





IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

|                          |   |                               |
|--------------------------|---|-------------------------------|
| DAWN CURRY PAGE, et al., | ) |                               |
|                          | ) |                               |
| Plaintiffs,              | ) |                               |
|                          | ) |                               |
| v.                       | ) | Civil Action No.: 3:13-cv-678 |
|                          | ) |                               |
| VIRGINIA STATE BOARD OF  | ) |                               |
| ELECTIONS, et al.,       | ) |                               |
|                          | ) |                               |
| Defendants.              | ) |                               |

**DEFENDANTS’ SUR-REPLY IN OPPOSITION TO PLAINTIFFS’  
THIRD SUPPLEMENTAL MOTION FOR ATTORNEYS’ FEES**

Plaintiffs’ reply in further support of their motion does more than restate their argument for the attorney’s fees they previously requested. Plaintiffs now ask for an *additional* \$22,500 in fees, most of them incurred in connection with preparing their fee petition. As with their previous request for “fees on fees”—which this Court reduced by almost ninety percent—they ask for more than Fourth Circuit precedent supports. In accordance with that precedent, the Court should award no more than \$10,000 for the portion of their latest request representing “fees on fees.”

Plaintiffs’ reply properly concedes that Richmond rates should apply both to the hours originally claimed in their motion as well as the 58.3 additional hours incurred since then,<sup>1</sup> and requests that the Court hold Intervenor-Defendants liable for any additional fee award.<sup>2</sup>

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<sup>1</sup> See Plaintiffs’ Reply in Support of Third Supplemental Motion for Attorneys’ Fees (July 13, 2015), at 2-3, 8-9, 13, ECF No. 184 [hereinafter Pls.’ Reply].

<sup>2</sup> *Id.* at 5-8.

Defendants agree and, for the same reasons set forth in our opening brief,<sup>3</sup> renew our argument that Intervenor-Defendants are solely responsible for any additional fee award.

But we cannot agree with Plaintiffs that they are entitled to an additional \$22,500 in fees incurred in June and July. As set forth in Exhibit A, more than \$17,500 of this amount—or 43.7 hours—represents the time their counsel spent on preparing their fee request.<sup>4</sup> This amount of “fees on fees” is excessive. The Court should only award a lower, reasonable amount, bearing in mind that a “prevailing party should not be awarded the cost of seeking attorneys’ fees where it appears that plaintiff has not made sufficient effort to minimize the cost of seeking said fees.”<sup>5</sup>

When Plaintiffs previously requested more than \$75,000 in “fees on fees” incurred in preparing their earlier fee petitions, the Court concluded that “awarding the claimed amount would be a significant departure from Fourth Circuit precedent,” and “limit[ed] the award . . . to a reasonable fee of \$10,000.”<sup>6</sup> In support of its conclusion, the Court cited *Spell v. McDaniel*, where the Fourth Circuit applied a seventy-percent reduction to “the simply incredible 64.6 hours that counsel contend[ed] . . . they spent preparing the . . . fee petition.”<sup>7</sup> The Fourth Circuit found, rather, that “[n]ineteen attorney hours were sufficient to accomplish the initial task as well

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<sup>3</sup> See Defendants’ Brief in Opposition to Plaintiffs’ Third Supplemental Motion for Attorneys’ Fees (July 6, 2015), at 3-8, ECF No. 183.

<sup>4</sup> We do not oppose the time entries reflecting the time that Plaintiffs’ counsel spent, at Defendants’ request, preparing Excel versions of their billing records.

<sup>5</sup> *Trimper v. City of Norfolk, Va.*, 846 F. Supp. 1295, 1308 (E.D. Va. 1994) (noting that a “prevailing party in a civil rights suit is under a duty to minimize the cost of vindicating his rights”), *aff’d*, 58 F.3d 68 (4th Cir. 1995) (internal citation omitted).

<sup>6</sup> Memorandum Opinion and Order (March 11, 2015) at 21, ECF No. 139. The Court then applied a further 20% reduction to the \$10,000 award because it suffered from a “block billing defect.” *Id.* at 21-22. Defendants acknowledge that that further reduction is not warranted here.

<sup>7</sup> 852 F.2d 762, 770 (4th Cir. 1988). See also ECF No. 139 at 21.





