

Court of Appeals, State of Michigan

ORDER

Citizens United Against Corrupt Govt v Detroit Financial Rev Team

Docket No. 314639

Karen M. Fort Hood
Presiding Judge

Michael J. Talbot

Kirsten Frank Kelly
Judges

The Court orders that the motion for attorney fees, costs and expenses under MCR 2.114(E) is GRANTED.

In the order issued by this Court on March 7, 2013, a majority of this panel found that petitioner's pleadings violated MCR 2.114. MCR 2.114(E) mandatorily imposes sanctions for the signing of a document without confirming through reasonable inquiry that the document is "well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." MCR 2.114(E) provides that appropriate sanctions for the violation include reasonable attorney fees and reasonable expenses incurred because of the filing of the document. The party seeking the fee bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates. *Vittiglio v Vittiglio*, 297 Mich App 391, 409; 824 NW2d 591 (2012).

An award of attorney fees as sanctions under MCR 2.114(E) must be "reasonable." *FMB-First MI Bank v Bailey*, 232 Mich App 711, 720; 591 NW2d 676 (1998). Respondents request \$300 per hour for the work performed by attorney Heather Meingast, licensed in 1998, and \$350 per hour for the work performed by attorney Margaret Nelson, who has been practicing for 33 years. Respondents rely on the State Bar of Michigan's 2010 Economics of Law Practice Survey issued by the Michigan State Bar. The Michigan Bar Journal is an acceptable source of information regarding attorney fees. *Smith v Khouri*, 481 Mich 519, 532; 751 NW2d 472 (2008). We find the requested hourly rates to be reasonable in light of the Michigan Bar Journal survey and thereby accept them for calculation.

In their itemized bill of costs, respondents indicate that Meingast spent 6.5 hours on research and writing; 1.25 hours in a conference with Nelson and 0.25 hours communicating with the clients. Nelson spent 1.25 hours in the conference with Meingast and 1.25 hours reviewing and editing the response. Given the labor necessary to produce the response to petitioner's pleadings, we find that the number of hours claimed on the response is reasonable.

In determining whether attorney fees are reasonable, the court first is to multiply the reasonable hourly rate by the reasonable hours billed to produce a baseline figure. *Smith*, 481 Mich at 533. The baseline number for the rate multiplied by the number of hours is \$3,275. Respondents also paid \$100 in filing fees to this Court.

Once a baseline is established, the court then should consider certain additional factors and whether those factors support an increase or decrease to the baseline number. *Id.* Courts assessing fees should evaluate the factors set forth in *Wood v Detroit Automobile Inter-Ins Exchange*, 413 Mich

573, 588; 321 NW2d 653 (1982), as well as the factors listed in Michigan Rule of Professional Conduct 1.5(a). *Smith*, 481 Mich at 529-530. We briefly address factors that are pertinent to aid appellate review. See *Prins v Michigan State Police*, __Mich App__, __NW2d__ (Docket No. 309803, issued March 5, 2013), slip op at 6.

The two attorneys involved are experienced, one having practiced for over 14 years and the other for over 33 years. The amount in question is not particularly excessive or onerous. The time and labor involved in the case appears to be sufficiently estimated. The result was in respondents' favor. Importantly, in its answer to the motion, petitioner did not challenge the figures proposed by respondents such that no evidentiary hearing is necessary on this issue. See *Smith*, 481 Mich at 532. Under the totality of the circumstances, the Court finds that respondents are entitled to the requested attorney fees.

The Court therefore directs that payment should be made by petitioner and its counsel, Andrew Paterson, jointly and severally. See *Jackson County Hog Producers v Consumers Power Co*, 234 Mich App 72, 89; 592 NW2d 112 (1999). Petitioner and counsel should pay respondents the amount of \$3,375.00, including \$3,275 in attorney fees and \$100 in costs, within 21 days of the Clerk's certification of this order.

Fort Hood, P.J. would deny the request, a public question being involved.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

MAR 28 2013

Date


Chief Clerk