

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

BALTIMORE COUNTY BRANCH OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
et al.,

Plaintiffs,

v.

BALTIMORE COUNTY, MARYLAND,
et al.,

Defendants.

Civil Action No. 1:21-cv-03232-LKG

**DEFENDANT BALTIMORE COUNTY'S NOTICE OF FILING DECLARATION OF
MARGARET FONSHELL WARD IN SUPPORT OF ITS OPPOSITION TO
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

PLEASE TAKE NOTICE that, pursuant to this Court's modified Scheduling Order, ECF 111, 112, Defendant Baltimore County, Maryland ("Baltimore County") is hereby filing as Exhibit 6 in support of its Opposition to Plaintiffs' Motion for Attorneys' Fees and Litigation Expenses, ECF 106, the Declaration of Margaret Fonshell Ward.

Dated: April 11, 2024

Respectfully submitted,

/s/ Ava E. Lias-Booker

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of April, 2024, a copy of the foregoing Defendant Baltimore County's Notice of Filing Declaration of Margaret Fonshell Ward in Support of its Opposition to Plaintiffs' Motion for Attorneys' Fees and Litigation Expenses was served via the Court's CM/ECF system upon all counsel of record.

/s/ Melissa O. Martinez

Melissa O. Martinez

EXHIBIT 6

Declaration of Margaret Fonshell Ward

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DECLARATION OF MARGARET FONSHELL WARD

1. I, Margaret Fonshell Ward, am over the age of eighteen, and am otherwise competent to testify. I am not a party to, or related to a party, in this action. I have never served as counsel to any party to this action.

2. In 1987, I graduated from Georgetown University Law Center.

3. I am licensed to practice law, and a member in good standing, before the following state and federal courts: Supreme Court of Maryland, District of Columbia Court of Appeals, Supreme Court of the Commonwealth of Virginia, U.S. District Court for the District of Maryland, U.S. District Courts for the Eastern and Western Districts of Virginia, U.S. District Court for the District of Columbia, the United States Court of Appeals for the Third Circuit, the United States Court of Appeals for the Fourth Circuit, the United States Court of Appeals for the Fifth Circuit, and the United States Court of Appeals for the D.C. Circuit.

4. For the last 36 years I have been actively engaged in the practice of civil litigation. This includes significant discovery, motions, trials and appeals in state and federal court, including all levels of the judiciary in Maryland.

5. I am a partner at the law firm of Downs Ward Bender Herzog & Kintigh, P.A., a firm which provides legal advice, civil litigation defense, and appellate advocacy throughout Maryland in numerous practice areas.

6. I have been active in professional and community organizations, serving on the Board of Directors of DRI and as President of the Maryland Defense Counsel, and chair of the Lawyers Campaign for CollegeBound. I currently serve as a committee member of the International Association of Defense Counsel, the Federation of Defense and Corporate Counsel, and the Association of Defense Trial Attorneys.

7. I am an active contributor to Maryland Volunteer Lawyers Service, providing pro bono legal services to low-income Marylanders, for which I currently handle guardianship cases.

8. Our firm has defended numerous civil cases in which plaintiffs' counsel have sought attorneys' fees. Among these, I served as the lead attorney in *Kniaz, et al. v. Kay Management Co., et al.*, Case No. 19-CV-001343-LO (E. D. Virginia) and *Marks v. First Top of the Hill, L.L.P.*, Case No. 19-CV-003426-DLB (D. Maryland), which involved claims of violations of the Fair Housing Act.

9. I have testified in fee petition cases, including *Nationwide Property & Casualty Company, et al. v. American Employers Insurance Company, et al.*, Circuit Court for Baltimore County Case No. 03-C-08-006273, which involved separate claims of whether fees incurred in more than ten years of construction litigation and associated insurance coverage litigation were fair and reasonable.

10. Throughout my 36 years of practice, including my career-long participation and leadership in the various professional organizations that I serve, I am generally familiar with the billing rates of Baltimore attorneys and law firms appearing before the U.S. District Court for the District of Maryland.

11. From my experience in insurance coverage, civil rights, and fee petition cases, I am aware of the amount of work and corresponding number of hours required to litigate these cases.

