UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

T.E., et al.

Plaintiffs,

-v-

PINE BUSH CENTRAL SCHOOL DISTRICT, et al.

Defendants.

Case No. 12-CV-2303 (KMK)

ORDER

KENNETH M. KARAS, District Judge:

On June 29, 2015, Plaintiffs submitted a letter from Ilann M. Maazel to the Court concerning the Settlement Agreement and the infant compromise hearing, now scheduled for July 9, 2015. (Dkt. No. 149.) Attached to the letter, Plaintiffs submitted a Declaration of Ilann M. Maazel, a copy of the Settlement Agreement, a proposed order approving the Settlement Agreement, the minutes of the Pine Bush Central School District Board for June 9, 2015, a summary of costs incurred by Plaintiffs in this case, an Affidavit Declaration of S.E. and an accompanying exhibit, and an Affidavit Declaration of D.C. and an accompanying exhibit. (*Id.*)

"Under Rule 83.2(a)(1) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, '[a]n action by or on behalf of an infant or incompetent shall not be settled or compromised, or voluntarily discontinued, dismissed or terminated, without leave of the Court embodied in an order, judgment or decree.'" *Camac v. Long Beach City Sch. Dist.*, No. 09-CV-5309, 2013 WL 991355, at *2 (E.D.N.Y. Mar. 13, 2013) (quoting Local Civ. R. 83.2(a)(1)). In particular, "[i]n this judicial district, a proposed settlement involving a claim made by an infant must be reviewed by a judicial officer, who must determine whether: (1) the best interests of the infant are protected by the terms and conditions of the

proposed settlement; and (2) the proposed settlement, including any legal fees and expenses to be paid, as part of the proposal, are fair and reasonable." *Martegani v. Cirrus Design Corp.*, 687 F. Supp. 2d 373, 377 (S.D.N.Y. 2010); *see also Mateo v. United States*, No. 06-CV-2647, 2008 WL 3166974, at *2 (S.D.N.Y. Aug. 6, 2008) (same). "[A] strong presumption exists that a settlement is fair and reasonable where (i) the settlement is not collusive but was reached after arm's length negotiation; (ii) the proponents have counsel experienced in similar cases; and (iii) there has been sufficient discovery to enable counsel to act intelligently." *Camac*, 2013 WL 991355, at *2 (alterations and internal quotation marks omitted).

"An attorney for a minor child must establish that a proposed settlement for the minor is fair and reasonable, and that includes, necessarily, any proposed attorney compensation." *Martegani*, 687 F. Supp. 2d at 378 (citing N.Y. C.P.L.R. § 1208(b); N.Y. Jud. Law § 474). "The burden is on counsel to keep and present records from which the court may determine the nature of the work done, the need for it, and the amount of time reasonably required; where adequate contemporaneous records have not been kept the court should not award the full amount requested." *Id.* (alteration and internal quotation marks omitted). This is so even where the guardian of a child has entered into a contingency fee agreement. *See id.*; *see also Johnson v. City of New York*, No. 08-CV-3673, 2010 WL 5818290, at *4 (E.D.N.Y. Dec. 13, 2010) (explaining that "[t]he Court must ensure that the allocation of attorney's fees from the settlement proceeds represents 'suitable compensation for the attorney for his services,' notwithstanding contingency agreements with a party" (quoting N.Y. Jud. Law § 474)). "[T]o determine whether a proposed attorney fee is reasonable, a court should evaluate what a reasonable paying client would be willing to pay for the legal services, in other words, the appropriate market rate for counsel over the course of the number of hours appropriately

worked." *Martegani*, 687 F. Supp. 2d at 378. Indeed, "the United States Supreme Court has stated that 'the party seeking an award of fees should submit evidence supporting the hours worked and the rates claimed.'" *Id.* (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (alterations omitted)).

Moreover, in the context of an infant compromise hearing, "[w]hen multiple attorneys are involved in [an inquiry into whether fees are fair and reasonable], fee splitting agreements offer no more than non-mandatory guidance because the court is under a duty to evaluate the quantity and quality of the representation by each attorney in order to ensure that the fees are appropriate." *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 90 (2d Cir. 2010). Accordingly, it is appropriate for the Court to "inquire as to the roles played and services provided by each firm." *Id.* Finally, "[a] party's request for costs is generally governed by Local Civil Rule 54.1," which requires, among other things, that "the party must include as part of the request 'an affidavit that the costs claimed are allowable by law, are correctly stated and were necessarily incurred'" and "[b]ills for the costs claimed must be attached as exhibits." *D.J. ex. rel. Roberts v. City of New York*, No. 11-CV-5458, 2012 WL 5431034, at *9 (S.D.N.Y. Oct. 16, 2012) (quoting Local Civ. R. 54.1)).

In light of these considerations, Plaintiffs are to supplement the record by providing the Court with the following information: (1) the experience of each law firm and/or lawyer in representing plaintiffs in similar cases; (2) evidence supporting the hours that each attorney and/or law firm worked and the rates that they claim; (3) a copy of the retainer agreement

between Plaintiffs and counsel (*see* Decl. of Ilann M. Maazel in Support of Proposed Order of Compromise ("Maazel Decl.") ¶ 23 (Dkt. No. 149-1).); (4) a copy of the co-counsel agreement (*see id.* ¶ 28 n.1); and (5) a request for costs in accordance with the requirements of Local Civil Rule 54.1, by no later than July 7, 2015.

SO ORDERED.

DATED: July 6, 2015
White Plains, New York

KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE