



Jl-CA-003-003

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED

JUL 27 1990

W. L. GRANVILLE, County Clerk

By *EB* **DEPUTY**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

HELENE HOLLINGSWORTH, a taxpayer;)
MATT X., CLIFF Y., and LETYCIA H.,)
formerly children confined in)
Orange County Juvenile Hall; and)
MELISSA P. and RUTH T., children)
currently confined in Orange County)
Juvenile Hall, by and through their)
guardian ad litem, NANCY PHELPS,)
individually and on behalf of all)
others similarly situated,)

**CASE NO. 51-08-65
ORDER OF REFERENCE**

Plaintiffs,

vs.

ORANGE COUNTY, CALIFORNIA, a local)
government entity; MICHAEL)
SCHUMACHER in his official)
capacity as Orange County Chief)
Probation Officer; EDWARD M.)
CLARKE, in his official capacity)
as Chief Deputy Probation Officer)
for Institutional Services; and)
STEPHANIE LEWIS, in her official)
capacity as Director of the)
Orange County Juvenile Hall,)
and DOES 1-50, inclusive,)

Defendants.

FINDINGS

The Court has made the following determinations: the hearing on Plaintiff's Motion for Attorneys' Fees and Costs requires the

1 examination of a long account; the taking of accounts is
2 necessary for the information of the Court; and questions of fact
3 have arisen upon Plaintiffs' Motion for Attorneys' Fees and
4 Costs.

5 It appears that the interest of justice and efficiency will
6 best be served in this case by the appointment of a Referee, for
7 the purpose of hearing and determining these matters, and to
8 report and make recommendations to the Court thereon.

9 APPOINTMENT OF REFEREE

10 It is therefore ordered that the Judicial Arbitration &
11 Mediation Services, Inc., by a Judge of the Superior Court,
12 Retired, is hereby appointed Referee for such purposes. His
13 office and address and telephone number are:

14 500 North State College Blvd., Ste. 600
15 Orange, CA 92668 ph: (714) 939-1300

16 MATTERS SUBMITTED

17 The following matters shall be heard and determined by the
18 Referee:

19 Plaintiffs' Application for Attorneys Fees and Costs

20 1. The issues of fact in the examination of Plaintiffs'
21 application for attorneys' fees in the lodestar amount of
22 \$651,994.50 (\$632,017.00 + \$19,977.50), including, without
23 limitation:

24 A. Determination of the total number of hours actually
25 and productively spent by each attorney, law clerk, and paralegal
26 on only the issues of (i) restraints (soft-ties and the
27 rubber/safety room) and (ii) Rule 3-1-025. The calculation of
28 hours for these issues shall be separate. The Referee is

(

1 directed to the Court's Statement of Decision attached hereto for
2 the discussion of these issues on which the Plaintiffs were
3 determined prevailing parties under 42 U.S.C. 1988. Time
4 expended on all other issues, including any matters relating to
5 the guardian ad litem, Michael D. Pursell, Esq., shall be
6 excluded. To the extent possible, this determination shall be
7 made by the Referee examining, to the Referee's satisfaction,
8 Plaintiffs' original documentation, i.e., contemporaneous time
9 records maintained to systematically record the work performed
10 for which fees are claimed.

11 B. Determination of the reasonable hourly rate for each
12 attorney, law clerk and paralegal for whom Plaintiffs are
13 claiming fees. Because Plaintiffs claim fees for work performed
14 from 1985 to 1990, the Referee shall consider the prevailing
15 community rate for attorneys of similar qualifications performing
16 similar work when the work was performed and not use only the
17 attorneys' present fees. Additionally, the Referee may consider
18 any other factors the Referee considers relevant and identify any
19 such factors in his findings.

20 C. Determination of the allowable litigation and expert
21 costs attributable only to the issues of (i) restraints and (ii)
22 Rule 3-1-025. Costs attributable to any other issues, including
23 the guardian ad litem, Michael D. Pursell, Esq., shall be
24 excluded. To the extent possible, this determination shall be
25 made by the Referee examining, to the Referee's satisfaction,
26 Plaintiffs' back-up documentation to verify each item for which
27 costs are claimed. The Referee may set forth his findings in the
28 manner the Referee decides will most clearly state his

(
1 accounting.

2 D. Determination of the lodestar amount, i.e., the
3 reasonable attorneys' fees which would fully compensate
4 Plaintiffs' attorneys for prevailing on only the issues of (i)
5 restraints and (ii) Rule 3-1-025 in this litigation. The Referee
6 need not determine a multiplier.

7 Defendants' Application for Costs

8 1. The issues of fact in the examination of Defendants'
9 application for costs in the amount of \$17,325.78 including,
10 without limitation:

11 A. Determination of the allowable costs to Defendants,
12 which are attributable only to the issues on which Plaintiffs
13 were unsuccessful. Also, any costs attributable to the guardian
14 ad litem, Michael D. Pursell, Esq., shall be excluded. The
15 Referee may set forth his findings in the manner the Referee
16 decides will most clearly state his accounting.

17 POWERS OF REFEREE

18 In order to accomplish this reference, the Referee shall
19 have and is granted the following powers:

20 1. To set the date, time and place of all conferences and
21 hearings.

22 2. To recommend the issuance of subpoenas.

