No.

IN THE SUPREME COURT OF THE UNITED STATES

DEMARCO NICHOLAS, et al

Plaintiff/Appellant,

v.

ILLINOIS DEPARTMENT OF TRANSPORTATION, CENTRAL MANAGEMENT SERVICES

Defendant/Appellee

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

J.M.J.
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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 19-1456

Short Caption:

DiMarco Nichols, et al vs. Illinois Department of Transportation, Central Management Services

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion,response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief.

Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.

[ ] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

DeMarco Nichols, Longo and Associates Ltd., Joseph Anthony Longo

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

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(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and
ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature:

/s/ Joseph Anthony Longo

Date: 20 April 2020

Attorney's Printed Name: Joseph Anthony Longo

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d).

Yes x No

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Presented, reviewable questions

- Confusion in the circuits over *Johnson* factors versus lodestar: Will the Supreme Court resolve the tension?

- Given the dearth of younger attorneys willing to accept Civil rights cases, does *Nichols* and similar cases, chill, if not frightened, attorneys from accepting them?

- Can lower courts disregard undisputed attorney market affidavits and rely, instead, on past fee decisions to determine the lodestar?

Related Proceedings

The following are related within the meaning of Rule 14.1(b)(iii):

Nichols vs. Illinois Department of Transportation, 4 F.4th 437 (7th Cir. 2021)

Nichols vs. Illinois Department of Transportation, 2019 LEXIS 4633 (ND Ill. 1/10/19)

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Other Authorities

Petitioner's brief

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Seventh Circuit Court of Appeals.

Below opinions

The Seventh Circuit's opinion is reported at 4 F.4th 437. The District Court's opinion is reported at 2019 LEXIS 4633.

Jurisdiction

The Seventh Circuit entered judgment on 7/7/21. The Supreme Court's 3/19/20 coronavirus order provided for 150 days to file a petition, i.e., 12/3/21. The petition was timely filed electronically on 12/2/21. 28 USC §1254(1) provides the Supreme Court with jurisdiction.

Statute

42 USC §1988 (b) states, "in any action or proceeding to enforce a provision...the court, in its discretion, may allow the prevailing party...a reasonable attorney's fee as part of the costs".

Statement

The governmental defendants fired Mr. Nichols for violence--threatening supervisors, indisputably, in writing:

> 'WILLING, if the threat persists, to do away with it by ANY AND ALL NECESSARY MEANS. Am I 'hostile'? No.... Am I capable of 'hostility'? Yes. INFINITE hostility....When I came in late, the 'tech' sent me home. If there is another incident of this nature, someone in the Harvey yard is going to get 'fucked up'.

R137-7. Over many years, the media has broadcasted angry employees engaging in a shooting spree at work/school, killing innocent workers/students. Mr. Nichols was a known Muslim working where Christian employees/management held Bible study and proselytized at work.

Uncontroverted market affidavits swore that, based upon the attorneys' experience and substantial contacts with numerous civil rights attorneys over decades, civil rights attorneys would have rejected *Nichols* "because the risk would have been exceedingly high". R290-2-¶13; R290-6 -¶9-10; R290-5-¶16; R290-7-¶7. *Nichols* was extremely risky for solo practitioners--like petitioner --who can only handle a few of these cases simultaneously. R290-5-¶15.

With these very risky facts, the case proceeded to trial against the governmental defendant having substantial resources to fight tooth and nail. At the religious civil rights trial, 2-3 potential jurors admitted in voir dire that they were prejudiced against Muslim Mr. Nichols because Muslims are violent--massacring countless, innocent people repeatedly, e.g., 9/11.R290-11.

Ultimately, the petitioner obtained a jury verdict for Mr. Nichols on all counts [$1,500,000--emotional harm, though no bills existed; with equitable damages--including reinstatement (which former employers rarely provide)--before the Title VII cap reduction, totaling approximately $3,500,000]. Thereafter, the petitioner presented a fee petition with 8 uncontroverted, attorney market affidavits swearing that $550/hour was the market for the petitioner, an attorney for nearly 40 years, and/or that the 3107.9 hours were reasonable, totaling $1,709,345. Defendants presented no affidavits.

The District Court gave the petitioner's 8 undisputed declarations/affidavits little to no weight, R305-11, relying instead, on previous judicial fee decisions concerning the petitioner. Unfortunately, little to no criteria or standards exist nationwide on declarations/affidavits. Consequently, district courts have enormous, unchecked subjectivity— barred by *Perdue v. Kenny*, 130 S.Ct. 1662 (2010).

Nevertheless, after effectively disregarding the petitioner's 8 undisputed declarations/affidavits, the District Court reduced the petitioner's fees by 65% and compensated with only 35%! R305-6. The governmental defendants presented no evidence that the obtained

results ($3,500,000) could have been achieved by working fewer hours. Indeed, the uncontroverted, undisputed evidence by the plaintiff's bar was that the petitioner's hours were reasonable. Supra. Having jurisdiction under 28 USC §1291, the Court of Appeals affirmed.

Reasons why and how granting the petition would reduce confusion and promote stability

Numerous fee shifting statutes exist. If the Supreme Court chooses the option of accepting and proceeding with *Nichols*, then its decision would affect numerous fee shifting statutes. Indisputably, a concerning dearth exists of younger attorneys willing to accept the risks of civil rights litigation. Civil rights litigation is important. The last two years have had increasing racial tension, riots, violence. Compensation in civil rights cases trails other areas of the law.

When lower courts decide fee petitions, they face confusing tension between the lodestar and the *Johnson* factors. Though the Supreme Court instructed lower courts to utilize the lodestar, prohibiting them from utilizing the subjective *Johnson* factors, many circuits continue to utilize the *Johnson* factors, creating confusion and unpredictability in the circuits on how fee petitions will be resolved. Also, a circuit split exists on whether lower courts can rely on past judicial fee decisions to determine the hourly rate or if the hourly rate must be determined by current attorney market affidavits.

If the Supreme Court decides to add clarity to these issues, such clarity would minimize or eliminate the unpredictability relating to fee decisions. Also, it may entice younger and seasoned attorneys to accept civil rights litigation, reducing or reversing the precipitous refusal of attorneys to accept them. *Nichols* is a good case to address these issues. The Court of Appeals affirmed a 65% reduction in fees and compensating with only 35%-- though the petitioner won on all counts, defendants presented no countering affidavits and the petitioner effectively obtained results of $3,500,000. The Supreme Court may decide that *Nichols*, like similar decisions, further deter competent attorneys from accepting worthy civil rights cases.

