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Defendants.)

JAMES C. HOLLORAN,)
Plaintiff,)

v.)

DEPUTY JOE DUNCAN, *et al.,*)
Defendants.)

Case No. 1:13-cv-1187 JDB-egb

Jury Demanded

ALEXIS PINNELL,)
Plaintiffs,)

v.)

DEPUTY JOE DUNCAN, *et al.,*)
Defendants.)

Case No. 1:13-cv-1193-JDB-egb

Jury Demanded

JOHN RAINEY,)
Plaintiff,)

v.)

DEPUTY JOE DUNCAN, *et al.,*)
Defendants.)

Case No. 1:13-cv-01167 JDB-egb

Jury Demanded

AARON RODEN,)
Plaintiffs,)

v.)

DEPUTY JOE DUNCAN, *et al.,*)
Defendants.)

Case No. 1:13-cv-01195 JDB-egb

Jury Demanded

CODY SCOTT,)
Plaintiff,)

v.)

DEPUTY JOE DUNCAN, *et al.,*)
Defendants.)

Case No. 1:13-cv-01166 JDB-egb

Jury Demanded

BLAKE WILLIAMS,)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 1:13-cv-01168 JDB-egb
)	
DEPUTY JOE DUNCAN, <i>et al.</i> ,)	Jury Requested
— <i>Defendants.</i>)	

ORDER

The District Court has issued its Order Adopting Report and Recommendation as Modified, Granting Motion for Sanctions and Directing Plaintiffs’ Counsel to Submit Affidavit of Fees and Cost to the Magistrate Judge [D.E. 138]. The Magistrate Judge notes for clarity that instead of the affidavit being submitted to the Court, Counsel for Plaintiffs instead has filed a motion for these fees [D.E. 147]. Therefore, it is this motion for fees that is now considered by the Magistrate Judge.

The fees are sought by two attorneys:

Andrew Clarke. A graduate of Cecil C. Humphrey’s School of Law (1992), Mr. Clarke and has significant experience in handling civil right cases to include writing and speaking on the subject. Counsel affirms he did not bill for his paralegal’s time and that his own time of 52 hours he seeks was devoted to this spoliation issue. His hourly rate in such cases is \$400 and his total fees sought here are \$20,800.00.

Jodi E. Melind. A graduate of the Nashville School of Law in May of 2010, she had previous experience as a family law mediator and paralegal. Her law practice includes plaintiff’s work from 2009 to this time, including federal court in the Middle and Western

Districts of Tennessee. Ms. Melind has a \$300.00 per hour rate, and according to her time records, she expended 16.2 hours in this matter, and seeks fees of \$4860.00.

Thus, the total of these fees sought in this motion is \$25,660.00.

By affidavit, Henderson County attorney Leanne Thorne — herself a civil rights litigator often before this Court — states she knows Mr. Clarke personally, and that from her own experience, spoliation matters are often complex and require significant time and expertise to develop. Memphis attorney William B. Ryan — with a distinguished legal background and years of litigation experience adds by his affidavit his opinion that Clarke and Melind have exercised proper billing judgment in this difficult area of civil rights litigation. As well, he cites the 2013 billing survey of the *National Law Journal* which notes the average rates for Memphis and Nashville was \$400.00 per hour for experienced lawyers. His affidavit concurs with the billing rates of Mr. Clarke and Ms. Melind. However, his own billing rate for employment and civil rights involving individual plaintiffs is \$300-350 per hour. Of course, the present case includes multiple Plaintiffs.

Counsel for the Defendant Sheriff and County concedes on the Court's decision to award attorney fees, but challenges the billing rate of Ms. Melind and some of her time as duplicative of Mr. Clarke's time. For example, his argument that Ms. Melind was unnecessarily present in the Jackson hearing since she did not participate by speaking or doing very little. The Court has no clear recollection of her precise role during the proceedings, but does not find her time duplicative. An assisting lawyer or "second chair" is not uncommon and could well have been useful in a lawsuit of this nature, particularly present when the two witnesses testified.

Nonetheless, this was not a difficult or complex spoliation issue. From the beginning, the Defendant County agreed it had notice to preserve the video and that in some fashion, the video was permitted to “time out” after thirty days and was erased automatically. The Magistrate Judge heard the testimony of the two key witnesses and made the determination that sanctions should apply and fees be awarded. While the hours worked were reasonable and necessary, the Magistrate Judge finds that the compensation rates sought should be adjusted based upon all of the above and particularly the relatively uncomplicated nature of the spoliation issue.

The Magistrate Court finds that Attorney Clarke is entitled to his 52 hours at a reduced hourly rate of \$350.00. While Mr. Clarke seeks \$400 an hour, the Magistrate Judge notes that Memphis rates are typically higher than Jackson, Tennessee area attorney fees. Further, as noted by Defense Counsel, Mr. Clarke was awarded a \$350 hourly rate in Memphis by District Judge Samuel H. Mays, Jr. and Magistrate Judge Charmiane Claxton in January of 2013.¹ As for Ms. Melind, this Court finds that her hourly rate for her 16.2 hours is adjusted to an hourly rate of \$250.00 as assisting attorney. The total of fees is thus reduced to \$22,250.

IT IS SO ORDERED this 9th day of January, 2015.

s/Edward G. Bryant
UNITED STATES MAGISTRATE JUDGE

¹ Counsel for Defendant incorrectly refers to Magistrate Judge Claxton as “Magistrate Claxton”. Counsel should take care to use the proper title when referring to a U.S. Magistrate Judge. *See* page 5 of counsel’s brief.