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United States District Court

Northern District of Illinois

Eastern Division

I, H. Stuart Cunningham, Clerk of the United States District Court for the Northern District of Illinois, do hereby attest and certify that the annexed document is a full, true, and correct copy of the original(s) on file in my office and in my legal custody.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois on 4-9-86

H. STUART CUNNINGHAM

CLERK

By: Ruth Dillies

Deputy Clerk

Return to Box 408

Sara Johnson

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UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Name of Assigned Judge	Milton I. Shadur	Sitting Judge (if Other Than Assigned Judge)	
Case Number	81 C 1279	Date	Dec. 19, 1985
Case Title	JOHN THOMSON v LIEUTENANT EARL JONES et al		

**MOTION:** (In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3d-party plaintiff, and (b) state briefly the nature of the motion being presented.)

memorandum opinion and order

Sent for file, offlined  
DEC 23 1985  
Offlined on \_\_\_\_\_

**DOCKET ENTRY:** (The balance of this form is reserved for notations by court staff.)

(1)  Judgment is entered as follows: (2)  [Other docket entry]

Memorandum opinion and order entered. Accordingly, plaintiff's petition for an award of fees & expenses is approved as tendered. Defendants Jones & Baskin are jointly & severally ordered to pay to plaintiff, in addition to the compensatory and punitive damages previously awarded by this Court, the sum of \$92,097.51.

(3)  Filed motion of [use listing in "MOTION" box above]

(4)  Brief in support of motion due \_\_\_\_\_

(5)  Answer brief to motion due \_\_\_\_\_ Reply to answer brief due \_\_\_\_\_

(6)  Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_

(7)  Status hearing  held  continued to  set for  re-set for \_\_\_\_\_ at \_\_\_\_\_

(8)  Pretrial conference  held  continued to  set for  re-set for \_\_\_\_\_ at \_\_\_\_\_

(9)  Trial  set for  re-set for \_\_\_\_\_ at \_\_\_\_\_

(10)  Bench trial  Jury trial  Hearing held and continued to \_\_\_\_\_ at \_\_\_\_\_

(11)  This case is dismissed  without  with prejudice and without costs  by agreement  pursuant to  FRCP 4(j) (failure to serve)  General Rule 21 (want of prosecution)  FRCP 41(a)(1)  FRCP 41(a)(2)

(12)  [For further detail see  entry on the reverse of  order attached to the original minute order form.]

<input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail CIV-31 form.	130 COURT CLERK'S OFFICE	number of notices	Document # 124	
		date typed envelopes		DEC 22 1985
		date docketed		DEC 23 1985
		date mld. notices		DEC 23 1985
courtroom deputy's initials	Date/time received in central Clerk's Office	mailing dpt. initials		

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JOHN THOMSON, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 81 C 1279  
 )  
 LIEUTENANT EARL JONES, et al., )  
 )  
 Defendants. )

MEMORANDUM OPINION AND ORDER

John Thomson ("Thomson"), through appointed counsel, has moved under 42 U.S.C. §1988 ("Section 1988") for an award of attorneys' fees and expenses after having obtained judgment by default against Earl Jones ("Jones") and Marvin Baskin ("Baskin"), two of the defendants in this 42 U.S.C. §1983 case. 1/ Neither Jones nor Baskin has responded to the motion despite a personal notification from this Court (see Appendix 1) and the Assistant Attorney General who handled the case before and at trial has filed a short statement explaining why he has not responded either on behalf of defendant Warden Richard DeRobertis (who stood trial and won his case) or on behalf of Jones and Baskin, whom the Attorney General's office had not represented since 1982 (see Appendix 2). This Court has

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1/ As this Court's findings and conclusions reflect (619 F.Supp. 745 (N.D. Ill. 1985)), Thomson claimed and proved deprivations of his constitutional rights--both of his liberty interest under the Due Process Clause itself and of his right to be free from cruel and unusual punishment under the Fourteenth Amendment's incorporation of the Eighth Amendment.

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perforce evaluated the current petition without the assistance normally provided by opposing parties' presentations, but it has nonetheless given the request the same hard look that is always accorded to such fee applications.

Members of the Schiff, Hardin & Waite law firm ("Schiff Hardin") were appointed by this Court to represent Thomson, who had originally filed a pro se complaint. Counsel conducted themselves throughout this extended case in accordance with the best standards of the profession, according Thomson the same high-quality representation the firm provides to its clients that can afford to pay today's tariffs for legal services.

Though the total damages this Court awarded against Jones and Baskin (including punitive damages) aggregated \$40,000, Thomson seeks an award of \$92,091.51. There is now pending before the United States Supreme Court the question whether Section 1988 awards to successful plaintiffs are automatically to be tempered by a comparatively low underlying judgment, even though the requested fee is otherwise entirely reasonable.

City of Riverside v. Rivera, No. 85-224, cert. granted, 51 U.S.L.W. 3270 (Oct. 21, 1985). But unless and until the Supreme Court rules otherwise, this Court will adhere to the standards set by the courts for determining the reasonableness of fees to be awarded. See Lynch v. City of Milwaukee, 747 F.2d 423, 428-29 (7th Cir. 1984) (rejecting district court's application of a negative multiplier "in view of the nominal award here," while at the same time recognizing such a nominal

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award may be factor to be considered in determining fee award).

Counsel's memorandum in support of the present petition reflects the same level of meticulousness and first-rate lawyering as the services counsel rendered to Thomson in preparing for trial and trying the case. It reflects:

1. the properly careful calculation, and elimination, of time allocable to the defendants who prevailed at trial;
2. in that same respect, the exclusion of one-half the actual trial time;
3. the exclusion of the time of senior Schiff Hardin attorneys who provided occasional assistance to the active litigators, and the exclusion of the time of paralegals having minimal contacts with the case; and
4. the elimination of duplicative or "insufficiently explained" time.