Confusion in the circuits over Johnson factors versus lodestar

In *Perdue*, the Supreme Court effectively barred lower courts from utilizing the subjective *Johnson v. Ga. Highway*, 488 F.2d 714 (5th Cir. 1974) factors, ordering lower courts, instead, to utilize the lodestar. The lodestar was supposed to "become the guiding light of our fee-shifting jurisprudence." *Burlington v. Dague*, 505 U.S. 557, 562 (1992). Instead, confusion and darkness prevail leading to inconsistent, unpredictable results—causing further anxiety for attorneys deciding whether to accept/reject civil rights cases. The Second Circuit noted this confusion in *Arbor v. Albany*, 522 F.3d 182, 187-190 (2d Cir. 2007):

> The Supreme Court's emphasis on the Third Circuit's economic model...and its simultaneous invocation of the equitable *Johnson* factors at an early stage of the fee-calculation process, proved to be in tension....While the Third Circuit had expected district courts to correct for market dysfunction, the Supreme Court now asked district court judges to *hypothesize* that market on the basis of their experience as lawyers within their districts and on the basis of affidavits provided by the parties. Generally speaking, the rates an attorney routinely charges are those that the market will bear; yet the Supreme Court required that the district courts conjure a different, 'reasonable' hourly rate. After *Hensley* and *Blum*, circuit courts struggled with the nettlesome interplay between the lodestar method and the *Johnson* method....the Supreme Court has not yet fully resolved the relationship between the two methods....The meaning of the term "lodestar" has shifted over time, and its value as a metaphor has deteriorated to the point of unhelpfulness.

Id @ 188-190. Because "the Supreme Court has not yet fully resolved the relationship between the two methods....(and) the meaning of the term "lodestar" has ...deteriorated to...unhelpfulness", supra, the Second Circuit abandoned the lodestar, instructing lower courts to use their subjectivity to determine a "presumptively reasonable fee", i.e., what a "reasonable, paying client would be willing to pay". *Arbor at* 187-190. Indeed, despite the Supreme Court's *Perdue* opinion, the *Johnson* factors, "remains the standard in this...(second) circuit". *Sevilla v. Nekasa*, 2017 LEXIS 47744, n.6 (S.D.N.Y. 3/30/17).

Similarly, the Seventh Circuit in *Nichols* (attached) and other courts utilize the subjective *Johnson* factors, effectively ignoring *Perdue*. *Gee v. Texas*, 2018 LEXIS 171812 (ND Tex. 9/14/18) ("the Johnson factor may have been called into question .....But, the Fifth Circuit, without comment or reference to...Perdue... has continued to utilize" it); K.*L. v. Warwick*, 584 F. App'x 17, 19 (2d Cir. 2014) ("we...instructed district courts to consider the Johnson factors... in setting the reasonable hourly rate"); *Reaching vs. Prince*, 478 Fed Appx 54, 57 (4th Cir. 2012); M*cClain v. Lufkin*, 649 F.3d 374 (5th Cir. 2011); Sp*encer v. Cent.*, 2012 LEXIS 4927 (D. Md. 1/13/12); T*rustees v. Flexwrap*, 818 F. Supp. 2d 585(E.D.N.Y. 2011). *Hudson v. Pittsylvania,* 2013 LEXIS 121930 (WD Va. 8/2/13); *Hendrickson v. Berryhill*, 2019 U.S. Dist. LEXIS 24761 (D. SD 2/15/19); *Vargas vs. Howell*, 949 F.3d 1188, 1195 (9th Cir. 2020); *Ela v. Destefano*, 869 F.3d 1198 (11th Cir. 2017) (district courts must use *Johnson* factors to determine reasonableness of lodestar).

This nationwide inconsistency and confusion fosters unpredictability. "The Supreme Court has not yet fully resolved the relationship between the two methods". *Arbor*@188. The Supreme Court's guidance is necessary to reduce the darkness and shed light that increases predictability relating to fee petitions. This guiding light would assist with numerous fee shifting statutes.

Given the dearth of younger attorneys willing to accept civil rights cases, does *Nichols and similar cases* chill, if not frightened, attorneys from accepting them?

The Supreme Court receives thousands of petitions for certiorari annually. Some may involve cases in which wealthy clients can afford to pay attorneys to prosecute their cases. Ordinarily, victims suffering civil rights violations do not have the money to pay private attorneys hourly to prosecute their rights, much less, vigorously. Many victims suffering civil rights violations cannot even afford the court filing fee.

Some may think/feel that an appeal involving attorney's fees is not important—but only at

first. This is because encouraging the private bar to accept civil rights cases is important. Indeed, the last couple of years have been filled with substantial racial tension, discrimination, violence, death. Unless private attorneys are willing to take the risk with difficult, civil rights cases and work essentially for free, important constitutional rights become impotent.

Younger and seasoned attorneys can choose how they will proceed to the next step. They are not bound to represent civil rights plaintiffs, particularly in difficult (though worthy) cases. Private attorneys must consider their practice, i.e., bills to pay, etc. How courts rule on fee petitions influences the attorneys' choices and the next step.

Attorney Lee, former president of the National Employment Lawyers Association(NELA), USA's largest civil rights organization, having published, spoken on related topics nationwide(R290-3,¶18), testified:

> the...bar is concerned about the dearth of younger lawyers...one of the most important reasons for the dearth...(is)...the obstacles to making a living...Any failure.... to award a reasonable...fee...very likely contribute(s) to a continuing dearth.

"Antitrust and securities fraud command superior fee awards while employment litigation trails behind, despite legislative intent to the contrary." Willging & Weeks, *Attorney Fee Petitions: Suggestions for Administration and Management* 44 (Federal Judicial Center 1985). The existing plaintiff's civil rights bar will die or retire. They will not be fully replaced by younger attorneys. Therefore, civil rights victims, having worthy cases, may feel helpless, hopeless because they cannot find competent attorneys to help them, and thus, must suffer continuing constitutional violations. Alternatively, they will proceed pro se, not knowing how to prosecute civil rights cases which are very difficult, time-consuming and draining of judicial resources.

