THE TEN COMMANDMENTS OF COMPENSATION: HOW TO ENSURE ADEQUATE ATTORNEYS' FEES AWARDS IN CIVIL RIGHTS CASES

by Jeff Scott Olson

During the Warren Court years, a period of great substantive advancement in the courts for civil rights law, most civil rights cases were handled by attorneys from a small number of national non-profit organizations like the American Civil Liberties Union and the NAACP Legal Defense Fund, which selected cases carefully for their law-reform impact value, and by a handful of dedicated lawyers in private practice who took on civil rights work without any expectation of compensation at all. The inclusion of an attorneys' fees provision in the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq., signaled a growing awareness on the part of Congress that as the emphasis in civil rights litigation moved from establishing great principles of law to actually enforcing them in myriads of individual cases, there would simply not be enough free lawyers to go around. The solution, as perceived by Congress when it passed the Civil Rights Attorneys' Fees Awards Act of 1976, and as explicitly laid out in the legislative history of that act, was to permit a prevailing civil rights lawyer to "bill", with the court's aid, a losing defendant on the same basis he or she would bill a paying client.

Congress's hope was that skilled litigators who were in practice to make money and already working for paying clients would begin to accept civil rights cases.
At a number of points, the legislative history of § 1988 reveals Congress' basic goal that attorneys should view civil rights cases as essentially equivalent to other types of work they could do, even though the monetary recoveries in civil rights cases (and hence the funds out of which their clients would pay legal fees) would seldom be equivalent to recoveries in most private law litigation.

Hensley v. Eckerhart, 461 U.S. 424, 447 (1983) (Brennan, J. dissenting).
the object of judicial fee determination is to simulate the results that would obtain if the lawyer were dealing with a paying client

Henry v. Webermeier, 738 F.2d 188, 195 (7th Cir. 1984).
The Congressional intent that a skilled litigator should be able to make as good a living in a civil rights practice as in work for exclusively paying clients is not self-executing, because obtaining an adequate attorneys' fees award is not as simple as sending a bill to a client. By following the Ten Commandments of Compensation below, however, an attorney can help carry out the intent of Congress while insuring for himself or herself the economic freedom to handle civil rights cases on a continuing basis.

THE BIG TEN

I. KEEP ACCURATE, CONTEMPORANEOUS, DETAILED TIME RECORDS.

A. Your efforts should be, so far as possible, separable by issue. Hensley v. Eckerhart, 461 U.S. 424 (1983).

B. Also by task, so the court can assess reasonableness.

C. Rounding looks like cheating. Zabkowicz v. West Bend Company, 37 FEP Cases (BNA) 35,242 (1985).

D. Write your original time slips for all eyes.

II. CHARGE AN ADEQUATE HOURLY RATE ACROSS THE BOARD.
A. You may be concluded by your regular hourly billing rate. Laffey v. Northwest Airlines, Inc., 740 F.2d 1071 (D. C. Cir. 1984).

B. Your poor paying clients will appreciate a lump sum "professional courtesy" discount more than a rate break, anyway.

III. DON'T CAVE IN ON COMPENSATION IN SETTLEMENT.
A. If attorneys' fees are a stumbling block to settlement, they can be left for subsequent negotiation or litigation while other issues are resolved through a consent order.

IV. PROVE YOUR HOURLY RATE IS REASONABLE.
In Blum v. Stenson, 465 U.S. 886 (1984), the narrow question before the Court was whether public interest attorneys working for organizations that never charge a fee for their services should be compensated at the same rates as private attorneys when they win cases under fee-shifting statutes, but the Supreme Court used the case to explain the intent of § 1988 as to awarded rates generally. Noting that the legislative history of § 1988 expressly approved of four particular reported opinions as having correctly calculated "fees which are adequate to attract competent counsel but which do not produce windfalls to attorneys," Id. at 893-894, quoting S.Rep. No. 94-1011, p. 6 (1976), reprinted in U.S. Code Cong. & Admin. News 1976, pp. 5908-5913, the Blum Court said:
In all four of the cases cited by the Senate Report, fee awards were calculated according to prevailing market rates.

Id. at 894. Specifically, the Court went on to say:
We cannot assume that Congress would endorse the standards used in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974), Stanford Daily, Davis and Swann v. Charlotte-Mecklenberg Board of Education, 666 F.R.D. 483 (W.D. N.C. 1975), if fee awards based on market rates were viewed as the kind of "windfall profits" it expressly intended to prohibit.

