May Q&A: Attorney's Fees in Juvenile Justice Litigation

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Question: If you prevail in challenging constitutional violations for children with disabilities in juvenile justice facilities, what is the relevance of the Prison Litigation Reform Act to a claim for attorney's fees?

Answer: The PLRA prescribes an hourly rate cap on fees that applies to juvenile justice facilities, just as it does to other correctional settings. However, the cap should be calculated based on hourly rate established by Congress, rather than the actual rate paid in the district for appointed counsel in criminal matters.

The Prison Litigation Reform Act, 42 U.S.C. § 1997e(d)(1), establishes a maximum hourly rate for attorney's fees in "[i]n any action brought by a prisoner who is confined to any jail, prison, or other correctional facility...." Prisoners include any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program. *Id*. at § 1997(h). While there is an argument, based upon a comparison of the language in §§ 802(g)(5) and 1997e(d)(1) of the PLRA, that a juvenile justice center is not a "jail, prison, or other correctional facility," this argument has now been rejected by three courts of appeals and is not likely to succeed elsewhere. *Christina A. v. Bloomberg*, 315 F.3d 990 (8th Cir. 2003); *Alexander S. v. Boyd*, 113 F.3d 1373 (4th Cir. 1997); and *District of Columbia v. Jerry M.*, 717 A.2d 866 (D.C. 1998).[1]

A more promising argument relates to the calculation of the rate cap. The PLRA provides for payment of attorney's fees at the 150% of the rate "established" under the Civil

[1] The district court's opinion in *Christina A. v. Bloomberg*, 167 F.Supp. 2d 1094, 1099-1100 (D. S.D. 2001) held that a juvenile justice facility is not included in the fee limitation imposed by the PLRA. The limitation on attorney fees contained in § 803 of the PLRA applies to "any action brought by a prisoner who is confined to any jail, prison, or other correctional facility." The limitation is codified at 42 U.S.C. § 1997e(d)(1). While the court concluded that plaintiffs are "prisoners" within the meaning of § 803, it held that the South Dakota State Training School is not a "jail, prison, or other correctional facility" for the purposes of § 803. The court relied upon the legislative history and chronology of the statutory limitations. It noted that § 803 amended the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997 *et seq*. In a provision that pre-dates enactment of the PLRA, 42 U.S.C. § 1997(1), CRIPA expressly defines the term "institution" for the purposes of § 1997 ("as used in this subchapter") and identifies five types of facilities: one type, identified in subsection (ii), is "a jail, prison, or other correctional facility," while another type of facility, identified in subsection (iv), is "for juveniles...." The court concluded that since CRIPA expressly applies to prisoners in "a jail, prison, or other correctional facility," as distinguished from prisoners in facilities "for juveniles," and since the plaintiffs in the case were in a facility "for juveniles," the attorney's fees limitations in § 803 do not apply to the lawsuit. *Christina A.*, 167 F.Supp.2d at 1099-1100.

Justice Act, 18 U.S.C. § 3006A. *See* 42 U.S.C. § 1997e(d)(3). Courts are divided over whether the established rate is the one authorized by Congress and established by the Judicial Conference, or the one actually implemented in the relevant district. *Compare Webb v. ADA*, 285 F.3d 829, 838-9 (9th Cir. 2002) (PLRA fee cap is linked to approved rate) *with Hernandez v. Kalinowski*, 146 F.3d 196, 201 (3d Cir. 1998) (PLRA fee cap is linked to implemented rate). Several courts have adopted the higher rate, reasoning that Congress originally established a specific rate in the statute itself, and then directed the Judicial Conference to revise that rate periodically to reflect market changes and cost of living adjustments. Since Congress explicitly directed that the PLRA rate be the rate "established" under the CJA, it is reasonable to conclude that Congress intended to link the PLRA rate to the maximum hourly rate set by the Conference. *See Emily J. v. Rowland*, CA 3:93-CV-1944 (RNC) (D. Conn. April 26, 2003) (unpublished); *Ilick v. Miller*, 68 F.Supp.2d 1169, 1174 (D. Nev. 1999). *But see Hadix v. Johnson*, Case No. 4:92-CV-110, 2002 U.S. Dist. LEXIS 23421 (W.D. Mich., Dec. 2, 2002); *Morrison v. Davis*, 195 F.Supp. 2d 1019, 1022-23 (S.D. Ohio 2001).

Defendants will argue that the rate "established under section 3006A of Title 18" is the rate actually paid to CJA counsel. While the former is the clear requirement of the statute, the latter is not referred to by Congress nor reflected in the language of the PLRA *See Webb* at 838_39 (reversing a lower court's construction of the statute to equate the rate "established" by the Judicial Conference with the rate "appropriated" by Congress). The Ninth Circuit directly addressed and rejected the defendants' argument:

> The PLRA expressly provides for payment at the rate "established" under 18 U.S.C. § 3006A. 42 U.S.C. § 1997e(d)(3). The Judicial Conference determined that a rate of $75 per hour for the District of Idaho was justified. Section 1997e(d)(3) makes no distinction between the amount authorized by the Judicial Conference and the amount actually appropriated by Congress to compensate court_appointed counsel in criminal proceedings.

Webb, 285 F.3d at 839. The district court in *Ilick* adopted a similar rationale for its conclusion:

> The court finds the delay in implementing the approved CJA rate not controlling for the PLRA rate determination, however. First, the payment of these attorneys fees will not come from CJA funds, but instead from defendants' own coffers. Thus, the fact that the $75 CJA has not yet actually been paid to lawyers in Reno or Las Vegas is not persuasive. Further, the PLRA sets the payment rate as 150% of the rate "established" by the CJA in 18 U.S.C. § 3006A. 42 U.S.C. § 1997d(3). It does not limit payment of fees to 150% of the CJA payments actually "paid" or "awarded." The critical word is "established." Here, the court finds the "established" CJA rate to be $75, for the Judicial Conference has already decided that this is the proper rate of pay. That the $75 rate is not currently paid due to lack of funds does not change the "establishment" of the $75 rate.

68 F.Supp.2d at 1174.

The difference between these rates is significant. The maximum rate authorized by the Judicial Conference is $113/hour.[2] The actual rate paid CJA attorneys handling criminal matters is substantially lower.[3] Thus, convincing a court to adopt the higher rate can result in a significantly greater attorney's fees award.

[2] The PLRA cap, calculated 150% of this rate, would be $169.50 per hour.

[3] In Connecticut, for instance, the actual CJA rate is $90/hour, which would make the PLRA rate $135 per hour.