23 3. To preside over hearings, take evidence and rule on
24 objections and motions.

25 4. To order the production of all pertinent writings,
26 including books of account, records, documents and receipts in
27 the possession of any of the parties. The Referee, in this
28 regard, is to recommend to the court the imposition of any

1 sanctions for the failure of any party or attorney to comply with
2 such an order to produce or to cooperate with the Referee.

3 5. To employ, as reasonably necessary, accountants, and
4 other experts, and to recommend to the court appropriate fees for
5 such services.

6 6. To order, supervise, preside over, conduct hearings,
7 rule on objections, and recommend sanctions for any appropriate
8 discovery to accomplish this reference.

9 7. To petition the Court for any further, additional, and
10 different powers in this reference.

11 REPORT OF REFEREE

12 The Referee shall submit a written report to this Court
13 within 20 days from the completion of this reference, with copies
14 mailed to the attorneys for the parties. The report shall
15 contain the following:

16 1. For the court only, all of the original, back-up
17 documentation submitted to the Referee by plaintiffs.

18 2. Regarding Plaintiffs, determination of the total number
19 of hours actually and productively spent by each attorney, law
20 clerk, and paralegal on only the issues of (i) restraints and
21 (ii) Rule 3-1-025, set forth separately, with the computations
22 for each individual also set forth separately.

23 3. Regarding Plaintiffs, determination of the reasonable
24 hourly rate for each attorney, law clerk and paralegal for whom
25 Plaintiffs are claiming fees for the time period during which
26 their respective work was performed. Computations for each
27 individual shall be set forth separately.

28 4. Regarding Plaintiffs, determination of the litigation

1 and expert costs attributable only to the issues of (i)
2 restraints and (ii) Rule 3-1-025. Computations shall be set
3 forth in the manner the Referee decides will most clearly state
4 his accounting.

5 5. Regarding Plaintiffs, determination of the lodestar
6 amount, i.e., the reasonable attorneys' fees which would fully
7 compensate Plaintiffs' attorneys for prevailing on only the
8 issues of (i) restraints and (ii) Rule 3-1-025 in this
9 litigation.

10 6. Regarding Defendants, determination of the allowable
11 costs to Defendants, which are attributable only to the issues on
12 which Plaintiffs were unsuccessful. Computations shall be set
13 forth in the manner the Referee decides will most clearly state
14 his accounting.

15 7. Any other matters which the Referee feels are necessary
16 to provide a complete report to the Court regarding this
17 reference.

18 8. Recommendations as to the following items:

19 (a) Amount of fees and costs of the Referee, and fees of
20 any experts employed to assist the Referee that the Court should
21 allow; and

22 (b) The allocation of all costs and fees payable to the
23 Referee between the parties; and

24 (c) The imposition of any sanctions against any of the
25 parties and/or attorneys for failure to produce discovery items
26 or to cooperate with the Referee in this reference.

27 Interim reports may be submitted from time to time by the
28 Referee to the Court.

1 OBJECTIONS TO REPORT

2 Objections to the report may be filed with the Court no
3 later than fifteen (15) days after the Referee serves the report
4 or all objections thereto will be deemed waived. Copies of such
5 objections and any response thereto, shall be served upon the
6 Referee, who may then file a supplemental report. The Court will
7 then set a hearing on the matters of objections, fees or
8 sanctions. Such hearing may be waived by the parties in writing,
9 filed with the clerk of the Court; in such event, the Court will
10 determine these matters based on the written objections, any
11 responses, the report and any supplemental report of the Referee.

12 FEES AND COSTS -- PAYMENT

13 The Referee shall receive a fee as agreed to by the parties,
14 or if the parties cannot agree, then in a reasonable amount,
15 subject to approval of the Court.

16 The parties shall pay in advance, to the Referee, the
17 estimated reasonable fees and costs of the reference, as may be
18 specified in advance by the Referee. The parties shall initially
19 share equally by each paying their proportionate amount of the
20 estimated fees and costs of the reference. The costs shall
21 include the costs of a certified shorthand reporter, if so
22 ordered by the Referee. All fees and costs shall be paid within
23 ten (10) days of the billing by the Referee.

24 All costs and fees shall be subject to reallocation as
25 recommended by the Referee and as finally determined by the
26 Court.

27 ///

28 ///

JURISDICTION RESERVED

The Court reserves jurisdiction to make such other and further orders with respect to this reference as may be just and proper, including, but not limited to, the allowance of reference fees and costs and the enforcement thereof.

DECISION OF THE COURT

The Referee is invited, as may be appropriate, to append, at the end of the report, wording as follows: "The hearing on objections to the report of the Referee having been [heard and submitted] [waived]; and the Court having considered all of these matters independently of the report of the Referee, the Court now decides as follows: The above report, [statement of decision] [and] [findings] and recommendations are approved, confirmed, and adopted by the Court [as follows:]


[_____], [and the parties are ordered to comply with the terms thereof] [as the decision of the Court as to each of such matters in this case]."

Dated: July _____, 1990.


LINDA HODGE McLAUGHLIN
Judge of the Superior Court

THE ABOVE REFERENCE IS SO ORDERED:

Dated: July 27, 1990.


LINDA HODGE McLAUGHLIN
Judge of the Superior Court

LHM:ec
90-009