12. I am also familiar with the Fee Guidelines set forth in Appendix B of the Local Rules of the U. S. District Court for the District of Maryland. In my experience, the Fee Guidelines accurately reflect the generally accepted permissible billing practices for law firms, as well as the rates that law firms charge across a broad range of diverse civil matters. Law firms, including Downs Ward Bender Herzog & Kintigh, P.A., with experienced attorneys who handle civil cases in Maryland who appear in the U.S. District Court for the District of Maryland generally charge rates consistent with the Fee Guidelines.

13. In addition to my background and experience, I have reviewed the materials in this matter, including the Complaint, the briefing related to Plaintiffs' Motion for a Preliminary Injunction and Baltimore County's Motion for Approval of Proposed Redistricting Map and to Modify the Preliminary Injunction, Plaintiffs' Motion for Attorneys' Fees and Litigation Expenses and the declarations of Cyril Smith and Mitchell Mirviss, Baltimore County's Response in Opposition to that motion, and the parties' billing records.

14. In this Voting Rights Act lawsuit, Plaintiffs sought to compel the County to create a second majority-Black councilmanic voting district. Plaintiffs successfully enjoined the election from occurring under the original redistricting map, but did not achieve the result of creating a second majority-Black district.

15. Plaintiffs' counsel are seeking \$896,556.00 in legal fees in this case. This amount is substantially more than I would expect and have seen in like cases with similar degrees of success. Nearly \$900,000 in legal fees is excessive for work occurring over only sixty days from the date the Complaint was filed to the date of the Court's ruling, which resulted in obtaining a preliminary injunction that was reversed one month later and without receiving the ultimate relief requested.

16. Part of Plaintiffs' counsel's substantial fee demand is due to seeking fees for unsuccessful work and work not related to Plaintiffs' limited success of obtaining a temporary preliminary injunction. Plaintiffs' counsel seeks over \$100,000 in opposing the County's Motion for Approval of Proposed Redistricting Map and to Modify the Preliminary Injunction (which was granted), the drafting and revising of status reports after the preliminary injunction was modified, preparing for a settlement conference that never occurred, and for submitting discovery requests to the County that were improper, objected to, and never answered.

17. Plaintiffs' counsel also seeks over \$50,000 in attorneys' fees for drafting a fee petition prior to the August 8, 2023 decision of *Stinnie v. Holcomb*, 77 F.4th 200 (4th Cir. 2023), during the time where a plaintiff could not be considered a prevailing party and be awarded attorneys' fees for only obtaining a preliminary injunction under Fourth Circuit law. It is unreasonable for Plaintiffs' counsel to be entitled to any of these unnecessarily incurred fees that could not have been successful and were unrelated to Plaintiffs' success.

18. In support of Plaintiffs' Motion for Attorneys' Fees submitted in this case, Plaintiffs are seeking the following rates in the 2021-2024 time frame: For Brown, Goldstein and Levy: \$725/hour for the lead partner with over 20 years of experience, and \$220/hour for paralegals; for Arnold & Porter: \$760/hour and \$787/hour respectively for two partners each with over 20 years

of experience, and \$502/hour and \$536/hour respectively for two associates each with less than 5 years of experience; and for the ACLU of Maryland: \$650/hour for the organization's legal director with over 20 years of experience, \$350/hour for a staff attorney with 5-8 years of experience, and \$220/hour for paralegals. I am aware of no lawyers in the Baltimore, Maryland area that can generally command a rate of over \$700/hour in these kinds of cases, especially representing plaintiffs. Curiously, Plaintiffs argue that the lead partner at Brown, Goldstein and Levy had no experience in voting rights cases. Thus, it was unreasonable for Plaintiffs to still seek \$725/hour for his services despite his lack of experience necessitating bringing in attorneys from Arnold & Porter.

19. All of Plaintiffs' attorneys' requested rates are excessive and unreasonable; they exceed the rates set forth under the Fee Guidelines in Appendix B of the Local Rules and also exceed rates typically charged by talented and skilled attorneys pursuing attorneys' fees in cases in Baltimore and in the U. S. District Court for the District of Maryland.

