

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT DASCOLA,

Plaintiff,

vs.

Case No. 2:14-cv-11296-LPZ-RSW
Hon. Lawrence P. Zatkoff
Magistrate Judge R. Steven Whalen

CITY OF ANN ARBOR and JACQUELINE
BEAUDRY, ANN ARBOR CITY CLERK,

Defendants,

and

SECRETARY OF STATE RUTH JOHNSON,

Intervenor-Defendant.

Thomas Wieder (P33228)
Attorney for Plaintiff
2445 Newport Rd.
Ann Arbor, MI 48103
(734) 994-6647
wiedert@aol.com

Erik A. Grill (P64713)
Denise C. Barton (P41535)
Assistant Attorneys General
Attorneys for Intervenor-Defendant
P.O. Box 30736
Lansing, MI 48909
(517) 373-6434
grille@michigan.gov

Office of the City Attorney
Stephen K. Postema (P38871)
Abigail Elias (P34941)
Attorneys for Defendants
301 E. Huron St., P.O. Box 8647
Ann Arbor, MI 48107
(734) 794-6170
spostema@a2gov.org
aekelias@a2gov.org

**PLAINTIFF'S MOTION FOR DETERMINATION
OF ADDITIONAL ATTORNEY'S FEES**

For his Motion, Plaintiff states:

1. In its July 22, 2014 Opinion and Order, the Court ordered that “Plaintiff is awarded all reasonable costs and attorney’s fees.”
2. For the reasons set forth in the accompanying Brief and attachment, Plaintiff seeks \$12,320.00 in attorney’s fees for the work of Thomas F. Wieder, Attorney-at-Law.
3. Concurrence by the Defendants in this Motion was sought, but was not obtained.

WHEREFORE, Plaintiff asks this Court to enter an order awarding Plaintiff \$12,320 in attorney’s fees and no amount for costs, with \$7,110 to be paid by the City Defendants and \$5,210 to be paid by the Intervenor-Defendant.

/s/ Thomas F. Wieder
Thomas F. Wieder (P33228)
Attorney for Plaintiff

Dated: August 19, 2014

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2014, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notice of such filing to the following: Stephen K. Postema, Abigail Elias, Erik A. Grill and Denise C. Barton.

/s/ Thomas F. Wieder
Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT DASCOLA,

Plaintiff,

vs.

Case No. 2:14-cv-11296-LPZ-RSW
Hon. Lawrence P. Zatkoff
Magistrate Judge R. Steven Whalen

CITY OF ANN ARBOR and JACQUELINE
BEAUDRY, ANN ARBOR CITY CLERK,

Defendants,

and

SECRETARY OF STATE RUTH JOHNSON,

Intervenor-Defendant.

Thomas Wieder (P33228)
Attorney for Plaintiff
2445 Newport Rd.
Ann Arbor, MI 48103
(734) 994-6647
wiedert@aol.com

Erik A. Grill (P64713)
Denise C. Barton (P41535)
Assistant Attorneys General
Attorneys for Intervenor-Defendant
P.O. Box 30736
Lansing, MI 48909
(517) 373-6434
grille@michigan.gov

Office of the City Attorney
Stephen K. Postema (P38871)
Abigail Elias (P34941)
Attorneys for Defendants
301 E. Huron St., P.O. Box 8647
Ann Arbor, MI 48107
(734) 794-6170
spostema@a2gov.org
aelias@a2gov.org

**MEMORANDUM BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR
DETERMINATION OF ADDITIONAL ATTORNEY'S FEES**

DISCUSSION

Plaintiff Obtained Excellent Results.

In determining the amount of the attorney's fee to award, the court should consider the degree of the plaintiff's success and the "results obtained." Hensley v. Eckerhart, 461 U.S. 424 (1983). In this case, Plaintiff accomplished the goal he set out to achieve. He asked for and received a court order preventing the Defendants from keeping him off the Ann Arbor City Council ballot by subjecting him to requirements previously declared unconstitutional and void by this Court. The Court has already awarded attorney's fees and costs for that effort.

