

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.)	

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO FILE SUR-REPLY**

Defendants seek leave under Local Civil Rule 7(F)(1) to file a three-page sur-reply brief for the limited purpose of addressing the \$22,500 in attorney's fees requested for the first time in Plaintiffs' Reply in Support of Third Supplemental Motion for Attorneys' Fees.¹ Because this is a separate amount on top of the \$59,042.50 Plaintiffs requested in their original motion, Defendants could not have addressed it in their opposition brief. Now that Plaintiffs have specified the amount of "fees on fees" that they seek, fairness dictates that Defendants have an opportunity to respond.

On June 19, 2015, Plaintiffs filed their Third Supplemental Motion for Attorneys' Fees, and asked that the Court award \$59,042.50 in attorneys' fees incurred during the remand phase of the case.² In support, Plaintiffs provided copies of their billing records as well a declaration that concluded, "Plaintiffs seek a total of 120.6 hours totaling \$59,042.50 in fees as itemized in

¹ ECF No. 184.

² Plaintiffs' Memorandum in Support of Third Supplemental Motion for Attorneys' Fees (June 19, 2015) at 9, ECF No. 176.

these billing records.”³ Defendants and Intervenor-Defendants each filed a brief opposing the amount Plaintiffs sought.⁴ Among other things, Defendants argued that a portion of the 120.6 hours was not compensable, and that Plaintiffs’ claimed billing rates should be reduced to what this Court had previously found reasonable.

On July 13, 2015, Plaintiffs filed their reply, which reiterated their request for compensation for all 120.6 hours but conceded the reasonable market rates proposed by Defendants. But Plaintiffs then went further, and asked for another \$22,500:

With Plaintiffs’ concession on hourly rates, Plaintiffs seek \$51,040.50 in fees for their work on remand through May 31, 2015. Plaintiffs also seek an additional \$22,500.00 for work performed through July 12, 2015, including their fees on fees⁵

In support of this supplemental request, Plaintiffs filed a second declaration by their lead counsel, which attached billing records for 58.3 additional hours and worksheets documenting their increased request for \$73,540.50.⁶

Defendants seek leave to file a short sur-reply addressing just the new hours and fees claimed by Plaintiffs. Local Civil Rule 7(F)(1) does not permit a party to file a sur-reply without obtaining leave of Court. This Court “has the discretion to allow a sur-reply where a party brings

³ Declaration of Kevin J. Hamilton (June 19, 2015) at 5 ¶ 13.

⁴ See ECF No. 182 (Intervenor-Defendants), ECF No. 183 (Defendants).

⁵ Plaintiffs’ Reply in Support of Third Supplemental Motion for Attorneys’ Fees (July 13, 2015) at 3, ECF No. 184 [hereinafter Pls.’ Reply]. See also *id.* at 13 (indicating that Plaintiffs “seek to recover an additional \$22,500.00 in fees”).

⁶ See Second Declaration of Kevin J. Hamilton (July 13, 2015), ECF No. 185, with its attachments, as well as the worksheets filed as ECF No. 186 and ECF No. 186-1.