"[D]espite...fee-shifting (statutes)...plaintiffs...encounter substantial difficulty in obtaining...representation."H.R.Rep.#102-40(I)-75;1991-USCCAN-13. Some may think/feel that

this is troubling. Our Constitution "is generally considered the world's oldest written national constitution still in use." https://www.history.com/news/which-country-has-the-worlds-shortest-written-constitution. There must be a reason. Constitutional rights are very important, having the highest priority. If plaintiffs "cannot recover in full their attorney's fees, they will...determine it is too costly and too great a hassle to file suit, and individual enforcement...will fail". *LaFerney v. Smith*, 410 So.2d 534, 536 (Fla. 5th DCA 1982). At least in theory, *Hensley v. Eckardt*, 461 US 424,435(1983) teaches that with "excellent results", lower courts should provide fully compensatory fees, but what occurs in practice tells and conveys a different story.

Even when plaintiffs are able to convince attorneys to accept their cases and win 100% with "excellent results", *Hensley,* judges excruciatingly scrutinize the attorney's fee petitions as if he/she were the constitutional violator instead of the defendant being the constitutional violator. The petitioner does not argue that careful scrutiny should not be had, but, it must be with the goal of providing a reasonable attorney fee that will entice attorneys to accept, not reject, civil rights cases and to litigate them zealously. Defendant/attorneys do not face this excruciating scrutiny, getting paid--win or lose. Governmental defendants resist reasonable settlements, having substantial taxes to fight civil rights plaintiffs tooth and nail. This further repels the plaintiff's bar from accepting these cases, rejecting them, and instead, choosing to represent clients in other areas of the law. Attorney Potter,R305-2,¶10.

Private attorneys, who accept civil rights cases, particularly very difficult and worthy cases, become private attorney generals working essentially for free and assume the nervous risk that they may never be paid for each hour they work. They lend their unpaid work and financial resources to society. Frequently, they are solo practitioners. Therefore, the risk to them is even greater than a larger firm. By them accepting the substantial risk, society becomes a better version

of itself: 1) vindicating "important... rights that cannot be valued solely in monetary terms", *Blanchard v. Bergeron*, 489 U.S. 87, 96 (1989), and 2) taxes are not increased to expand the federal bureaucracy to enforce the law.

Perdue at 1672 teaches that courts exercise their discretion properly when they compensate attorneys with a fee that attracts competent counsel to accept these cases, not reject them. Philosophically, theoretically, this sounds and seems good on paper. Unfortunately, such does not occur in practice. *Nichols* is one example.

The petitioner has attended numerous nationwide civil rights conferences, being a member of correlative listservs and speaking to numerous attorneys over the years. In such, attorneys nationwide have expressed much concern about how judges use a meat ax -unfairly—on their fee petitions, even when they achieve "excellent results". *Hensley.*

Reading *Nichols* reducing fees by 65% and compensating by only 35% though the petitioner won on all counts, the governmental defendants presented no countering affidavits and the petitioner effectively obtained results of $3,500,000, seasoned and younger attorneys may worry that even if they accept civil rights cases and prosecute them vigorously (indisputably, they are time-consuming), they could endure similar meat-axing of their fee petition, e.g., 65%, though they may win on all counts and achieve "excellent results". *Hensley.*

As seasoned and younger attorneys read *Nichols*, they may notice that the Seventh Circuit threatened to sanction the petitioner in the future for making similar, though undefined, fee petition arguments. Also, they may notice that without specifics, the District Court accused the petitioner of "misrepresentations and mischaracterizations of... facts and communications", "frivolous motions" in this case and "several other cases".R305-29. Seasoned and younger attorneys may reflect upon the fact that even if they win for their civil rights victimized clients, a substantial probability exists that lower courts will attack them personally to justify their goal to

meat-ax the fee petitions.

These seasoned and younger attorneys may notice that judges focus on subjective factors, e.g., other judges' criticisms of them, instead of attorneys' undisputed market affidavits, though the Supreme Court has directed lower courts to focus on the market and the market entails practicing attorneys, not judges. Judges are generalists. They do not practice civil rights litigation daily. Seasoned and younger attorneys may reflect upon *Perdue* at 551 which in theory prohibits subjectivity because it places "unlimited discretion in... judges", but, in practice, judges disregard *Perdue*. These seasoned and younger attorneys may consider that *Hensley* at 435 holds that "excellent results" is the "most critical" factor and that the "attorney should recover a full compensatory fee", but that District Courts disregard this.

After reading fee decisions like *Nichols*, seasoned and younger attorneys might be chilled, if not frightened, to take the risk of civil rights cases, particularly difficult ones like *Nichols*—hence, a dearth of attorneys willing to accept these cases continues. Supra. Attorneys must be incentivized. To be incentivized, attorneys, young and old, must know that if they accept civil rights cases, which are overly stressful as compared to other areas of the law, if they win for their civil rights clients, they will be paid for their work, undue anxiety and commitment. Otherwise, constitutional violations will not be prosecuted and will continue.

Circuit split whether "market" is determined by prior judicial decisions or attorneys testifying to current market conditions

Regarding hourly rates, *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984) instructed lower courts to utilize "the prevailing market rates," noting that in "private practice" the "fees...often are based on the...hours...multiplied by the lawyer's customary rate"-- which is determined by

attorney declarations. [1] *Nichols*t affirmed the District Court rejecting "the prevailing market rates" as sworn to in the petitioner's 8 uncontroverted affidavits, and instead, holding that previous judges' fee decisions for petitioner were "extremely relevant"—admitting--"even if the evidence...did support...$550 per hour, several courts...found a reasonable rate...to be much lower".R305-12-13. Effectively, the Seventh Circuit conveyed that generalist/judges know the civil rights attorney market rate better than attorneys practicing civil rights daily.

Nichols conflicts with other courts holding that previous fee decisions are not determinative. *Roberts v. Honolulu*, 938 F.3d 1020,1024 (9th Cir. 2019)(reversible error when District Courts rely on past fee decisions as their "guiding light"; ordering judge to calculate lodestar based upon petitioner's uncontroverted market affidavits); *Crawford v. Metro*, 2010 Lexis 146232,*4(M.D. Tenn. 3/9/10)($300/hour in 2001; in 2010, $500/hour); *Peatross v. Memphis*, 2016 LEXIS 183822,*4(W.D. Tenn.10/11/16)($400 in 2016; $350 in 2015; "previous decisions...(don't)...mean that his rate would never increase"; "Court has no reason not to rely on the evidence provided by...[petitioner]...to establish...his hourly rate"); *Case v. Unified*, 157 F.3d 1243 (10th Cir. 1998) (District Court abused discretion by disregarding market evidence and providing rates from its previous decisions). *Student v. AT&T*, 842 F.2d 1436, 1446 (3d Cir. 1988) held:

> Courts...do not examine an independently operating market governed by supply and demand, but rather recast fee awards made by previous courts into 'market' rates....engag(ing) in a tautological, self-referential enterprise. They perpetuate a court-established rate as a 'market' when that rate...bears no necessary relationship

[1] Little to no discernible standard exists how to calculate a "reasonable" hourly rate. *Laffey v. Northwest*, 572 F. Supp. 354 (D.D.C. 1983), aff'd in part, rev'd partly, other grounds, 746 F.2d 4 (D.C. Cir. 1984)(calculate an attorney's years in practice with a correlative rate, regardless of their experience in particular cases); *Interfaith v. Honeywell*, 426 F.3d 694 (3rd Cir. 2005); *Sullivan v. Sullivan*, 958 F.2d 574 (4th Cir. 1992); *Garnes v. Barnhardt*, 2006 LEXIS 5938 (N.D. Cal. 1/31/06); *North Carolina Alliance v. US Dep't of Transp.*, 168 F. Supp. 2d 569 (M.D.N.C. 2000).

> to... relying on the marketplace: to calculate a reasonable fee sufficient to attract competent counsel.

Nichols affirming the District Court's rejection of the petitioner's 8 undisputed, uncontroverted attorney declarations conflicts with other courts holding that district courts must accept undisputed declarations as true. Accepting them as true is important because it is the only evidence before the District Court and District Courts must act as a neutral, not as an advocate for the governmental defendants, and make decisions based upon the only evidence before them. *Cunningham v. McKeesport*, 753 F.2d 262,267(3d Cir. 1985)("no reason... to disregard uncontested affidavits"); *United vs. Phelps*, 896 F.2d 403, 407 (9th Cir. 1990); *Brinker v. Giuffrida*, 798 F.2d 661,668(3d Cir. 1986)(defendants argued excessiveness without affidavits; remanded to determine fees based only upon petitioner's uncontroverted affidavits).

Also, *Nichols* approved the district court utilizing the historical rate. Unfortunately, no standards or criteria exist how to calculate the historical rate. The *Nichols* District Court relied on a magistrate judge in 2012 providing $300/hour to the petitioner for work from 2006 in a case involving losses, and then, provided a $60 increase for inflation and increasing skill/reputation/experience for all hours in *Nichols* in which the petitioner won all counts and achieved "excellent results", *Hensley*. The $60/hour increase is $8.50/year from 2012. Reviewing *Nichols*, would competent counsel be enticed to accept civil rights cases?

Instead of an increase of $8.50/year, why not $6/year, $3/year or $200/year? Where in fee shifting jurisprudence is the standard, criteria to determine the increase? Would the historical rate of $360/hour apply to worked hours just in 2012 or also in 2014, 2016, 2019 etc.?

Though *Pennsylvania v. DelawareValley*, 483 U.S. 711, 716 (1987) allows courts to utilize historical rates to reflect current values, this could not mean that the Supreme Court intended that the "historical rate" be substantially less than the current market rate, e.g., $360/hour vs. the

undisputed $550/hour current market. Could it? Indeed, such would conflict with the Supreme Court's repeated decisions that lower courts should compensate attorneys with reasonable fees "to make it possible for those who cannot pay a lawyer for his time and effort to obtain competent counsel." *Delaware Valley* at 725. [2] The Supreme Court's guidance is needed, particularly as a dearth exists of attorneys willing to accept worthy, but extremely risky, civil rights cases.

Nichols conflicts with other courts utilizing current market rates, not historical rates "adjusted" for inflation, because of the loss of the use of money, investment income, not being paid monthly, long delays until receiving payment, etc. *Reaching v. Prince*, 2012 Lexis 8397, *6,7,14 (4th Cir.2012)(calculating interest monthly "would...be a death defying...calculation"; if historical rates are utilized, "adjustment...is required...to render the fee...fully compensatory'");*Lanni v. NJ*, 259 F.3d 146,149-150(3d Cir. 2001)("current market rate is exactly that"; "it is not...past rates");*Ramos v. Lamm*, 713 F.2d 546,555(10th Cir. 1983)("current rates will...approximate periodic compensation adjusted for inflation and interest...obviate...guessing when periodic billings would have been...paid");*Duran v. Cicero*, 2012 WL 1279903,*16(N.D. Ill. 4/16/12)(petitioners had to wait many years for payment....Petitioners' proposal has...greater simplicity"); *Marfia v. Bankasi*, 903 F.Supp 463,476(SD NY 1995)(petitioner unpaid for seven years); *Murray v. Weinberger*, 741 F.2d 1423,1433(DC 1984) ("current... rates" ...

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[2] "Congress enacted §1988 specifically because it found that the private market for legal services failed to provide many victims of civil rights violations with effective access to the judicial process." *Riverside v. Rivera*, 477 U.S. 561, 576 (1986). Many civil rights statutes were designed with the understanding "that enforcement would prove difficult and that the Nation would have to rely in part upon private litigation as a means of securing broad compliance with the law." *Newman vs. Piggie,* 390 U.S. 400, 401 (1968). "This private enforcement...decentralizes enforcement decisions ... and helps insulate enforcement from capture by established interests" and "is also less expensive for taxpayers." Albiston & Nielsen, *The Procedural Attack on Civil Rights: The Empirical Reality of Buckhannon for the Private Attorney General*, 54 UCLA L. Rev. 1087, 1090 (2007). By enacting §1988, Congress harnessed free market principles, creating an economic incentive for citizens to vindicate their civil rights directly rather than relying on enforcement by the federal government.

"counterbalance ...delay in payment" and "simplify the task...an important objective....A...need...(exists)...for simple rules in...fees cases");*Gates v. Deukmejian*, 987 F.2d 1392,1406(9th Cir. 1992); *Copeland v. Marshall*, 641 F.2d 880,893(D.C.Cir.1980).

