," including six attorneys, Chief District Judge J. Frederick Motz, District Judge Catherine C. Blake, and Magistrate Judge William Connelly. *Id.* at 4 n.19. The committee assessed (1) fees awarded to prevailing plaintiffs in civil rights litigation,

[7] These rates became effective in January 2008. Prior to that time—*i.e.*, during the first three years of this litigation—the rates were substantially lower:

0-5 years:	$135-170
5-8 years:	$150-225
More than 8 years:	$200-275
Paralegals/law clerks:	$90

D. Md. Rules Appendix B (Aug. 15, 2004). Historical versions of the local rules are available on the District of Maryland's PACER website under Case No. 1:10-mc-642.

and (2) hourly rates charged by defense counsel in civil rights litigation, adjusted upward to reflect the risk of nonpayment faced by prevailing plaintiffs. *See id.* at 13. "The reasonableness of the ranges established by [Appendix B] is supported by the fact that both methods of identifying rates came to essentially similar results." *Id.* Although the Appendix B rates are not binding, the courts in the District of Maryland have accepted them as "presumptively reasonable." *See, e.g.*, *Bell v. Baltimore County*, 550 F. Supp. 2d 590, 593 (D. Md. 2008); *Poole ex rel. Elliot v. Textron, Inc.*, 192 F.R.D. 494, 509 (D. Md. 2000); *see also Xiao-Yue Gu v. Hughes STX Corp.*, 127 F. Supp. 2d 751, 767 (D. Md. 2001) (describing Appendix B rates as the "prevailing market rate" in the District of Maryland).

2. Judges in the District of Maryland consistently reduce requested hourly rates that are higher than Appendix B levels and just as consistently approve requested rates that are within Appendix B levels.

A survey of attorneys' fee awards in the District of Maryland between January 1, 2010 and June 30, 2011 establishes that the Appendix B rates are, in fact, the prevailing market rates for civil rights and discrimination litigation in the District. Westlaw research indicates that the District of Maryland made 26 attorneys' fee awards between January 1, 2010 and June 30, 2011.[8] Twenty-four of the awards were at hourly rates within the Appendix B guidelines, and of those 24:

- In 8 cases, the court reduced requested hourly rates to Appendix B levels;[9]

[8] This number excludes *Prestige Capital Corp. v. Target Masonry & Flooring, Inc.*, 2010 WL 4182951 (D. Md. Oct. 25, 2010), in which a fee award was made but there is insufficient information to determine the hourly rate approved by the court.

[9] *Beyond Sys., Inc. v. World Ave. USA, LLC*, 2011 WL 1899389, at *3-4 (D. Md. May 18, 2011); *Flores v. Life Ins. Co. of N. Am.*, ___ F. Supp. 2d ___, 2011 WL 921826, at *7 (D.

- In 11 additional cases, the court approved the requested hourly rates based, in whole or in part, on the fact that the requested rates were within the Appendix B guidelines;[10]
- In 5 more cases, the approved hourly rate was in fact within Appendix B, although the court did not explicitly mention this fact.[11]

Md. 2011) (reducing requested hourly rate from $450 to $300 for attorney in practice since 1992); *Hylind v. Xerox Corp.*, 2011 WL 806419, at *4-5 (D. Md. Feb. 28, 2011); *Md. Elec. Indus. Health Fund v. K&L Elec., Inc.*, 2010 WL 3056935, at *1-2 (D. Md. Aug. 3, 2010); *Monge v. Portofino Ristorante*, 751 F. Supp. 2d 789, 800-01 (D. Md. 2010) (reducing requested rate from $349 to $200; top of Appendix B range was $190); *Moore v. Sebelius*, 2010 WL 1881753, at *1 (D. Md. May 10, 2010); *Laborers' Dist. Council Pension v. E.G.S., Inc.*, 2010 WL 1568595, at *5 (D. Md. Apr. 16. 2010) (reducing associate's requested rate from $300 to $200 and approving partner's rate of $390 as within the applicable Appendix B range); *Kiddie Academy Domestic Franchising LLC v. Faith Enters. DC, LLC*, 2010 WL 673112, at *8-9 (Feb. 22, 2010).

