

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA,
Plaintiff

v.

ROBERT F. STROM as the Finance Director of
THE CITY OF CRANSTON, et al.
Defendants

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C.A. No. 15-525

PLAINTIFF'S MEMORADUM IN SUPPORT OF HIS
MOTION FOR ATTORNEY'S FEES AND COSTS

Pursuant to 42 U.S.C. §1988, F.R.Civ.P. 54, and LR Cv 54.1, Plaintiff Edward Caniglia hereby moves that the Court award him his reasonable attorney's fees and costs with respect to the summary judgment decision and judgment he obtained that Defendant City of Cranston violated his due process rights under the Fourteenth Amendment of the United States Constitution. Plaintiff hereby reserves his right to supplement this motion or to file an additional motion following a determination of Plaintiff's petition for writ of certiorari to the Supreme Court respecting claims that were dismissed.

Facts and Procedural Background

On August 21, 2015, Defendants seized Edward Caniglia's firearms. They told his wife he had to get a court order for the return of the firearms and refused to return them for over four months. On October 1, 2015, attorney Nicholas Lambros sent Defendants a letter requesting the return of Plaintiff's firearms. Defendants told Lambros that Plaintiff would have to get a court order for the return of his guns.

Plaintiff filed this lawsuit on December 10, 2015 and his counsel prepared a motion for preliminary injunction to obtain the return of the firearms. Defendants then returned the firearms

without a motion or court order. The parties attended a phone conference with Judge McConnell and prepared a proposed order respecting a stay of discovery so the parties could have settlement discussions with Magistrate Judge Sullivan. Those discussions were unsuccessful. In August 2016, Plaintiff prepared for and attended a Rule 16 conference with Judge McConnell. Judge McConnell referred the parties for additional settlement discussions with Judge Smith.

In September 2016, Plaintiff had meetings with counsel while preparing a settlement conference statement including proposed due process procedures. In December 2016 and January, February and March 2017, the parties attended several settlement conferences with Judge Smith in person or by phone and otherwise had settlement communications. The case did not settle.

In April 2017, the parties had a phone conference with Judge McConnell and the Court entered a revised scheduling order. The Parties then initiated discovery.

Some of the subsequent discovery concerned the due process issues, including documents productions and portions of the depositions of Plaintiff, his wife Kim Caniglia, Defendant Col. Michael Winkvist, and Defendant Major Robert Quirk. There was extensive time on discovery on other claims not included in this fee request. For example, there were depositions of Cranston police and rescue officers which have been deleted from the time records presented. During discovery, Defendants produced an inventory of seized firearms which indicated that they had seized and kept hundreds of firearms for “safekeeping,” much like Plaintiff’s firearms.

In December 2018, and January and February 2019, Plaintiff filed a summary judgment motion and related materials and objected to Defendants’ summary judgment motion. On June 4, 2019, the Court issued a decision on the Parties’ cross-motions for summary judgment. Caniglia v. Strom, 396 F.Supp.3d 227 (D.R.I. 2019). That decision held, *inter alia*, that

Defendants had violated Plaintiff's post-seizure due process rights. Plaintiff and Defendants subsequently stipulated to a judgment that awarded Plaintiff nominal damages of one dollar on his due process claim.

Argument

A plaintiff who has prevailed in a §1983 action is entitled to recover his attorney's fees. Hensley v. Eckerhart, 461 U.S. 424, 429 (1983) ("Hensley"). The courts award an attorney's fee to a prevailing plaintiff to encourage individuals to challenge violations of their civil rights by pursuing legitimate claims of constitutional violations even if the pecuniary damages are small and the plaintiff cannot pay for an attorney. Id. "Accordingly, a prevailing plaintiff 'should recover an attorney's fee unless special circumstances render such an award unjust.'" Id., quoting S.Rep. No. 94-1011, p. 4 (1976) (quoting Newman v. Piggie Park Enterprises, 390 U.S. 400, 402) (1968). The First Circuit has said that "awards in favor of prevailing civil rights plaintiffs are virtually obligatory." Diaz-Rivera v. Rivera-Rodriguez, 377 F.3d 119, 124 (1st Cir. 2004). Moreover, "[a] prevailing party in a civil rights action is normally entitled to attorney's fees incurred in the pursuit of fees under section 1988." Torres-Rivera v. O'Neil-Cancel, 524 F.3d 331, 340 (1st Cir. 2008).

