

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>LAWRENCE J. STEINERT,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION</b>
<b>v.</b>	)	
	)	<b>No. 98-2564-CM</b>
	)	
<b>THE WINN GROUP, INC., et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
<hr style="width:100%; border: 0.5px solid black;"/>		

**MEMORANDUM AND ORDER**

On March 17, 2003, the court granted defendants' motion to sanction plaintiff's counsel pursuant to 28 U.S.C. § 1927. The court ordered defendants to issue an accounting of excess attorneys' fees incurred by defendants in connection with their defense of plaintiff's dismissed 42 U.S.C. §§ 1983 and 1985 claims and in connection with defendants' responses to plaintiff's requests for extensions of time. Defendants complied with the court's order, and plaintiff's counsel filed responses objecting to defendants' accounting. On August 8, 2003, plaintiff's counsel filed a motion for reconsideration of the court's award of attorneys' fees, which the court denied. Pending before the court, therefore, is defendants' accounting of excess attorneys' fees, entitled Response to Order Regarding Attorneys' Fees ("Defendants' Response") (Doc. 165).

**I. Legal Standards**

The court follows a two-step process to determine an award of reasonable attorneys' fees and expenses. The initial estimate is calculated by multiplying the number of hours reasonably expended by a

reasonable hourly fee, resulting in the “lodestar” amount. *Blum v. Stenson*, 465 U.S. 886, 888 (1984); *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The court may then adjust upward or downward from the lodestar as necessary. *Blum*, 465 U.S. at 888.

The party moving for attorneys’ fees “bears the burden of . . . documenting the appropriate hours expended and the hourly rate.” *Case v. Unified Sch. Dist. No. 233, Johnson County, Kan.*, 157 F.3d 1243, 1249 (10<sup>th</sup> Cir. 1998). To satisfy its burden, therefore, the party must submit “meticulous, contemporaneous time records that reveal, for each lawyer for whom fees are sought, all hours for which compensation is requested and how those hours were allotted to specific tasks.” *Id.* at 1250 (citing *Ramos v. Lamm*, 713 F.2d 546, 553 (10<sup>th</sup> Cir. 1983)). The court will reduce the hours claimed if the attorneys’ records are inadequate or fail to precisely document the time necessary to complete specific tasks.

*Hensley*, 461 U.S. at 433-34; *Case*, 157 F.3d at 1250. In particular, the court will likely reduce the hours of attorneys that use “block billing,” meaning a method by which the attorney enters the total daily time spent on a case rather than time expended on specific tasks. *See Robinson v. City of Edmond*, 160 F.3d 1275, 1285 n.9 (10<sup>th</sup> Cir. 1998). The court is also empowered to reduce the award amount if the attorneys have not exercised “billing judgment.” *Case*, 157 F.3d at 1250. The attorneys demonstrate billing judgment by only claiming the number of hours expended on a task that they would expect a client to pay for that service. *Id.*

The court’s determination of whether the attorney’s hourly rate is reasonable requires the attorneys “to produce satisfactory evidence—in addition to the attorney’s own affidavits—that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.” *Blum*, 465 U.S. at 896 n.11. In addition, “a district judge may turn to [his or

her] own knowledge of prevailing market rates as well as other indicia of a reasonable market rate.” *Bee v. Greaves*, 910 F.2d 686, 689 n.4 (10<sup>th</sup> Cir. 1990).

## **II. Defendants’ Accounting**

In awarding fees under § 1927, the court found that plaintiff’s counsel acted recklessly or with indifference to the law in asserting claims under § 1983 and § 1985. The court also found that plaintiff’s counsel abused the judicial process by requesting at least fifteen extensions of time, which prolonged the proceedings in this case an additional 495 days. Consequently, the court ordered defendants to submit an accounting of only the *excess* fees for the *extra* work incurred by defendants in their motion to dismiss plaintiff’s § 1983 and § 1985 claims and in responding to plaintiff’s counsel’s numerous requests for extensions of time. In response, defendants’ attorneys submitted invoice time sheets documenting their time spent and produced the following narrative summary based on the time sheets.

### **April 1999**

4/19/99 Nick Badgerow spent 1/10 of an hour outlining the Motion to Dismiss.

4/20/99 Nick Badgerow spent 2.75 hours working on the Motion to Dismiss.

4/22/99 Nick Badgerow spent 1/10 of an hour working on the Motion to Dismiss.

4/26/99 Nick Badgerow spent 1/10 of an hour working on the Motion to Dismiss.

Nick Badgerow’s hourly rate at that time was \$230. The total excess fees for the month was \$701.50. Spencer Fane reduced the bill this month, making Nick Badgerow’s effective rate \$214.73. Accordingly defendants actually paid \$654.93 in excess fees during this month.

