

**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.

---

Thomas Wieder (P33228)  
Attorney for Plaintiff  
2445 Newport Rd.  
Ann Arbor, MI 48103  
(734) 994-6647  
[wiedert@aol.com](mailto: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](mailto:spostema@a2gov.org)  
[aelias@a2gov.org](mailto:aelias@a2gov.org)

---

**PLAINTIFF'S MOTION FOR  
DETERMINATION OF ATTORNEY'S FEES AND COSTS**

For his Motion, Plaintiff states:

1. In its May 20, 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 attachments, Plaintiff seeks \$37,300.00 in attorney's fees for the work of Thomas F. Wieder, Attorney-at-Law, and costs in the amount of \$425.50.
3. Concurrence by the Defendants in this Motion was sought, but was denied.

**WHEREFORE**, Plaintiff asks this Court to enter an order awarding Plaintiff \$37,300.00 in attorney's fees and \$425.50 in costs.

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

Dated: June 6, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on June 6, 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 and Abigail Elias.

/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.

---

Thomas Wieder (P33228)  
Attorney for Plaintiff  
2445 Newport Rd.  
Ann Arbor, MI 48103  
(734) 994-6647  
[wiedert@aol.com](mailto: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](mailto:spostema@a2gov.org)  
[aalias@a2gov.org](mailto:aalias@a2gov.org)

---

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

## 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.

This accomplishment is particularly important because it protects the significant political right of Plaintiff, and others who may follow him, to seek political office. The goal in this case was not to seek pecuniary gain; it was to stop an unconstitutional practice. It also establishes clearly that a municipality may not ignore orders of this Court and make their own definition of what the law is.

### **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. Over a nearly three-month period, he devoted 93.25 hours to this matter. This time included researching the factual and legal bases for Plaintiff's claim and a review of prior litigation regarding the challenged City Charter provisions in both 1971-1972 and 2001-2002.

Before the filing of the Complaint, extensive communication took place between Mr. Wieder and Stephen Postema, Ann Arbor City Attorney, in an attempt to avoid litigation entirely or to narrow the issues, should litigation ensue.

During the course of this case, Mr. Wieder prepared the Complaint, five Motions and eight Briefs. As the Court noted in its Opinion and Order, Defendants raised numerous issues of little relevance to the case, but Mr. Wieder was, nevertheless, required to spend considerable time researching and responding to Defendants' pleadings on these issues.

This was not a simple case. The Court has specifically noted that, on the central legal issue of the case, this was a case of first impression in this Circuit.

Given the number and complexity of the issues presented, and the lack of clear authority on the central legal issue, the 93.25 hours recorded by Mr. Wieder was a reasonable amount of time to devote to this 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 95<sup>th</sup> percentile figures from that report.

The 95<sup>th</sup> 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.

**Plaintiff’s Costs.**

Plaintiff’s costs are limited, consisting of the \$400 case filing fee, and \$25.50 in page charges from PACER, for a total of \$425.50. Plaintiff should be awarded all of these costs.

**Verification.**

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

**CONCLUSION**

For the reasons stated above, Plaintiff asks this Court to grant his Motion for attorney’s fees in the amount of \$37,300 and costs in the amount of \$425.50.

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

Dated: June 6, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on June 6, 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 and Abigail Elias.

/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.

---

Thomas Wieder (P33228)  
Attorney for Plaintiff  
2445 Newport Rd.  
Ann Arbor, MI 48103  
(734) 994-6647  
[wiedert@aol.com](mailto: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](mailto:spostema@a2gov.org)  
[aelias@a2gov.org](mailto:aelias@a2gov.org)

---

**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 Bill of Costs, attached hereto as Exhibit B, is a true and accurate accounting of the costs incurred in the prosecution of this case.

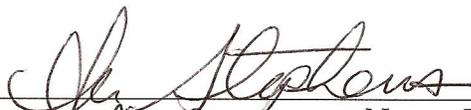
5. The statements made in the Brief in Support of Plaintiff's Motion for Determination of Attorney's Fees and Costs regarding the rate customarily charged by me for such work are true and accurate.