[10] *Antonio v. Sec. Serv. of Am., LLC*, 2011 WL 1230892, at *2-3 (D. Md Mar. 30, 2011); *Asbestos Workers Local 24 Pension Fund v. NLG Insulation, Inc.*, 760 F. Supp. 2d 529, 543 (D. Md. 2010); *Plumbers & Steamfitters Local 486 Pension Fund v. RLS Heating, Air Conditioning & Refrigeration, LLC*, 2010 WL 5391450, at *6 (D. Md. Dec. 22, 2010) (reducing requested rate for associate to $215, slightly above Appendix B maximum, because more senior attorney requested an hourly rate of $225, well below the applicable range of $275-400); *Cross v. Fleet Reserve Ass'n Pension Plan*, 2010 WL 3609530, at *5 (D. Md. Sept. 14, 2010) *Almandarez v. J.T.T. Enters. Corp.*, 2010 WL 3385362, at *2 (D. Md. Aug. 25, 2010); *First Bankers Corp. v. Water Witch Fire Co.*, 2010 WL 3239361, at *2 (D. Md. Aug. 16, 2010); *Jones v. Williams*, 2010 WL 2813483, at *5 (D. Md. July 14, 2010); *McIntosh v. McLaurin*, 2010 WL 2802167, at *3 (July 14, 2010); *J&S Sports Prods., Inc. v. Greene*, 2010 WL 2696672, at *6 (D. Md. July 6, 2010); *Davis v. Home Depot U.S.A., Inc.*, 2010 WL 1245775, at *5 (D. Md. Mar. 26, 2010); *Trustees of the Nat'l Auto. Sprinkler Indus. Welfare Fund v. Fire Sprinkler Specialties, Inc.*, 2010 WL 723803, at *1 (D. Md. Feb. 23, 2010); *Hobby Works, Inc. v. Protus IP Solutions, Inc.*, 2010 WL 234968, at *2 (D. Md. Jan. 15, 2010).

[11] *Trustees of the Nat'l Auto. Sprinkler Indus. Welfare Fund v. Advanced Safety, Inc.*, 2011 WL 2119083, at *3 (D. Md. May 25, 2011); *Chanel, Inc. v. Banks*, 2011 WL 121700, at *14 (D. Md. Jan. 13, 2011); *Bd. of Trustees v. Fraternal Order of Eagles No. 245*, 2010 WL 4806975, at *4 (D. Md. Nov. 18, 2010); *Diegert v. Baker*, 2010 WL 3860639, at *6 (D. Md. Sept. 30, 2010); *Nicholes v. Advanced Credit Mgmt., Inc.*, 2010 WL 2998625, at *2 (D. Md. July 25, 2010).

Moreover, every single fee award in cases involving civil rights or similar claims has been at hourly rates within the Appendix B guidelines. *See Hylind*, 2011 WL 806419, at *5 (gender discrimination; reducing hourly rates to mid-point of Appendix B guidelines); *Almandarez*, 2010 WL 3385362, at *2 (Fair Labor Standards Act; approving rates as "within accepted rates identified in Appendix B"); *Nicholes*, 2010 WL 2998625, at *2 (Fair Debt Collection Practices Act; approving rate within Appendix B without mentioning guidelines); *Jones*, 2010 WL 2813483, at *5 (Fair Labor Standards Act; approving rate as within Appendix B); *Monge*, 751 F. Supp. 2d at 800-01 (Fair Labor Standards Act; reducing hourly rate from $349 to $200); *Moore*, 2010 WL 1881753, at *1 (gender discrimination; reducing rate from $250 to $215 and directing that clerical tasks performed by attorney be compensated at $95 per hour).

