

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUL 05 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

REBECCA A. RICKLEY,

Plaintiff - Appellant,

v.

COUNTY OF LOS ANGELES;
WILLIAM HOWARD; KEVIN
PETROWSKY; SOHEILA KALHOR;
MICHAEL TRIPP; RAJESH PATEL,

Defendants - Appellees.

No. 09-56498

D.C. No. 08-CV-4918-SVW
Central District of California,
Los Angeles

ORDER

Before: Peter L. Shaw, Appellate Commissioner

I
Background

Rebecca Rickley filed this 42 U.S.C. § 1983 action against the County of Los Angeles and individual County employees (collectively, the “County”) alleging that the County violated her free speech and equal protection rights in retaliation for her complaints that the County failed to enforce building and safety codes against her neighbors. Rickley and the County reached a settlement that reserved for the district court the determination of attorneys’ fees under 42 U.S.C § 1988. The district court awarded fees in the amount of \$13,770 for work

performed by co-counsel Christopher L. Campbell, Esq., but denied Rickley's request for fees in the amount of \$124,510 for work performed by Natasha Roit, Esq., who is Rickley's spouse and a co-owner of their home.

Rickley appealed, and this court vacated the district court's order denying Rickley an award of fees for Roit's services and remanded for determination of a reasonable fee. *See Rickley v. Cnty. of Los Angeles*, 654 F.3d 950, 957 (9th Cir. 2011). The court held that the district court erred by misconstruing the applicable legal precedents and misapplying the analytical framework established in *Kay v. Ehrler*, 499 U.S. 432, 437-38 (1991). *See Rickley*, 654 F.3d at 953-55. In particular, the district court erred by conducting an individualized inquiry into Roit's particular independence and emotional detachment, rather than a categorical inquiry into whether a class of attorneys as a whole should be presumed to lack independence or detachment and therefore excluded from receiving a fee award under § 1988. *Id.*

Rickley filed a bill of costs in the amount of \$5,152.65, the County filed objections, and Rickley filed a reply. The Clerk taxed costs against the County in the amount of \$673.80. *See* 28 U.S.C. § 1920; Fed. R. App. P. 39; 9th Cir. R. 39-1.1-5. Rickley also filed an application for attorneys' fees on appeal, the County objected, and Rickley replied. The court granted Rickley's application for fees and

referred to the Appellate Commissioner the determination of a reasonable fee. *See* 9th Cir. R. 39-1.9. Rickley filed a supplement to the fee application requesting the award of expenses not taxed as costs by the Clerk, and the County did not file an objection to the supplemental request.

II Analysis

A. Attorneys' Fees

Under 42 U.S.C. § 1988, “the court, in its discretion, may allow the prevailing party . . . a reasonable attorney’s fee.” “The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

Rickley requests fees in the amount of \$36,795 for 18.6 hours of work by Campbell at the hourly rate of \$350 per hour and for 67.3 hours of work by Roit at the hourly rate of \$450 per hour. Campbell was admitted to the Maryland bar in 2002 and the California bar in 2004, and his office is in Los Angeles. Roit was admitted to the California bar in 1986, and her office is in Malibu. In support of the requested hourly rates, Rickley submits Campbell’s declaration that he currently bills at hourly rates of \$375 to \$425, and that he was awarded \$350 per

hour by a state court in 2010. Rickley also submits Roit's declaration that she primarily represents clients on a contingency fee basis and does not typically bill by the hour, but when she must provide an hourly rate for quantum meruit determinations, retainer agreements, or discovery sanctions, she routinely sets her rate at \$450 per hour.

In addition, Rickley provides a declaration by Edward J. Horowitz, Esq., a California certified specialist in appellate law with more than forty years of legal experience. Horowitz states that he has first-hand knowledge of the prevailing rates for appellate work in California state and federal courts, and that the requested rates are well within the prevailing rates for work before the Ninth Circuit.

Rickley claims that Campbell's and Roit's hours were spent as follows:

<u>Description of Services</u>	<u>Hours</u>
Interviews & Conferences	4.3
Obtaining & Reviewing Records	3.7
Legal Research	30.3
Preparing Briefs	39.6
Preparing For & Attending Oral Argument	5.0
<u>Preparing Bill Of Costs & Application For Attorneys' Fees</u>	<u>3.0</u>
Total Hours Claimed	85.9

Rickley requests fees for filing a notice of appeal, civil appeals docketing statement, a 30-page opening brief, a 31-page reply brief, 4 volumes of excerpts of the record, a bill of costs, and an attorneys' fees application. Rickley also requests fees for participating in a telephone conference with the Circuit Mediator, obtaining a telephone extension of time to file the opening brief, and appearing at oral argument in Pasadena. Rickley does not request fees for filing replies to the County's oppositions to the bill of costs and the fee application, or for reviewing the County's petition for rehearing and request for rehearing en banc.

