

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

ROY L. DENTON)	
)	
Plaintiff)	Case No. 1:07-cv-211
)	
v.)	JURY DEMAND
)	
STEVE RIEVLEY)	Collier/Carter
)	
Defendant)	

**DEFENDANT STEVE RIEVLEY’S MOTION FOR ATTORNEYS’ FEES
FED. R. CIV. P. 54(d)(2) and 42 U.S.C. A. § 1983 and § 1988**

Comes the Defendant, Steve Rievley, in his individual capacity, (herein “Officer Rievley”) pursuant to Rule 54(d)(2) of the *Federal Rules of Civil Procedure* and 42 U.S.C.A. § 1983 and § 1988 and moves this Court for an Order allowing Officer Rievley to recover his attorneys’ fees. In support thereof, Officer Rievley would show this Court the following:

The Plaintiff filed this action in September, 2007 pursuant to 42 U.S.C.A. § 1983 claiming violations of his civil rights. During the course of the litigation, the Plaintiff filed countless motions, some of which were motions to ask this Court to reconsider its rulings for the second (or third) time on previous motions. Regardless, all of these motions required the attorneys for Officer Rievley to respond. Eventually, two trials were subsequently held; one in April, 2010 which ended in a hung jury and the last trial which ended in defense verdict in favor of Officer Rievley. In its August 27, 2010 Order, this Court ordered that “the defendant STEVE RIEVLEY recover costs from the Plaintiff ROY L. DENTON.” *See Court Doc. 140.*

Rule 54(d)(1) does not allow attorneys' fees to a prevailing order unless a federal statute provides otherwise. As a prevailing party in a § 1983 case, Officer Rievley, is entitled to his attorneys' fees by federal statute. 42 U.S.C.A. § 1988. Section 1988 provides that "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." *Id.*

Rule 54(d)(2) allows the prevailing party to move the Court for attorney's fees upon timely motion (here within 14 days of the entry of judgment). *Id.* As the judgment was entered on August 27, 2010, this Motion is timely and is being made pursuant to 42 U.S.C.A. § 1988. The total amount of fees requested is \$35,332.70. *See Affidavit of B. Elizabeth Roderick*, attached hereto as Exhibit 1. These fees are correct and were necessarily incurred in this action. *Id.* The fees and services for which the fees have been charged were actually and necessarily performed. *Id.* The fees and hours were reasonable given the complexity of the case, the numerous amount of pleadings filed by the Plaintiff and the responses required to be filed thereto, the necessity for filing an appeal to the Sixth Circuit, and the two trials that ensued. *Id.*

Officer Rievley respectfully submits that he is entitled to recover his attorney's fees due to the voluminous amount of motions filed by the Plaintiff all of which required responses, the two trials of this matter, the unanimous verdict in Officer Rievley's favor, this Court's Order entitling Officer Rievley to recover all costs, and 42 U.S.C.A. § 1988. Accordingly, Officer Rievley is respectfully requesting this Court to use its discretion and grant his Motion for Attorneys' fees in addition to his Bill of Costs which is filed simultaneously herewith.

ROBINSON, SMITH & WELLS

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Elizabeth Roderick, BPR #022762
Attorney for Defendant, Steve Rievley

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

This the 9th day of September, 2010.

Robinson, Smith & Wells

By: s/ Elizabeth Roderick

c: Roy L. Denton
120 6th Avenue
Dayton, TN 37321

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