All those things cut away over 220 hours of actually-recorded time--some 17% of the total lawyers' hours. In summary, and from this Court's own knowledge of the work involved in the case, the remaining time is reasonable.

One of the petition's exhibits is an affidavit from the Director of the Institutionalized Persons Project of the American Civil Liberties Union, stating his opinion that the hourly rate sought for each of the lawyers in the case is reasonable and well within the range of normal market rates. This Court has also independently reviewed all those rates and

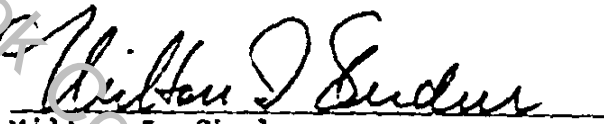
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found them reasonable in market terms. See Henry v. Webermeier, 738 F.2d 188, 193-94 (7th Cir. 1984). Finally this Court has determined that the calculation resulting from multiplying the reasonable time by the reasonable hourly rates is itself reasonable, taking into account all the relevant factors (see Lynch, 747 F.2d at 426).

Accordingly the petition for fees and expenses is approved as tendered. Jones and Baskin are jointly and severally ordered to pay to Thomson, in addition to the compensatory and punitive damages previously awarded by this Court, the sum of \$92,091.51.

  
Milton I. Shadur  
United States District Judge

Date: December 19, 1985

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

CLERK OF  
MILTON I. SHADUR  
JUDGE

CHICAGO ILLINOIS 60604

November 29, 1985

Ms. Sara L. Johnson  
Schiff Hardin & Waite  
7200 Sears Tower  
Chicago, Illinois 60606

Mr. Earl Jones  
9920 South Oglesby  
Chicago, Illinois 60628

Thomas A. Zoppolo, Esq.  
Assistant Attorney General  
100 West Randolph Street  
13th Floor  
Chicago, Illinois 60601

Mr. Marvin Baskin  
913 Lois Place  
Apt. A-112  
Joliet, Illinois 60435

Mr. William Sheldon  
98 East Lakeshore Drive  
Cherokee Village  
Hardy, Arkansas 72542

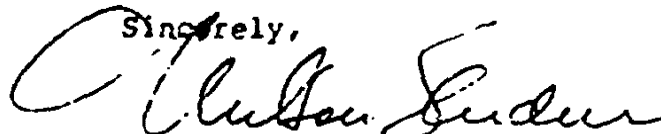
Re: Thomson v. Jones, et al.  
No. 81 C 1279

Dear Ms. Johnson and Gentlemen:

On November 22 I received the petition filed by appointed counsel for plaintiff John Thomson, seeking an award of attorneys' fees in the civil rights case tried before me earlier this year. Because defendants Jones and Baskin were not separately represented at trial, and because judgments were entered against them based on the proof at trial, I wanted to alert them particularly to the need to respond to the current petition.

Needless to say, I will evaluate the petition to see whether the amount requested is reasonable, whether or not any responses are filed. However, the task of a court in deciding issues is necessarily simplified when parties present their own positions to the court--that is the very reason we have the adversary process. Accordingly I shall await any responses to the petition until December 16, 1985. Anyone who has not filed a response on or before that date will be considered to have waived the right to respond, and I will then decide the issues based on the papers before me and my own independent review of the matter.

Sincerely,



Milton I. Shadur  
APPENDIX 1

MIS:wb

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

12/16/85

JOHN THOMSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 81 C 1279
	)	
LT. EARL JONES, et al.,	)	Judge Shadur
	)	
Defendants.	)	

DEFENDANT DeROBERTIS' RESPONSE TO  
PLAINTIFF'S PETITION FOR ATTORNEYS' FEES

In a letter dated November 29, 1985, the Court set December 16, 1985 as a deadline for filing responses to plaintiff's petition for attorneys fees.

The Illinois Attorney General's office had withdrawn representation from defendants Jones and Baskin in 1982. Because the office did not represent those individuals on the merits and will not indemnify them, it would be inappropriate at this stage to respond on their behalf to the fee petition filed against them.

Warden DeRobertis was a prevailing party at the trial and therefore neither he, the Department of Corrections, nor the State of Illinois is liable for attorneys' fees in this situation. Accordingly, he will not address the merits of the fee petition.

Respectfully submitted,

NEIL F. HARTIGAN  
Attorney General of Illinois

BY: Thomas A. Ioppolo  
THOMAS A. IOPPOLO  
Assistant Attorney General  
General Law Division  
100 W. Randolph, Floor 13  
Chicago, Illinois 60601  
312/917-5165

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## LEGAL DESCRIPTION

THE NORTH 9 FEET OF LOT 7 AND ALL OF LOT 6 IN BLOCK 9 IN CALUMET TRUST'S SUBDIVISION IN SECTION 12, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOTH NORTH AND SOUTH OF THE INDIAN BOUNDARY LINE, AND FRACTIONAL SECTION 7, TOWNSHIP 37 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, NORTH OF THE INDIAN BOUNDARY LINES PER PLAT RECORDED DECEMBER 30, 1925 AS DOCUMENT NO 9137462 IN COOK COUNTY, ILLINOIS.

Commonly Known As: 9920 S. Oglesby Ave., Chicago, Illinois 60617

Property Tax Identification Number: 25-12-406-039, Vol. 287

*All 20.*

THIS DOCUMENT PREPARED BY AND  
WHEN RECORDED SHOULD BE RETURNED TO:

Sara L. Johnson  
Schiff Hardin & Waite  
7200 Sears Tower  
Chicago, Illinois 60606

OR

BOX 408

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