The County objects that the amount of attorneys' fees requested is unreasonable, and that the hourly rates and the number of hours claimed for legal research are excessive. The County argues that the court should award \$4,185 for Campbell and \$15,690 for Roit, or a total of \$19,875 in fees. The County's arguments lack merit.

1. Reasonable Hourly Rates

- a. Campbell

The County objects to the hourly rates requested, noting that the district court denied Rickley's request for the \$350 hourly rate for Campbell and awarded fees for Campbell at the County's proposed \$225 hourly rate. This objection lacks merit. Campbell's district court work was performed between July 2008 and

September 2009, and his court of appeals work was performed between October 2009 and August 2011. Rickley reasonably may be awarded a higher rate for the court of appeals work based on Campbell's increased legal experience and the complexity of appellate representation.

Moreover, the district court found that Rickley presented no evidence that Campbell had billed a client for civil rights work at \$300 to \$350 per hour, or that \$350 is a reasonable rate for an attorney with Campbell's experience in civil rights work. But in the court of appeals, Rickley provided Campbell's declaration that he was awarded the \$350 hourly rate in 2010 in a state court case. In Campbell's declaration and a supplemental declaration accompanying Rickley's fee reply, Campbell describes his representation in seven additional complex, high profile, or appellate matters.

Rickley also provided Horowitz's declaration that he has first-hand knowledge of the prevailing rates for appellate work in California state and federal courts, and that the requested rate for Campbell is well within the prevailing rates for work before the Ninth Circuit. Horowitz's declaration is corroborated by the Appellate Commissioner's experience reviewing many fee requests in similar appeals. Thus, the evidence is sufficient to establish that the requested \$350 hourly rate for Campbell is "in line with those prevailing in the community for similar

services by lawyers of reasonably comparable skill, experience and reputation.”
Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984). Rickley is awarded the \$350 hourly rate for Campbell.

b. Roit

The County objects that Roit is experienced in civil and personal injury litigation, but not in cases like this one, and therefore no more than \$300 per hour should be awarded for Roit. In addition, the district court on remand awarded a \$275 hourly rate for Roit, finding that the evidence before the district court did not support awarding the requested \$450 rate for Roit. *See Rickley v. Cnty. of Los Angeles*, No. 08-CV-4918-SVW (C.D. Cal. Dec. 14, 2011) (Order). The district court found that opposing counsel with substantial experience directly relevant to the case billed the County at a discounted \$275 hourly rate, and that the substantial gap in experience and credentials between Roit and opposing counsel offset the negotiated discount. *Id.* The district court rejected an engagement letter that showed that Rickley’s previous counsel billed her \$495 per hour, finding that the previous counsel’s unique credentials supported a substantially higher hourly rate than Roit would merit. *Id.*

Nevertheless, the evidence before the court of appeals supports awarding the requested \$450 hourly rate for Roit on appeal. Rickley provides Horowitz’s

declaration that he has first-hand knowledge of the prevailing rates for appellate work in California state and federal courts, and that the requested rate for Roit is well within the prevailing rates for work before the Ninth Circuit. Horowitz's declaration is corroborated by the Appellate Commissioner's experience reviewing many similar appellate fee requests, and the declaration was not submitted to the district court.

Moreover, Roit's district court work was performed between July 2008 and September 2009, and the court of appeals work was performed between October 2009 and August 2011. A higher rate reasonably may be awarded for the court of appeals work based on Roit's increased experience, particularly with litigation of this type, and the complexity of appellate representation in general. In a declaration accompanying Rickley's fee reply, Roit describes her extensive experience in appellate litigation. Roit's resume and declaration show that she has represented clients in a number of significant trials and appeals during her 25 years of practice. Roit received the California Trial Lawyer of the Year award in 2003 and was named one of the top 50 female attorneys in California by the Daily Journal in 2004.

Thus, the evidence supports a determination that the requested \$450 hourly rate for Roit is "in line with those prevailing in the community for similar services

by lawyers of reasonably comparable skill, experience and reputation.” *Blum*, 465 U.S. at 895 n.11. Rickley is awarded the \$450 hourly rate for Roit.

2. Hours Reasonably Expended

The County objects to Rickley’s request for 30.3 hours for legal research, contending that Rickley’s counsel should have been able to complete the necessary research in no more than 15.3 hours. The County argues that a minimal amount of case law and statutory law was involved on appeal, and that Rickley’s counsel was familiar with the legal authority after the district court proceedings. The County argues that Rickley’s counsel should not have spent “virtually an entire work week” researching to find new or additional case law for the appeal.

