

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SHELLEY ANNE SCHOENFELD,

Plaintiff,

v.

Case No.: 8:17-cv-407-T-AAS

**NANCY A. BERRYHILL, Deputy
Commissioner of Operations, Social
Security Administration,**

Defendant.

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ORDER

Shelley Anne Schoenfeld moves for an award of fees and costs pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412. (Doc. 22). Specifically, Ms. Schoenfeld seeks attorney’s fees in the amount of \$4,045.17, litigation expenses in the amount of \$65.38, and costs in the amount of \$400.00. (*Id.*).

The court may award fees pursuant to the EAJA upon a showing that: (1) the claimant is a prevailing party, (2) the government’s position was not substantially justified, (3) the claimant’s application was timely filed, (4) the claimant’s net worth was less than \$2 million at the time the complaint was filed, and (5) no circumstances make the award unjust. *See* 28 U.S.C. § 2412(d). The fee award must also be reasonable. 28 U.S.C. § 2412(d)(2)(A).

The court entered an order reversing and remanding the case under sentence four of 42 U.S.C. § 405(g) to the Commissioner for further administrative proceedings. (Doc. 20). The Clerk entered judgment in favor of Ms. Schoenfeld thereafter. (Doc.

21). As the prevailing party, Ms. Schoenfeld now requests an award of fees. *See* 28 U.S.C. § 2412(a)(1) & (d)(1)(A). The Commissioner does not challenge Ms. Schoenfeld’s entitlement to fees under the EAJA but argues the attorney’s fees requested are based on an unreasonable hourly rate and improperly include clerical tasks. (Doc. 23).

A. Reasonable Hourly Rate

Pursuant to the EAJA, “the amount of fees awarded . . . shall be based upon prevailing market rates for the kind and quality of the services furnished.” 28 U.S.C. § 2412(d)(2)(A). Ms. Schoenfeld requests an hourly rate of \$195.61 for attorney Suzanne L. Harris, \$125.00 per hour for work performed by attorneys not admitted to the Middle District of Florida, and \$75.00 per hour for work performed by paralegals. Ms. Schoenfeld’s attorney’s fee request is broken down as follows:

Name	Status	Rate	Hours	Total
Suzanne L. Harris	Attorney, admitted to M.D. Fla.	\$195.61	1.1	\$215.17
Howard D. Olinsky	Attorney, <i>not</i> admitted to M.D. Fla.	\$125.00	2.1	\$262.50
Edward A. Wicklund	Attorney, <i>not</i> admitted to M.D. Fla.	\$125.00	2.3	\$287.50
Marisa Burkett	Attorney, <i>not</i> admitted to M.D. Fla.	\$125.00	19.9	\$2,487.50
Michelle Fecio	Attorney, <i>not</i> admitted to M.D. Fla.	\$125.00	1	\$125.00
Michael Smith	Paralegal	\$75.00	0.4	\$30.00
Jonnah Graser	Paralegal	\$75.00	2.4	\$180.00
Moiria Deutch	Paralegal	\$75.00	0.3	\$22.50
Shannon Persse	Paralegal	\$75.00	0.4	\$30.00
Kyrsten Gifford	Paralegal	\$75.00	0.8	\$60.00
Michelle Callahan	Paralegal	\$75.00	0.7	\$52.50
Tamica Lockwood	Paralegal	\$75.00	3.7	\$277.50

Jennifer Overfield	Paralegal	\$75.00	0.2	\$15.00
				TOTAL: \$4,045.17

(Doc. 22, Exs. D-P).

The Commissioner challenges as unreasonable the rates requested for attorneys not admitted to the Middle District of Florida. As the Commissioner points out, the prevailing market rate for social security appeals for attorneys not admitted to practice in the Middle District of Florida is the reasonable hourly rate of a paralegal for social security appeals, or \$75.00 per hour. *See e.g., Wood v. Comm’r of Soc. Sec.*, No. 2:15-cv-437-FtM-29CM, 2017 WL 2298190, at *3 (M.D. Fla. May 26, 2017); *Duffield v. Colvin*, No. 3:15-cv-1065-J-MCR, 2016 WL 6037306, at *2 (M.D. Fla. Oct. 14, 2016). Indeed, the Eleventh Circuit affirmed a district court’s decision to award EAJA fees at a paralegal rate for attorneys not admitted to practice before the district court. *See Zech v. Comm’r of Soc. Sec.*, 680 F. App’x 858, 860 (11th Cir. 2017). Therefore, the court will reduce the hourly rate for attorneys Howard D. Olinsky, Edward A. Wicklund, Marisa Burkett, and Michelle Fecio to \$75.00 per hour.