20. In my experience, attorneys in these jurisdictions who routinely pursue or defend these cases do so at or below the Fee Guidelines, and Plaintiffs' desired rates as identified in paragraph 18 are unreasonable.

21. The current hourly rates in the Appendix B Fee Guidelines are as follows:

Years of Experience	Hourly Rate
20 or more	\$300-475
15-19	\$275-425
9-14	\$225-350
5-8	\$165-300
Less than 5	\$150-225
Paralegals & Staff	\$95-150

22. These Guidelines adopted by this Court control and establish presumptively reasonable fee ranges for litigation in the U.S. District Court for the District of Maryland. In my opinion, Plaintiffs have not overcome that presumption. The two declarations from Cyril Smith and Mitchell Mirviss that purport to justify deviating from the controlling guidelines make general and conclusory assertions that the rates sought “are at or below the market rate for comparable attorneys and paralegals in the Baltimore region.” ECF 105-5 at ¶ 9; ECF 105-6 ¶ 8. But they do not explain why a departure from the Guidelines should be permitted.

23. Mr. Smith explains that he worked on the Fee Petition Subcommittee of the Court’s Bench-Bar Liaison Committee, which in 2013 surveyed the rates charged by Maryland firms. ECF 105-5 ¶ 5. The Guidelines’ rates were amended effective 2014 and remain in place. Mr. Smith does not explain why they should not be considered presumptively reasonable or why the Court should depart from those rates in this case. *See* ECF 105-5 at ¶ 5.

24. Neither declaration provides any specific evidence of what attorneys at their respective firms charge clients in any specific cases, much less any cases that parallel the litigation here. They are thus irrelevant and unhelpful to this Court’s fee analysis, and the Court should not consider them. Instead, the Guidelines should control.

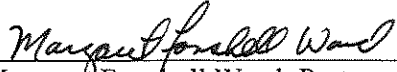
25. The partner and lead attorney for Brown, Goldstein and Levy as well as the partners from Arnold & Porter, and the ACLU of Maryland’s legal director, all of which have over 20 years of experience, should be compensated at a rate of \$300-\$475/hour. The ACLU’s staff attorney, who has 5-8 years of experience, should be compensated at a rate of \$165-\$300/hour. The Arnold & Porter associates, both with fewer than 5 years of experience, should be compensated at a rate of \$150-\$225/hour. And Brown, Goldstein and Levy’s and the ACLU’s paralegals and staff members should be compensated at a rate of \$95-\$150/hour.

26. In addition to Plaintiffs' counsels' excessive rates, Plaintiffs' billing records reflect numerous instances of billing practices prohibited by the Fee Guidelines. For instance, Plaintiffs' attorneys billed for each attorney that attended each hearing, internal conference, client call, and meeting with experts. Guideline 2(c) in Appendix B states that "[o]nly one lawyer for each party shall be compensated for attending hearings." Likewise, Guideline 2(d) states that "only one lawyer is to be compensated for client, third party, and intra-office conferences."

27. Plaintiffs' more experienced attorneys also billed their higher rates for work such as legal research and the initial drafting of pleadings that I would have expected to be handled by a more junior and less expensive associate or staff attorney. For instance, the ACLU of Maryland's legal director performed the majority of the legal research and drafting of the complaint and motion for preliminary injunction at a rate of \$650/hour. This is particularly surprising given that the ACLU had a staff attorney on this case, who under the guidelines, would have instead been billing \$165-300/hour for the same work. Arnold & Porter also staffed two junior associates to this case that could have handled the majority of the initial case research at a Guidelines rate of \$150-225/hour.

28. Overall, Plaintiffs' desired fee award in this case is excessive. Plaintiffs should not be entitled to recover attorneys' fees for unsuccessful work, for billing at rates beyond this Court's Guidelines, and for engaging in billing practices that are proscribed by this Court's rules.

I declare under the penalty of perjury that the foregoing is true and correct.



Margaret Fonshell Ward, Partner
Downs Ward Bender Herzog & Kintigh, P.A

Executed on: April 11, 2024
Date