IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
OKLAHOMA

DR. RACHEL TUDOR, Plaintiff, v. SOUTHEASTERN OKLAHOMA STATE UNIVERSITY, and THE REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA, Defendants.	)	Case No. 5:15-CV-00324-C

PLAINTIFF DR. RACHEL TUDOR'S
RESPONSE TO MOTION OF EZRA YOUNG
AND BRITTANY NOVOTNY FOR ATTORNEY FEES

I. THE APPLICATION IS PREMATURE AND PLAINTIFF WISHES TO WITHDRAW IT

The Court had previously granted to Ezra Young and Brittany Novotny the permission to participate in any future proceedings pertaining to attorneys' fees and costs. [ECF 352]. Nonetheless, attorney fees belong to the Plaintiff, Dr. Rachel Tudor, and not to Mr. Young or Ms. Novotny.

> [T]he party, rather than the lawyer, is entitle[d] to receive the fees under § 1988(b),” and “the statute controls what the losing defendant must pay, not what the prevailing plaintiff must pay his lawyer.

Astrue v. Ratliff, 560 U.S. 586, 598 (2010) (citations omitted) (in reference to 42 U.S.C. § 1988(b)). The statute construed by the Court, 42 U.S.C. § 1988(b) states, in pertinent part, “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.” The statute at issue here, 42 U.S.C. § 2000e-5(k), is virtually identical, stating that “the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney’s fee (including expert fees) as part of the costs.” The Tenth Circuit has understood *Astrue* to mean that the plaintiff is entitled to the lodestar amount even if its lawyers are entitled to less, such as in a fixed-fee arrangement. *Centennial Archaeology, Inc. v. AECOM, Inc.*, 688 F.3d 673, 682 (10th Cir. 2012).

Fed. R. Civ. P. 54 and LR 54.2 call for the filing of a motion for attorney fees two weeks after the entry of judgment of this Court under Fed. R. Civ. P. 58. A decision on the amounts to be awarded has not yet been made by the Court, and there obviously has been no entry of judgment while the matter is proceeding. The Tenth Circuit Judgment [ECF 358] explicitly remanded the case to the United States District Court for the Western District of Oklahoma “for further proceedings in accordance with the opinion of this court.” Permitting piecemeal applications for

attorney fees is not in accord with Fed. R. Civ. P. 54 and LR 54.2. The Court's ruling on attorney fees will necessarily need to evaluate the totality of the circumstances in determining appropriate fees.

Mr. Young and Ms. Novotny have put in their own motion, which includes certain time charges that she does not believe are valid or appropriate, and multipliers for work that left much to be desired. As set forth in the Declaration of Dr. Rachel Tudor, filed under seal, the information from the Oklahoma Bar Association and her termination of Mr. Young and Ms. Novotny for cause bears on this point. Dr. Tudor is aware that this may result in a lower amount of attorney fees taken from the coffers of the State of Oklahoma, but her concern, as it always has been, is justice, and not money. She does not want them filing for her.

II. EXAMPLES OF DR. TUDOR'S CONCERNS REGARDING BILLING ITEMS.

Dr. Tudor has identified some of the contentions by Mr. Young and Ms. Novotny in their filing about which she has veracity concerns. The filing inaccurately states:

> 29.Other attorneys would not take this appeal. Application of a multiplier is warranted because it appropriately incentivizes attorneys to take on appeals like this one.
>
> a. At the time Tudor's appeal was filed in 2018, there were no firms or nonprofit organizations that were willing to take her case on despite the historic success of her November 2017 jury trial.

> b. Between 2018 and 2019, I recall that on several occasions Tudor asked me to assist her in finding private law firms to take on her case either on a pro bono or contingency basis. Unfortunately, I was unable to find her any viable options given the large number of attorneys who were conflicted out of the case and belief by many that there were little to no available attorneys' fees left in the case.

As set forth in Dr. Tudor's Declaration, this is incorrect. After Dr. Tudor expressed concerns about the manner in which the trial proceedings were conducted by Mr. Young and Ms. Novotny, and indicated her desire to find alternate counsel for the appeal, they told her they "quit," that they would file a damning motion stating that she is a "problem client," and their withdrawal motion would damage her reputation so much that it would prevent her from being reinstated. The billing statements filed by Mr. Young and Ms. Novotny do not indicate any time spent researching alternate counsel. This is surprising in light of the fact that the billing statements are extremely detailed, even when doing so is prejudicial to Dr. Tudor, their former client to whom they owe an obligation under Oklahoma Rule of Professional Conduct 1.9. Although they seem to have have billed time for the most minor of projects, there is no reference to any time spent speaking with Dr. Tudor or others about alternate counsel. Rather, Mr. Young has no direct knowledge of this, because, as he states, "it is my understanding" that Dr. Tudor "struggled" to find new appellate counsel. Dr. Tudor contests the supposition that no other attorneys would take this appeal. The strongest evidence is that other

attorneys did, in fact, take on this appeal. The idea that there were "little to no available attorneys' fees left in the case" is clearly belied by the fact that Mr. Young and Ms. Novotny have rendered a bill for over one million dollars since that time.

> c. It is my understanding that after Ms. Novotny and I notified Tudor that we desired to withdraw as her counsel in August 2019, that Tudor struggled, again, to find new appellate counsel. In fact, in part because Tudor could not find new counsel, Ms. Novotny and I remained on the case for several months thereafter until Tudor retained Jillian Weiss in January 2020 as her counsel for the second time and stayed on as counsel of record until our request to withdraw was granted in June 2020.

As set forth in the Declaration of Dr. Tudor, Mr. Young and Ms. Novotny did not "notif[y]" her about their desire to withdraw as counsel. Rather, they threatened her with withdrawal, and stated convincingly that no other attorneys would want to take her case, including in their claims her current counsel. Dr. Tudor contacted current counsel in October 2019, of whom Jillian Weiss was her former counsel who had begun the case and worked with her for some years on it. Because of the lengthy proceedings, it took some time for current counsel to get up to speed and to determine an appropriate way forward. There are thousands of dollars in billing claims researching and preparing a Motion to Withdraw without client consent, which was never filed. There are also bills claiming to be communications with John Knight (the ACLU attorney representing Aimee Stevens in the *Bostock* case),

who has no relation to this case, although Mr. Knight did email Dr. Tudor regarding his interest in the case. The documents submitted by Mr. Young and Ms. Novotny appear to be at odds with Dr. Tudor's understanding.

CONCLUSION

Plaintiff, Dr. Rachel Tudor, respectfully requests this Court to issue an order denying the motion of Ezra Young and Brittany Novotny as premature.

Dated: October 18, 2021

/s/ Jillian T. Weiss
Jillian T. Weiss
Pro Hac Vice
775 Fourth Avenue, No. 320173
Brooklyn, NY 11232
845-709-3237
845-684-0160
jweiss@jtweisslaw.com

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2021, I electronically filed a copy of the foregoing with the Clerk of Court by using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Jillian T. Weiss