### **May 1999**

5/17/99 – Nick Badgerow spent 1/10 of an hour speaking with Mr. Gage about plaintiff’s request for an extension to respond to defendants’ Motion to Dismiss.

5/21/99 – Nick Badgerow spent 1/10 of an hour reviewing plaintiff’s Motion for Extension.

Mr. Badgerow’s hourly rate at that time was \$230. The total excess fees paid by defendants for May 1999 were \$46.

**June 1999**

6/1/00 – Nick Badgerow spent 1/10 of an hour reviewing the Order relating to plaintiff's Motion for Extension of Time.

6/27/00 – Nick Badgerow spent 1/10 of an hour reviewing Order relating to another of plaintiff's Motion for Extensions of Time.

Mr. Badgerow's hourly rate at that time was \$230. The total excess fees paid by defendants for June 1999 were \$46.

**July 1999**

7/14/99 – Nick Badgerow spent 2/10 of an hour speaking with Mr. Gage regarding plaintiff's request for an extension to respond file financial disclosures and reviewing an Order regarding the same.

7/14/99 – Jeannie DeVeney spent 1/10 of an hour reviewing an Order regarding the extension of plaintiff's deadlines.

7/15/99 – Nick Badgerow spent 1/10 of an hour reviewing another of plaintiff's Motions for Extension of Time to file a certificate of financial interest.

7/19/99 – Nick Badgerow spent 1/10 of an hour speaking to Mr. Gage about another of plaintiff's Motions for Extension of Time.

7/22/99 – Nick Badgerow spent 1/10 of an hour reviewing plaintiff's Motion for Extension of Time to provide records authorizations.

7/23/99 – Nick Badgerow spent 1/10 of an hour reviewing an Order related to plaintiff's Motion for Extension of Time to provide records authorizations and to provide authority for attorneys' fees.

7/28/99 – Jeannie DeVeney spent 1/10 of an hour speaking to Mr. Gage about another Motion for Extension of Time for plaintiff to respond to defendants' Motion to Dismiss.

7/29/99 – Nick Badgerow spent 1/10 of an hour reviewing plaintiff's Motion for Extension of Time to file an Amended Complaint, drafting a response to same, and reviewing an Order related to plaintiff's Motion for Extension of Time to file a certificate of financial interest.

7/30/99 – Nick Badgerow spent 1/10 of an hour reviewing plaintiff's Motion for Extension of Time to respond to defendants' Motion to Dismiss and speaking with Mr. Gage regarding the status of the case.

Nick Badgerow's hourly rate during this month was \$230. Jeannie DeVeney's hourly rate during this month was \$150. The total excess fees paid by defendants during this month amounted to \$214.

### **August 1999**

8/3/99 – Nick Badgerow spent 1/10 of an hour reviewing an Order related to plaintiff's Motion for Extension of time to respond to defendants' Motion to Dismiss.

8/4/99 – Nick Badgerow spent 1/10 of an hour reviewing plaintiff's Motion for Extension of Time to provide records authorizations and authority for attorneys' fees.

8/5/99 – Nick Badgerow spent 1/10 of an hour reviewing Orders related to plaintiff's Motions for Extension of Time to file a Motion to Amend the Complaint and to file witness and exhibit lists and speaking to Mr. Gage regarding another Motion for Extension of Time to respond to defendants' Motion to Dismiss.

8/20/99 – Nick Badgerow spent 1/10 of an hour reviewing plaintiff's Motion to Extend all deadlines.

8/23/99 – Carol Clark spent 1/10 of an hour reviewing plaintiff's Motion to Extend all deadlines.

Nick Badgerow's hourly rate during this month was \$230. Carol Clark's hourly rate during this month was \$125. The total excess fees paid by defendants during this month amounted to \$104.50.

### **September 1999**

9/9/99 – Nick Badgerow spent 1/10 of an hour reviewing plaintiff's Motion to Extend various deadlines.

9/13/99 – Nick Badgerow spent 1/10 of an hour speaking with Mr. Gage regarding deadlines and reviewing plaintiff's Motion to File a witness and exhibit list and statutory authorization for attorneys' fees out of time.

9/24/99 – Carol Clark spent 2.25 hours working on a Motion to Compel plaintiff to provide executed records releases and conducting legal research related to the same.

9/27/99 – Nick Badgerow spent 1.5 hours working on the Motion to Compel, Certificate of Compliance and Order.

9/27/99 – Carol Clark spent 2 hours finalizing the Motion to Compel.

9/28/99 – Nick Badgerow spent one quarter of an hour sending a fax to Mr. Gage re the Motion to Compel and finalizing the same.

Nick Badgerow's hourly rate for this month was \$230. Carol Clark's was \$125. The total excess fees paid by defendants during this month amounted to \$979.75.

