FILED

2010 SEP -9 A 11: 25

U.S. DISTRICT COURT
EASTERN DIST. TENN.

BY_________DEPT. CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE,
AT CHATTANOOGA

ROY L. DENTON,	*	**Case No. 1:07-cv-211**
Plaintiff	*	
	*	**Chief Judge Curtis L. Collier**
v.	*	
	*	
STEVE RIEVLEY,	*	
in his individual capacity	*	
Defendant	*	
	*	***JURY DEMAND***
	*	

PLAINTIFF ROY L. DENTON'S MOTION FOR DISALLOWANCE
AND
OBJECTIONS TO PETITION FOR COSTS

Comes now the Plaintiff Roy L. Denton, *pro se*, and **OBJECTS** to the Petition For Costs as filed by the defendant. *See Court Doc. No. 145*.

For cause, the plaintiff states that the defendant is required to submit to the clerk a Bill of Costs using COURT form AO 133. Neither attorney has submitted any affidavit or any other document to support their claims of costs. The plaintiff will address his Objections to the Petition for Costs using a Line item approach and thereby, respectfully states as follows:

According to the Local Rules of this Court, **Costs will be taxed in accordance with this Court's Guidelines on Preparing Bills of Cost. E.D. TN. LR. 54.1** —

Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:

> **"Sec. 1924. Verification of bill of costs."**
> "Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

LINE ITEM OBJECTIONS

~~~Filing of Certificate of Costs.~~~

According to the *Court's Guidelines on Preparing Bills of Cost*, "***After entry of the final judgment*** allowing costs to the prevailing party, said party within thirty (30) days shall prepare a certificate of costs that shall contain an ***itemized schedule of costs*** incurred ***and a statement*** that such schedule is correct ***and that the charges were actually and necessarily incurred***. The original certificate shall be filed with the clerk and a copy served upon opposing counsel".

OBJECTION

The Petition for Costs as filed by the defendant does not meet this rule. The defendant mistakenly asserts that a "***final judgment***" has been entered in this matter. Only a "*jury verdict in a civil trial*" was rendered. There has been no final judgment entered in this matter. Furthermore, the plaintiff is allowed 28 days in which to file post trial motions such as Motion J.N.O.V., New Trial, Mistrial and any other post trial relief he may be entitled BEFORE the judgment becomes final and subject to appeal".

~~~Witnesses and Experts.~~~

According to the *Court's Guidelines on Preparing Bills of Cost*, "Where witnesses, expert and otherwise, appear voluntarily or are subpoenaed by the regular service of subpoena within the district, or outside the district as allowed by law, they shall be entitled to fees provided by statute to be taxed as costs in the case. ***In all civil cases, witness fees will be taxed only upon the certificate by counsel for the prevailing party requesting the same. Said certificate shall contain the following information***:

- (1) the name of the witness;
- (2) the place of residence, or the place where subpoenaed, or the place from which the witness voluntarily traveled without a subpoena to attend upon said case;

- (3) the number of days the witness actually testified in court;
- (4) the number of days the witness traveled to and from the place of trial or hearings and the exact number of miles traveled; and
- (5) the manner of travel, that is, whether by air, railroad, bus or private automobile."

OBJECTION

As to any of the named witnesses provided within the defendant's petition, the Petition for Costs ***fails to certify the place of residence of the witness or the place subpoenaed***, or the place from which the witness voluntarily traveled without subpoena to attend the case. The Petition for Costs in **Line items 1, 2, 3, 4, 5 and 6** names witnesses Jason Woody, Brian Malone and Gerald Brewer. The defendant fails to determine the "**manner**" in which the witness traveled. In this instant case, Jason Woody, Brian Malone and Gerald Brewer is believed to have each traveled in Dayton city owned police vehicles, using public taxpayer owned gasoline where such vehicles are **NOT** authorized by local city ordinance to travel in excess of ten miles of the Dayton City Hall.

