

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ARTHUR DOE, *et al.*

Plaintiff,

v.

FITCH,¹ *et al.*,

Defendants.

Case No. 3:16-cv-00789 (CWR) (FKB)

DECLARATION OF ROBERT B. MCDUFF IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND COSTS

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Attorneys for Plaintiffs

¹ Lynn Fitch is substituted for former Attorney General Jim Hood. Fed. R. Civ. P. 25(d).

I am Robert B. McDuff. Pursuant to 28 U.S.C. §1746, I make the following declaration in support of plaintiff's motion for an award of attorneys' fees in this case.

1. I am an attorney practicing in Jackson, Mississippi and am one of the attorneys for the plaintiff in this case. My practice includes civil and criminal cases. The civil cases generally involve civil rights and civil liberties issues, many relating to the Voting Rights Act and redistricting. My practice has involved trial, appellate, and post-conviction work in cases in several states. I have argued four cases in the United States Supreme Court involving civil and constitutional rights. I have also argued a large number of civil and criminal cases in the federal courts of appeals and the Mississippi Supreme Court. I have handled cases involving voting rights, police misconduct, prison conditions, free speech, indigent defense funding, access to the courts, reproductive freedom, school prayer, and discrimination on the basis of race and sexual orientation. I am a recipient of the Pro Bono Service Award of the International Human Rights Law Group of Washington, D.C.; the William Robert Ming Advocacy Award of the national NAACP; the Frederick Douglass Award of the Southern Center for Human Rights; the Champion of Justice Award of the Mississippi Center for Justice; the Outstanding Co-Counsel Award of the Innocence Project New Orleans; the Pro Bono award of the Capital Area Bar Association; the R. Jess Brown award of the Magnolia Bar Association; the Legal Award of the Mississippi Conference NAACP; the Ernst Borinski Civil Libertarian Award of the ACLU of Mississippi; the Justice Albert Tate, Jr. Award of the Louisiana Association of Criminal Defense Lawyers; and the Trial Lawyer of the Year award of the Mississippi Association for Justice. I was selected as a fellow of the American College of Trial Lawyers and also as a fellow of the American Academy of Appellate Lawyers. I have been a member of the faculty of the Trial Advocacy Workshop at Harvard Law School. I am a founder of the Mississippi Center for

Justice and a member of the Board of Directors of the Lawyers' Committee for Civil Rights Under Law.

2. Prior to opening my own law practice in Jackson in 1992, I was an attorney with the Lawyers' Committee for Civil Rights Under Law in Washington, DC (where I specialized in voting rights cases) and, before that, a member of the faculty of the University of Mississippi Law School, where I taught and also directed a federal court public defender program, and before that, an attorney with the civil rights law firm of Ratner & Sugarmon in Memphis. After graduating law school, I was a law clerk for U.S. District Judge William Wayne Justice of the Eastern District of Texas. I am a native of Hattiesburg, Mississippi. I graduated from Millsaps College in 1976 and Harvard Law School in 1980.

3. Some of my cases are contingent fee cases, some are court appointments, some are pro bono cases, and some are paid on a regularly billed hourly basis.

4. The attached time listing reflects an accurate itemization, to the best of my personal knowledge, records, and estimation, of nearly all of the time my office spent on this case. These hours include time I spent on this case and hours my then-associate Jake Howard spent on this case. All the time listed was reasonably expended. I have included no excessive, redundant or unnecessary time expenditures. There may be some hours that I neglected to include here. The total number of hours in the itemization for my work is 12.7. The total number of hours in the itemization for Mr. Howard's work is 11.2.

5. I have reviewed all of the hours in the attached listing and believe them all to have been reasonably expended.

6. Over the years, much of my practice has involved litigation in which payment is contingent upon success, as well as pro bono cases and court appointments. However, I have

had hourly rate clients in both civil and criminal matters. For those who can afford it, my hourly rate is \$500 per hour. Sometimes I charge less. And on one occasion I had an hourly rate client who paid me \$600 per hour.

7. Although I believe it to be within the market range for a lawyer of my experience, I am not seeking my full rate of \$500 in this case. Instead I am seeking a rate of \$450 per hour for my work. I am familiar with market rates for complex litigation in the Southern District of Mississippi. I believe the requested rates do not exceed the prevailing rates in Jackson for similar services by lawyers of reasonably comparable skill, experience, and reputation. *See, e.g., McWilliams v. Advanced Recovery Systems, Inc.*, 2017 WL 2625118 at *2 (S.D. Miss. 2017) (referring to a 2016 affidavit from a former Mississippi bar president stating that customary and reasonable rates charged by Mississippi lawyers in complex litigation are from \$500 to \$550 per hour). I graduated law school 41 years ago, clerked for a federal judge, and have over 39 years of complex litigation experience in the area of civil rights. I am seeking the lower rate of \$450 because the case law in fee-shifting cases in this district does not generally contemplate the higher rate of \$500 that I believe is charged by many lawyers of my experience in the district. This Court approved a \$450 rate for me earlier this year in *Thomas v. Reeves*, No. 3:18-CV-441-CWR-FKB, 2021 U.S. Dist. LEXIS 26320, at *13 (S.D. Miss. Feb. 11, 2021). The Court's order in that case noted that, "[t]he run of cases indicate, if anything," a \$450 rate for me is "below-market." *Id.*