Therefore, though in theory, *Perdue* ordered courts to utilize the lodestar, which is supposed to be the star of light, in practice, confusing, darkness prevails in nationwide fee decisions, causing unpredictability, inconsistency and further deterring competent attorneys from accepting civil rights cases. The Supreme Court's intervention is necessary. Otherwise, the precipitous decline of private attorneys willing to accept these cases will continue and society as a whole will suffer--today and tomorrow.

Conclusion

For the foregoing reasons, to add light to the darkness of fee petition jurisprudence, the judgment of the court of appeals should be reversed.

Respectfully submitted,

/s/ Joseph Anthony Longo

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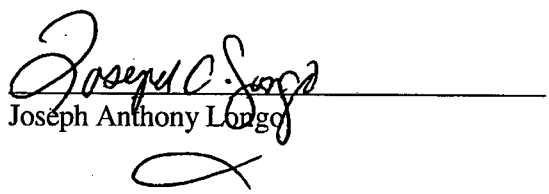
CERTIFICATE OF SERVICE

I, Joseph Anthony Longo, an attorney, certify that I served this petition for writ of certiorari by electronic filing and by electronic service to those below on 21 February 2022 after 5pm. Under penalties as provided by law pursuant to 735 ILCS, Sec 5/1-109, I certify that the statements set forth in this Certificate of Service are true and correct.



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Appendix

Nichols vs. Illinois Department of Transportation, 4 F.4th 437 (7th Cir. 2021)

Nichols v. Ill. DOT, 4 F.4th 437

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No. 19-1456

Reporter
4 F.4th 437 * | 2021 U.S. App. LEXIS 20028 ** | 2021 WL 2815878

DEMARCO NICHOLS, Plaintiff-Appellant, and LONGO & ASSOCIATES, LIMITED, et al., Appellants, v. ILLINOIS DEPARTMENT OF TRANSPORTATION, et al., Defendants-Appellees

Prior History:

[**1] Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 1:12-cv-01789 — Thomas M. Durkin, Judge.

Nichols v. Ill. DOT, 2019 U.S. Dist. LEXIS 4633, 2019 WL 157915 (N.D. Ill., Jan. 10, 2019)

Disposition:

AFFIRMED.

Core Terms

district court, billed, travel, fee award, lodestar, attorney's fees, reasonable hourly rate, abused, hourly rate, voluminous, upward, cases, costs, calculating, reduction

Case Summary

Overview

HOLDINGS: [1]-The district court did not abuse its discretion in awarding attorney's fees and costs under the fee-shifting provision of Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e-5(k), because the attorney submitted a voluminous and unreasonable fee petition, inflating his hourly rate and grossly overstating the hours that an attorney reasonably could have expended litigating the action, and the district court meticulously, fairly, and correctly applied case law and awarded reasonable attorneys' fees and costs.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

- Civil Procedure > Appeals > Standards of Review > De Novo Review
- Civil Rights Law > ... > Procedural Matters > Costs & Attorney Fees > Appellate Review

HN1 **Standards of Review, De Novo Review**

The appellate court reviews de novo whether the district court applied the correct legal framework for deciding a fee award. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

- Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > Reasonable Fees

HN2 **Attorney Fees & Expenses, Reasonable Fees**

An attorney's fee award's size is a function of three numbers: the hours worked, the hourly rate, and any overall adjustments up or down. A court starts by determining the lodestar, which is the attorney's reasonable hourly rate multiplied by the hours the attorney reasonably expended on the litigation. Once the court calculates the lodestar, it then may determine whether an adjustment is warranted under the case-specific circumstances. If a plaintiff requests fees for the fee award litigation, the court will also determine that after calculating the lodestar. More like this Headnote

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• Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

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HN3 **Standards of Review, Abuse of Discretion**

The appellate court reviews an award of attorneys' fees for abuse of discretion, and gives the district court the benefit of the doubt.

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• Civil Procedure > ... > Summary Judgment > Supporting Materials > Affidavits

• Evidence > Types of Evidence > Documentary Evidence > Affidavits

HN4 **Supporting Materials, Affidavits**

District courts may refuse to credit conclusory affidavits. More like this Headnote

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HN5 **Supporting Materials, Affidavits**

A district court is entitled to weigh the probity of affidavits submitted to support a fee request. More like this Headnote

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• Evidence > Types of Evidence > Documentary Evidence > Affidavits

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HN6 **Supporting Materials, Affidavits**

An attorney's self-serving affidavit alone cannot establish the market rate for that attorney's services.

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- Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > Reasonable Fees
- Civil Rights Law > ... > Procedural Matters > Costs & Attorney Fees > Reasonable Fees

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HN7 **Attorney Fees & Expenses, Reasonable Fees**

Courts presume that a reasonable attorney's fee includes reasonable travel time billed at the same hourly rate as the lawyer's normal working time. If attorneys charge their paying clients for travel time they are entitled to charge the defendants for that time in a case such as this where the plaintiffs have shown a statutory right to reasonable attorneys' fees. But if the travel is unnecessary, the time spent in travel should be subtracted out.

More like this Headnote

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- Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > Reasonable Fees

HN8 **Attorney Fees & Expenses, Reasonable Fees**

Reasonable travel warrants attorneys' fees, but unnecessary or unsupported travel does not.

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- Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > Reasonable Fees

HN9 **Attorney Fees & Expenses, Reasonable Fees**

The distance between an attorney's place of practice and the courthouse is a factor that can be considered in determining whether it was

reasonable to use an option other than an in-person appearance. But, a trial judge must take into account that attorneys have every right to consider the accessibility of their office to their clients when determining the situs of their practice. The mere fact, then, that an attorney has chosen an office located outside of an urban center does not preclude an award of fees for travel from that office to the courthouse. The key questions remain whether the attorney has adequately supported their fee petition and whether their request is reasonable under the circumstances. More like this Headnote

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- Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > Reasonable Fees
- Civil Rights Law > ... > Procedural Matters > Costs & Attorney Fees > Award Calculations

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HN10 **Attorney Fees & Expenses, Reasonable Fees**

Upward adjustments of attorney's fees are appropriate only in rare or exceptional cases. Indeed, the lodestar is presumptively sufficient to induce a capable attorney to take on a meritorious civil rights case. More like this Headnote

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- Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > Reasonable Fees

HN11 **Attorney Fees & Expenses, Reasonable Fees**

District courts need not undertake a line-by-line inquiry when the voluminous nature of a petition makes doing so impractical. A court's lump-sum approach is a practical means of trimming fat from a fee application; it is generally unrealistic to expect a trial court to evaluate and rule on every entry in an application. More like this Headnote

Shepardize® - Narrow by this Headnote (1)

Counsel: For DEMARCO NICHOLS, Plaintiff - Appellant: Joseph A. Longo, Attorney, LONGO & ASSOCIATES, Mount

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JOSEPH A. LONGO, Appellant, Pro se, Mount Prospect, IL.