Only twice in the past 18 months has the District of Maryland awarded attorneys' fees at an hourly rate above the Appendix B guidelines. In both cases, the circumstances were substantially different than this case. In *Whitaker v. Navy Federal Credit Union*, 2010 WL 3928616 (D. Md. Oct. 4, 2010), the court awarded attorneys' fees in an action by a class of credit union borrowers whose vehicles had been repossessed. One of the two attorneys requested fees at an hourly rate of $400, within the applicable Appendix B range of $275-400. The other attorney requested an hourly rate of $450. The district court approved this rate in light of the attorney's "wealth of experience in litigating class actions under federal consumer protection statutes." *Id.* at *6; *accord Buffington*, 913 F.2d at 130 (noting that "high-end hourly rates" may be awarded to attorneys with substantial experience with the type of case for which fees are awarded). Unlike the plaintiff class in *Whitaker*, Reaching Hearts does not claim

that any of the requested hourly rates are justified by the timekeeper's expertise in civil rights litigation.

The second case was *Plasterers' Local 96 Pension Plan v. Perry*, 711 F. Supp. 2d 472 (D. Md. 2010). In awarding fees under ERISA, the court noted that all of the attorneys involved had substantially reduced their ordinary billing rates and that the lead partner requested fees at $385 per hour, a rate within the Appendix B guidelines. *Id.* at 477. In light of this, the court approved rates for some other attorneys that were slightly above Appendix B rates, noting that the case was complex and that the slightly higher rates were consistent with other fee awards in ERISA litigation. *Id.* at 477-78. Here, in contrast, Reaching Hearts is requesting fees at hourly rates that are, in many cases, significantly higher than the Appendix B guidelines. The notable exception is Brian Tucker, whose regular practice *does* include litigation of discrimination claims on behalf of various nonprofit institutions including religious entities. J.A. 486. Tucker's 2010 customary hourly rate of $235 falls well within the Appendix B guidelines for attorneys in practice between five and nine years.

D. Conclusion

Based upon the evidence, the County asks this Court to hold that the reasonable hourly rate for calculating the lodestar is the rate actually charged by counsel and actually paid by Reaching Hearts throughout this litigation. In no event, however, should fees be awarded at an hourly rate higher than the rates set forth in Appendix B.[12]

[12] If this Court concludes that the reasonable hourly rates for this case are the Appendix B rates, the County requests that rates be set at the applicable Appendix B rate for those timekeepers whose actual hourly rates exceeds the applicable range, and

II. THE DISTRICT COURT ABUSED ITS DISCRETION BY AWARDING FEES AT MARCH 2011 RATES, EFFECTIVELY GRANTING AN ENHANCEMENT OF THE FEE AWARD

The Supreme Court has "established a strong presumption that the lodestar represents the reasonable fee, and [has] placed upon the fee applicant who seeks more than that the burden of showing that such an adjustment is necessary to the determination of a reasonable fee." *City of Burlington v. Dague*, 505 U.S. 557, 602 (1992) (internal quotation marks & citation omitted). The Supreme Court recently addressed the issue of enhancements to the lodestar calculation in *Perdue v. Kenny A.*, 130 S. Ct. 1662 (2010). In *Perdue*, the district court granted a 75 percent enhancement of a $10.5 million fee award on the grounds that (1) an enhancement was necessary to compensate counsel for the delay in payment of their fees; and (2) the relief obtained—a consent decree that benefited 3,000 children in Georgia's foster care system—was extraordinary. *See id.* at 1670. The Supreme Court vacated the enhancement, holding "there is a strong presumption that the lodestar is sufficient; factors subsumed in the lodestar calculation cannot be used as a ground for increasing an award above the lodestar; and a party seeking fees has the burden of identifying a factor that the lodestar does not adequately take into account and proving with specificity that an enhanced fee is justified." *Id.* at 1669.