Therefore, strict certification is demanded to show that each "police witness" is not being unjustly enriched by using a public taxpayer owned vehicle to conduct ***personal*** business such as driving to and from Chattanooga, TN to a federal court building, as well as to attempt to collect a "mileage fee" from the plaintiff for an undetermined travel cost.

Furthermore, the defendant is claiming as cost a witness fee and mileage on **Line item 7**, which names **Kim Denton as a witness** and is claiming costs for witness fee and mileage for her. As the court records clearly show, the defendant's attorneys subpoenaed Kim Denton the Friday before court and never called her to testify. In fact, there was absolutely no good faith reasoning to have her subpoenaed except to have her sequestered and removed from the trial as with the "other witnesses" with the tactic to remove Kim Denton, the wife of the plaintiff from courtroom

thereby depriving the plaintiff of her assistance, as she assisted him with court approval at the first trial. In any event, costs as to the witness Kim Denton are not taxable to the plaintiff as a matter of law because she did not testify but had to appear in court under subpoena, sequestered, and was never called to testify as a witness for the defendant

~~~Cost for Private Process Server.~~~

The defendant claims a cost at **Line item 8** for the amount of $55.00 paid to Wayne Clemens - **Private Process Server**.

OBJECTION

The cost the defendant submits in **Line item 8** is for a "***private process server***". Under Local Rule 54.1 and the associated Guidelines for Preparing Bills of Costs (a)(1) states in pertinent part — "The costs for service by a sheriff ***or other authorized person shall be taxable, except that counsel have the duty to mitigate costs by having process served by a person located as close as possible to the person to be served in order to minimize legal fees. Costs for service by a private process server will not be taxed.***" *(emphasis added)*

As the Rule clearly states in it's last sentence, "**Costs for service by a private process server will not be taxed**". Wayne Clemons is itemized as a "**private process server**". Furthermore, counsel for the defendant had a duty to mitigate costs by having process served by a person located as close as possible to the person to be served. On Friday, August 20, 2010, attorney Ronald D. Wells was actually in Dayton, TN at the Dayton Police department to conduct "witness preparation" at that time. In any event, defendant's lawyers are not entitled to tax any cost to the plaintiff for their "private process server" as a matter of law.

~~~Court Reporter Cost~~~

In **Line item 9**, the defendant submits as costs an amount of $512.55 for transcript(s)

prepared by Elizabeth B. Coffey, Court Reporter.

OBJECTION

Under Local Rule 54.1 and the associated Guidelines for Preparing Bills of Costs (a)(2)(i) states in pertinent part —

- 2) *Transcripts and Depositions*. When a transcript is obtained ***for purposes of appeal, the cost of the original is taxable if the appeal is successful.***
(i) Transcripts of trial proceedings obtained for the purposes of ***preparing proposed findings of fact and conclusions of law, when directed by the court in a bench trial***, shall be taxable as a matter of course to the successful party. *(emphasis added)*

Under 28 U.S.C. § 1920(2), prevailing parties are entitled to the fees of the court reporter for all or ***any part of the transcript necessarily obtained for use in the case***. "Courts generally consider a transcript 'necessarily obtained' when it was necessary to counsel's effective performance and proper handling of the case ... or when requested by the court.... The words 'use in the case' signify that the transcript must have a direct relationship to the determination and result of the trial." *Dopp v. HTP Corp.*, 755 F. Supp. 491, 502 (*D. Puerto Rico* 1991), vacated on other grounds, 94 7 F.2d 5 06 (1st Cir. 1991). Clearly, the defendant cannot expect the court to tax a transcript to the plaintiff ***when the transcript must have a direct relationship to the determination and result of the trial.***