Here, Defendants refused to return Plaintiff's firearms for four months until he filed suit and had prepared a motion for preliminary injunction. Then, and only then, did Defendants return his firearms. Discovery in this case indicates that the City of Cranston Police Department has similarly seized hundreds of firearms for safekeeping and refused to return them without court orders.

The starting point to determine the appropriate amount of fees is the lodestar, which is the number of hours productively worked times a reasonable hourly rate. Hensley, 461 U.S. at 433.

The Court can determine a reasonable hourly rate by taking into account the prevailing rates in the community for comparably qualified attorneys. Hensley, 461 U.S. at 449. Pursuant to LR Cv 54.1(b)(2):

[A] motion for attorneys' fees shall be accompanied by an affidavit regarding the reasonableness of the requested hourly fee from a disinterested attorney admitted to practice in Rhode Island who is experienced in handling similar cases and familiar with the usual and customary charges by attorneys in the community who have comparable experience in similar cases.

LR Cv 54(b)(2).

Here, Plaintiff seeks to recover reasonably hourly rates of \$350 for Thomas Lyons, and \$150 for Rhiannon Huffman. Their qualifications are set forth in their declarations. Attorney Sonja Deyoe has submitted an affidavit as a disinterested attorney stating that these rates are reasonable.

With respect to the number of hours productively worked, Plaintiff seeks to recover a total of 82.5 hours for Mr. Lyons and 40.8 hours for Ms. Huffman. Mr. Lyons was in the case from the very beginning through the entry of judgment and was involved in all the activities for which Plaintiff seeks reimbursement. Those activities include:

- Revising the complaint and amended complaint
- Preparing the preliminary injunction motion
- Engaging in two different, extended settlement mediations and numerous settlement communications
- Preparing written discovery
- Taking or attending the depositions of Edward Caniglia, Kim Caniglia, Col. Winkquist, and Major Quirk
- Attending other conferences with the Court

- Numerous communications with the client and opposing counsel
- Preparing the summary judgment motion and related memoranda and objecting to Defendants' summary judgment motion
- Preparing and filing the final judgment that entered judgment for Plaintiff on his due process claim and awarded him nominal damages
- Preparing this fee motion.

For Ms. Huffman, Plaintiff seeks reimbursement for drafting or revising the complaint, reviewing settlement communications, drafting or reviewing the initial disclosures and written discovery, reviewing the summary judgment motion papers, among others. All of these legal services were reasonably necessary to obtain the return of Plaintiff's firearms and his award of compensatory damages.

Local Rule 54.1 provides that the Court should consider other pertinent factors set forth in Rule 1.5 of the Rhode Island Rules of Professional Conduct. Those factors are:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

Here, the matter required significant time and labor and presented relatively novel and difficult questions of constitutional law. Obviously, Plaintiff's counsel were unable to work on other fee-generating matters when working on this case. As set forth in Ms. Deyoe's affidavit, the hourly rates charged compare favorably to those customarily charged by similar attorneys. Here, the amount involved, while not insignificant, pales in comparison to the significance of the

constitutional issue involved. The time limitations were not a significant factor. Plaintiff's counsel have not represented Plaintiff in other matters. They are highly experienced in civil litigation generally and civil rights litigation, in particular. Finally, Plaintiff's counsel have charged Plaintiff no fee and their compensation will depend on the Court's award in response to this Motion.

Plaintiff has excised from his fee request the time spent on his other, unsuccessful claims. That time included six depositions of Cranston police officers and an EMT as well as the legal research respecting the unsuccessful claims and the objection to Defendants' summary judgment motion, to the extent the objection was unsuccessful. That work totaled over 147 hours in attorney time. In addition, Plaintiff has excised expenses related to the unsuccessful time, including the cost of the six deposition transcripts and an expert witness. The total of the excised time and expenses was more than \$55,000.