This Motion seeks determination of the additional fees awarded by the Court in its July 22, 2014 Opinion and Order. The activity which generated these additional fees concerned Plaintiff's Post-Judgment Motion for Additional Injunctive Relief, the intervention of Defendant Secretary of State Ruth Johnson and related matters. Again, in this part of the litigation, Plaintiff accomplished his goal by obtaining an Order from this Court enjoining all Defendants from counting any votes on inaccurate ballots in the Third Ward Councilmember primary election.

Plaintiffs' Fee Request is Reasonable.

In Northcross v. Board of Education, 611 F.2d 624 (6th Cir, 1979), the Sixth Circuit held that "[o]nce [the issue of whether the plaintiff has prevailed] is determined in the plaintiffs favor, they are entitled to recover attorney's fees for 'all the time reasonably spent on a matter.'" Id. 636. (citation omitted). The "lodestar" calculation - made by multiplying the number of hours reasonably spent on the case by reasonable hourly rates - is "presumed to be the reasonable fee contemplated by §1988." City of Riverside v.

Rivera, 477 U.S. 561, 568 (1986); Wolfel v. Morris, 972 F.2d 712, 715 (6th Cir. 1992).

To determine the reasonableness of the hours expended and the rates charged, courts conduct a case-specific analysis that takes into consideration, among other things, the time and labor required, the experience, reputation and expertise of the lawyers, and the results obtained. Hensley, at 430, n3. Such an analysis establishes the reasonableness of Plaintiff's fee request here.

The Number of Hours for which Plaintiff Seeks Attorney's Fees is Reasonable.

Thomas F. Wieder was the sole attorney representing Plaintiff in this matter. He devoted 30.8 hours to the post-judgment portion of this matter. This time included research for and the writing of multiple briefs, responses and replies, a number of which involved new legal issues occasioned by the intervention of the Secretary of State.

The 30.8 hours recorded by Mr. Wieder was a reasonable amount of time to devote to this portion of the case.

The Reasonable Hourly Rate Requested is in Line with the Michigan Rates for Lawyers of Similar Skill, Experience and Reputation.

Plaintiff seeks hourly rates for his attorney that are "in line with those prevailing in [Michigan] for similar services by lawyers of reasonably comparable skill, experience, and reputation." Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984).

The requested rate for Mr. Wieder is equal to the rate he would normally bills clients in 2014. The education and experience of Mr. Wieder more than justifies the requested rates. Mr. Wieder is a 1980 cum laude graduate of the University of Michigan Law School from which he also received a Master of Public Policy Degree.

Since his admission to the Michigan Bar in 1981, Mr. Wieder has acquired extensive litigation experience in all of Michigan's trial courts and appellate courts, as well as significant experience in Federal trial courts. In 1995-2000, he was the sole counsel in a 301-member class action suit resulting in damage awards totaling \$25.5 million.

In 2008, he was lead counsel in a successful election law related case. (Green Party of Michigan, Libertarian Party of Michigan, Reform Party of Michigan, et al v. Michigan Secretary of State Terri Lynn Land, Case No. 2:08-cv-10149 (E.D. Mich.)) The attorney fees in that case were negotiated and settled by the parties, with Mr. Wieder receiving in excess of \$300 per hour. Mr. Wieder has also handled matters before the Michigan Teacher Tenure Commission and the Michigan Public Service Commission.

Using the State Bar of Michigan 2010 Economics of Law Practice Attorney Income and Billing Rate Summary Report as a guideline, it is clear that the hourly rate requested is reasonable. Given Mr. Wieder's educational background, broad range of litigation experience and success, it is not unreasonable to use the 95th percentile figures from that report.

The 95th percentile billing rate for all private practitioners was \$425 per hour. For attorneys with 31 to 35 years of practice, the rate was \$450. For the Ann Arbor area, the rate was \$425. For Washtenaw County, the rate was \$440. For civil rights law attorneys, the rate was \$450.

In viewing these figures, two things should be noted. They reflect billing rates from four years ago, and are probably lower than comparable rates today. In addition, some courts have held that the contingent nature of the fee arrangement with the party

may be taken into account. “The contingent nature of the fee is an appropriate factor to weigh in determining the overall reasonableness of the fee...” Bonner v. Coughlin 657 F.2d 931, 936 (C.A.Ill., 1981) (Seventh Circuit).

Accordingly, Plaintiff’s attorney should be fully compensated for the hours claimed at the hourly rate sought.

Verification.