Id. at 895.
On this subject, the Blum opinion concludes:
The statute and legislative history establish that "reasonable fees" under section 1988 are to be calculated according to the prevailing market rates in the relevant community, regardless of whether plaintiff is represented by private or non-profit counsel.

Id. at 895. In a footnote attached to this text, the Supreme Court specified the nature of a claimant's evidentiary burden in establishing the market rates for his counsel's services:
To inform and assist the Court in the exercise of its discretion, the burden is on the fee applicant to produce satisfactory evidence -- in addition to the attorney's own affidavits --

that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation. A rate determined in this way is normally deemed to be reasonable, and is referred to -- for convenience -- as the prevailing market rate.

Id. at 895, n.11.
All courts in this country have uniformly followed the clear command of the Blum opinion. See, e.g., Glover v. Johnson, 934 F.2d 703, 716 (6th Cir. 1991) (hourly rate can be established by proving that the rates sought are rates charged for similar services by lawyers of comparable skill, experience and reputation); Malloy v. Monaghan, 73 F.3d 1012, 1018-19 (10th Cir. 1996) (imposition of insurance defense attorney's hourly rate on prevailing plaintiff's attorney as inappropriate).

A. If an Attorney's Actual Billing Rate for Paying Clients Is Within the Range of Market Rates, it Is the Appropriate Basis for a Fee Award.

Over the years since Blum v. Stenson established that market rates are the appropriate basis for a fee award under a fee-shifting statute, the courts have refined their approach to the determination of the market rates for particular lawyers' services. In Henry v. Webermeier, 738 F.2d 188 (7th Cir. 1984), the Court of Appeals took the first step, holding that where the plaintiffs' lawyers quite properly took the trouble of obtaining and putting into evidence a number of affidavits, none controverted, setting forth the market rates for southern Wisconsin civil rights trial lawyers with experience comparable to theirs, and establishing that the rates that they were asking were indeed market rates, . . . the hourly rates that the plaintiffs' lawyers submitted were a benchmark that the district judge was not free to ignore.

In Kurowski v. Krajewski, 849 F.2d 767 (7th Cir. 1988), the Court wrote:
Awards of fees under § 1988 are supposed to give counsel the market rate for their time, Blum v. Stenson, 465 U.S. 886 (1984), and the kinds of billing and staffing arrangements struck when clients must pay their own lawyers are the best benchmarks of the arrangements (and bills) appropriate under § 1988.

In Pressley v. Haeger, 977 F.2d 295 (7th Cir. 1992). The Court wrote:
. . . There is a deeper problem. The judge assumed that he was searching for the "just" or "fair" price of legal services, what the lawyers "deserve." Perhaps in a just world, first violins would earn more than second fiddles. Frequently, in this world, the two earn the same; sometime second chairs earn more. Prevailing plaintiffs are entitled not to a "just" or "fair" price for legal services, but to the market price for legal services.... "It is not the function of judges in fee litigation to determine the equivalent of the medieval just price. It is to determine what the lawyer would receive if he were selling his services in the market rather than being paid by court order."

Id. at 13 [emphasis in original, citations omitted].
The Pressley Court concluded its reversal of the district court's reductions in the hourly rates of junior counsel by saying:

Fee litigation under § 1988 depends on what the market rate is rather than on what litigants and judges think it ought to be. All of the evidence in this record shows that the market rate for these three lawyers' time was $182.00 per hour, and § 1988 requires the judge to use that rate.

Id. at 14.
In Barrow v. Falk, 977 F.2d 100 (7th Cir. 1992), the Seventh Circuit used the market rate approach to conclude that a fee-applicant was concluded by the market rate he actually charged his paying clients and could not ask, in an application under a fee-shifting statute, for a higher hourly rate based on proof that the market paid higher rates than those he actually charged. The following year, the Court established the rule that an attorney's actual hourly billing rate, if within the range of market rates charged by other similarly qualified attorneys, is the presumptive basis for an award.

In Gusman v. Unisys Corp., 986 F.2d 146 (7th Cir. 1993), the Court considered a fee application submitted by plaintiff's two counsel including affidavits showing the rates their paying clients actually paid, $225.00 and $200.00 per hour respectively. The defense attorneys submitted affidavits they had gathered tending to support an average rate for civil rights litigation in the Madison area of $125.00 to $150.00 per hour. The Seventh Circuit rejected this averaging approach, citing Barrow v. Falk, 977 F.2d 1100 (7th Cir. 1992), for the proposition that "the market rate of legal time is the opportunity cost of that time, the income foregone by representing this plaintiff."