### **October 1999**

10/12/99 – Jeannie DeVeney spent 2.50 hours reviewing plaintiff's most recent request for extension of time, revising the Motion to Compel and Certificate of Compliance, revising the employment records authorization related to the same, and drafting a letter to Mr. Gage re the same.

10/14/99 – Jeannie DeVeney [spent] 3 hours revising, finalizing and filing the Motion to Compel and Certificate of Compliance; drafting a response to plaintiff's most recent Motion for Extension; and drafting a Motion to Dismiss for lack of prosecution.

10/14/99 – Cathy Daniels spent 3/4 of an hour assisting with verifying the deadlines missed and extended in connection with the Motions to Compel and to Dismiss for lack of prosecution.

10/15/99 – Nick Badgerow spent one-half an hour completing the final draft of the Motion to Compel and Opposition to plaintiff's most recent Motion for Extension.

10/20/99 – Jeannie DeVeney spent 1/10 of an hour reviewing the Order on plaintiff's most recent Motion for Extension.

10/25/99 – Nick Badgerow spent one quarter of an hour reviewing plaintiff's response to defendants' Motion to Dismiss.

10/29/99 – Nick Badgerow spent 3.25 hours working on a Reply in Support of defendants' Motion to Dismiss and conducting legal research regarding the same.

Nick Badgerow's hourly rate during this month was \$230. Jeannie DeVeney's was \$150, and Cathy Daniels' was \$90. Defendants also incurred a delivery fee of \$31.90 in connection with filing their Motion to Compel. The total excess fees and expenses paid by defendants during this month amounted to \$1,827.50.

### **November 1999**

11/1/99 – Nick Badgerow spent 4.75 hours working on the Reply in Support of defendants Motion to Dismiss and conducting legal research regarding the same.

11/4/99 – Nick Badgerow spent 1/10 of an hour finalizing the Reply brief.

11/18/99 – Nick Badgerow spent one quarter of an hour reviewing plaintiff's addendum to his Opposition to defendants' Motion to Dismiss.

11/18/99 – Jeannie DeVeney spent 6/10 of an hour drafting a Motion for Extension to file expert disclosures and discussing the same with Mr. Gage.<sup>1</sup>

11/22/99 – Nick Badgerow spent 2 hours reviewing plaintiff's motion for leave to file an opposition to defendants Motion to Compel records releases out of time and drafting a response to the same.

11/24/99 – Nick Badgerow spent 1/10 of an hour reviewing plaintiff's supplemental request for more time to respond to defendants' Motion to Compel.

11/30/99 – Jeannie DeVeney spent 1.2 hours drafting another Motion to Compel discovery.

Nick Badgerow's rate during this month was \$230. Jeannie DeVeney's was \$150. The total excess fees for this month amounted to \$1,926. Spencer Fane reduced defendants' bill by 14% on this statement, making the total excess fees actually paid by defendants in this month \$1,656.36.

### **December 1999**

12/1/99 – Jeannie DeVeney spent 1.8 hours working on the latest Motion to Compel discovery.

12/2/99 – Jeannie DeVeney spent 7/10 of an hour revising, finalizing and filing the Motion to Compel and Certificate of Compliance.

12/20/99 – Nick Badgerow spent 1/10 of an hour reviewing orders from the court regarding plaintiff's motion to file pleadings out of time, defendants' Motion to Compel and defendants' Motion for Extension of time to designate experts.

---

<sup>1</sup> “At first glance, this time does not appear to be “excess” time. The reason that defendants needed the extension, however, was plaintiff's failure to provide any of the information requested by defendants and/or requested by the rules.”

12/21/99 – Jeannie DeVeney spent 3/10 of an hour reviewing the Court’s Order described above and drafting a Motion for Extension of time for defendants to conduct discovery and discussing the same with Mr. Gage.<sup>2</sup>

12/22/99 – Nick Badgerow spent 1/10 of an hour finalizing the Motion for Extension.

12/29/99 – Nick Badgerow spent 2.4 drafting Motion to Dismiss for failure to comply with a court order and failure to prosecute and conducting legal research in support of the same.

12/30/99 – Nick Badgerow spent one quarter of an hour working on the Motion to Dismiss.

12/30/99 – Jeannie DeVeney spent 7/10 of an hour finalizing and filing the Motion to Dismiss and reviewing plaintiff’s Motion for Extension of time to respond to the Motion to Compel Records authorizations.

12/30/99 – Cathy Daniels spent one quarter of an hour following up on recent motions for extension of time filed by plaintiffs.

Nick Badgerow’s hourly rate was \$230 during this month. Jeannie DeVeney’s was \$150, and Cathy Daniels’ was \$90. In addition, defendants paid \$397.62 on computerized legal research on tasks that fall into the “excess fees” category. The total excess fees and expenses paid by defendants during this month amounted to \$1,600.62.