Clearly, the transcript defendant obtained for the "*Testimony of Roy L. Denton*" was not ever needed for the case or used at trial. The only reference, as the record will show, that defendant made to a "transcript" was one page with the words, "*he is gay*" underlined which was read aloud to the jury by the plaintiff at Mr. Wells' behest. Therefore, this transcript, and any transcript obtained by defense counsel was for their own use and is not taxable to the plaintiff.

~~~Disbursements for Printing~~~

In **Line item 10**, the defendant submits as costs an amount of $219.30 for 1,462 copies of

paper @ .15 per copy.

OBJECTION

Restated, Costs will be taxed in accordance with this Court's *Guidelines on Preparing Bills of Cost.* E.D. TN. LR. 54.1 — and by reading those *Guidelines* it states, "Section 1920 (4) provides for the taxation of the cost of producing copies of papers necessarily obtained for use in the case. The general rule followed by this court is that duplicating expenses are properly taxable only to the extent that the copies were used as exhibits at trial or were furnished to and used by the court or opposing counsel. See e.g., *Sun Publishing Co. v. Mecklenburg News, Inc.*, 594 F. Supp. 1512, 1524 (E.D. Va. 1984). Although not required to submit a bill of costs so detailed as to make it impossible economically to recover copying costs, the prevailing party is required to provide the best breakdown obtainable from retained records. See *Northbrook Excess & Surplus Insurance Co. v. Proctor & Gamble Co.*, 924 F.2d 633, 643 (7th Cir. 1991). Furthermore, as stated by one court, the losing party "***should be taxed for the cost of reproducing relevant documents and exhibits for use in the case, but should not be held responsible for multiple copies of documents, attorney correspondence, or any of the other multitude of papers that may pass through a law firm's xerox machines***." *Fogleman v. ARAMCO*, 920 F.2d 278, 286 (5th Cir. 1991). The costs of copies obtained for counsel's own use or for counsel's convenience are not taxable. The fee of an official for certification or proof of non-existence of a document is taxable." *(emphasis added)*

As the record clearly shows, as demonstrated in the Witness-Exhibit list (*See Court Doc. No. 137*), the defendant used something like **7 or 8 pages** of a police report as his only submitted evidence. No other paper documents were filed, or even used at trial for that matter. For the defendant to somehow attempt to pass on the cost of photocopying countless pieces of paper to

mass mail to "whoever", then that is their cost to bear, not mine.

This Court should also take *sua sponte* notice of the fact that this entire litigation may have a public impact, thereby creating public interest. An Amendment to the United States Constitution is of paramount importance to the public. A jury verdict that is tantamount to a "*jury nullification*" of the landmark Fourth Amendment protections and provisions found in *Payton v. New York*, 445 U.S. 573 (1980) and *Georgia v. Randolph*, 547 U.S. 103 (2006) would most certainly spur interest concerning constitutional property rights, especially the well grounded privacy inside one's home.

When calculating costs, this court should consider the public appeal to the merits that in trained legal hands may can better show. No matter how clumsily this "*pro se non lawyer*" may have presented his case, some other person may pick up the torch for the betterment of the people, or the betterment of the government. From that public interest stand point, people should not fear to vindicate their constitutional rights because of "money", or lack thereof.

Accordingly, as the First Circuit has held, "Under section 1920(4), Plaintiffs are entitled to the fees for their copies which were necessarily obtained for use in the case. Copies are recoverable when they are reasonably necessary to the maintenance of the action." *Rodriguez-Garcia v. Davila*, 904 F.2d 90, 100 (1st Cir. 1990). The defendant isn't entitled to any award of the nearly 1,500 pages claimed.

~~~Mileage~~~

At **Line item 11**, the defendant lists a mileage expense of $263.61.

<u>OBJECTION</u>

The defendant is somehow "claiming" a mileage expense, but offers absolutely no information as to where, who or what justifies $263.61. And how does such a mileage figure

amount even get calculated? In the interest of "just wanting to know" the plaintiff performed a Mapquest.com driving directions search and it revealed that from the office of Ronald D. Wells, located at 633 Chestnut Street, Chattanooga, TN and drive to the Federal Courthouse located at 900 Georgia Ave., Chattanooga, TN is an astonishing **.39 mile**.