Somewhat more clearly, the Court said:
A client who retains a lawyer with an hourly rate of $100.00, when the average in the community is $150.00, is entitled to collect from his adversary only $100.00 for each hour reasonably expended. . . . And lawyers who fetch above-average rates are presumptively entitled to them, rather than to some rate devised by the court.
Gusman v. Unisys Corp., 986 F.2d 1146 (7th Cir. 1993), at 10 [citations omitted].

The Court went on to hold:
Our recent cases have stressed that the best measure of the cost of an attorney's time is what that attorney could earn from paying clients. For a busy attorney, this is the standard hourly rate. If he were not representing this plaintiff in this case, the lawyer could sell the same time to someone else. That other person's willingness to pay establishes the market's valuation of the attorneys' services.

Id., 12.
The Court said "a judge who departs from this presumptive rate must have some reason other than the ability to identify a different average rate in the community." Id. at 13.
As the Seventh Circuit said in Balcor Real Estate Holdings, Inc. v. Walentas Phoenix Corp., 73 F.3d 150 (7th Cir. 1996):

Courts award fees at the market rate, and the best evidence of the market value of legal services is what people pay for it. Indeed, this is not "evidence" about market value; it is market value.

Id. at 10.

B. Some of the obvious ways of doing this, in roughly ascending order of complexity and expense, are:
(1) prove by affidavit that your client has agreed to supplement an awarded fee to bring you up to your regular hourly rate.
(2) prove that you charge the requested rate across the board. Submit redacted bills.
(3) prove that you have been awarded the requested rate or its equivalent by other courts.
(4) prove that your hourly rate is within the range of rates charged by attorneys of your seniority and practice area according to national and regional publications.
(5) prove, through discovery, that the defense lawyers charge hourly rates comparable to yours.
(6) prove by affidavit, preferably theirs, that other lawyers in your relevant community charge rates comparable to yours and think that your requested rate is reasonable.
(7) call an expert witness on attorneys' fees to state, initially by affidavit, his or her knowledge, of the range of hourly rates charged by attorneys of similar skill, reputation and experience in the relevant community.
[8] call an expert witness on attorneys' fees to canvass the literature and possibly conduct a survey.

The courts are all over the map concerning the significance of the hourly rates charged by defense counsel in determining the applicable rate for plaintiff's lawyers.

Most recently, the First Circuit affirmed an award pegged to defense counsel's rates because "no reason presented itself why [plaintiff's] attorney's rate should be more than the defense attorneys' rates." Andrade v. Jamestown Housing Authority, 82 F.3d 1179 (1st Cir. 1996).

On the other hand, noting that private attorneys hired by a government entity "are not in the same legal market as private plaintiffs' attorneys who litigate civil rights cases," the Ninth Circuit reversed a fee award based on defense counsel's rates. Trevino v. Gates, 99 F.3d 911, 925 (9th Cir. 1996). See also, Brooks v. Georgia State Board of Education, 997 F.2d 857, 869 (11th Cir. 1993); Malloy v. Monahan, 73 F.3d 1012, 1018 (10th Cir. 1996) ("[p]laintiffs' and defendants' civil rights work, however, are markedly dissimilar").

In contrast, where defense counsel's published rates were full market rates and were relied on by a plaintiff in support of its fee petition, the Fifth Circuit regarded defense lawyers' published rates as "highly probative," even though defense counsel charged less than those published rates in the case at bar. Walker v. U.S. Dept. Of Housing and Urban Development, 99 F.3d 761, 770 (5th Cir. 1996).

V. PROVE THAT THE NUMBER OF HOURS YOU HAVE SPENT ON THE CASE, AND ON EACH INDIVIDUAL TASK, IS REASONABLE.

A. Your supporting affidavits should contain opinions on these points.

B. Your own affidavit should explain why particular phases of the case, as well as the case as a whole, consumed as much time as they did.

C. For some time, the courts have regarded the fact that defense counsel spent significantly less time on the case than did counsel for the plaintiff as "irrelevant." Harkless v. Sweeney Independent School District, 608 F.2d 594, 597-598 (5th Cir. 1979); see also, Harkless v. Sweeney Independent School District, 466 F. Supp. 457, 466, 474 (S.D. Tex. 1978); Brantley v. Surles, 804 F.2d 321, 327 (5th Cir. 1986). "The amount of hours that is needed by one side to prepare adequately may differ substantially from that for opposing counsel, since the nature of the work may vary dramatically." Johnson v. University College of the University of Alabama in Birmingham, 706 F.2d 1205, 1208 (11th Cir. 1983). Consequently, the fees charged by a defendant's counsel are virtually irrelevant to -- and certainly can never be controlling with respect to -- the reasonableness of the fees awarded to a prevailing plaintiff. See also, Mirabal v. General Motors Acceptance Corporation, 576 F.2d 729 (7th Cir. 1978); Samuel v. University of Pittsburgh, 80 F.R.D. 293 (W.D. Pa. 1978).