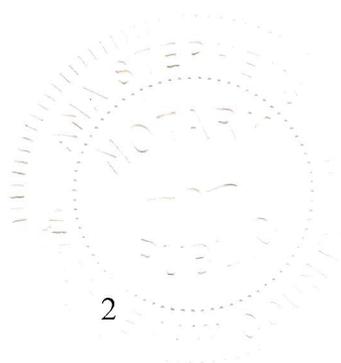
6. The statements made in the Brief in Support of Plaintiff's Motion for Determination of Attorney's Fees and Costs regarding the prevailing rate charged in the community for similar services are true and accurate to the best of my knowledge, information and belief.

Further deponent sayeth not.

  
\_\_\_\_\_  
Thomas F. Wieder

Subscribed and sworn to before me this 6 day of June, 2014.

  
\_\_\_\_\_  
Ana Stephens, Notary Public  
Washtenaw County, Michigan  
My Commission Expires: *November 16, 2018*



ANA STEPHENS NOTARY PUBLIC - MICHIGAN WASHTENAW COUNTY ACTING IN THE COUNTY OF _____ MY COMMISSION EXPIRES NOV. 16, 2018
--

**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](mailto:wiedert@aol.com)

June 6, 2014

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

<u>Date</u>	<u>Activity</u>	<u>Hours</u>
3/12/14	Tel. conf. with client and follow-up email re: taking out nominating petitions.	.50
3/13/14	Tel. conf. with client regarding dealings with City Clerk.	.50
3/17/14	Tel. call to Clerk Beaudry setting forth position that Dascola was eligible to run for City Council.	.25
3/17/14	Review email response from Clerk Beaudry regarding Dascola eligibility to run for City Council.	.25
3/18/14	Prepare and email detailed letter, including citations, to City Attorney Stephen Postema setting forth facts and showing Dascola's eligibility to run for Council.	2.00
3/19/14	Review Postema response to 3/18/14 email.	.25
3/19/14	Tel. conf. with Postema regarding factual issues about duration of Dascola residence in 3 <sup>rd</sup> Ward.	.50
3/19/14	Prepare and email detailed follow-up letter to Postema regarding facts and applicable law concerning Dascola residency.	1.75
3/19/14	Tel. conf. with client regarding status of case.	.50
3/20/14	Tel. conf. with client about handling of petitions and public access to correspondence between the attorneys.	.25
3/23/14	Prepare and send email to Postema informing him of intent to file suit and exploring possibility of settlement.	.25
3/24/14	Email to client advising him about procedures and legal issues associated with his submission of petitions.	.25

3/24/14	Read and review Postema email stating City's position and rejecting settlement.	.25
3/24/14	Prepare and send email to Postema responding to Postema email of same date regarding City's factual accuracy and legal analysis.	1.00
3/24/14	Read and review Postema response email.	.25
3/24/14	Prepare and send email to Postema regarding residency statute, handling of Dascola petitions and other matters.	.75
3/25/14	Prepare and send email to Postema on the issue of "voided" laws.	.75
3/25/14	Read and review Postema email on registered voter durational requirements and escrowing of Dascola petitions pending outcome of expected litigation.	.25
3/25/14	Read and review Postema email on repeal of charter provisions, relevance of state court ruling, etc.	.25
3/27/14	Prepare and send email to Postema regarding the status of "void" laws, enforcement of "voided" charter provisions, etc. Prepare Motion for Summary Judgment. Prepare Complaint.	4.25
3/28/14	Finalize and file Complaint. Read and review Postema email on the "revival doctrine." Read and review cited cases. Research and prepare Brief in Support of Motion for Summary Judgment.	3.75
3/29/14	Finalize and File Motion for Summary Judgment and Brief in Support.	1.25
3/30/14	Tel. conf. with client regarding status of case.	.50
3/31/14	Read and review Postema email outlining his expected Motion to Dismiss, recent case law, the Home Rule Cities Act and acceptance of service of Complaint. Review authorities cited in email.	1.25
4/1/14	Prepare and send email in response to Postema email of same date, denying concurrence in the City's Motion, reviewing authorities, raising issue of expedited proceedings and other issues raised in his email.	1.50
4/1/14	Read and review Postema email on prior state case.	.25
4/1/14	Prepare and send email to Postema responding to his claims about the prior state case, seeking his concurrence in Plaintiff's Motion for Summary Judgment and other matters.	.50