In this case, Reaching Hearts sought a 15 percent enhancement of the lodestar amount as a reward for counsel's "extraordinary" success and as a means of compensating counsel for a purported delay in payment. The district court recognized

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at the timekeeper's actual rate for those timekeepers whose hourly rates are within the applicable Appendix B range.

that an enhancement was improper under *Perdue* but made clear his dissatisfaction with that fact. J.A. 197 ("I am sorely tempted to enhance the award in this case for superior results, and the problem I have is that Justice Alito's opinion indicated that there are few such circumstances that they are rare and exceptional and require specific evidence that the lodestar fee would not have been adequate to attract competent counsel."). To get around *Perdue*—and despite having disregarded Fourth Circuit law in its determination of the lodestar hourly rate—the district court awarded fees at March 2011 rates, claiming that doing so was necessary to make up for a "delay in payment" suffered by the attorneys. But it is clear that the court's purpose was, at least in part, to reward counsel's success:

> I conclude that whether it's – whether an enhancement is appropriate under this case or not which, in my heart of hearts believe probably should be, I think that applying current hourly rates to the recovery of fees in this case is fully justified by the time value of money. And to the extent that that's too generous, which I doubt it is, that this does represent in my judgment a case of superior – I mean really superior attorney performance.

J.A. 197.

The district court's decision to award fees at March 2011 rates is unjustified by the delay-in-payment rule and is contrary to the Supreme Court's holding in *Perdue*.

First, there has been no delay in payment. Quite often, attorneys representing civil rights plaintiffs receive no compensation at all (and no reimbursement for expenses) during the course of the litigation. *See Daly v. Hill*, 790 F.2d 1071, 1081 (4th Cir. 1986). The delay-in-payment rule is premised on the understanding that "compensation received several years after the services were rendered … is not equivalent to the same dollar amount received reasonably promptly as the legal

services are performed." *Missouri v. Jenkins*, 491 U.S. 274, 283 (1989). When there is no deficit—when, as here, counsel have been paid throughout the litigation—there is no reason to increase the lodestar. *Cf. id.* at 284 n.6 (observing that interim fee awards serve the same purpose as a delay-in-payment enhancement). This case thus stands in marked contrast to *Perdue*, in which the attorneys advanced $1.7 million in expenses and received no ongoing fee payments—and yet the Supreme Court indicated that an enhancement was not proper. *Perdue*, 130 S. Ct. at 1676.

Second, an enhancement is not warranted for superior results. The Supreme Court held in *Perdue* that "superior results" do not provide a basis for enhancement of the lodestar amount, because "superior results are relevant only to the extent it can be shown that they are the result of superior attorney performance," as opposed to a sympathetic jury or mistakes by opposing counsel. *Perdue*, 130 S. Ct. at 1674. Because attorney performance is subsumed within the lodestar, an enhancement for superior results is warranted only in the most exceptional cases. *Id.* This case is not exceptional; the results obtained by Reaching Hearts' attorneys are not so extraordinary that the strong presumption in favor of the lodestar fee is overcome.

An enhancement by any other name is still an enhancement. The district court abused its discretion in unilaterally increasing counsel's hourly rates when doing so was unnecessary to compensate for a delay in payment and unjustified to reward counsel for their success.

III. THE DISTRICT COURT ABUSED ITS DISCRETION IN REFUSING TO EXAMINE COUNSEL'S TIME SHEETS AND TO SUBTRACT EXCESSIVE HOURS

This case was vigorously litigated by both parties. The County exerted every

effort to defend itself, and there is no question that Reaching Hearts is entitled to compensation for all hours reasonably expended in pursuit of the relief obtained. This is thus not a case in which the defendant "litigate[s] tenaciously and then … complain[s] about the time necessarily spent by the plaintiff in response." *City of Riverside v. Rivera*, 477 U.S. 561, 580 n.11 (1986) (internal quotation marks omitted). But "[a] prevailing party is not automatically entitled to compensation for all the time its attorneys spent working on the case." *Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 426 F.3d 694, 711 (3d Cir. 2005). Here, the County has identified a limited number of specific instances in which the hours billed by Reaching Hearts' attorneys are unreasonable and should be reduced. The district court declined even to consider the County's challenges, stating that it would not "go through and parse these bills from beginning to end" and declaring broadly that the hours incurred were "very reasonable." J.A. 193.