**Exhibit A: “Fees on Fees” Requested by Plaintiffs<sup>1</sup>**

| <i>Date</i> | <i>Timekeeper</i> | <i>Billed Hours</i> | <i>Billed Amount</i> | <i>Requested hourly rate</i> | <i>Reasonable hourly rate</i> | <i>Adjusted billed amount</i> | <i>Narrative</i>  |
|-------------|-------------------|---------------------|----------------------|------------------------------|-------------------------------|-------------------------------|---|
| 06/08/15    | W. Stafford       | 1.1                 | \$544.50             | \$495.00                     | \$405.00                      | \$445.50                      | Research and draft correspondence regarding issues related to fee petition;   |
| 06/09/15    | C. DeJulio        | 2.2                 | \$858.00             | \$390.00                     | \$350.00                      | \$770.00                      | Research whether attorney fees may be recovered from intervenor-defendants and whether fees are available for appeal (2.0); summarize research regarding same (.2); |
| 06/10/15    | W. Stafford       | 0.3                 | \$148.50             | \$495.00                     | \$405.00                      | \$121.50                      | Review C. DeJulio correspondence on attorneys' fees research (.2); draft correspondence to K. Hamilton analyzing recoverability of fees (.1);                       |
| 06/10/15    | C. DeJulio        | 3                   | \$1,170.00           | \$390.00                     | \$350.00                      | \$1,050.00                    | Continue research regarding availability of attorney fees from intervenor-defendants and fees on appeal (2.6); summarize same (.4);                                 |
| 06/14/15    | K. Hamilton       | 0.5                 | \$310.00             | \$620.00                     | \$575.00                      | \$287.50                      | Conference with B. Stafford regarding renewed fee application (.3); exchange email with M. Elias regarding same (.2);   |
| 06/14/15    | W. Stafford       | 0.5                 | \$247.50             | \$495.00                     | \$405.00                      | \$202.50                      | Gather materials from earlier fee petition briefing and prepare outline of supplemental motion for fees on remand;  |

<sup>1</sup> Information in this table is taken from the Second Declaration of Kevin J. Hamilton (July 13, 2015), ECF 185, and the exhibits thereto.

| <i>Date</i> | <i>Timekeeper</i> | <i>Billed Hours</i> | <i>Billed Amount</i> | <i>Requested hourly rate</i> | <i>Reasonable hourly rate</i> | <i>Adjusted billed amount</i> | <i>Narrative</i>   |
|-------------|-------------------|---------------------|----------------------|------------------------------|-------------------------------|-------------------------------|--|
| 06/15/15    | C. DeJulio        | 0.8                 | \$312.00             | \$390.00                     | \$350.00                      | \$280.00                      | Conference with B. Stafford regarding supplemental motion for attorneys' fees (0.2); conference with K. Hamilton and C. Anderson regarding supplemental motion for attorneys' fees (0.1); review materials for supplemental motion for attorneys' fees (0.5);  |
| 06/15/15    | K. Hamilton       | 0.5                 | \$310.00             | \$620.00                     | \$575.00                      | \$287.50                      | Conference with B. Stafford regarding supplemental fee application;  |
| 06/16/15    | C. DeJulio        | 1.5                 | \$585.00             | \$390.00                     | \$350.00                      | \$525.00                      | Conference with K. Hamilton regarding availability of attorneys' fees against Intervenor-Defendants (0.1); conduct research regarding availability of attorneys' fees against Intervenor-Defendants (1.4)  |
| 06/17/15    | C. DeJulio        | 7.1                 | \$2,769.00           | \$390.00                     | \$350.00                      | \$2,485.00                    | Summarize research regarding availability of attorneys' fees against Intervenor-Defendants (0.4); draft Third Supplemental Motion for Attorneys' Fees (0.8); draft Memorandum in Support of Third Supplemental Motion for Attorneys' Fees (4.3); draft Declaration of K. Hamilton (0.7); conduct research regarding availability of attorneys' fees on remand (0.3); conduct research regarding allocation of fees against multiple defendants (0.2); conference with K. Hamilton regarding supplemental motion for fee award (0.4); |



| <i>Date</i> | <i>Timekeeper</i> | <i>Billed Hours</i> | <i>Billed Amount</i> | <i>Requested hourly rate</i> | <i>Reasonable hourly rate</i> | <i>Adjusted billed amount</i> | <i>Narrative</i>  |
|-------------|-------------------|---------------------|----------------------|------------------------------|-------------------------------|-------------------------------|---|
| 06/17/15    | W. Stafford       | 0.4 <sup>2</sup>    | \$396.00             | \$990.00                     | \$405.00                      | \$162.00                      | . . . ; conference with K. Hamilton regarding fee petition (.4);  |
| 06/17/15    | K. Hamilton       | 0.9                 | \$558.00             | \$620.00                     | \$575.00                      | \$517.50                      | Review and revise supplemental motion for fee award (.5); conference with C. DeJulio regarding same (.4);   |
| 06/17/15    | M. Elias          | 0.5                 | \$367.50             | \$735.00                     | \$575.00                      | \$287.50                      | Review fee application cases;   |
| 06/18/15    | W. Stafford       | 0.8                 | \$396.00             | \$495.00                     | \$405.00                      | \$324.00                      | Revise and assist in finalization of papers in support of motion for fees on remand;  |
| 06/18/15    | K. Hamilton       | 1.5                 | \$930.00             | \$620.00                     | \$575.00                      | \$862.50                      | Review and revise brief and supporting documentation for supplemental fee application (1.1 ); conference with C. DeJulio regarding same (.4);   |
| 06/18/15    | C. DeJulio        | 4.9                 | \$1,911.00           | \$390.00                     | \$350.00                      | \$1,715.00                    | Draft motion for attorneys' fees and supporting documents (3.9); revise same (0.6); correspond with A. Branch regarding filing motion for attorneys' fees (0.1 ); conference with K. Hamilton regarding motion for attorneys' fees and supporting documents (0.3) |
| 06/19/15    | K. Hamilton       | 0.9                 | \$558.00             | \$620.00                     | \$575.00                      | \$517.50                      | Review and revise supplemental fee application (.6); conference with C. DeJulio regarding filing supplemental fee application (.3)  |
| 06/19/15    | M. Elias          | 1                   | \$735.00             | \$735.00                     | \$575.00                      | \$575.00                      | Review fee application (.8); email regarding comments (.2)  |