### **January 2000**

1/3/00 – Nick Badgerow spent 1/10 of an hour reviewing an Order regarding plaintiff’s Motion to Extend time to respond to defendants’ Motion to Compel.

1/4/00 – Nick Badgerow spent 2/10 of an hour reviewing plaintiff’s motion for reconsideration of ruling on order compelling production of medical release and outlining a response to the same.

1/5/00 – Jeannie DeVeney spent 2 hours reviewing plaintiff’s Motion to Reconsider and begin[] to draft a response to the same.

1/6/00 – Jeannie DeVeney spent three quarters of an hour working on the response to plaintiff’s Motion to Reconsider.

1/6/00 – Jennifer Bearce spent one hour assisting in the preparation of defendants’ response to plaintiff’s Motion to Reconsider.

---

<sup>2</sup> “Again, this Motion was necessitated by plaintiff’s failure to provide discovery requested by defendants and/or required by the Rules.”

1/17/00 – Nick Badgerow spent 1/10 of an hour reviewing the court’s order granting defendants’ Motion for Extension to complete discovery.

Nick Badgerow’s hourly rate during this month was \$240. Jeannie DeVeney’s was \$165, and Jennifer Bearce’s was \$80. Defendants also paid \$129.91 on computerized legal research on tasks that fall into the “excess fees” category. The total excess fees and expenses paid by defendants during this month amounted to \$759.66.

### **February 2000**

2/23/00 – Jeannie DeVeney spent 2 hours drafting a Motion to Compel documents and a privilege log and a Certificate of Compliance.

Jeannie DeVeney’s hourly rate for this month was \$165. The total excess fees for the month amounted to \$330. Spencer Fane reduced this month’s statement by 30%. Accordingly, the total excess fees actually paid by defendants during this month amounted to \$231.

### **March 2000**

3/20/00 – Brett Fulkerson<sup>3</sup> spent 1.25 hours conducting legal research regarding the recovery of attorneys fees after a voluntary dismissal.

3/21/00 – Brett Fulkerson spent 7.9 hours conducting legal research regarding the availability of attorneys’ fees under § 1988 and drafting a memorandum regarding the same.

3/22/00 – Brett Fulkerson spent 3.9 hours working on the attorneys’ fees memo.

3/23/00 – Nick Badgerow spent 1/10 of an hour outlining a response to plaintiff’s Motion to Dismiss to include a request for attorneys’ fees.

3/23/00 – Brett Fulkerson spent 1.3 hours reviewing a memorandum from Mr. Badgerow regarding the response to plaintiff’s Motion to Dismiss and researching the availability of fees under Rule 42.

3/27/00 – Brett Fulkerson spent 3.9 hours conducting legal research regarding the availability of attorneys’ fees under § 1988 and drafting a portion of the response to plaintiff’s Motion to Dismiss.

3/29/00 – Brett Fulkerson spent 2 hours conducting legal research regarding attorneys’ fees and drafting a portion of the response to plaintiff’s Motion to Dismiss.

---

<sup>3</sup> Brett Fulkerson began working on the case because Jeannie DeVeney went on maternity leave.

3/30/00 – Brett Fulkerson spent 3.3 hours conducting legal research regarding attorneys’ fees and drafting a portion of the response to plaintiff’s Motion to Dismiss.

3/31/00 – Brett Fulkerson spent 2.7 hours editing the response to plaintiff’s Motion to Dismiss, to include a request for attorneys’ fees.

Nick Badgerow’s hourly rate during this month was \$240. Brett Fulkerson’s was \$145. Defendants also paid \$71.84 for computerized legal research on tasks that fall into the “excess fees” category. This amounts to a total of \$3,902.09 in excess fees and expenses chargeable to defendants. Spencer Fane reduced this month’s bill by approximately 35%. Accordingly, defendants paid \$2,536.36 in fees and expenses for excess work.

#### **April 2000**

4/4/00 – Nick Badgerow spent one half an hour responding to plaintiff’s Motion to Dismiss.

4/6/00 – Nick Badgerow spent one quarter of an hour finalizing and filing the response.

Nick Badgerow’s hourly rate for this month was \$240. In addition, defendants paid \$35.10 for a delivery charge in connection with the response to plaintiff’s Motion to Dismiss. Accordingly, defendants paid a total of \$215.10 on excess fees in this month.

#### **August 2000**

8/10/00 – Jeannie DeVeney spent 1.3 hours researching and drafting a motion for fees.

8/11/00 – Jeannie DeVeney spent 2/10 of an hour revising and finalizing the motion for fees.