The district court is duty-bound to "review the time charged, decide whether the hours set out were reasonably expended for each of the particular purposes described and then exclude those that are excessive, redundant, or otherwise unnecessary." *Evans v. Port Authority*, 273 F.3d 346, 362 (3d Cir. 2001) (internal quotation marks omitted); *see Rum Creek Coal Sales*, 31 F.3d at 175 ("The number of hours must obviously be adjusted to delete duplicative or unrelated hours."). In *Rum Creek Coal Sales*, for example, this Court recognized that the plaintiff had "fully prevailed" and thus should be "fully compensated," but nevertheless affirmed the district court's ruling that a substantial number of hours were not reasonably expended and thus should be omitted from the lodestar calculation. *Id.* at 175-78.

Reaching Hearts "bears the burden of establishing entitlement to an award and documenting the appropriate hours expended." *Hensley*, 461 U.S. at 437. In defense of the total number of hours claimed, Reaching Hearts asserts that it excluded "277.1 work hours (equal to $44,193.00)." J.A. 214. But Reaching Hearts does not identify what timekeepers' hours were reduced (was it a partner, an associate, a paralegal, or an intern?), nor for what activities.[13] In the absence of this elementary information, it is impossible to determine what billing judgment might have been exercised through the exclusion of those hours.

A. The district court abused its discretion by refusing to deduct hours for duplicative research resulting from lead counsel Coe's move to the Gallagher firm.

There can be no question that Coe's decision to change law firms in mid-2007 necessarily resulted in a duplication of effort. Although Coe was formally denominated lead counsel, his participation in the litigation while at Whiteford was minimal, amounting to 8.5 percent of the 1,054.1 hours claimed by Whiteford timekeepers. Other Whiteford timekeepers—particularly associate Ranak Jasani, who recorded more than 62 percent of Whiteford hours—spent substantial time researching the law of § 1983 and RLUIPA. Jasani herself spent 109.8 hours,[14] the

[13] The average hourly rate for the excluded time is $159.48, indicating (using the 250/130 blended fee structure) that approximately 75 percent of the excluded time was for non-attorney timekeepers.

[14] Jasani billed 76.8 hours for research alone. She billed an additional 65.9 hours to research combined with some other task, such as drafting a court document, making it necessary to approximate the amount of time devoted to each task. *Cf. Spell v. McDaniel*, 852 F.2d 762, 768 (4th Cir. 1988) ("Because the burden is on the party seeking the fee award to establish the reasonableness of the hours spent, where it is necessary for the court to approximate because of counsel's inadequate record-

majority of the 132.9 hours attributed to research by Whiteford timekeepers. Because Jasani and her familiarity with the applicable law did not follow Coe and this matter to Gallagher, the transfer of the case inevitably caused the creation of inefficiency in the representation of Reaching Hearts. This inefficiency is evidenced in the billing entries of Tucker, who replaced Jasani as the lead associate on the matter. Tucker's billing records indicate that he devoted 166.9 hours to research of the substantive issues,[15] while other Gallagher timekeepers billed 72.8 hours to research. Undeniably, many of these hours would have been unnecessary if Jasani were still working on the case. In order to account for this duplication, the County requests that Tucker's research hours be reduced by one-half, or 83.5 hours.

B. The district court abused its discretion by refusing to deduct hours attributable to overstaffing.

In all, *twenty-nine* timekeepers billed time to this litigation, including eight partners and nine paralegals. "There is nothing inherently unreasonable about a client having multiple attorneys," provided fees are awarded only for "the distinct contribution of each lawyer." *Norman*, 836 F.2d at 1302. But "counsel for plaintiffs in

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keeping we consider it just to do so in favor of the party contesting the fee award." (citation omitted)). In estimating the number of hours devoted to research, the County has assumed that each of two tasks took an equal amount of time. *See Michigan v. EPA*, 254 F.3d 1087, 1091 (D.C. Cir. 2001). The County has thus estimated that the 65.9 hours billed by Jasani for research combined with another task involved 33 hours of research (65.9 ÷ 2 = 32.95; rounding to nearest tenth of an hour = 33).