<sup>2</sup> This entry contained time descriptions for multiple tasks; it has been edited to include only the fee-petition-related work and the associated hours and fees.

| <i>Date</i> | <i>Timekeeper</i> | <i>Billed Hours</i> | <i>Billed Amount</i> | <i>Requested hourly rate</i> | <i>Reasonable hourly rate</i> | <i>Adjusted billed amount</i> | <i>Narrative</i>   |
|-------------|-------------------|---------------------|----------------------|------------------------------|-------------------------------|-------------------------------|--|
| 06/19/15    | C. DeJulio        | 3.1                 | \$1,209.00           | \$390.00                     | \$350.00                      | \$1,085.00                    | Revise motion for attorneys' fees and supporting documents (2.4); communicate with K. Hamilton regarding same (0.5); file same (0.2)   |
| 06/23/15    | K. Hamilton       | 0.5                 | \$310.00             | \$620.00                     | \$575.00                      | \$287.50                      | Telephone conference regarding attorneys' fee petition and related issues (.5);  |
| 07/01/15    | K. Hamilton       | 0.5                 | \$310.00             | \$620.00                     | \$575.00                      | \$287.50                      | Telephone conference with M. Elias regarding fee petition for supplemental fees and related issues;  |
| 07/06/15    | K. Hamilton       | 0.5                 | \$310.00             | \$620.00                     | \$575.00                      | \$287.50                      | Review fee petition reply papers;  |
| 07/06/15    | W. Stafford       | 3.5                 | \$1,732.50           | \$495.00                     | \$405.00                      | \$1,417.50                    | Review oppositions to motion for fees (0.9); research and draft reply in support of same (2.6);  |
| 07/07/15    | C. DeJulio        | 0.8                 | \$312.00             | \$390.00                     | \$350.00                      | \$280.00                      | Correspond with C. Anderson regarding time and billing records for reply in support of attorneys' fees (0.1); review Court's prior ruling on attorneys' fees in preparation for same (0.4); review time records for same (0.2); conference with B. Stafford regarding same (0.1) |
| 07/07/15    | W. Stafford       | 1                   | \$495.00             | \$495.00                     | \$405.00                      | \$405.00                      | Research and draft reply in support of motion for fees;  |
| 07/09/15    | C. DeJulio        | 0.3                 | \$117.00             | \$390.00                     | \$350.00                      | \$105.00                      | Review June time records for reply in support of motion for attorneys' fees  |
| 07/11/15    | W. Stafford       | 2.3                 | \$1,138.50           | \$495.00                     | \$405.00                      | \$931.50                      | Research and draft reply in support of motion for fees and accompanying papers;  |

| <i>Date</i>  | <i>Timekeeper</i> | <i>Billed Hours</i> | <i>Billed Amount</i> | <i>Requested hourly rate</i> | <i>Reasonable hourly rate</i> | <i>Adjusted billed amount</i> | <i>Narrative</i>  |
|--------------|-------------------|---------------------|----------------------|------------------------------|-------------------------------|-------------------------------|---|
| 07/12/15     | C. DeJulio        | 1.3                 | \$507.00             | \$390.00                     | \$350.00                      | \$455.00                      | Prepare declaration of K. Hamilton and supporting documents                     |
| 07/12/15     | W. Stafford       | 1.5                 | \$742.50             | \$495.00                     | \$405.00                      | \$607.50                      | Research and draft reply in support of motion for fees and accompanying papers; |
| <b>TOTAL</b> |                   | <b>43.7</b>         | <b>\$20,289.50</b>   |                              |                               | <b>\$17,564.50</b>            |   |

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| v.                       | ) | Civil Action No.: 3:13-cv-678 |
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| VIRGINIA STATE BOARD OF  | ) |                               |
| ELECTIONS, et al.,       | ) |                               |
|                          | ) |                               |
| Defendants.              | ) |                               |

**ORDER**

This matter is before the Court on Defendants’ motion for leave to file a sur-reply brief, of no more than three pages, to respond to new material in Plaintiffs’ Reply in Support of Third Supplemental Motion for Attorneys’ Fees, ECF No. 184. Pursuant to Local Civil Rule 7(F)(1), and it appearing to the Court that the relief requested is just and proper, Defendants’ motion is GRANTED. Defendants’ proposed sur-reply brief, filed as Exhibit 1 to their motion (ECF No. \_\_\_\_\_), shall be deemed filed as of the date of this order.

It is so ORDERED.

\_\_\_\_\_  
Robert E. Payne  
Senior United States District Judge

Richmond, Virginia

Date: \_\_\_\_\_, 2015