B. Hours Expended

The Commissioner also challenges the reasonableness of the hours billed by attorneys and paralegals in connection with the case, noting hours billed for non-compensable clerical tasks. *Mobley v. Apfel*, 104 F. Supp. 2d 1357, 1360 (M.D. Fla. 2000) (“[T]asks of a clerical nature are not compensable as attorney’s fees.”). Review of the cited records reveals billing charges for non-compensable clerical time, such as mailing correspondence to Ms. Schoenfeld and the Clerk, calendaring deadlines, and

filing, among others. (See Billing records, Doc. 22, Ex. C; Commissioner's list of clerical tasks, Doc. 23, pp. 6-8). (*Id.*). Thus, the following time entries will be deducted:

Name	Task	Date	Hours	Total
Suzanne L. Harris	Service of process	3/10/17	0.2	\$39.12
	Review summons, calendar answer date	3/23/2017	0.2	\$39.12
Howard D. Olinsky	Review summons	3/8/2017	0.2	\$15.00
Edward A. Wicklund	Review scheduling order, calendar deadlines	6/13/2017	0.2	\$15.00
Michael Smith	Sent correspondence to the Clerk	2/23/2017	0.2	\$15.00
Jonnah Graser	Ready and file EAJA Petition	10/3/2018	0.9	\$67.50
Shannon Persse	Remand Referral back to AC	7/11/2018	0.2	\$15.00
Michelle Callahan	Federal Court Accept Letter, New Filing	2/21/2017	0.3	\$22.50
	File Proof of Service	3/22/2017	0.3	\$22.50
Tamica Lockwood	Sent Third Party Auth. Form	2/15/2017	0.2	\$15.00
	Sent Prospect Packet	2/15/2017	0.2	\$15.00
	Review executed Prospect Packet for completion	2/15/2017	0.3	\$22.50
	Save executed Third Party Auth. Form	2/15/2017	0.1	\$7.50
	Review notarized Prospect Packet for completion	2/16/2017	0.3	\$22.50
TOTAL:				\$333.24

Considering the above revisions to the hourly rates and number of hours billed, the amount of fees awarded to Ms. Schoenfeld will be adjusted as follows:

Name	Status	Rate	Hours	Total
Suzanne L. Harris	Attorney, admitted to M.D. Fla.	\$195.61	0.9	\$176.05
Howard D. Olinsky	Attorney, <i>not</i> admitted to M.D. Fla.	\$75.00	1.9	\$142.50
Edward A. Wicklund	Attorney, <i>not</i> admitted to M.D. Fla.	\$75.00	2.1	\$157.50
Marisa Burkett	Attorney, <i>not</i> admitted to M.D. Fla.	\$75.00	19.9	\$1,492.50
Michelle Fecio	Attorney, <i>not</i> admitted to M.D. Fla.	\$75.00	1	\$75.00
Michael Smith	Paralegal	\$75.00	0.2	\$15.00
Jonnah Graser	Paralegal	\$75.00	1.5	\$112.50
Moiria Deutch	Paralegal	\$75.00	0.3	\$22.50
Shannon Persse	Paralegal	\$75.00	0.2	\$15.00
Kyrsten Gifford	Paralegal	\$75.00	0.8	\$60.00
Michelle Callahan	Paralegal	\$75.00	0.1	\$7.50
Tamica Lockwood	Paralegal	\$75.00	2.6	\$195.00
Jennifer Overfield	Paralegal	\$75.00	0.2	\$15.00
			TOTAL:	\$2,486.05

C. Conclusion

Accordingly, Ms. Schoenfeld's Motion for Attorney's Fees Pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 (Doc. 22) is **GRANTED in part** as follows:

(1) Ms. Schoenfeld is awarded attorney's fees in the amount of **\$2,486.05**, expenses in the amount of **\$65.38**, and costs in the amount of **\$400.00**.

(2) The United States Department of the Treasury will determine whether Ms. Schoenfeld owes a debt to the government. If Ms. Schoenfeld has no discernable

federal debt, the government will accept Ms. Schoenfeld's assignment of EAJA fees (Doc. 22, Ex. Q) and pay the fees awarded directly to Ms. Schoenfeld's counsel.

(3) In all other respects, the motion is **DENIED**.

ORDERED in Tampa, Florida on October 31, 2018.

A handwritten signature in black ink, reading "Amanda Arnold Sansone". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

AMANDA ARNOLD SANSONE
United States Magistrate Judge