

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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CEDRIC JOHNSON,

Plaintiff,

v.

GEORGE DALEY, M.D.,

Defendant.

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ORDER

98-C-518-C

Pursuant to the mandate issued by the Court of Appeals for the Seventh Circuit on August 19, 2003, the amended judgment entered herein on October 27, 2000 will be vacated.

I have recalculated the award of attorney fees owed to plaintiff's counsel by applying the recovery limit set out in 42 U.S.C. § 1997e(d), which is 150% of the hourly rate established under 18 U.S.C. § 3006A in effect between May 4, 1999, when counsel was appointed, and January 10, 2000, which is the date of the last billable hours listed on the itemization of fees provided by plaintiff's counsel in support of his fee award request. The rates in effect in 1999 were \$45 an hour for out-of-court time and \$65 an hour for in-court time. On January 1, 2000, the rates were increased in both categories by \$5 to \$50 and \$70.

One hundred fifty percent of \$45 and \$65 is \$67.50 and \$97.50, respectively. One hundred fifty percent of \$50 and \$70 is \$75 and \$105, respectively.

In the October 6, 2000, order awarding plaintiff attorney fees and costs in this case, I found that plaintiff's request for compensation for 490.9 out-of-court hours and 34.2 in-court hours was directly and reasonably incurred in proving an actual violation of plaintiff's rights under the United States Constitution. However, I deducted .9 hours of out-of-court-time claimed for library staff's work on the case as not compensable under 42 U.S.C. § 1988. These findings and the finding that plaintiff was entitled to recover costs in the amount of \$8,778.81 were not disturbed by the decision of the court of appeals.

According to plaintiff's itemization of hours set out in Exhibit A attached to the motion for an award of attorney fees (Dkt. #83), all but 2.7 hours of the 34.2 in-court hours claimed by counsel were recorded after January 1, 2000. All but 17.1 of the 488 out-of-court hours claimed by counsel were recorded *prior to* January 1, 2000.<sup>1</sup> Thus, I have calculated plaintiff's award of attorney fees to be as follows:

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<sup>1</sup>Initially, plaintiff sought reimbursement for 490 hours of out-of-court time. Later, in a letter dated October 13, 2000, plaintiff requested permission to withdraw the application for 2.0 hours that had been figured at the rate of \$275 per hour. This reduced the original fee award by \$550 and is reflected in the amended judgment.

		<u>Hours</u>	<u>Rate</u>	<u>Total</u>
<u>In-Court</u>	<u>Pre-1/1/00</u>	2.7	\$97.50	\$263.25
<u>In-Court</u>	<u>Post 1/1/00</u>	31.5	\$105.00	\$3307.50
<u>Out-of-Court</u>	<u>Pre-1/1/00</u>	470.9	\$67.50	\$31,785.75
<u>Out-of-Court</u>	<u>Post 1/1/00</u>	17.1	\$75.00	<u>\$1282.50</u>
GRAND TOTAL:				\$36,639.00

With the addition of an award of costs and out-of-pocket expenses in the amount of \$8,778.81, the total amount of the attorney fee award is \$45,417.81.

In the October 6, 2000 order, I concluded that it was proper for plaintiff to pay \$200 of the \$40,000 jury award he received toward his attorney fees pursuant to the fee shifting provision set out in 42 U.S.C. § 1997e(d)(2). That conclusion stands.

#### ORDER

IT IS ORDERED that

1. The amended judgment entered herein on October 27, 2000 is VACATED.
2. Defendant is to pay plaintiff \$45,417.81, minus \$200, for a total of \$45,217.81.
3. The clerk of court is requested to enter a second amended judgment as follows:

IT IS ORDERED AND ADJUDGED that defendant George Daley's denial of the requests to have plaintiff Cedric Johnson evaluated for a liver transplant constituted deliberate indifference to plaintiff Johnson's serious

medical condition in violation of plaintiff's Eighth Amendment rights, that defendant George Daley's conduct resulted in a delay in plaintiff Cedric Johnson's receipt of a liver transplant, and that said delay in plaintiff Cedric Johnson's receipt of a liver transplant caused him to suffer physical injuries and mental harm, with a jury award to plaintiff of \$10,000 in compensatory damages and \$30,000 in punitive damages. FURTHER, IT IS ORDERED that plaintiff's motion for an award of attorney fees, costs and out-of-pocket expenses is granted, defendant is to pay plaintiff \$45,417.81, minus \$200 against the judgment pursuant to 42 U.S.C. § 1997e(d)(2), for a total of \$45,217.81, and this case is CLOSED.

Entered this 26th day of September, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge