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IN THE CIRCUIT COURT OF THE FIFTEENTH  
JUDICIAL CIRCUIT, IN AND FOR  
PALM BEACH COUNTY, FLORIDA

CASE NO.: 2003 CA 13234 AH

EDITH RAPP,  
Plaintiff,

vs.

JEWS FOR JESUS, INC.,  
Defendant.

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ORDER TAXING FEES AND COSTS AGAINST BARRY M. SILVER,  
ESQUIRE AND BARRY M. SILVER, P.A.

This action came before the Court for an evidentiary hearing on October 15, 2010 in order to determine the amount of fees and costs to be taxed against Barry M. Silver, Esquire and Barry M. Silver, P.A. and in favor of Defendant, Jews for Jesus, Inc. and its attorneys, Liberty Counsel.

In an order dated October 29, 2009 the Court found that Mr. Silver was engaging in bad faith litigation conduct and the Court made the necessary detailed factual findings.

In an order dated November 23, 2005 the Court found that attorney's fees were due for the portion of the defense fees expended to respond to the First Amended Complaint that was an absolute repetition of identical pleadings that had been previously stricken and therefore had no legal basis to allow them to be repled.

In both instances fees and costs were ordered to be taxed against Mr. Silver.

In this order the Court's concern is restoring Defendant's attorneys' fees and costs that were incurred as a direct result of this conduct to the extent allowable by law. Unfortunately the Court cannot restore the time lost. There are costs that were incurred that the Court cannot fully order repaid. Finally, entering a judgment is not necessarily adequate unless the judgment is ultimately paid.

It is up to The Florida Bar to decide whether or not to pursue this matter in order

to protect the judicial system from disregard of court orders and disregard of the appellate law of the case.

The fees and costs taxed and the findings of the reasonableness of those fees and costs are based upon the testimony and evidence presented at this hearing. The Court cannot consider as evidence the affidavits of attorneys who did not testify.

The undersigned judge has presided over this case since 2005 and is familiar with the progress of the case since that time and has had a full opportunity to view the work product of the attorneys and the level of effort, expertise and accuracy brought to bear in their presentations.

In sanctions cases the attorneys entitled to sanctions are entitled to fees for litigating the actual amount of fees. Condren v. Bell, 853 So.2d 609 (Fla. 4<sup>th</sup> DCA 2003).

This case falls at a point of intersection of issues where religion and the First Amendment meet. In the Court's view this is a specialized area where relatively few lawyers practice. Based upon the record no local lawyer or law firm had the necessary expertise to represent Defendant in this case. Mr. Silver is the only lawyer locally that is a specialist in this area. Therefore it was reasonable for Defendant to retain the services of Liberty Counsel who practice out of Longwood, Florida. That is not to say that at least in theory one could acquire some expertise in the case and represent Defendant but Defendant's counsel are experts in this area and have years of labor in this specific area. That level of experience/expertise is not presently available from a local attorney or law firm according to the record.

The Court finds that the record keeping of Defendant's attorneys is sufficiently detailed and accurate to be reliable. There are no claims for duplicate legal services. The Court finds that the various attorneys' legal rates are reasonable based upon the testimony of their experience and qualifications. The Court finds that the time expended was necessary and directly related to the misconduct.

The Court is well aware of the general rule that prohibits the taxation of computer research, postage, costs and copies not put in evidence. E.g., Mitchell v. Osceola Farms, 574 So.2d 1162 (Fla. 4<sup>th</sup> DCA 1991). Since this is a sanctions motion if the

Court could it would award those costs. Therefore in the event that this matter is considered by an appellate court and should it be determined that those costs are awardable the Court has included in footnotes the amount the Court would award for those matters if it had the authority to do so.

Costs awarded do include travel costs so that counsel may appear in person in court. Centex-Rooney Const. Co., Inc. v. Martin County, 723 So.2d 1255 (Fla. 4<sup>th</sup> DCA 1999).

Regarding the Court's November, 2005 order: That order is partially invalid however the sanctions portion was not made invalid by the law of the case and that is the section that still applies. The Court finds that the testimony and evidence establishes by the greater weight of the evidence that the time sought was limited strictly to the allowable sanctions portion of that order.

Regarding attorneys' fees and costs recoverable under the Court's November 23, 2005 sanctions order:

The Court finds the following hours and rates to be reasonable and to have been necessarily expended in this matter:

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Erik W. Stanley	19.1	\$270.00	\$5,157.00
Mathew D. Staver	4.1	\$495.00	\$2,029.50
	Total Fees:		\$7,186.50

Costs are taxed in the amount of \$332.69.<sup>1</sup>

Regarding attorneys' fees and costs recoverable under the Court's October 29,

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<sup>1</sup> Costs untaxed are Westlaw charges of \$39.54.

2009 sanctions order:

The Court finds the following time was reasonable and necessarily incurred, that the rates were reasonable and that the expenses were reasonably and necessarily incurred:

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Stephen M. Crampton	2.70	\$375.00	\$1,012.50
Horatio G. Mihet	91.10	\$285.00	\$25,963.50
Mathew D. Staver	3.40	\$495.00	\$1,683.00
Law Clerk	10.50	\$90.00	\$945.00
	Total Fees:		\$29,604.00

Costs in this instance include transcription charge for August 14, 2009, travel expenses, and charges for hearing exhibits and binders - \$55.47 and supplemental materials and binders requested by the Court - \$61.34. This particular hearing obviously took a lot of time to prepare because the Court had specifically wanted a paragraph by paragraph comparison of the complaints filed by Mr. Silver so that the Court could determine whether the paragraphs in the earlier complaints had specifically been ruled improper were included again in his latest complaint. These were very long complaints and this required not only a lot of work but a large demonstrative exhibit that could not have been effectively presented on standard size paper. Therefore these particular exhibits were necessary in order for the Court to have an adequate understanding. Total costs taxed are \$435.92.<sup>2</sup>

Finally the Court finds the following time and expenses were reasonable and necessarily incurred preparing for and attending this hearing that was held on October 15, 2010:

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<sup>2</sup> Costs untaxed for couriers are \$141.03. Costs untaxed for Westlaw are \$202.40.

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Erik W. Stanley	0.20	\$270.00	\$54.00
Mathew D. Staver	15.10	\$495.00	\$7,474.50
Total Fees:			\$7,528.50

Total costs are travel expenses of \$186.29.

Therefore it is the final judgment of the Court that Defendant, Jews for Jesus, Inc. or its counsel, Liberty Counsel, Post Office 540774, Orlando, Florida 32854-0774, recover from Barry M. Silver, Esquire and Barry M. Silver, P.A., 1200 South Rogers Circle, Suite 8, Boca Raton, Florida 33487, \$45,273.90 for reasonable and necessary fees and costs incurred, for which let execution issue.

ORDERED AND ADJUDGED at West Palm Beach, Florida, this 4 day of November, 2010.

  
 EDWARD FINE  
 Circuit Judge

Copies furnished:  
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