

See Dkt. 91.¹ Judge Brown also gave Plaintiffs permission to move for an award of fees² and costs.

¹ HR-IT appealed the district court’s ruling to the Fifth Circuit. On July 24, 2023, the Fifth Circuit issued an opinion affirming the judgment of the district court. See *Gentry v. Hamilton-Ryker IT Sols., L.L.C.*, No. 22-40219, 2023 WL 4704115 (5th Cir. July 24, 2023). Mandate has yet to issue.

² Before I launch into a discussion on the underlying request for fees and costs, let me take a moment to address one of the burning legal questions of our generation: Is the proper term “attorney fees,” “attorneys fees,” “attorney’s fees,” or “attorneys’ fees?” This is an issue that has kept me up many a night—perhaps because my daughter is majoring in English and minoring in linguistics. I sincerely hope this footnote will let others sleep more soundly.

To begin, I note that I am not the first judge to grapple with whether and how to use an apostrophe and the word “attorney” together. As the Sixth Circuit has explained: “In federal statutes, rules[,] and cases, we find [“attorney fees,” “attorneys fees,” “attorney’s fees,” or “attorneys’ fees”] used interchangeably, nay, promiscuously.” *Stallworth v. Greater Cleveland Reg’l Transit Auth.*, 105 F.3d 252, 253 n.1 (6th Cir. 1997). The Fifth Circuit has used all the varied formulations referenced above—and more—from time to time. See *Iscavo Avocados USA, L.L.C. v. Pryor*, 953 F.3d 316 *passim* (5th Cir. 2020) (attorneys’ fees); *In re Russell*, 941 F.3d 199, 202, 204 (5th Cir. 2019) (attorney fees); *Davis v. Credit Bureau of the S.*, 908 F.3d 972 *passim* (5th Cir. 2018) (attorney’s fees); *Int’l Paper Co. v. Cook*, 985 F.2d 556 (5th Cir. 1993) (attorneys fees). Although the Fifth Circuit has never settled on a uniform style, one panel did recently note that “[t]here are at least eleven competing terms we could use instead of ‘attorney fees.’” *Gahagan v. U.S. Citizenship & Immigr. Servs.*, 911 F.3d 298, 300 n.1 (5th Cir. 2018). The Federal Rules of Civil Procedure offer no solution to this quandary, using both the terms “attorney’s fee” and “attorneys’ fee.” *Compare* FED. R. CIV. P. 54(d)(2) (discussing the award of attorney’s fees), *with id.* advisory committee’s note to 1993 amendment (discussing the award of attorneys’ fees). Congress also cannot seem to adhere to a single spelling. See 28 U.S.C. § 1927 (authorizes an award of “attorneys’ fees” against any attorney who unreasonably and vexatiously multiplies a proceeding); *id.* § 1447 (authorizes an order remanding a case to award “attorney fees”); 29 U.S.C. § 216(b) (authorizes an award of “attorney’s fees” to a prevailing FLSA plaintiff).

With no clear-cut directive from the Fifth Circuit, federal statutes, or the federal rules, I turn to the highest court in the land. I am sure to get a simple and straightforward answer from the United States Supreme Court, right? Not exactly. The Supreme Court’s Style Guide contains the style preferences of the Supreme Court used by its Reporter of Decisions when preparing the high court’s official opinions. It provides: “Use the singular possessive case ‘attorney’s fees’ (not ‘attorneys’) in the term ‘attorney’s fees,’ even though in the particular case more than one attorney may be involved.” OFF. OF THE REP. OF DECISIONS, *THE SUPREME COURT’S STYLE GUIDE* § 10.3 (Jack Metzler ed., 2016). Despite this seemingly unambiguous language, the Supreme Court is known to use the term

Plaintiffs have filed a Motion for Entry of Attorneys' Fees and Costs Pursuant to the FLSA. Dkt. 95. In that motion, Plaintiffs seek attorneys' fees in the amount of \$194,730.00 and costs in the amount of \$2,624.33. HR-IT opposes the award of these amounts. *See* Dkt. 104. Although HR-IT recognizes that the FLSA requires that prevailing plaintiffs collect reasonable attorneys' fees and costs, HR-IT argues that the amounts sought by Plaintiffs are wildly excessive.

LEGAL STANDARD

Under the FLSA, a successful plaintiff is entitled to an award of attorneys' fees and costs. *See* 29 U.S.C. § 216(b) ("The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."). The Fifth Circuit has unequivocally held that "[r]easonable attorneys' fees are mandatory" when a court

"attorneys' fees" in some of its decisions. *See CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 110 (2012) (Ginsburg, J., dissenting) (referring to attorneys' fees); *Brown v. Ent. Merchs. Ass'n*, 565 U.S. 809 (2011) (same). What am I to do?

Before giving up on this quest, I turn to noted lawyer/grammarian/lexicographer Bryan Garner. He observes:

attorney's fees; attorneys' fees; attorney fees; counsel fees. The first of these now appears to be prevalent. *See* Attorney's Fee Act, 42 U.S.C. § 1988 (1988). The plural possessive *attorneys' fees* is just as good, and some may even prefer that term in contexts in which there is clearly more than one attorney referred to. *Attorney fees* is inelegant but increasingly common. It might be considered a means to avoid having to get the apostrophe right. (But cf. the phrase *expert-witness fees*.) *Counsel fees* is another, less-than-common variant.

The only form to avoid at all costs is **attorneys fees*, in which the first word is a genitive adjective with the apostrophe wrongly omitted.

BRYAN GARNER, *GARNER'S DICTIONARY OF LEGAL USAGE* 94 (3d ed. 2011).

In short, there is no one right way to reference the fees awarded for work done by an attorney. As the old saying goes, "different strokes work for different folks." My preference going forward is as follows: I will use "attorney's fees" to refer to fees sought by one lawyer and "attorneys' fees" to refer to fees sought by more than one lawyer. I will eschew entirely "attorney fees" and "attorneys fees." Now, back to the show.