

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:21-CV-00469-FL

Human Rights Defense Center,

Plaintiff,

v.

Casandra Skinner Hoekstra, et al.,

Defendants.

Order

The court has found that Plaintiff Human Rights Defense Center is entitled to recover the reasonable expenses, including attorney's fees, associated with moving to compel a second deposition of the North Carolina Department of Public Safety and taking that deposition. This order will set out the process for the calculation and payment of the amount HRDC is entitled to receive.

I. Guidance on Fee Awards

The court provides the following guidance to help the parties determine the appropriate amount of fees HRDC is entitled to receive.

Courts in the Fourth Circuit employ a three-step process to calculate an attorney fee award. The first step involves determining a “lodestar figure by multiplying the number of reasonable hours expended times a reasonable rate.” *Robinson v. Equifax Info. Servs., LLC*, 560 F.3d 235, 243 (4th Cir. 2009) (citing *Grissom v. The Mills Corp.*, 549 F.3d 313, 320 (4th Cir. 2008)). After determining the lodestar figure, the court should consider whether to reduce that figure based on the results the attorney obtained for her client. If a fee request includes “fees for hours spent on unsuccessful claims unrelated to successful ones” the court should subtract those fees from the lodestar figure. *Johnson v. City of Aiken*, 278 F.3d 333, 337 (4th Cir. 2002). Then the court should

“award[] some percentage of the remaining amount, depending on the degree of success enjoyed by the” applicant. *Id.*

A. Reasonable Hourly Rate

The Fourth Circuit requires that, in calculating a fee award, a court must determine the reasonable hourly rate for work done by the attorneys for the party entitled to recover fees. The court must determine “the prevailing market rates in the relevant community for the type of work for which [a party] seeks an award.” *Plyler v. Evatt*, 902 F.2d 273, 277 (4th Cir. 1990). The relevant community will typically be the “community in which the court sits[.]” *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 179 (4th Cir. 1994).

The prevailing market rate in this community may differ from hourly rate counsel’s services may command in their local community. *See Williams v. AT&T Mobility, LLC*, No. 5:19-CV-00475, 2022 WL 412708, at *2 & n.1 (E.D.N.C. Feb. 9, 2022) (discussing prevailing market rates in this court). If counsel wishes to base their hourly rate on a community other than the one in which the court sits, it should be prepared to justify that request. *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 179 (4th Cir. 1994) (quoting *Nat’l Wildlife Fed. v. Hanson*, 859 F.2d 313 (4th Cir. 1988)).

In any event, the party seeking the fee award must provide “specific evidence of the ‘prevailing market rates in the relevant community’ for the type of work for which he seeks an award.” *Spell v. McDaniel*, 824 F.2d 1380, 1402 (4th Cir. 1987) (quoting *Blum v. Stenson*, 465 U.S. 886, 895 (1984)). Generally speaking, a party meets this burden by supplying the court with “affidavits of other local lawyers who are familiar both with the skills of the fee applicants and more generally with the type of work in the relevant community.” *Robinson*, 560 F.3d at 245.

B. Reasonable Hours Expended

Counsel should ensure that they are able to establish that their fee request is based on a reasonable number of hours considering the work performed. Any billing records used to support the hours expended should contain “sufficient detail that a neutral judge can make a fair evaluation of the time expended, the nature and need for the service, and the reasonable fees to be allowed.” *Hensley v. Eckerhart*, 461 U.S. 424, 441 (1983) (Burger, C.J., concurring).

II. Deadlines for Fee Dispute

The deadlines below will apply to this portion of the case.

A. Disclosure of Amount Sought

No later than 14 days after the second Rule 30(b)(6) deposition concludes, HRDC must serve NCDAC with written notice of the amount they seek to recover along with supporting documentation.

B. Response to Amount Sought

No later than 14 days after receiving written notice of the amount sought, NCDAC must notify HRDC in writing whether it agrees to pay some, none, or all of the requested amount. If NCDAC does not respond by this deadline, it will be considered to have agreed to pay the entire requested amount and will have waived any arguments against the amount requested.

If the parties do not agree to pay the requested amount, the written notice shall specifically identify the disputed items and the justification for the dispute. If a dispute involves the hourly rate charged by an attorney or paraprofessional, the response must identify the hourly rate the reimbursing party believes is appropriate and why. If a dispute involves specific time entries, the response must specifically state the reasons why it believes the requesting party has no right to recover for that entry.

For any items that are not the subject of a dispute, the written notice should state the date NCDAC intends to make payment. Unless the parties agree otherwise, payment should be made within 30 days after providing notice of the willingness to pay (or the expiration of the response period if no response is sent).

C. Meet and Confer Over Disputed Items

No later than 7 days after service of a written notice disputing the amount HRDC is entitled to recover, the parties must meet and confer either by telephone or videoconference to discuss the disputed items. The parties must make a good-faith effort to resolve any disputes.

If, after meeting and conferring, the parties agree on disputed items, payment should be made within 30 days after the meet and confer process.

D. Briefing on Disputed Items

If, after meeting and conferring, the parties still dispute whether HRDC is entitled to recover for certain items, HRDC must file a motion for award of attorney fees along with a supporting memorandum. This motion and supporting memorandum must be filed no later than 7 days after the meet and confer process concludes. This court's Local Civil Rules on supporting memorandum for non-discovery motions will apply to briefing on this motion, with the following modifications: NCDAC may file a response no later than 7 days after HRDC files its motion. HRDC may file a reply no later than 7 days after the filing of the response.

The parties should ensure that their briefs address all matters necessary under Supreme Court or Fourth Circuit precedent for an award of fees and costs. Parties should be sure to support their positions with declarations or other evidence.

Dated: April 7, 2023



Robert T. Numbers, II
United States Magistrate Judge