Verification of fees, costs, customary charges and prevailing rates in the community is provided in the attached Affidavit of Thomas F. Wieder.

Apportionment of Fees Among Defendants

Plaintiff suggests that the assessment of fees should be apportioned among the Defendants based on whether the specific item of activity by Plaintiff’s counsel relates to actions taken or pleadings filed by the City Defendants, the Intervenor-Defendant or both. Marked on Exhibit A to the Affidavit of Thomas F. Wieder - his “timesheet” for the hours at issue - is Mr. Wieder’s designation for each item of work listed – C for City Defendants, I for Intervenor-Defendant, and CI for both. Based on these determinations, Plaintiff suggests that the proper allocation of responsibility for Plaintiff’s attorney’s fees is 57.7% for the City Defendants and 42.3% for the Intervenor-Defendant.

CONCLUSION

For the reasons stated above, Plaintiff asks this Court to grant his Motion for additional attorney’s fees in the amount of \$12,230.00, with \$7,110 assessed against the City Defendants and \$5,210 assessed against the Intervenor-Defendant.

/s/ Thomas F. Wieder
Thomas F. Wieder (P33228)
Attorney for Plaintiff

Dated: August 19, 2014

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2014, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notice of such filing to the following: Stephen K. Postema, Abigail Elias, Erik A. Grill and Denise C. Barton.

/s/ Thomas F. Wieder
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT DASCOLA,

Plaintiff,

vs.

Case No. 2:14-cv-11296-LPZ-RSW
Hon. Lawrence P. Zatkoff
Magistrate Judge R. Steven Whalen

CITY OF ANN ARBOR and JACQUELINE
BEAUDRY, ANN ARBOR CITY CLERK,

Defendants,

and

SECRETARY OF STATE RUTH JOHNSON,

Intervenor-Defendant.

Thomas Wieder (P33228)
Attorney for Plaintiff
2445 Newport Rd.
Ann Arbor, MI 48103
(734) 994-6647
wiedert@aol.com

Office of the City Attorney
Stephen K. Postema (P38871)
Abigail Elias (P34941)
Attorneys for Defendants
301 E. Huron St., P.O. Box 8647
Ann Arbor, MI 48107
(734) 794-6170
spostema@a2gov.org
aekias@a2gov.org

Erik A. Grill (P64713)
Denise C. Barton (P41535)
Assistant Attorneys General
Attorneys for Intervenor-Defendant
P.O. Box 30736
Lansing, MI 48909
(517) 373-6434
grille@michigan.gov

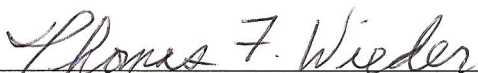
AFFIDAVIT OF THOMAS F. WIEDER

STATE OF MICHIGAN)
) ss.
COUNTY OF WASHTENAW)

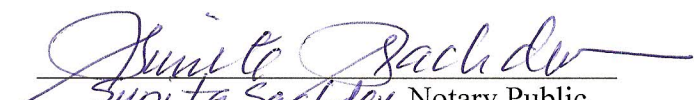
Thomas F. Wieder, being first duly sworn, deposes and says that:

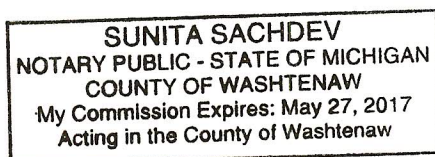
1. I am the attorney for Plaintiff in this action.
2. Attached hereto, as Exhibit A, is my Statement of Professional Services in Robert Dascola v. City of Ann Arbor, et al.
3. The Statement of Professional Services is, to the best of my ability, a true and accurate accounting of the activities in which I engaged as attorney for the Plaintiff, as well as a true and accurate accounting of the amount of time that I spent on those activities.
4. The statements made in the Brief in Support of Plaintiff's Motion for Determination of Additional Attorney's Fees regarding the rate customarily charged by me for such work are true and accurate.
5. The statements made in the Brief in Support of Plaintiff's Motion for Determination of Additional Attorney's Fees regarding the prevailing rate charged in the community for similar services are true and accurate to the best of my knowledge, information and belief.

Further, Deponent sayeth not.


Thomas F. Wieder

Subscribed and sworn to before me this 19th day of August, 2014.


