

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Cheryl J. Hopwood, *et al.*,

Plaintiffs,

v.

State of Texas, *et al.*,

Defendants.

CIVIL ACTION NO.
A-92-CA-563-SS

PLAINTIFFS' JOINT STATUS REPORT

Plaintiffs Hopwood, Carvell, Elliott and Rogers jointly file this amended status report, which is identical in all respects to the joint status report filed on July 20, 2001, except Locke Liddell & Sapp have been removed as counsel for plaintiffs Hopwood and Carvell. Following a February 15, 2001, status conference, the Court entered an order stating that "within thirty (30) days of the final disposition of this case by the United States Supreme Court, the parties shall file a status report with the Court regarding any matters, if any, that remain pending in this case." On June 25, 2001, the United States Supreme Court denied the defendants' petition for certiorari. Consequently, plaintiffs file this status report to identify the single matter that remains pending in this case: the amount of reasonable attorneys' fees incurred by plaintiffs as prevailing parties since September 1, 1996, the effective date of plaintiffs' last supplement to their application for attorneys' fees.

DISCUSSION

This Court issued a decision on March 20, 1998, following a four-day trial on individual remedial issues. That decision denied plaintiffs any additional individual remedies, awarded

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Clerk of the Southern District

plaintiffs their reasonable attorneys' fees and costs through August 31, 1996, and enjoined the University of Texas School of Law from considering racial preferences in the selection of those individuals to be admitted as students at the Law School.

Both sides appealed that decision to the Fifth Circuit. On December 21, 2000, the Fifth Circuit issued an opinion affirming this Court's award of attorneys' fees to plaintiffs, affirming this Court's holding denying plaintiffs additional individual relief, and reversing the injunction against the Law School. In addition, the Fifth Circuit rejected defendants' arguments concerning the constitutional issues that were decided in favor of plaintiffs by the Fifth Circuit in 1996. Both sides petitioned for rehearing en banc, and the Fifth Circuit denied both petitions on January 17, 2001. The defendants filed a petition for certiorari in the United States Supreme Court seeking review of the constitutional issues decided by the Fifth Circuit in its 1996 and 2000 decisions, as well as the Fifth Circuit's 2000 affirmance of this Court's award of attorneys' fees to plaintiffs. The Supreme Court denied defendants' petition for certiorari on June 25, 2001.

Plaintiffs have incurred attorneys' fees and costs since the effective date of their last supplement to their fee application (September 1, 1996), to which plaintiffs are legally entitled.¹ For example, plaintiffs successfully defended against defendants' challenges to the fee award made by this Court in March 1998 and successfully opposed defendants' cross-appeal to the Fifth Circuit; plaintiffs Hopwood and Carvell also specifically opposed defendants' 2001 petition for certiorari. Such fees are recoverable as a matter of law. *See, e.g., Norris v. Hartmarx Specialty*

¹ The attorneys' fees and costs awarded to plaintiffs by this Court in its March 20, 1998 decision were affirmed by the Fifth Circuit, and the Supreme Court denied certiorari review of defendants' legal challenges to that award. Consequently, no further proceedings regarding the viability or amount of that award are either necessary or permitted. Plaintiffs expect defendants to pay that already-affirmed award promptly.

Stores, 913 F.2d 253, 257 (5th Cir. 1990) (instructing district court to award attorneys' fees for work in the appellate court in successfully defending the relief plaintiff attained at the trial stage); *Johnson v. Mississippi*, 606 F.2d 635, 637-38 (5th Cir. 1979) (prevailing parties are entitled to attorneys' fees for time spent litigating an attorneys' fee claim).

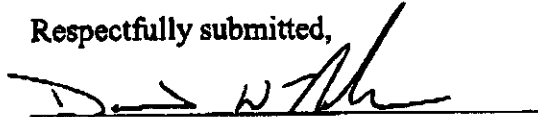
Plaintiffs will not seek any further action by this Court with respect to the injunction against the Law School that this Court entered on March 20, 1998 and the Fifth Circuit reversed in its December 2000 opinion. Plaintiffs will not ask this Court to conduct further proceedings for a Rule 65 injunction because such proceedings are unnecessary at this time. Defendants themselves have characterized the Fifth Circuit's decisions as "a clear directive from the federal courts," Petition for Certiorari at 22, that is a "*de facto* injunction or declaratory judgment [that] [d]efendants, plaintiffs, and the courts below have all treated as such." *Id.* at 24. Plaintiffs agree with defendants' characterization of the Fifth Circuit's holdings.² Because defendants have also represented to the courts that they have "treated this 'judicial instruction' as an injunction [with which] *they have complied for five years and will continue to do so until the instruction is vacated or superseded,*" *id.* (emphasis added), plaintiffs do not believe that it is necessary to burden the federal courts with further proceedings regarding a Rule 65 injunction at this time.

² Moreover, as defendants stated in their reply brief in support of their Petition, all parties, including plaintiffs, "recognize that th[e Fifth Circuit's] instruction is binding on the law school and, as such, [wa]s reviewable by the [Supreme] Court," had it wished to grant certiorari. Reply at 8.

Thus, the *only* issue remaining in this case is the additional amount of attorneys' fees to which plaintiffs are entitled. Pursuant to this Court's February 15, 2001 Order, plaintiffs will file supplemental applications for attorneys' fees and costs by July 25, 2001.

Dated: July 30, 2001

Respectfully submitted,



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