[15] Tucker billed 49.1 hours to research alone, and another 235.5 hours to research and drafting of a court document. The County has excluded from this time hours billed for research related to attorney's fees and to Reaching Hearts' opposition to the County's motion for stay pending appeal. The County also has not attempted to parse Tucker's time entries immediately before and during trial, where research and several other tasks were combined in a single entry.

civil rights cases … cannot be compensated for the kind of additional overstaffing that is routinely provided in corporate litigation." *Smith v. District of Columbia*, 466 F. Supp. 2d 151, 159 (D.D.C. 2006). A claim that multiple lawyers were necessary to perform a function should be greeted with "healthy skepticism" from the court. *Lipsett v. Blanco*, 975 F.2d 934, 938 (1st Cir. 1992).

Appendix B provides specific guidelines regarding the number of attorneys who may bill for various activities, such as intra-office conferences and attendance at hearings or depositions. The County challenges the hours claimed by counsel to the extent these guidelines were not complied with.

1. Attendance at hearings and depositions

Appendix B provides that "[o]nly one lawyer for each party shall be compensated for attending" depositions unless the fee applicant makes a specific "showing of a valid reason for sending two attorneys to the deposition." Appendix B.2.b & n.4. The same rule applies to hearings. Appendix B.2.c & n.5. The time sheets submitted in support of Reaching Hearts' fee application reflect the following violations of this rule (the hours claimed by each timekeeper are in parentheses):

12/5/05	Coe (3.0) and Jasani (2.5) attend motions hearing, J.A. 227;
2/28/06	Coe (4.6) and Jasani (4.6) attend mediation, J.A. 232;
3/20/06	Coe (4.5) and Jasani (3.6) attend mediation, J.A. 236;
7/11/06	Stone (4.1) and Jasani (3.5) attend motions hearing, J.A. 257;
8/29/06	Jasani conduct (5.4) and Spielberger (5.7) attend deposition, J.A. 265;
9/14/06	Spielberger conduct (9.2) and Jasani attend (7.1) attend deposition, J.A. 269.

Reaching Hearts has offered no justification of why two attorneys were necessary for

these hearings and depositions. The County requests deduction of 21.3 of Jasani's hours and of 5.7 of Spielberger's hours.

2. Only two attorneys should be compensated for attending the trial.

The trial lasted seven days and included testimony from ten live witnesses. Coe conducted the direct examination of each witness for Reaching Hearts and the cross-examination of each witness for the County. He also presented Reaching Hearts' opening and closing statements and argued all motions. In short, the trial was a one-man show. Despite this, Reaching Hearts seeks an award of fees for three timekeepers for all but one day of trial:

4/15/08	Coe, Kinkopf, Tucker
4/16/08	Coe, Tucker, Smolkin
4/17/08	Coe, Tucker, Caldwell
4/18/08	Coe, Kinkopf, Tucker
4/22/08	Coe, Kinkopf, Tucker
4/23/08	Coe, Tucker
4/24/08	Coe, Kinkopf, Tucker

J.A. 299-302. The County does not dispute that Coe reasonably required the assistance of one other person during the course of trial. The most logical person to assist was Tucker, the associate assigned to the case. However, Reaching Hearts offers no justification for the additional presence of Kinkopf (41.3 hours), Smolkin (12.3 hours), or Caldwell (10 hours). These hours should therefore be deducted from Reaching Hearts' fee request.