VI. IDENTIFY, QUANTIFY, AND EXPLAIN HOURS FOR WHICH COMPENSATION IS NOT REQUESTED.

A. This includes both hours for which compensation is not requested because they were devoted to unsuccessful, separable claims and are thus not compensable under Hensley v. Eckerhart, 461 U.S. 424 (1983), and hours for which you have elected not to claim compensation through the exercise of "billing judgment". See, infra, Commandment VII.

B. Plaintiff's Counsel Are Entitled to be Compensated for Both (1) Time Invested in Successful Claims and (2) Time Invested in Other Claims that Were Related to the Successful Claims on the Facts or the Law or Both.

In Hensley v. Eckerhart, 461 U.S. 424 (1983), the Supreme Court first said that legal work on unsuccessful claims which are based on both different facts and different legal theories from successful claims advanced in the same lawsuit may not be compensated under § 1988 -- "the Congressional intent to limit awards to prevailing parties requires that these unrelated claims be treated as if they had been raised in separate lawsuits, and therefore no fee may be awarded for services on the unsuccessful claim." Id. at 435. However, the Court went on to observe that many civil rights cases involve a "common core of facts" or "related legal theories." Id. The Supreme Court recognized that in such cases, it is in- appropriate to separate hours devoted to unsuccessful claims from those devoted to successful claims. Where claims are related on the facts or the law or both, the lodestar computation should be based on all hours reasonably expended in the litigation.

Id.
These principles have been construed many times, including recently by the United States Court of Appeals for the Seventh Circuit in Jaffee v. Redmond, 142 F.3d 409 (7th Cir. 1998), where the Court said:

In the context of partial recovery cases, we have interpreted Hensley to permit attorneys' fees for unsuccessful claims when those claims involved a common core of facts or related legal theories. . . . For example, we have affirmed a district court's award of fees for time spent pursuing an unsuccessful employment discrimination claim, brought in tandem with a successful retaliation claim, because "the court found that the successful claim for retaliatory discharge could not have been tried effectively without reviewing and analyzing the facts that led to the underlying discrimination charge." Merriweather v. Family Dollar Stores, 103 F.3d 576, 584 (7th Cir. 1996).

Jaffee, Id. at 20. This rationale applies to both losing arguments lodged in support of successful claims, and losing claims which are related on the facts or the law or both to successful claims. Id.

It may seem strange, at first, to contemplate that the Supreme Court and all of the courts in the land have mandated that civil rights claimants' attorneys be paid not only for hours spent in support of successful claims, but even for hours spent in support of claims that were unsuccessful, if they were merely related on the facts or the law to a successful claim. However, as the Seventh Circuit pointed out in Jaffee v. Redmond, 142 F.3d 409 (7th Cir. 1998), any other approach would place 42 U.S.C. § 1988 at odds with the rules governing attorneys' professional conduct:

We have recognized previously that § 1988's "overriding goal was to reimburse with a reasonable attorneys' fee those who as 'private attorneys general' take it upon themselves to invoke and thereby invigorate federal constitutional and statutory rights. Charles v. Daley, 846 F.2d 1057, 1063 (7th Cir. 1988), cert. denied 492 U.S. 905 (1989). If arguments that do not contribute to a plaintiff's ultimate success were not eligible for compensation for that reason alone, then attorneys might be discouraged from raising novel but reasonable arguments in support of their clients' claims and a disincentive for strong advocacy could result. The ethics of the legal profession counsel an opposite approach. See Model Rules of Professional Conduct Rule 1.3 CMT.1 (1983) ("A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf."). "A lawyer who figures out the likeliest outcome in his favor, and aims only for that, is likely to fall short. The good lawyer aims higher, and is not improvident to do so." Partington v. Broyhill Furniture Industries, 999 F.2d 269, 273-74 (7th Cir. 1993). . . .

Id. at 417 [additional citations and quotations omitted].