Jeannie DeVeney's hourly rate during this month was \$165. Accordingly, defendants paid \$247.50 in excess fees in this month.

#### **September 2000**

9/8/00 – Jeannie DeVeney spent 1.3 hours gathering information from the file to use in support of defendants’ Motion for Fees.

9/14/00 – Jeannie DeVeney spent 7/10 of an hour gathering information from the file to use in a letter to Mr. Gage regarding the Motion for Fees and to use in support of that Motion.

9/20/00 – Jeannie DeVeney spent 4.9 hours drafting a statement of compliance with local rule 54.2, conducting legal research in connection with defendants’ Motion for Fees and communicating with defendants on this issue.

9/22/00 – Jeannie DeVeney spent 5.2 hours working on the suggestions in support of the Motion for Fees.

9/25/00 – Nick Badgerow spent one quarter of an hour and Jeannie DeVeney spent 2/10 of an hour working on the same.

9/26/00 – Jeannie DeVeney spent 3.5 hours finalizing, filing and preparing exhibits for the Motion for Fees and communicating with defendants re same.

Nick Badgerow's hourly rate during this month was \$240. Jeannie DeVeney's was \$165. In addition, defendants paid \$169.44 for computerized legal research conducted in connection with tasks that fall into the category of excess fees. This comes to a total of \$ 2,803.44. Spencer Fane reduced defendants' bill by 10% during this month. Accordingly, defendants paid \$2,523.10 in excess fees and expenses during this month.

### **October 2000**

10/11/00 – Jeannie DeVeney spent 5/100 of an hour speaking with Mr. Gage re an extension of time for plaintiff to respond to defendants' Motion for Fees.

10/16/00 – Jeannie DeVeney spent 8/10 of an hour reviewing plaintiff's response to defendants' Motion for Fees and conducting legal research regarding the same.

Jeannie DeVeney's hourly rate for this month was \$165. Accordingly, defendants paid a total of \$140.25 in excess fees in this month.

### **November 2000**

11/1/00 – Jeannie DeVeney spent one half an hour reviewing plaintiff's motion for extension of time to file a response to defendants' Motion for Fees and drafting an opposition to the same.

11/28/00 – Jeannie DeVeney spent 1.7 hours reviewing plaintiff's response to defendants' Motion for Fees and beginning to draft a reply in support of the same.

Jeannie DeVeney's hourly rate for this month was \$165. Accordingly, defendants paid a total [o]f \$363 in excess fees during this month.

### **December 2000**

12/1/00 – Jeannie DeVeney spent 2.4 hours working on the reply in support of defendants' Motion for Fees.

12/6/00 – Jeannie DeVeney spent 6.1 hours working on the reply in support of defendants' Motion for Fees.

12/7/00 - Jeannie DeVeney spent 1.5 hours working on the reply in support of defendants' Motion for Fees.

Jeannie DeVeney's hourly rate for this month was \$165. In addition, defendants paid \$258.57 for computerized legal research in connection with tasks that were connected to excess fees. Accordingly, defendants paid \$1,908.57 in excess fees and expenses.

### **September 2001**

9/10/01 – Jeannie DeVeney spent 2/10 of an hour reviewing the Order regarding defendants' Motion for Fees.

9/24/01 – Jeannie DeVeney spent 1.6 hours reviewing plaintiff's Motion to Reconsider the fee issue, conducting legal research regarding the same and beginning to draft a response to the same.

9/25/01 – Jeannie DeVeney spent 1.3 hours and Nick Badgerow spent one half an hour finalizing the opposition to plaintiff's Motion to Reconsider.

Nick Badgerow's hourly rate during this month was \$265. Jeannie DeVeney's was \$185. Accordingly, defendants paid \$706 in excess fees during this month.

### **April 2002**

4/4/02 – Nick Badgerow spent 1.5 hours reviewing the Order denying plaintiff's Motion for Reconsider and Motion for Protective Order, and conducting legal research regarding the scope of discovery in a post-dismissal deposition under sections 1988 and 1927.

4/24/02 – Jeannie DeVeney spent 9/10 of an hour conferring with Nick Badgerow about the advisability of proceeding with a Motion for Fees and researching the same. Nick Badgerow spent 2/10 of an hour conferring with Jeannie DeVeney regarding the same.

Nick Badgerow's hourly rate during this month was \$265. Jeannie DeVeney's was \$195. Thus, the excess fees chargeable to defendants was \$626. Spencer Fane reduced defendants' bill by 25% during this month. Accordingly, defendants actually paid \$469.50 in excess fees during this month.

### **May 2002**

5/14/02 – Jeannie DeVeney spent 3.75 hours reviewing plaintiff's deposition in connection with a renewed Motion for Fees and drafting the same.

5/23/02 – Nick Badgerow spent 3/10 of an hour working on the renewed Motion for Fees and communicating with defendants about the same.