C. The district court abused its discretion in refusing to deduct excessive time billed for certain tasks.

The fee application is generally free of excessive hours billed to particular events. Nevertheless, the County believes that the following hours should be reduced or eliminated:

- 50 hours claimed by Coe, Conover, and Jasani to research and draft a 14-page complaint, J.A. 218-22;
- 32.3 hours claimed by Jasani for reviewing an unspecified number of audio tapes of unspecified length, J.A. 238-40, 254-58;
- 2.5 hours claimed by paralegal Wilkinson on August 16, 2006 to prepare for Thomas Kunjoo's deposition, J.A. 263, which had been taken a week before, J.A. 261;
- 26.8 hours claimed by Whiteford and Gallagher paralegals to summarize depositions of unidentified deponents[16] or deponents who were not trial witnesses;[17]
- 27.6 hours claimed by Gallagher partner Matthew Oakey, a bankruptcy lawyer, for researching and drafting the appeal brief when three other attorneys and a paralegal were also involved in drafting the brief, J.A. 323-25;[18]
- 51.7 hours claimed by paralegal Smolkin to "cite check the 4th Circuit brief for correct fact citation to the Joint Appendix," J.A. 320-25.

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[16] Whiteford paralegal Bassett claimed 5.8 hours on December 1 and 7, 2006 for summarizing the deposition of an unidentified witness. J.A. 273. Gallagher paralegal Ascione claimed 5.5 hours on March 27, 2008 for summarizing the deposition of County witness Ralph Grutzmacher and unidentified others. J.A. 292.

[17] Gallagher paralegal Ascione claimed 3.8 hours on March 25-26, 2008 for summarizing the depositions of non-witness Tiffany Jennings and witness Leslie Shoemaker. J.A. 290-91. Gallagher paralegal Smolkin claimed 5.0 hours on March 26, 2008 for summarizing the depositions of non-witness Barbara Sollner-Webb and witness Thomas Kunjoo. J.A. 291. Smolkin also claimed 6.7 hours between March 28 and April 4, 2008, for summarizing the deposition of non-witness Beth Forbes. J.A. 292-94.

[18] In all, six timekeepers billed 287.1 hours for researching and drafting Reaching Hearts' brief on appeal—the equivalent of seven 40-hour workweeks.

Other hours should be deducted because the tasks were secretarial, and thus not properly billed as legal fees. *See Harris v. L & L Wings, Inc.*, 132 F.3d 978, 985 (4th Cir. 1997). These are:

- 21.5 hours claimed by Gallagher paralegal Amodeo to "scan" and "transpose" Whiteford invoices, J.A. 331-33, 336, 338-39;
- 3.9 hours claimed by Gallagher paralegal Smolkin on April 18, 2008 to transcribe trial notes, J.A. 300.

The hours billed by Amodeo should be substantially reduced, and the hours billed by Smolkin should be eliminated.

IV. THE DISTRICT COURT ABUSED ITS DISCRETION IN AWARDING EXPENSES FOR INADEQUATELY DOCUMENTED RESEARCH AND COPYING FEES

Under § 1988, Reaching Hearts is entitled "to recover those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988) (internal quotation marks omitted). But the ability to claim expenses does not remove from Reaching Hearts the duty of proving that the expenses were reasonable and necessary to the representation. *See Lee v. Am. Eagle Airlines, Inc.*, 93 F. Supp. 2d 1322, 1335 (S.D. Fla. 2000). "[T]he law is clear that no litigation costs should be awarded in the absence of adequate documentation." *Trimper*, 58 F.3d at 77 (disallowing expenses when the fee applicant submitted only "an unverified 'Chart of Expenses,' with no receipts or bills attached").

In light of the foregoing principles, the following claimed expenses must be disallowed on the basis that Reaching Hearts has failed to establish that they were reasonable and necessary for effective representation and has failed to provide

adequate documentation of costs.