VII. USE BILLING JUDGMENT UNTIL IT HURTS. Hensley v. Eckerhart, 461 U.S. 424 (1983).

A. You can never cut yourself by trying as deep as the doctor will for fun.
VIII. INSIST ON DUE PROCESS.
National Association of Concerned Veterans v. Secretary of Defense, 675 F.2d 1319 (D.C. Cir. 1982).

A. If you can, get the court to order, in advance of your submission of a fee application, that,
(1) defense objections to your application not specific and documented are waived,
(2) you have an opportunity to respond to objections that are specific and documented.

IX. INSIST ON FIDELITY TO FIRST PRINCIPLES.
H.R. Rep. No. 94-1558 (1976); S. Rep. No. 94-1011, U.S. Code Cong.and Admin. News. 5908-5914 (1976).

A. Exceptions to fee liability are narrow.
B. Courts should compensate counsel as would their paying clients.
C. Attorneys should find civil rights cases equally, that is, neither more nor less, as attractive as other kinds of cases they might take for paying clients.
D. The fact that attorneys' fees must bear some relation to the degree of success in the litigation does not mean that they need to bear any relation to the dollar amount of the monetary recovery.
The Supreme Court has reasoned that a plaintiff's success cannot be measured solely in monetary terms because a civil rights plaintiff necessarily secures important nonmonetary benefits by vindicating important civil and constitutional rights. See City of Riverside v. Rivera, 477 U.S. at 574 (plurality opinion). The Court's plurality explained that "[b]ecause damages awards do not reflect fully the public benefit advanced by civil rights litigation, Congress did not intend for fees in civil rights cases, unlike most private law cases, to depend on obtaining substantial monetary relief." Id. at 575.

Although success is the most significant of the Hensley factors, this Court has repeatedly rejected the contention that a district court should look to the percentage of the plaintiff's initial demand actually recovered through settlement or judgment and then mechanically reduce the attorney's fee award by a proportionate amount. Sheehan v. Donlon Corp., Nos. 98-1020 & 98-1095, slip op. at 14 (7th Cir. Mar. 18, 1999), Alexander v. Gerhart Enterprises, Inc., 40 F.3d 187, 194 (7th Cir. 1994), Wallace v. Mulholland, 957 F.2d 333, 339 (7th Cir. 1992). Nor has this Court ever held that an attorney's fee award is unreasonable simply because it exceeds by some multiple the amount recovered by the plaintiff, notwithstanding the concerns in Riverside v. Rivera, 477 U.S. 561, 584-586 (Powell, J., concurring) and Cole v. Wodziak, 169 F.3d 488. See, e.g., Estate of Borst v. O'Brien, 979 F.2d 511, 517 (7th Cir.1992) (attorneys' fee award 47 times plaintiff's recovery not unreasonable). In determining an appropriate attorney's fee, we have rejected mechanical rules which call on a court simply to compare the amount demanded and the amount recovered because federal antidiscrimination law vindicates important public interests which may not be reflected in the size of a particular recovery. See, e.g., Zagorski v. Midwest Billing Services, 128 F.3d 1164, 1166 (7th Cir. 1997); Hyde v. Small, 123 F.3d 583, 585 (7th Cir. 1997).

Thus, in determining the degree of success a plaintiff has obtained, this Court has used a three-part test derived from Justice O'Connor's concurrence in Farrar, 506 U.S. at 121-122. Under this test, "we look at the difference between the judgment recovered and the recovery sought, the significance of the legal issues on which the plaintiff prevailed and,

finally, the public purpose served by the litigation." Cartwright v. Stamper, 7 F.3d 106, 109 (7th Cir. 1993). "The standard is whether the fees are reasonable in relation to the difficulty, stakes, and outcome of the case." Bankston v. State of Illinois, 60 F.3d 1249, 1256 (7th Cir. 1995). See also, Zagorski, 128 F.3d at 1167 n. 5 (citing cases).

Connolly v. National School Bus Service, 177 F.3d 593 (7th Cir. 1999).
E. The "lodestar" product of an attorney's hours reasonably invested in the case multiplied by his or her reasonable hourly rate in reference to the actual market for legal services is presumed to be an appropriate award.

In Hensley v. Eckerhart, 461 U.S. 424, 433 (1983), the Supreme Court first endorsed the "lodestar method" of determining an attorneys' fees award under a fee-shifting statute, saying:

The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.

The Hensley Court went on to emphasize that the party seeking an award of fees has an obligation to submit admissible evidence upon which the Court may base such a calculation:

The party seeking an award of fees should submit evidence supporting the hours worked and rates claimed. Where the documentation of hours is inadequate, the district court may reduce the award accordingly.