4/2/14	Read and review Waiver of Service of Summons.	.25
4/3/14	Prepare and File Plaintiff's Amended Motion for Summary Judgment.	.50
4/3/14	Prepare and file Motion for Expedited Consideration and Brief In Support.	2.00
4/4/14	Review Defendants' Brief in Response to Motion for Expedited Consideration.	.25
4/7/14	Read and review Court's Expedited Briefing Schedule provided directly by Judge Zatkoff's office before Order entered.	.25
4/14/14	Read and review Defendants' Motion to Dismiss and Brief in Support, review citations.	2.75
4/14/14	Read and review Defendants' Response Brief in Opposition to Motion for Summary Judgment, review citations.	2.25
4/14/14	Tel. conf. with client regarding status of case.	.75
4/15/14	Prepare Response to Motion to Dismiss. Research and prepare Brief in Support.	7.75
4/16/14	Research and prepare Brief in Support of Response to Motion to Dismiss.	8.25
4/17/14	Finalize Brief in Support of Response to Motion to Dismiss. Research and prepare Reply Brief in Support of Motion for Summary Judgment.	9.75
4/18/14	Finalize Reply Brief in Support of Motion for Summary Judgment. File Response to Motion, Brief in Support, Reply Brief in support of Motion for Summary Judgment.	3.00
4/21/14	Read and review Court's Expedited Consideration Order.	.25
4/23/14	Read and review Defendants' Reply Brief regarding Motion to Dismiss.	1.00
4/23/14	Prepare and send email to client discussing briefs filed by Defendants.	.50
4/23/14	Email to Postema regarding issue of oral argument.	.25
4/30/14	Read and Review Court's Order for supplemental briefing.	.50
5/1/14	Research "re-enactment" issue, prepare Supplemental Brief.	3.25

5/2/14	Research "re-enactment" issue, prepare Supplemental Brief.	4.75
5/5/14	Research "re-enactment" issue, prepare Supplemental Brief.	2.25
5/5/14	Research "re-enactment" issue, prepare Supplemental Brief.	1.50
5/6/14	Finalize and file Supplemental Brief.	1.25
5/6/14	Tel. conf. with client regarding status of case.	.50
5/6/14	Read and review Defendants' Supplemental Brief and citations therein.	1.25
5/8/14	Prepare Motion for Leave to File First Amended Complaint and Brief in Support, email to Postema seeking concurrence in Motion, file Motion and Brief.	1.25
5/9/14	Read and Review Defendants' Response to Motion for Leave, Review citations therein.	1.75
5/10/14	Research and prepare Reply Brief in Support of Motion for Leave.	3.25
5/11/14	Finalize and file Reply Brief in Support of Motion for Leave.	3.00
5/13/14	Tel. conf. with Judge's Clerk and Postema regarding need for oral argument on Motions. Tel. conf. with Postema regarding possible settlement.	.75
5/20/14	Read and review Court's Opinion and Order and Judgment; tel. conf. with client.	1.25
6/4/14	Prepare Motion to Determine Amount of Attorney Fees and costs, Affidavit and Brief in Support.	3.00

**TOTAL HOURS: 93.25**

**93.25 Hours at \$400.00 per hour: \$37,300**

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

**EXHIBIT B**

---

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

June 6, 2014

Bill of Costs for Robert Dascola v. City of Ann Arbor, et al

Case filing fee	\$400.00
PACER page charges	<u>25.50</u>
TOTAL COSTS	\$425.50