For ILLINOIS DEPARTMENT OF TRANSPORTATION, ILLINOIS DEPARTMENT OF CENTRAL MANAGEMENT SERVICES, Defendants - Appellees: Bridget DiBattista, Attorney, OFFICE OF THE ATTORNEY GENERAL, Civil Appeals Division, Chicago, IL.

Judges: Before RIPPLE, KANNE, and SCUDDER, Circuit Judges.

Opinion by: RIPPLE

Opinion

[*439] RIPPLE, *Circuit Judge*. Attorney Joseph Longo represented Demarco Nichols, the plaintiff in this employment discrimination action against the Illinois Department of Transportation ("IDOT"). When his client prevailed, Mr. Longo petitioned the district court for attorneys' fees and costs under the fee-shifting provision of Title VII of the Civil Rights Act of 1964. *See* 42 U.S.C. § 2000e-5(k). The district court concluded that Mr. Longo, in his fee petition, inflated his hourly rate and grossly [**2] overstated the hours that an attorney reasonably could have expended litigating this action. In the end, the district court awarded Mr. Longo $774,584.50 in fees and $4,061.02 in costs. Mr. Longo now appeals. He contends that the district court applied an erroneous legal framework and abused its discretion **[*440]** when it reduced his rate and hours. Because the district court acted well within its discretion, we affirm its judgment.

I

BACKGROUND

The underlying discrimination case was tried to a jury and resulted in a judgment of $1.5 million in damages (later reduced to the statutory cap of $300,000) and $952,156 in equitable relief. Neither the jury's verdict nor the equitable relief that Mr. Nichols received is at issue in this appeal. Instead, our task today is to resolve a dispute over the district court's application of Title VII's fee-shifting provision, 42 U.S.C. § 2000e-5(k).

Mr. Longo petitioned for $1,709,345 in attorneys' fees and $4,460.47 in costs. He submitted that his hourly rate was $550 and that he had worked 3,107.9 hours on Mr. Nichols's case. Mr. Longo also requested a 15% upward adjustment based on (1) his assertion that Mr. Nichols's case was "risky" [1]; (2) the successful outcome he achieved; and [**3] (3) the ability of a large fee award to act as a deterrent against future misconduct. For its part, IDOT vigorously contested Mr. Longo's fee calculation. In IDOT's view, an appropriate fee award was $286,931.02, which included a downward adjustment based on IDOT's contention that Mr. Longo's litigation conduct had inflated inappropriately his fee request.

The district court combed through Mr. Longo's voluminous fee petition and ultimately awarded $774,584.50 in fees and $4,061.02 in costs. In its opinion, the district court explained why Mr. Longo's requested rate and hours were both unreasonable. The district court first calculated the lodestar, which is the reasonable hourly rate multiplied by the reasonable hours worked. Relying on other then-recent fee awards for Mr. Longo, the court set the reasonable hourly rate at $360 for attorney work and $125 for paralegal work. Scrutinizing the hours submitted, the district court reduced Mr. Longo's request by 962.1 hours. The court explained that the reduction included 109.2 hours that Mr. Longo had billed for trips from his office to the downtown Chicago courthouse; 18.5 hours for paralegal work billed at an attorney's rate; a further [**4] 10% reduction (298.0 hours) for excessive billing for clerical work; and another 20% reduction (536.4 hours) for general excessive billing.

In the end, the court permitted Mr. Longo 2,145.8 hours at an attorney's rate and 18.5 hours at a paralegal's rate, which set the lodestar at $774,584.50. The district court then turned to the parties' requests for adjustments and concluded that neither an upward nor downward adjustment was warranted. Lastly, the district court denied Mr. Longo's request for fees for litigating the fee petition, noting that Mr. Longo's lack of billing judgment and his overly voluminous fee petition made such an award inappropriate. As a result, the court awarded the lodestar amount to Mr. Longo, who now appeals that fee award.

II

DISCUSSION

Mr. Longo's appellate brief touches on virtually every aspect of the district court's decision to award him fees below the amount he requested.2 He claims that **[*441]** the district court committed both legal error and abused its discretion. All of Mr. Longo's contentions in his appellate brief are meritless. Some are simply frivolous. Although we do not impose sanctions today for Mr. Longo's apparent failure to heed past opinions critical [**5] of frivolous fee litigation conduct, we are unlikely to countenance such behavior in the future.3 With that, we will address Mr. Longo's contention that the district court committed legal error, then turn to his assertion that the court abused its discretion.

A.

Mr. Longo submits that the district court "utilize[d] the wrong methodology/legal analysis" when it set his fee award.4 ***HN1*** We review de novo whether the district court applied the correct legal framework for deciding a fee award. *See* Anderson v. AB Painting & Sandblasting Inc., 578 F.3d 542, 544 (7th Cir. 2009).

Mr. Longo's argument is plainly frivolous. The analytical framework relevant here is well established and straightforward. ***HN2*** "The award's size is a function of three numbers: the hours worked, the hourly rate, and any overall adjustments up or down." Sommerfield v. City of Chicago, 863 F.3d 645, 650 (7th Cir. 2017). A court starts by determining the "lodestar," which is the attorney's reasonable hourly rate multiplied by the hours the attorney reasonably expended on the litigation. *Id.* (quoting Johnson v. GDF, Inc., 668 F.3d 927, 929 (7th Cir. 2012)). Once the court calculates the lodestar, it then may determine whether an adjustment is warranted under the case-specific circumstances. *Id.* If a plaintiff requests fees for the fee award litigation, the court will also [**6] determine that after calculating the lodestar. *See* Batt v. Micro Warehouse, Inc., 241 F.3d 891, 894 (7th Cir. 2001); *see also, e.g.*, Pennsylvania v. Del. Valley Citizens' Council for Clean Air, 478 U.S. 546, 565-66, 106 S. Ct. 3088, 92 L. Ed. 2d 439 (1986).

