

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Oregon Advocacy Center, Metropolitan)
Public Defender Services, Inc., and)
A.J. Madison,)
Plaintiffs,)

CV. NO. 02-339-PA

ORDER

Bobby Mink, Director of the Department)
of Human Services, in his official capacity,)
and Stanley Mazur-Hart, Superintendent of)
Oregon State Hospital, in his official)
capacity,)
Defendants.)

PANNER, Judge:

Plaintiffs, who prevailed on their civil rights claims in this court and on appeal, seek an award of attorney's fees. I award plaintiffs \$53,062.50 in fees and \$600.86 in costs.

BACKGROUND

Plaintiffs were represented by Kathleen L. Wilde, an attorney with almost 25 years' of experience, mainly in litigating federal civil rights actions. This case was tried on an accelerated schedule, with the court trial held only about three weeks after the complaint was filed. The expedited schedule required intense preparation. Defendants contested the case vigorously.

At trial, plaintiffs won essentially all the relief they sought, a declaration that criminal defendants who are unfit to proceed must receive prompt mental health treatment in a facility able to provide such care. The Ninth Circuit affirmed. Oregon Advocacy Center v. Mink, 322 F.3d 1101 (9th Cir. 2003).

STANDARDS

To determine a reasonable attorney's fee, the court should first calculate the lodestar amount, which is the number of hours reasonably spent on the litigation multiplied by reasonable hourly rates. McGrath v. County of Nevada, 67 F.3d 248, 252 (9th Cir. 1995). The court must exclude hours that were not reasonably expended. Id. The party seeking fees has the burden of showing that the time spent was reasonably necessary to the successful prosecution of the party's claims. Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc., 886 F.2d 1545, 1557 (9th Cir. 1989).

After calculating the lodestar amount, the court should then "assess whether the presumptively reasonable lodestar figure should be adjusted on the basis of Kerr factors not already subsumed in the initial calculation." McGrath, 67 F.3d at 252 (citing Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975)¹). The lodestar amount is presumptively reasonable, and the court may use a multiplier

¹The Kerr factors are: (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required; (4) the preclusion of other employment by the attorney; (5) the customary

to increase or decrease the lodestar amount only in "'rare' and 'exceptional' cases, supported by both 'specific evidence' on the record and detailed findings" that the lodestar amount is unreasonably low or high. Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 565 (1986) (citing Blum v. Stenson, 465 U.S. 886, 898-901 (1984)).

A district court has considerable discretion in determining a reasonable fee award. Webb v. Ada County, 195 F.3d 524, 527 (9th Cir. 1999). Even when the opposing party does not make specific objections, the court has an independent duty to determine whether a fee request is reasonable. Gates v. Deukmejian, 987 F.2d 1392, 1401 (9th Cir. 1992).

DISCUSSION

I. Number of Hours

Plaintiffs seek 235.83 hours. Defendants do not object to the number of hours.

I have evaluated plaintiffs' time records and find that the time spent was reasonable in light of the expedited schedule, the fairly novel legal issues, and the contested nature of the litigation. I note that Wilde deducted about 70 hours from the fee petition as a matter of billing judgment.

II. Hourly Rate

fee; (6) the contingent or fixed nature of the fee; (7) the time limits imposed by the client or circumstances; (8) the amount involved and result obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the attorney's professional relationship with the client; and (12) awards in similar cases. Kerr, 526 F.2d at 70. Several Kerr factors are subsumed in the lodestar calculation, including the novelty and complexity of the issues, the special skill and experience of counsel, the quality of the representation, the results obtained, and the contingency of the fee. Morales v. City of San Rafael, 96 F.3d 359, 363-64 & n.9 (9th Cir. 1996), amended on other grounds, 108 F.3d 981 (9th Cir. 1997). The subsumed factors "may not act as independent bases for adjustment of the lodestar." Cunningham v. County of Los Angeles, 879 F.2d 481, 487 (9th Cir. 1989).

Plaintiffs seek an hourly rate of \$225 for Wilde. Defendants do not object to the requested rate.

Here, plaintiffs have submitted affidavits from local attorneys in support of the requested hourly rate. I find that \$225 per hour is a reasonable hourly rate for a Portland attorney with Wilde's skill, reputation, and experience.

I conclude that the lodestar amount is \$53,062.50, based on 235.83 hours at \$225 per hour. There is no reason to adjust the lodestar amount based on any of the Kerr factors.

Defendants do not object to plaintiffs' costs. I find that the costs are reasonable.

Plaintiffs' Motion for Award of Fees (#52) is granted and plaintiffs are awarded \$53,062.50 in attorney's fees and \$600.86 in costs.

DATED this 29th day of May, 2003.

/s/ Owen M. Panner

OWEN M. PANNER
U.S. DISTRICT JUDGE