The County’s objection lacks merit. Rickley’s opening and reply briefs on appeal presented fifteen cases not cited by the parties in the district court fee proceedings. In comparison with Rickley’s motion for reconsideration and related reply filed in the district court, Rickley’s court of appeals briefs contained reworked and refined arguments regarding the district court’s application of *Kay*, 499 U.S. 432, and *Ford v. Long Beach Unified Sch. Dist.*, 461 F.3d 1087 (9th Cir. 2006). Some necessary duplication is inherent, too, in the process of litigating over time. *See Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). A competent lawyer needs to get up to speed with research previously

performed, and cannot rely entirely on that research because it may have grown stale. *Id.* Based on a review of the record and the briefs, Rickley's counsel reasonably expended the requested 30.3 hours on legal research for the successful appeal, and the hours are awarded.

The County does not object to other hours requested by Rickley, or to specific time entries by Rickley's counsel. "If opposing counsel cannot come up with specific reasons for reducing the fee request that the . . . court finds persuasive, it should normally grant the award in full, or with no more than a haircut." *Moreno*, 534 F.3d at 1116. A review of the briefs and the time entries, in light of fee requests in similar appeals, reveals that not even a haircut is warranted. *See id.* Rickley's counsel reasonably expended the requested 85.9 hours to achieve complete success on appeal, and the requested hours are awarded in full. *See Hensley*, 461 U.S. at 435 & n.11.

B. Expenses

In a supplement to the fee application, Rickley requests an award under 42 U.S.C. § 1988 of expenses in the amount of \$4,206.45 billed by Counsel Press LLC and not taxed as costs by the Clerk pursuant to 28 U.S.C. § 1920, Fed. R. App. P. 39, 9th Cir. R. 39-1.1-5. Rickley miscalculated the amount of expenses not taxed as costs by the Clerk, however, apparently because the mandate stated an

incorrect amount of taxed costs before it was amended. The correct amount of Rickley's expenses not taxed as costs by the Clerk is \$4,023.85. The County did not file an objection to Rickley's supplemental request for expenses, but the County objected to Rickley's bill of costs and some of those objections are relevant and considered, although overruled, here.

"It is well established that attorney's fees under 42 U.S.C. § 1988 include reasonable out-of-pocket litigation expenses that would normally be charged to a fee paying client, even if the court cannot tax these expenses as 'costs' under 28 U.S.C. § 1920." *Trs. of Constr. Indus. & Laborers Health & Welfare Trust v. Redlands Ins. Co.*, 460 F.3d 1253, 1258 (9th Cir. 2006). Thus, Rickley may be awarded the non-taxable Counsel Press LLC expenses for reproduction, service, FedEx, and postage for the briefs and excerpts of record. *See id.*; *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

The County objects, however, on the basis that the Counsel Press LLC expenses for filing, electronic filing, and preparing tables of contents and cases for the briefs and excerpts of record could have been avoided if counsel themselves had performed the tasks rather than using Counsel Press LLC. The County does not suggest that these tasks could have been compensated at counsel's hourly rates. *See Missouri v. Jenkins*, 491 U.S. 274, 288 n.10 (1989). Instead, the County

implies that the work should have been subsumed as overhead in counsel's hourly rates. *See, e.g., Keith v. Volpe*, 644 F. Supp. 1312, 1316 (C.D. Cal. 1986).

The County cites no authority, however, prohibiting Rickley's counsel from hiring an outside vendor for filing, electronic filing, and preparing tables, rather than performing these tasks in-house and including the expense in firm overhead. Indeed, the court may not set an award based on speculation about how other firms might have staffed the case, and the cost effectiveness of various law firm models is an open question. *See Moreno*, 534 F.3d at 1114-15. "Modeling law firm economics drifts far afield of the *Hensley* calculus and the statutory goal of sufficiently compensating counsel in order to attract qualified attorneys to do civil rights work." *Id.* at 1115.

Moreover, an award of reasonable attorney's fees under 42 U.S. C. § 1988 may include outside vendor expenses for filing, electronic filing, and preparing tables, as long as the expenses are customarily billed separately to fee paying clients. *See Burt v. Hennessey*, 929 F.2d 457, 459 (9th Cir. 1991); *see also Jenkins*, 491 U.S. at 285, 288-89 & n.10; *Trs. of Constr. Indus. & Laborers Health & Welfare Trust*, 460 F.3d at 1258. Campbell states in a reply to the County's objections to the bill of costs and in a declaration accompanying the supplemental request that Rickley, in the first instance, will absorb these expenses if they are not

awarded, and there is no evidence that it is not the normal practice to separately bill clients for Counsel Press LLC expenses. Accordingly, Rickley is awarded expenses in the amount of \$4,023.85.

III Conclusion

Pursuant to 42 U.S.C. § 1988, attorneys' fees and expenses in the amount of \$40,818.85 are awarded in favor of Rebecca A. Rickley and against the County of Los Angeles, William Howard, Kevin Petrowsky, Soheila Kalhor, Michael Tripp, and Rajesh Patel. This order amends the mandate.