

III. DISCUSSION

A. Jurisdiction over a Motion for Supplemental Fees

State Defendants first argue that a district court may decline a request for supplemental fees.³ See Cutner Assocs., P.C. v. Kanbar, 1998 WL 524902 (S.D.N.Y. Aug. 20, 1998). In Cutner Assocs., P.C., a district court declined to grant supplemental fees where the first fee award made no provision for prospective recovery of additional fees, a second fee award corrected certain calculation errors in the first award and ordered that there be no further correspondence on the issue, the judgment filed by the plaintiff made no allowance for prospective recovery, and then four months later plaintiff filed for supplemental fees. Id. at *1.

State Defendants next argue that this court must decline jurisdiction over a request for supplemental fees when judgment on the fees issues has already been entered and satisfied. For this proposition, State Defendants cite Magistrate Judge Thomas P. Smith's unpublished ruling by margin endorsement in Smith v. Wheaton, No. H-87-190 (D. Conn. Mar. 30, 2001).

Upon review, Judge Smith's ruling does not stand for the proposition for which State Defendants cite it. First, Judge Smith noted that judgment there had "long since been entered and satisfied." Such is not the situation here. Judgment for fees was entered on April 2, 2001. Plaintiff filed his present motion on April 9, 2001. State Defendants

³ State Defendants also cite Andrews v. Citigroup, Inc., 1999 U.S. Dist. LEXIS 19955 (S.D.N.Y. Dec. 30, 1999) for the proposition that a district court may decline to exercise jurisdiction over a request for supplemental fees. The cited case does not stand for the proposition for which State Defendants cite it nor can any relevance to the resolution of the present motion be discerned.

assert that the State issued its check on April 11, 2001.⁴

Second, contrary to State Defendants' argument, Judge Smith did not hold that courts in situations like his must decline jurisdiction. Nor did he hold that he did not have jurisdiction in his specific situation. He simply stated that "a proper jurisdictional basis for . . . such a post judgment motion" had not been shown. Furthermore, State Defendants' argument is undercut by recent District of Connecticut decisions that have considered such motions for supplemental fees as a matter of course without jurisdictional inquiries or objections. See, e.g., R.N. v. Suffield Bd. of Educ., 194 F.R.D. 49, 53 (D. Conn. 2000); N.S. v. Stratford Bd. of Educ., 97 F. Supp. 2d 224, 231-32 (D. Conn. 2000); Y.O. v. New Britain Bd. of Educ., 1 F. Supp. 2d 133, 140 (D. Conn. 1998).

B. Hourly Rate

In his previous motion for fees, Plaintiff asserted two hundred dollars per hour was an appropriate rate. State Defendants did not object. This court's March 15, 2001 Ruling accepted this rate. Plaintiff now again asserts two hundred dollars per hour is an appropriate rate. State Defendants do not object. Accordingly, the hourly rate of two hundred dollars is again accepted.

C. Number of Hours

Plaintiff asserts a total of 13.2 hours. State Defendants challenge the hours.

Plaintiff researched the standard for summary judgment for his previous motion for fees. Plaintiff filed a Local Rule 9(c)(1) statement as part of his previous motion for

⁴ More relevant to State Defendants' argument would be the date Plaintiff received the check. The letter accompanying the check is dated April 16, 2001. It would therefore seem that Plaintiff filed the present motion over a week before he received his check.

attorney's fees and costs. Plaintiff drafted a reply brief arguing that State Defendants' failure to submit a Local Rule 9(c)(2) statement meant that his asserted facts were deemed admitted. When State Defendants did submit a Local Rule 9(c)(2) statement and memorandum about the issue, Plaintiff reviewed it. Plaintiff's 3.3 hours associated with researching and briefing this issue are not allowed. The Local Rules clearly denote that such statements apply only to motions for summary judgment. The efforts expended were unnecessary.

Plaintiff also attributes 1.0 hours to reviewing this court's previous fee award Ruling and communicating the results to the client. Plaintiff does not cite to any authority that such hours are recoverable. Every fee award will likely have to be read, the results communicated to the client, and the check received and processed. If these hours were recoverable, then there seems little reason that after ruling on such a motion for supplemental fees, a plaintiff could not submit further motions for supplemental fees to recover these costs, and thereby request such supplemental fees ad infinitum. Absent some cited authority to the contrary, such fees are not allowed.⁵

Plaintiff also attributes 3.0 hours to researching and drafting the present motion for supplemental fees. Generally, a plaintiff's recovery of attorneys' fees for work done in connection with the fee application is appropriate. Gagne v. Maher, 594 F.2d 336, 343 (2d Cir. 1979), aff'd, 448 U.S. 122 (1980). However, when a previous award has already been made, the propriety of such fees should turn on whether there is some independent

⁵ Left unreached is the question of whether a plaintiff could cure this by requesting such fees prospectively.

basis for the granting of supplemental fees. A contrary rule would present the same problem as above, that a plaintiff could request such supplemental fees ad infinitum.

The remaining 5.9 hours are not challenged by State Defendants. This court finds them reasonable. Accordingly, the additional 3.0 hours noted above in requesting them are allowable.

D. Reduction for Limited Success

In this court's March 15, 2001 Ruling, Plaintiff was not granted the full lodestar figure as he had not achieved excellent results. The total amount to which Plaintiff was entitled had been reduced by fifty percent. This court has wide discretion in determining whether to maintain a percentage reduction in a supplemental fee award or to vary it. See Grant v. Martinez, 973 F.2d 96, 99 (2d Cir. 1992) (a "district court has wide discretion in determining the amount of attorneys' fees to award"); see, e.g., N.S. v. Stratford Bd. of Educ., 97 F. Supp. 2d at 231 (15% fee reduction in principal fee award but no fee reduction in supplemental fee award). Here, the total award is reduced by fifty percent again.

E. Calculation of Award

The total hours to be awarded is 8.9 hours. At an hourly rate of two hundred dollars, this gives a lodestar figure of \$1780.00. At a reduction of fifty percent, the fee award is \$890.00.

IV. CONCLUSION

Plaintiff's motion for supplemental fees, (Dkt. No. 113), is **granted** in the amount of \$890.00.

Dated at New Haven, Connecticut, May __, 2001.

Peter C. Dorsey
Senior United States District Judge