Id.
The lodestar product of hours times rates was elevated from a "starting point" to the presumptive fee award in Blum v. Stenson, 465 U.S. 886 (1984). In that case, while the Supreme Court recognized that "there may be circumstances in which the basic standard of reasonable rates multiplied by reasonably expended hours results in a fee that is either unreasonably low or unreasonably high," Id. at 897, such post-lodestar adjustments should be rare:

When, however, the applicant for a fee has carried his burden of showing that the claimed rate and number of hours are reasonable, the resulting product is presumed to be the reasonable fee contemplated by § 1988.

Id.

In the wake of Blum v. Stenson, recognition has spread that there is a strong presumption that the lodestar figure is reasonable and thus the appropriate fee award in the case, and post-lodestar adjustments are to be adopted only in exceptional cases. Oviatt v. Pierce, 954 F.2d 1470, 1482 (9th Cir. 1992).

Early on, courts often made willy-nilly adjustments, upward and downward, to lodestar figures that were otherwise rather firmly grounded in the evidence, based on the twelve factors which are said to be relevant to the level of a reasonable attorneys' fee in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). In fact, this sort of result-oriented adjustment occurred so frequently that these factors became known as the "Johnson factors." In Blum, the Supreme Court began to dismantle the machinery of post-lodestar adjustments based on the Johnson factors. In rejecting a 50% upward adjustment of a lodestar fee award, the Court said that neither an attorney's special skill or experience nor the novelty and complexity of the issues should be an appropriate basis for a post-lodestar upward adjustment, because the attorney's special skill should be reflected in his or her hourly rates, and "the novelty and complexity of the issues presumably were fully reflected in the number of billable hours recorded by counsel and thus do not warrant an upward adjustment in the fee." Id. at 888.

The Court went on to note that even "results obtained" should not ordinarily require a departure from the lodestar calculation because the results obtained should be reflected in the attorney's hours and rates:

"Results obtained" is one of the twelve factors identified in Johnson v. Georgia Highway Express, 488 F.2d at 718, as relevant to the calculation of a reasonable attorneys' fee. It is "particularly crucial where a plaintiff is deemed 'prevailing' even though he succeeded only on some of his claims for relief." . . . Because acknowledgment of the "results obtained" generally will be subsumed within the other factors used to calculate a reasonable fee, it normally should not provide an independent basis for increasing the fee award.

Id. at 900.

In Pennsylvania v. Delaware Valley Citizens Council for Clean Air, 478 U.S. 546 (1986), the Supreme Court traced the history through which the lodestar method had replaced ad hoc consideration of the Johnson factors.

The Court said, of its opinion in Blum v. Stenson, 465 U.S. 896 (1984):
We emphasized, however, that the figure resulting from this [lodestar] calculation is more than a mere "rough guess" or initial approximation of the final award to be made. Instead, we found that "[w]hen . . . the applicant for a fee has carried his burden of showing that the claimed rate and number of hours are reasonable, the resulting product is presumed to be the reasonable fee" to which counsel is entitled. . . .

Pennsylvania v. Delaware Valley Citizens Council for Clean Air, 478 U.S. 546, 564 (1986) (emphasis added by the Court in Delaware Valley).

The Delaware Valley opinion went on to note that "many of the Johnson factors 'are subsumed within the initial calculation' of the lodestar." 478 U.S. at 565, including the novelty and complexity of the issues, the special skill and experience of counsel, the quality of representation and, most significantly for the Court's duties here, the results

obtained. The Court concluded that "a strong presumption that the lodestar figure -- the product of reasonable hours times a reasonable rate -- represents a 'reasonable' fee is wholly consistent with the rationale behind the usual fee-shifting statute. . . ." Id. at 565.

X. INSIST ON COMPENSATION FOR DELAY IN PAYMENT.

Most often this is accomplished by awarding attorneys fees at those hourly rates which are current at the time the award is made, as opposed to at historical hourly rates current when the work was done. Missouri v. Jenkins, 491 U.S. 274 (1989); McPherson v. School District No. 186, 465 F.Supp. 749 (S.D. Ill. 1978). Some courts may be willing to award attorneys' fees at historical rates plus a mathematical factor for delay in payment. Other courts may be willing to award historical rates with accrued interest, especially if counsel charges interest to paying clients who are behind on their bills. Missouri v. Jenkins, 491 U.S. 274 (1989).