There is no question that the district court applied the correct legal framework. It started by determining Mr. Longo's reasonable hourly rate and multiplying that rate by the number of hours Mr. Longo reasonably had expended on Mr. Nichols's case. The court then considered and denied Mr. Longo's request for an upward adjustment and IDOT's request for a downward adjustment. Finally, the court denied Mr. Longo's request for fees for the fee-stage litigation. This methodology matches perfectly the legal framework set out in our case law.5 *See, [*442] e.g.*, Pickett v. Sheridan Health Care Ctr., 664 F.3d 632, 639-40 (7th Cir. 2011).

B.

Mr. Longo also challenges much of the district court's application of the methodology we just discussed in calculating the lodestar, in addressing his upward adjustment request, and in denying him fees for litigating the fee petition. ***HN3*** We review an award of attorneys' fees for abuse of discretion, Montanez v. Simon, 755 F.3d 547, 552-53 (7th Cir. 2014), and "give the district court the benefit of the doubt," Sommerfield, 863 F.3d at 650.

First, Mr. Longo claims that the district court abused its discretion in setting his reasonable hourly rate at $360. He invites our attention to six affidavits from other attorneys that he submitted alongside his petition [**7] to substantiate that his requested $550 hourly rate was reasonable. The district court thoroughly examined the affidavits and found them insufficient. That decision was far from an abuse of discretion. The court noted that three of the affidavits did not state the affiant's own hourly rate; instead, they were merely conclusory. ***HN4*** We have held that district courts may refuse to credit conclusory affidavits. *See* Montanez, 775 F.3d at 554. The district court also found the other three affidavits—those from attorneys David Lee, Aaron Maduff, and John Moran—unpersuasive. Lee's affidavit did not specifically address fees in employment

cases like this one, and his qualifications far exceeded Mr. Longo's; Maduff's was too general; and Moran's did not list a judicially approved or client-paid amount for work in similar employment cases. ***HN5*** The district court acted within its discretion in examining the persuasiveness of each affidavit; it gave sufficient reasons for finding each unpersuasive. *See Small v. Richard Wolf Med. Instruments Corp.*, 264 F.3d 702, 707 (7th Cir. 2001) (noting that a district court is entitled to weigh the probity of affidavits submitted to support a fee request). Mr. Longo also takes issue with the district court's discounting of his own affidavit. ***HN6*** The district court, consistent [**8] with our case law, concluded that Mr. Longo's affidavit was entirely conclusory and thus unpersuasive. *See Harper v. City of Chi. Heights*, 223 F.3d 593, 604 (7th Cir. 2000) (noting that "an attorney's self-serving affidavit alone cannot establish the market rate for that attorney's services"). In short, none of the district court's conclusions constitute an abuse of discretion.

Second, Mr. Longo claims that the district court abused its discretion when it relied on a prior case involving him in order to determine the reasonable hourly rate. The court observed that another judge in the district had set Mr. Longo's reasonable hourly rate at $360, and it found that judge's reasoning persuasive. *Smith v. Rosebud Farm, Inc.*, No. 11-cv-9147, 2018 U.S. Dist. LEXIS 143372, 2018 WL 4030591, at *5 (N.D. Ill. Aug. 23, 2018).

This determination, too, was not an abuse of discretion. Recent fee awards from an attorney's other cases provide a useful comparison when establishing that attorney's reasonable rate. *See, e.g., Jeffboat, LLC v. Dir., Off. of Workers' Comp. Programs*, 553 F.3d 487, 491 (7th Cir. 2009) ("[A] previous attorneys' fee award is useful for establishing a reasonable market rate for similar work."). The district court was especially reasonable to **[*443]** rely on *Smith* because that litigation overlapped with the litigation in this case.

Third, Mr. Longo submits that the district court abused its discretion by refusing to award him fees for the time he spent travelling [**9] to the courthouse for hearings. ***HN7*** Under our case law, we presume "that a reasonable attorney's fee includes reasonable travel time billed at the same hourly rate as the lawyer's normal working time." *Henry v. Webermeier*, 738 F.2d 188, 194 (7th Cir. 1984). We explained in *Henry* that "*if* [attorneys] charge their paying clients for travel time they are entitled to charge the defendants for that time in a case such as this where the plaintiffs have shown a statutory right to reasonable attorneys' fees." *Id.* (emphasis added). But we have emphasized that "if the travel is unnecessary the time spent in travel should be subtracted out." *Id.*

The district court did not categorically deny Mr. Longo fees for time spent traveling. Rather, the district court simply determined that the hours Mr. Longo submitted for trips from his office to the downtown Chicago courthouse were unreasonable. For each roundtrip, Mr. Longo billed 2.8 hours, which amounts to $1,008 at the reasonable $360 per hour rate (or $1,540 at the $550 rate Mr. Longo urges us to award). Mr. Longo's voluminous petition gives no hint that he bills paying clients every time he drives to court; especially in a case like this where he made thirty-nine such trips. *Cf. id.* (explaining that if [**10] an attorney charges paying clients for travel time, then defendants must pay for such time under a fee-shifting statute).

More fundamentally, the district court noted that it "allows parties to appear by phone and encourages parties to do so to avoid unnecessary expense to clients and wasted time to counsel, making travel time even less necessary for all but the trial or lengthy contested hearings."[6] Mr. Longo ignored that option. On the other hand, the district court awarded Mr. Longo's request for attorneys' fees for his travel to depositions. ***HN8*** This fits neatly with our holding in *Henry*: reasonable travel warrants attorneys' fees, but unnecessary or unsupported travel does not. We therefore cannot say that the court abused its discretion when it denied Mr. Longo fees for travel to and from his office.