Sunita Sachdev, Notary Public
Washtenaw County, Michigan
My Commission Expires: 05-27-17



THOMAS F. WIEDER
 ATTORNEY AT LAW
 2445 NEWPORT ROAD
 ANN ARBOR, MICHIGAN 48103

EXHIBIT A

TELEPHONE: (734) 994-6647
 FAX: (734) 994-6647
wiedert@aol.com

August 14, 2014

For Professional Services in Robert Dascola v. City of Ann Arbor, et al

<u>Date</u>	<u>Activity</u>	<u>Hours</u>
7/3/14	Research facts and law for Plaintiff's Post-Judgment Motion for Additional Injunctive Relief; begin drafting.	3.25 C
7/7/14	Prepare and finalize Plaintiff's Post-Judgment Motion for Additional Injunctive Relief and Brief in Support. File with Court. Email exchange with City Attorney regarding Motion, as well as City's position on compliance with SOS directive.	2.00 C
7/8/14	Prepare Plaintiff's Motion for Expedited Consideration of Plaintiff's Post-Judgment Motion for Additional Injunctive Relief, Brief in Support, file with Court. Review Second Expedited Consideration Order.	2.00 C
7/9/14	Read and review Defendants' Brief in Response to Plaintiff's Post-Judgment Motion for Additional Injunctive Relief.	3.75 C
7/10/14	Prepare and file Reply Brief in Support of Plaintiff's Post-Judgment Motion for Additional Injunctive Relief.	2.25 C
7/10/14	Tel. Conf. with Asst. A.G. Barton re: SOS's intention to Intervene.	.50 I
7/11/14	Review SOS's Motion to Intervene and Brief in Response to Plaintiff's Motion for Additional Injunctive Relief.	2.25 I
7/12/14	Research and prepare response to SOS's Motion to Intervene.	2.00 I
7/13/14	Finalize and file Response to SOS's Motion to Intervene.	1.25 I
7/14/14	Review Defendants' Response and Brief to SOS's Motion to Intervene.	.75 C

7/16/14	Review Opinion and Order re: SOS Motion to Intervene	.25 I
7/16/14	Review Order to Show Cause.	.15 C
7/16/14	Read and review email from Law Clerk Matthew Boucher Regarding Defendant-Intervenor's Brief.	.15 I
7/16/14	Research and prepare Plaintiff's Reply to SOS's Brief re: Plaintiff's Motion for Additional Injunctive Relief.	1.75 I
7/17/14	Finalize and file Plaintiff's Reply to SOS's Brief re: Plaintiff's Motion for Additional Injunctive Relief.	2.50 I
7/18/14	Read and Review email from Ian James Reach, representing Washtenaw County and Affidavit of Ed Golembiewski, Washtenaw County Chief Deputy Clerk / Director of Elections Regarding omission of Plaintiff's name from ballots.	.50 CI
7/22/14	Read and review Court's July 22, 2014 Opinion and Order. Tel. Conf. with client.	.50 CI
7/22/14	Read and Review email from Ian James Reach, representing Washtenaw County and revised Affidavit of Ed Golembiewski, Washtenaw County Chief Deputy Clerk / Director of Elections regarding omission of Plaintiff's name from ballots.	.50 CI
7/23/14	Read and review City Defendants' Brief in Response to Order to Show Cause.	.25 C
7/23/14	Read, review and respond to multiple emails regarding destruction of inaccurate Third Ward ballots with Beaudry, Golembiewski, Reach and Postema.	.75 C
7/25/14	Read and review City Defendants' Brief in response to Court's July 22, 2014 Order.	.50 C
7/25/14	Read and review Intervenor-Defendant's Brief in response to Court's July 22, 2014 Order.	.50 I
7/25/14	Prepare and file Plaintiff's Response to Court's July 22, 2014 Order.	.75 CI
7/29/14	Tel. conf. with Postema and Beaudry re: status of absentee ballot returns.	.25 C
8/14/14	Prepare Plaintiff's Motion to Determine Additional Attorney Fees and costs, Affidavit and Brief in Support.	1.50 CI

TOTAL HOURS: 30.80

30.80 Hours at \$400.00 per hour: \$12,320.00

C – City Defendants

I – Intervenor Defendant

CI – City and Intervenor Defendants equally.