

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

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PAUL GERLICH and ERIN FURLEIGH,

Plaintiffs,

vs.

STEVEN LEATH, WARREN MADDEN,  
THOMAS HILL and LEESHA ZIMMERMAN,

Defendants.

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**No. 4:14-cv-00264-JEG**

**O R D E R**

This matter now comes before the Court pursuant to the prior case management Order, ECF No. 87, and Plaintiffs' Motion for Attorney Fees and Costs, ECF No. 88. Defendants have filed Objections to Plaintiffs' Motion for Attorney Fees and Costs. ECF No. 90. Following those objections, the parties have conferred on the issue and have filed a Joint Stipulation on Attorney Fees and Costs and Joint Requests for Approval and Entry of Judgment. ECF No. 93. The parties have agreed to submit the matter without oral argument, and the Court finds no need for a hearing.

**APPLICABLE LAW**

Plaintiffs seek an award of attorney fees and costs as prevailing parties pursuant to 42 U.S.C. § 1988, Fed. R. Civ. P. 54 and Local Rule 54.1. There is no remaining dispute that the Plaintiffs are prevailing parties in this action. See Joint Status Report 3, ECF No. 86; Order on Joint Status Report 2, ECF No 87. Thus, the Court is left with the task of determining what is a reasonable fee for purposes of § 1988.

A reasonable fee involves an analysis of the number of fair and reasonable hours billed against a reasonable billable hour rate. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). This "lodestar" calculation is regarded as reasonable compensation. Perdue v. Kenny A. ex rel. Winn, 559 U.S. 542, 546 (2010). There is no dispute in regard to the number of hours billed on behalf of the Plaintiffs. Rather, the remaining dispute focused on some of the billed hourly rates.

A reasonable market rate is “usually the ordinary rate for similar work in the community where the case has been litigated.” Emery v. Hunt, 272 F.3d 1042, 1048 (8th Cir. 2001); see also H.J. Inc. v. Flygt Corp., 925 F.2d 257, 260 (8th Cir. 1991); Jorstad v. IDS Realty

regarding the claimed costs. Finally, the fees and costs incurred in connection with litigating the pending fee application were a matter of stipulation.

Having argued the relevant legal market is Des Moines, the Defendants challenged the fee claims for lead counsel Robert Corn-Revere and attorney Ronald London, both of Washington, D.C. Rather, the Defendants asserted the hourly rate claimed by Des Moines attorney Michael Giudicessi is an appropriate market rate which should be the highest rate allowed by the Court.

In support of the claimed fees, counsel have provided the Court with affidavits regarding their qualifications, the hourly rates they normally charge clients, and the reduced rates they are seeking in this matter. The record does not contain additional evidence regarding prevailing fees for like work in either market at issue. Based on the Court's experience, the rate of \$475 per billable hour utilized by Mr. Giudicessi is on the high end, but not excessive, for an attorney of his experience, skill, and expertise for this particular area of practice in the Des Moines market.

The professional stature and reputation of Mr. Corn-Revere and Mr. Giudicessi are both apparent to the Court and unchallenged by the Defendants. Indeed, it is Mr. Giudicessi's skill and experience that Defendants utilized in arguing Plaintiffs cannot make the necessary showing that they could not obtain local counsel with the ability and the willingness to take on the case. Quite the contrary, Mr. Giudicessi is extremely able and qualified in the area, and took the case, albeit as local counsel.

While Mr. Giudicessi's credentials in the area of First Amendment litigation are beyond dispute, his substantial experience has been gained largely in representation of news organizations and media companies. The list of clients and representative cases clearly supports that conclusion. Lead counsel, Mr. Corn-Revere, has similar generic credentials in the First Amendment area, but with a material distinction. He has been involved in a number of cases across the country representing First Amendment rights of students in the academic setting, and has written extensively on First Amendment issues. Thus, while both counsel were qualified to provide the

necessary representation in the case at bar, Mr. Corn-Revere came to the case with substantially extended experience specifically applicable to the case. His expertise and command of the legal principles in the area were apparent to the Court in argument, and it is reasonable to conclude made a material contribution to the result. The Court cannot on this record reach a similar distinction between Mr. Giudicessi and Mr. London. At bottom, the Court concludes under these circumstances the relevant legal market is Des Moines. However, even with that essential

against the Defendants for fees and costs to the prevailing parties in the total amount of \$598,208.17, which is to be made payable in a single check to the firm of Davis Wright Tremaine LLP.

**IT IS SO ORDERED.**

Dated this 21st day of March, 2018.

*James E. Gritzner*  
Senior Judge  
U.S. DISTRICT COURT  
JAMES E. GRITZNER  
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