The pro se plaintiff went even further and performed a Mapquest.com "fuel cost" analysis based upon a vehicle that gets 20 mpg in the city. The fuel cost one way from Ron Wells' office to the federal courthouse was .05 cents, in other words, a nickel. Having to drive back to his office is another nickel. In other words, if Mr. Wells drove his truck to and from the federal courthouse it would cost him a nickel there and a nickel back, which is a dime. In order to amass $263.61 in fuel then he would have had to had made 2,639 trips to the courthouse and back to his office. That is more trips than the Xerox copies he says he copied.

This lawsuit was filed on September 7, 2007 and as of now on September 9, 2010 this case docket number is roughly 1,097 days old. How Mr. Wells made over 2,600 trips to the courthouse for a case only almost 1,100 days old should be explained to this court. Therefore, this court should order Mr. Wells to show exactly how a figure, even down to the penny this mileage was calculated.

~~~Attorney Fees~~~

The attorneys for the defendant Steve Rievley have presented to this court that Mr. Wells has spent 146.50 hours of work on this case, and that his associate attorney spent 135.40 hours on this case, in spite of the fact she only filed an appearance in this case on May 26, 2010. In any event, further response is not required because the defendant is not entitled to attorney fees and even if this was a case where attorney fees would, or even could apply, he cannot claim the attorney fees as part of costs.

In conclusion, quoting Title 28 Part V Chapter 123 § 1924. *Verification of bill of costs.*— "Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

Clearly, just by the filing of the defendants document entitled "Petition for Costs" with no such affidavit, or anything else is to support the Petition is improper. The fact that they filed such petition as they are skilled attorneys, the whole submission of the document gives an appearance of impropriety upon the law firm of Robinson, Smith & Wells, in which Mr. Wells and Mrs. Roderick (Dickson) are associated, on a professional level, as well as a strict ethical level.

A prevailing party in a civil rights action is entitled to an award of attorney's fees under 42 U.S.C. § 1988(b). An award can also be made for attorney's fees incurred in the prosecution of an appeal. To be entitled to an award of attorney's fees the plaintiff must obtain some relief on merits. In this regard, an award for only nominal damages is sufficient to establish the plaintiff as a prevailing party. Even a complainant who prevails through settlement can claim attorney's fees as a prevailing party. However, a prevailing defendant can only be awarded attorney's fees under § 1988 if the plaintiff's underlying claim was "frivolous, unreasonable, or groundless, or ... the plaintiff continued to litigate after it clearly became so."*Christiansburg Garment*, 434 U.S. at 422, 98 S.Ct. at 701 (interpreting the fee-shifting provision in 42 U.S.C. Sec. 2000e-5(k)); *Hughes v. Rowe*, 449 U.S. 5, 14, 101 S.Ct. 173, 178, 66 L.Ed.2d 163 (1980) (interpreting the fee-shifting provision in 42 U.S.C. Sec. 1988). Moreover, Congress has defined the key term, "prevailing party," as having "the same meaning as such term has in [42 U.S.C. Sec. 1988]." 42 U.S.C. Sec. 3602(o).

THEREFORE, for the foregoing reasons and objections contained herein, the plaintiff moves the Court to DENY any costs as claimed in the Petition for Costs.

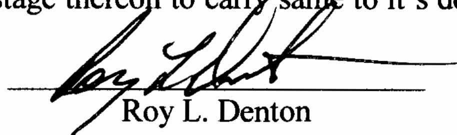
Respectfully submitted this 9th day of September, 2010.

BY:____________________

Roy L. Denton
120 6th Ave.
Dayton, TN 37321
423-285-5581

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an exact copy of this document has been served upon all parties of interest in this cause by placing an exact copy of same in the U.S. Mail addressed to such parties, with sufficient postage thereon to carry same to it's destination, on this 9th day of September, 2010.



Roy L. Denton

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