5/24/02 – Jeannie DeVeney spent one quarter of an hour and Jennifer Bearce spent 3.45 hours working on the renewed Motion for Fees.

Nick Badgerow's hourly rate during this month was \$265. Jeannie DeVeney's was \$195, and Jennifer Bearce's was \$90. Accordingly, defendants paid \$1,170 in excess fees during this month.

### **July 2002**

7/22/02 – Jeannie DeVeney spent 4.75 hours reviewing plaintiff's response to defendants' renewed Motion for Fees and beginning a draft reply in support of same.

7/23/02 – Jeannie DeVeney spent 3.25 hours working on a reply in support of defendants' renewed Motion for Fees.

7/24/02 – Nick Badgerow spent 3/10 of an hour and Cathy Daniels spent 6/10 of an hour working on a reply in support of defendants' renewed Motion for Fees.

7/25/02 – Jeannie DeVeney spent 4/10 of an hour finalizing and filing defendants' reply in support of its renewed Motion for Fees.

Nick Badgerow's hourly rate during this month was \$265. Jeannie DeVeney's was \$195, and Cathy Daniels's was \$110. In addition, defendants paid \$24.75 in copy charges, \$35.90 in delivery charges and \$71.09 in computerized legal research related to excess work. Accordingly, defendants paid \$1,915.24 in excess fees and expenses during this month.

### **September 2002**

9/18/02 – Jeannie DeVeney spent 1/10 of an hour speaking to Mr. Gage regarding plaintiff's requested extension to file a reply brief.

9/20/02 – Jeannie DeVeney spent three quarters of an hour reviewing plaintiff's Motion for Extension of Time and renewed Motion to Strike, and drafting a response to the same.

Jeannie DeVeney's hourly rate during this month was \$195. Accordingly, defendants paid \$165.75 in excess fees during this month.

### **October 2002**

10/2/02 – Jeannie DeVeney spent 5/100 of an hour reviewing the Order re plaintiff's Motion to Strike, for extension of time and to file a sur-reply.

10/23/02 – Jeannie DeVeney spent one quarter of an hour reviewing plaintiff's reply in support of his renewed motion to strike and plaintiff's sur-reply in opposition to defendants' renewed Motion for Fees.

Jeannie DeVeney's hourly rate during this month was \$195. Accordingly, defendants paid \$58.50 in excess fees during this month.

### **March 2003**

3/17/03 – Nick Badgerow spent one-half of an hour reviewing the Order regarding Defendants’ Motion for Fees and communicating with defendants regarding same. Jeannie DeVeney spent one-half of an hour reviewing the Court’s Order and beginning a review of the bills to submit to the court.

3/18/03 – Jeannie DeVeney spent one-half an hour reviewing bills for submission to the court and Nick Badgerow spent 1/10 of an hour communicating with the client on this subject.

3/21/03 – Jeannie DeVeney spent 1.75 hours reviewing bills for submission to the court.

The client was billed \$650 for services this month, all of which were “excess fees.”

### **April 2003**

To date, Jeannie DeVeney has spent 4.8 hours working on this submission. Jeannie DeVeney’s hourly rate during this month is \$210. Defendants will be billed \$1,008 for these excess fees.

The court has checked defendants’ calculations based on the above records and finds them to be accurate with two exceptions. The court’s calculations indicate that the total for October 1999 should be \$1859.40, rather than \$1827.50, and the total for September 2000, after the 10% reduction, should be \$2552.80, rather than \$2523.10. Therefore, based on the court’s calculations of defendants’ records, defendants are requesting excess fees and costs of \$22,258.79.

### **III. Plaintiff’s Counsel’s Objections**

Plaintiff’s counsel has raised several objections to defendants’ accounting of their excess fees, which the court will address below.

#### **1. Block Billing**

Plaintiff's counsel contends that defendants impermissibly block billed their time, leaving the court unable to determine the time spent on tasks that added excess fees.

The court begins by noting that the use of block billing does not *per se* preclude the recovery of attorneys' fees. *Cadena v. Pacesetter Corp.*, 224 F.3d 1203, 1215 (10<sup>th</sup> Cir. 2000). Rather, the court requires that a party submit records that provide enough detail to allow the court to determine the amount of time spent on specific tasks. *Robinson v. City of Edmond*, 160 F.3d 1275, 1285 (10<sup>th</sup> Cir. 1998). In this case, defendants have not submitted bills that identify the time allocated to certain tasks, rather than only indicating the amount of time spent on the case. *See Robinson*, 160 F.3d at 1285 n.9 (defining block billing). Specifically, defendants' records detail a discrete number of tasks that were worked on for the listed time interval. Because the court is only awarding excess fees, defendants were required, in some cases, to extract the tasks that comprised the excess fees and estimate the time spent on the task. That step does not categorically invalidate defendants' claimed fees. Rather, it requires the court to evaluate the time spent on each task and to determine if the time is reasonable. In this case, the court finds that defendants have documented their time spent with enough specificity to allow the court to make such a determination.