A. Online Research

Reaching Hearts claims entitlement to $20,815.16 for computerized research, primarily on LexisNexis, Westlaw, and PACER. In support of its claim, Reaching Hearts submitted a list of dates and amounts. J.A. 347-49. The entries for the period when Coe was with Whiteford are always on the last day of the month, indicating that the amount claimed is the total of all research conducted that month. Following Coe's transition to Gallagher, the entries are for various dates within a month, indicating that the amount is for research conducted that day. Many of the entries contain vague descriptions such as "research for case issues" or "research for issues for post-trial briefs." Only eight of the 60 entries provide any indication of the topic of research. Moreover, Reaching Hearts submitted no invoices in support of its claim for research expenses.

The County acknowledges that computerized research is a compensable expense. However, Reaching Hearts' records are inadequate to justify the amount claimed. First, the descriptions of the research—such as "research for case issues" or "research for post-trial briefs"—are insufficient to allow the court to determine whether the research claimed was reasonable and necessary in furtherance of the litigation (or even whether the research relates to *this* litigation). In light of the probability that Reaching Hearts' attorneys engaged in duplicative research following Coe's move to Gallagher, some description beyond "research for case issues" or "research for post-trial briefs" is required in order for Reaching Hearts to establish that the computerized research charges were reasonable and necessary to effective

representation. *See Krislov v. Rednour*, 97 F. Supp. 2d 862, 871 (N.D. Ill. 2000) (denying Westlaw expenses supported only by "a monthly … summary of charges which identify each day's entry by 'Elections' or some similar identification"). Additionally, Reaching Hearts has provided no invoices documenting the amounts paid for online research. *See KMS Fusion, Inc. v. United States*, 39 Fed. Cl. 593, 606 (Fed. Cl. 2000) (rejecting claim for computer research when unsupported by documentation); *Ingram ex rel. Ingram v. Jones*, 46 F. Supp. 2d 795, 800-01 (N.D. Ill. 1999) (same). The claimed research expenses therefore should be denied.

B. In-House Photocopying

The district court awarded Reaching Hearts $10,183.49 of copying costs, including the $5,470.01 taxed by the clerk. Of this amount, $3,918.44 charged for in-house photocopying, amounting to *20,612* copies, is supported by nothing more than a date and the notation "photocopies." J.A. 352-54. Counsel sometimes copied hundreds—or even thousands—of documents in a single day. On April 16, 2008, for example, counsel for Reaching Hearts made 3,840 copies of "trial exhibits." J.A. 300, 354. But counsel paid an outside copying service $3,342.59 to make copies of trial exhibits. J.A. 354.

While in-house photocopying costs are recoverable in civil rights litigation, an award for such expenses is proper only if the copies are "reasonable and necessary for effective and competent representation." *Robins v. Scholastic Book Fairs*, 928 F. Supp. 1027, 1035 (D. Or. 1996). Claims for photocopying costs that are "wholly devoid of explanation" are not compensable. *Lee*, 93 F. Supp. 2d at 1335-36; *see Am. Charities for Reasonable Fundraising Regulation, Inc. v. Pinellas County*, 278 F. Supp. 2d 1301, 1330

(M.D. Fla. 2003) (denying claim for $486.25 in copying costs submitted without explanation because "[t]his is a substantial expense and the defendants are entitled to an explanation of these charges").

In light of the foregoing, Reaching Hearts' entire claim of $3,918.44 for in-house photocopies should be disallowed.

C. Summary

For the reasons set forth above, the County asks the Court to deduct $24,733.60 from Reaching Hearts' claimed expenses.

CONCLUSION

There is no question that Reaching Hearts, as the prevailing party in the underlying litigation, is entitled an award of reasonable attorneys' fees and expenses. But the award here is not reasonable. The district court disregarded Fourth Circuit law by granting fees at hourly rates far above the prevailing market rate for civil rights litigation, and it circumvented Supreme Court law by disguising an enhancement as compensation for a non-existent delay in payment. The district court also failed to perform its duty to examine the fee request and omit excessive or improperly billed hours. Finally, the court awarded $24,733.60 in expenses that were entirely undocumented.

STATEMENT REGARDING ORAL ARGUMENT

The County respectfully requests oral argument.

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