Plaintiff acknowledges that the fees requested exceed the nominal damages awarded. Nonetheless, a plaintiff who wins nominal damages is a prevailing party under § 1988. The First Circuit has commented that the Supreme Court has "explicitly 'reject[ed] the proposition that fee awards under § 1988 should necessarily be proportionate to the amount of damages a civil rights plaintiff actually recovers.'" Diaz-Rivera v. Rivera-Rodriguez, 377 F.3d 119, 125 (1st Cir. 2004), quoting City of Riverside v. Rivera, 477 U.S. 561 (1986). In City of Riverside v. Rivera, the Supreme Court affirmed a fee award of \$243,343.75 where damages were \$33,500. In Diaz-Rivera v. Rivera-Rodriguez, the First Circuit affirmed a fee award where plaintiff recovered only nominal damages on his due process claim and was unsuccessful on his other constitutional claims. See also, O'Connor v. Huard, 117 F.3d 12, 18 (1st Cir. 1997) (affirming an award of attorney's fees where plaintiff recovered nominal damages on his 14th Amendment claim).

Accordingly, Plaintiff's fee request is reasonable given the constitutional significance of the result obtained against the City of Cranston.

As the prevailing party, Plaintiff is also entitled to recover his reasonable costs and non-taxable expenses. 28 U.S.C. §1988; Fed. R. Civ. P. 54(d)(1); Palmisciano v. Garrahy, 707 f.2d 636, 637 (1st Cir. 1983) (per curiam). In addition, by statute, the Court may tax costs for (1) fees of the clerk and marshal; (2) fees for printed or electronically recorded transcripts; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and the costs of making copies; (5) docket fees; and (6) compensation of court-appointed experts and interpreters. 28 U.S.C. § 1920. With respect to costs, Plaintiff seeks reimbursement for the filing fee (\$400), the costs of constable service of the initial complaint (\$105), the transcription fees for four depositions, totaling (\$1,363.32), copying cost of \$390.12, for total costs of \$2,258.44.

With respect to the deposition transcripts, the First Circuit has not addressed whether a party that prevailed on summary judgment can recover the costs of depositions related to the successful claim. However, courts in other circuits have so held. See, e.g., Trawick v. Carmike Cinemas, Inc., 2019 WL 695468 at *10 (M.D.Ga. Dec. 19, 2019). Here, Plaintiff seeks transcript costs for three witnesses who were deposed, in part, about due process issues: Plaintiff Edward Caniglia (\$284.70), Defendant Col. Michael Winkvist, chief of the CPD (\$615.42), and Defendant Major Robert Quirk of the CPD (\$463.42). Plaintiff cited all three transcripts in his summary judgment arguments respecting due process. The Court should tax their depositions as costs.

Finally, Plaintiff's counsel acknowledge that they will share any award of attorneys' fees and costs with the American Civil Liberties Foundation of Rhode Island pursuant to Rule of

Professional Conduct 5.4(a)(4). See, Inmates of the Rhode Island Training School v. Martinez, 465 F.Supp.2d 131, 141 (D.R.I. 2006) (Lagueux, S.J.).

Conclusion

The Court should award Plaintiff Edward Caniglia his reasonable attorneys' fees in the total amount of \$35,670.40 and his reasonable costs in the amount of \$2,258.44.

EDWARD CANIGLIA

By his attorneys,

/s/ Thomas W. Lyons

Thomas W. Lyons #2946

Rhiannon S. Huffman #8642

Strauss, Factor, Laing & Lyons

One Davol Square, Suite 305

Providence, RI 02903

(401) 456-0700

tlyons@straussfactor.com

Cooperating attorneys,

AMERICAN CIVIL LIBERTIES FOUNDATION OF RHODE ISLAND

CERTIFICATION

I hereby certify that on May 7, 2020, a copy of the foregoing was filed and served electronically on all registered CM/ECF users through the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

/s/ Thomas W. Lyons