## **2. Motion to Compel**

Plaintiff's counsel objects to defendants' bill for twelve hours in connection with defendants' motion to compel execution of release and the accompanying certificate. Defendants point out that the work on this motion was necessitated by plaintiff's counsel's repeated requests for extension, and defendants detail the tasks completed in order to complete the motion.

Contrary to plaintiff's counsel's assertion, the court finds nothing "unconscionable" about the number of hours defendants reportedly spent on the motion. Nevertheless, defendants have proposed a

compromise in which only the 5.5 hours DeVeny billed in October 1999 be included. The court determines that defendants' proposed compromise represents a reasonable time spent on defendants' motion, and the court will adjust defendants' requested fees accordingly.

### **3. Nick Badgerow's Hours Worked**

Plaintiff's counsel challenges the hours Badgerow billed in connection with the motion to dismiss plaintiff's § 1983 and § 1985 claims.

From what the court can understand of plaintiff's counsel's objections, he appears to argue that Badgerow should have claimed *more* hours as the supervising attorney of then-associate DeVeny. In any case, the court finds that Badgerow's hours are appropriate and reasonable. Plaintiff's counsel's objection is denied.

### **4. April and June 1999**

Plaintiff's counsel objects to defendants' April and June 1999 time sheets because the time entries are handwritten. Defendants explain that they used a different accounting system in April 1999, and, therefore, they compiled the time sheet from individual records in storage. Defendants also submit a correct copy of the June 1999 time sheet because they inadvertently omitted the time entries in their original submission.

The court finds no reason to doubt defendants' April 1999 compilation or defendants' newly submitted June 1999 time sheet. Therefore, plaintiff's counsel's objections are denied.

### **5. Six-Minute Intervals**

Plaintiff's counsel asserts that defendants have misrepresented the time expended on certain tasks by billing six minutes, their minimum interval under their accounting method, when the task at hand could not have taken that long.

The court has thoroughly reviewed defendants' fee description and finds that defendants' reported times for reviewing plaintiff's motions for continuance or the court's orders granting plaintiff's motions are reasonable. These tasks would not have been necessary but for plaintiff's repeated requests for extensions, and the court has no problem believing that it would take defendants six minutes to open the document, read it, legally evaluate it, and then save or file the document in the appropriate location. Plaintiff's counsel's objection is denied.

#### **6. Defendants' Second Motion to Compel Execution of Releases**

Plaintiff's counsel challenges the 5.95 hours that defendants claim in connection with their second motion to compel execution of employment records release. Plaintiff's counsel asserts that plaintiff provided the necessary release.

However, as part of its order granting attorneys' fees, the court already concluded that the fee award was appropriate for, among other reasons, plaintiff's refusal to respond to discovery requests, which required defendants to file several motions to compel. In this case, as they point out, defendants were forced to file the second motion to compel in December 1999 and, after filing numerous motions to extend time, plaintiff did not properly execute the release until February 2001. The court finds that defendants' accounting of 5.95 hours is appropriate and, therefore, denies plaintiff's counsel's objection.

#### **7. Defendants' Motion to Extend Deadline**

Plaintiff's counsel asserts that he should not be responsible for defendants' time spent filing their motion to extend deadlines to make discovery disclosures.

However, it was plaintiff's repeated requests for time extensions and improper refusals to comply with discovery that made defendants' motion necessary. The court has already found that plaintiff's counsel's conduct unnecessarily extended these proceedings. Defendants' motion was but another outcome of his behavior. Plaintiff's counsel's objection is denied.

#### **8. Defendants' Motion to Dismiss for Failure to Comply with Court Order**

Plaintiff's counsel contends that he should not have to pay the attorneys' fees accrued when defendants filed a motion to dismiss the case for plaintiff's failure to comply with the court's order to produce the medical authorization form.

At the risk of sounding repetitive, plaintiff's counsel made necessary the motion to dismiss after he requested numerous extensions of time, refused to comply with discovery rules, and then sought to circumvent the court's order that he produce the authorization. Defendants' motion to dismiss was premised on this misconduct and falls easily within the court's order awarding attorneys' fees. Plaintiff's counsel's objection is denied.

#### **9. Defendants' Third Motion to Compel**

Plaintiff's counsel objects to the 2 hours spent on their third motion to compel documents. Again, plaintiff's counsel's conduct made defendants' motion necessary, and the court finds the hours billed to be within the court's order awarding attorneys' fees. Plaintiff's counsel's objection is denied.