Fourth, Mr. Longo challenges the district court's denying his request for an upward adjustment. He claims that he deserves such an adjustment because of the success he achieved in this case and as a means to encourage other lawyers to take similar cases. ***HN10*** Upward adjustments, however, are appropriate only in "rare" or "exceptional" cases. *See Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552, 130 S. Ct. 1662, 176 L. Ed. 2d 494 (2010) (internal quotation marks omitted). Indeed, the [**11] lodestar is presumptively sufficient to induce a capable attorney to take on a meritorious civil rights case. *Id.* Here, the district court reasonably concluded that Mr. Nichols's case was not rare or exceptional. Although Mr. Longo claimed it was rare to achieve a successful verdict for a Muslim **[*444]** plaintiff like Mr. Nichols in a discrimination case, the district court correctly noted that Title VII plaintiffs are often members of minority groups and thus this case is not rare in that respect. The court also correctly noted that the lodestar in this case was sufficient to achieve the fee-shifting statute's goal of attracting qualified lawyers to take similar cases. The district court's determination was certainly within its discretion; indeed, its reasoning is persuasive.

Fifth, Mr. Longo takes issue with the district court's decision not to award fees for the fee petition litigation. Again, the district court did not abuse its discretion. We have frowned upon lawyers who litigate fee awards with greater vigor than any other issue. *See Spegon v. Cath. Bishop of Chi.*, 175 F.3d 544, 554 (7th Cir. 1999). We also have instructed those seeking fees to review carefully their petition and cut unnecessary costs. Mr. Longo, as the district court noted, demonstrated [**12] no such billing judgment. Instead, he submitted a voluminous billing record that included plainly inappropriate entries. For example, Mr. Longo billed 284.8 hours for a summary judgment response that the district court

commented "was not particularly effective or well-organized."[7] He billed 250.1 hours for reviewing IDOT's summary judgment documents, an amount of time the district court found "simply ridiculous."[8] He billed 0.2 hours (twelve minutes) for reading even the shortest emails from IDOT's counsel. He billed a full attorney's rate for paralegal tasks. He billed an hour for motions hearings that lasted mere minutes. He served interrogatories and document requests with such breadth and volume that the magistrate judge overseeing discovery ordered Mr. Longo to seek leave of court before requesting additional discovery. We have no trouble concluding that the district court was within its discretion to deny fees for the fee petition litigation.

Mr. Longo also contests a few other aspects of the district court's opinion but provides no coherent argument to support his discontent. For instance, Mr. Longo appears to challenge the district court's decision to reduce his hours (after [**13] the other targeted reductions) by 20% based on his excessive billing. But he does not provide any explanation for his assertion that the district court erred in determining the reduction percentage. ***HN11*** And we have said that district courts need not undertake a line-by-line inquiry when the voluminous nature of a petition makes doing so impractical. *See* *Tomazzoli v. Sheedy*, 804 F.2d 93, 98 (7th Cir. 1986) ("We endorse the court's [lump-sum] approach as a practical means of trimming fat from a fee application; it is generally unrealistic to expect a trial court to evaluate and rule on every entry in an application."). Elsewhere, Mr. Longo says the district court based its decision on "thoughts/feelings" and viewed his petition with a "negative lens," but he does not explain what that means.[9] In any event, upon examination of the record, we are confident that the district court fairly applied the law to the facts of this case. Mr. Longo's conclusory statements do not present a coherent argument or give us any basis to disturb the award.

Conclusion

Mr. Longo submitted a voluminous and unreasonable fee petition. The district court meticulously, fairly, and correctly applied **[*445]** our case law and awarded reasonable attorneys' fees and costs. We, therefore, [**14] affirm the district court's judgment.

AFFIRMED

Footnotes

- [1]

  R.290 at 18.

- [2]

  The district court exercised its jurisdiction under 28 U.S.C. § 1331. We exercise ours under 28 U.S.C. § 1291. *See* *Palmer v. City of Chicago*, 806 F.2d 1316, 1318 (7th Cir. 1986) ("Attorney's fees usually are awarded after the final judgment; since there is then nothing else pending in the district court, the fee award is a final order in an uncontroversial sense, appealable under 28 U.S.C. § 1291."). Mr. Longo and his law firm are appropriate appellants for purposes of this appeal, which involves only the attorneys' fees and costs award. *See* *Mathur v. Bd. of Trs. of S. Ill. Univ.*, 317 F.3d 738, 741-42 (7th Cir. 2003).

- [3]

  Our warning today should come as no surprise to Mr. Longo, who has had his fee litigation conduct repeatedly criticized by district courts in our circuit. *See, e.g.*, *Smith v. Rosebud Farm, Inc.*, No. 11-cv-9147, 2018 U.S. Dist. LEXIS 143372, 2018 WL 4030591, at *4 (N.D. Ill. Aug. 23, 2018) ("Even a cursory review of the docket reveals that [Mr. Longo's] submissions regularly cited incorrect and/or irrelevant authorities and often were of questionable necessity or utility."); *Sommerfield v. City of*

Chicago, 2012 U.S. Dist. LEXIS 155064, 2012 WL 5354987, at *3 (N.D. Ill. Oct. 29, 2012), *report and recommendation adopted*, 2013 U.S. Dist. LEXIS 3715, 2013 WL 139502 (N.D. Ill. Jan. 10, 2013), *aff'd*, 863 F.3d 645 (7th Cir. 2017) ("[Mr. Longo's] willful misconduct time and time again results in needless and unreasonable expenditures of time for which he invariably seeks compensation through inflated fee awards and that courts have repeatedly condemned his behavior in published opinions that could not be more critical of a lawyer.").

- 4

Appellant's Br. 1.

- 5

Indeed, we have every reason to assume that Mr. Longo was well aware of the correct legal framework. We explained it just a few years ago in *Sommerfield v. City of Chicago*, 863 F.3d at 650, another case in which a district court concluded that Mr. Longo petitioned for an unreasonable fee award. He should have had no doubt that the district court in this case applied the correct legal framework.

- 6

R.305 at 18. ***HN9*** The distance between an attorney's place of practice and the courthouse is a factor that can be considered in determining whether it was reasonable to use an option other than an in-person appearance. But a trial judge must take into account that attorneys have every right to consider the accessibility of their office to their clients when determining the situs of their practice. The mere fact, then, that an attorney has chosen an office located outside of an urban center does not preclude an award of fees for travel from that office to the courthouse. The key questions remain whether the attorney has adequately supported their fee petition and whether their request is reasonable under the circumstances.

- 7

R.305 at 21.

- 8

Id.

- 9

Appellant's Br. 6, 10.