8. I am seeking the rate of \$400 per hour for the work of Jacob Howard, who worked in my office during much of the time he worked on this case. Mr. Howard graduated from Harvard Law School in 2009, over twelve years ago. Subsequently, he clerked for U.S. District Judge Myron Thompson in the Middle District of Alabama. He received the prestigious Prettyman

Fellowship at Georgetown Law School and spent the next two years there representing indigent criminal defendants in the District of Columbia. At the conclusion of that fellowship, he came to work for my law firm and was there for several years. He then joined the Mississippi office of the MacArthur Justice Center. Through his work in my office and at MacArthur, Mr. Howard gained extensive experience in civil rights litigation. He is one of the best lawyers I know. From my knowledge of the market, the rate of \$400 per hour is within, and does not exceed, the range of prevailing market rates for a lawyer of his experience for complex litigation in the Southern District of Mississippi.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge and opinion. Executed on this the 9th day of December, 2021.

s/ Robert B. McDuff
ROBERT B. MCDUFF

Exhibit A

Law Office of Robert B. McDuff

Attorney at Law

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Arthur Doe	July 5, 2020
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DATE	DESCRIPTION	HOURS	LAWYER
Oct-05-16	Review/editing draft complaint; comments to co-counsel	1.50	JWH
Oct-06-16	Call with co-counsel re filing complaint, class cert, summary judgment, and overall strategy	0.40	RBM
	Telephone call re: case strategy with co-counsel; research re: sealing of documents; findings to co-counsel	1.50	JWH
Oct-07-16	Final editing and filing of complaint and summons; service of summons; copies to co-counsel	4.50	JWH
Oct-10-16	Review/filing PHV applications for Ghita and Alexis; copies to co-counsel	0.30	JWH
Oct-11-16	Review and filing PHV for Matt; copy to Matt	0.20	JWH
Oct-18-16	Review/editing of draft motion for summary judgment and supporting memorandum; comments to co-counsel by email	2.00	JWH
Oct-20-	Telephone call with co-	0.50	JWH

16		counsel re: case strategy			
Oct-25-16		conf call with co-counsel re effort to achieve compromise on pseudonymity issue, motion re the same, and other upcoming motions		0.80	RBM
Oct-28-16		emails co-counsel and to Paul Barnes re effort to agree on pseudonym issue		0.30	RBM
Nov-01-16		emails co-counsel re our effort to achieve compromise with A.G. ofc re pseudonym issue		0.20	RBM
Nov-10-16		call from Paul Barnes re various issues relating to timing and substance of our motions; emails Judge Ball's chambers and co-counsel re possible scheduling call on Nov 21; emails co-counsel re issues Paul has raised in his call.		0.80	RBM
Nov-21-16		scheduling call with Magistrate; emails co-counsel afterwards		0.80	RBM
Dec-05-16		Met with client "Arthur Doe" to provide copies of, and briefly explain, pleadings.		0.70	JWH
Jun-05-17		Call co-counsel re next steps after court orders		0.50	RBM
Jun-08-17		emailing co-counsel re contacting Magistrate's office re Judge Reeves order that we do so to initiate a CM conference and CM order		0.20	RBM
Aug-15-17		Case management conference call with Judge		0.50	RBM

		Ball			
Jan-15-18		email co-counsel re scheduling depositions		0.10	RBM
Feb-01-18		email co-counsel Ghita Schwartz re upcoming depositions		0.10	RBM
Feb-08-18		conf call Judge Ball and counsel re settlement		0.40	RBM
Feb-14-18		call co-counsel re upcoming settlement conference and deposition preparation		1.00	RBM
Feb-21-18		mtg co-counsel Ghita and Matthew Strugar re next day's settlement conference		1.00	RBM
Feb-22-18		settlement conference with Judge Ball and counsel		3.50	RBM
		drafting potential settlement agreement		0.80	RBM
Feb-26-18		Conf call Team and conf call A.G. ofc re settlement and next steps		0.70	RBM
Feb-27-18		conf call AG's office re potential global settlement		0.20	RBM
Feb-28-18		follow-up call Judge Ball and counsel re settlement		0.40	RBM
Totals				23.90	

CERTIFICATE OF SERVICE

This is to certify that on this day I, Matthew Strugar, Counsel for Plaintiffs, electronically filed the foregoing document with the Clerk of the Court using the ECF system which sent notice of such filing to the following:

WILSON MINOR, MSB No. 102663
Special Assistant Attorney General
State of Mississippi
Office of the Attorney General
Post Office Box 220
Jackson, MS 39205
wmino@ago.state.ms.us

ATTORNEY FOR DEFENDANTS

THIS, the 10th day of December, 2021.

/s/Matthew Strugar
Matthew Strugar