#### **10. Defendants' Attorneys' Fees Incurred in Obtaining Sanctions**

Plaintiff's counsel argues that defendants should not be able to recover attorneys' fees for the time expended in obtaining sanctions against plaintiff's counsel awarding such fees. Plaintiff's counsel also contends that the court should disallow any fees accrued as a result of any unsuccessful theories advanced by defendants to sanction plaintiff and his counsel.

The court concludes that defendants' time spent seeking sanctions was a product of plaintiff's counsel's misconduct and, thus, falls within the court's order awarding attorneys' fees. Nevertheless, the court does find that defendants expended more than a reasonable amount of time researching the motion. In March 2000, defendants spent 23.55 hours researching the attorneys' fees issue and 2.8 hours beginning to write the motion. Defendants then spent 1.5 hours in August 2000 and 14.05 hours in September 2000 continuing to research and write the motion. The court recognizes that defendants' counsel reduced the bill for March 2000 by 35%, which would leave approximately 17.13 hours in that month. But the court still finds that defendants expended too much time researching the issue in March 2000, considering the time spent in August and September. Consequently, the court concludes that the hours billed in March 2000 should be reduced by 50% from the original bill.

#### **11. Hourly Rates**

Plaintiff's counsel also objects to the hourly rates charged by defendants' attorneys and paralegals assisting the attorneys.

The court notes that the present case has been ongoing since being filed in 1998, resulting in increases in the hourly rates charged by defendants' attorneys and paralegals. Badgerow's hourly rate was \$230 an hour in 1999 and rose to \$265 an hour by July 2002, the date of his last claimed excess fee. DeVeney's hourly rate started at \$150 an hour in July 1999 and increased to \$210 an hour by April 2003.

Defendants claim excess fees for work done by attorney Brett Fulkerson only for March 2000, for which his hourly rate was \$145 an hour. Attorney Carol Clark performed work in August and September 1999 at an hourly rate of \$125 an hour. Finally, paralegal Cathy Daniels's hourly rate started at \$90 an hour in October 1999 and increased to \$110 an hour by the July 2002 bill.

The court has reviewed defendants' attorneys' affidavits regarding the fees charged for attorneys and paralegals at Spencer Fane. The court has also reviewed the affidavits of Mark D. Hinderks and James M. Warden, both of whom are attorneys practicing in the Kansas City metropolitan area. Both Hinderks and Warden state that the hourly rates asserted for Badgerow, DeVeney, Fulkerson, and Daniels are within the range of hourly rates charged by professionals of their experience level practicing at a firm of the size and reputation of Spencer Fane. The court finds, based on the evidence submitted by defendants as well as the court's own knowledge of prevailing rates charged by attorneys in the Kansas City area, that defendants' counsels' and paralegal's hourly rates are reasonable based on these professionals' skills, experience, and reputation. Consequently, plaintiff's counsel's objection is denied.

#### **IV. Final Accounting**

Defendants have requested \$22,258.79 in excess costs and fees. The court concluded above that it was appropriate to reduce defendants' hours worked on their motion to compel execution of release and the accompanying certificate to the 5.5 hours DeVeney worked in October 1999. From the court's review of defendants' records, defendants' overall accounting should be reduced by \$1001.25 based on the following amounts:

##### **September 1999**

Clark: 4.25 hours worked at \$125/hour for a total of \$531.25.

Badgerow: 1.75 hours worked at \$230/hour for a total of \$402.50.

**October 1999**

Daniels: .75 hours worked at \$90/hour for a total of \$67.50.

The court also concluded above that defendants' hours for its March 2000 bill should be reduced by 50% from the original amount. For purposes of simplicity, in order to also prorate defendants' costs for legal research, the court will reduce defendants' total March 2000 bill to 50% of its original amount. The original bill was \$3902.09 and 50% of that amount is \$1951.05. Therefore, because defendants already reduced that month's bill by 35%, defendants' overall request should be reduced by an additional \$585.32.

Therefore, based upon the court's review of defendants' records and taking into account plaintiff's counsel's objections, the court concludes that \$20,672.22 represents an appropriate amount of excess fees expended by defendants. The court finds that defendants' counsel have asserted a reasonable claim for the hours they spent on the tasks connected to the court's order awarding § 1927 sanctions, and that defendants' counsel's hourly rate is a reasonable fee.

**IT IS THEREFORE ORDERED** that plaintiff's counsel is sanctioned in the amount of \$20,672.22 pursuant to 28 U.S.C. § 1927 and held liable to defendants for this full amount.

Dated this 31<sup>st</sup> day of August 2004, at Kansas City, Kansas.

s/ Carlos Murguia  
**CARLOS MURGUIA**  
**United States District Judge**

