

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARGRETTY RABANG, *et al.*,

Appellees,

vs.

ROBERT KELLY, *et al.*

Appellants.

No. 17-35427

SUPPLEMENTAL
OPPOSITION TO THE
AMOUNT OF FEES
REQUESTED

Plaintiffs Margretty Rabang, Olive Oshiro, Dominador Aure, Christina Peato, and Elizabeth Oshiro (collectively “Rabang”) have requested excessive fees without adequate documentation, justification or, in some cases, even relation to this appeal. Only reasonable fees should be allowed.

Appellants/Kelly Defendants ¹ (collectively “Kelly Defendants”) voluntarily dismissed their appeal, agreeing in the

¹ Robert Kelly, Jr., Rick D. George, Agripina Smith, Bob Solomon, Lona Johnson, Katherine Canete, Elizabeth King George, Katrice Romero, Donia Edwards, and Rickie Wayne Armstrong. Since there is now a second appeal (18-35711) by Rabang following the dismissal of their case (docket #34), the Kelly Defendants will avoid using Appellant and Respondent in this pleading to prevent any confusion between the two appeals from the same underlying matter.

process to pay reasonable fees incurred by on the appeal. In response, Rabang have sought excessive fees, including extensive hours related to activities in the District Court and excessive and duplicative time spent for the tasks involved. Kelly Defendants objected to the excessive fees on several ground: the fees sought include fees not incurred before the Ninth Circuit; Rabang failed to provide key information such as bills with sufficient un-redacted details to determine what work was actually performed; any indication bills have actually been sent or the fee agreement with their clients; and Rabang sought clearly excessive and/or duplicative hours for the work involved in the appeal.

By Order dated November 5, 2018 Rabang were required to supplement their submission specifically including more detailed information about the experience and qualification of the timekeepers for whom time was submitted. Rabang submitted The Affidavit of Gabe Galanda with exhibits including the resumes of the timekeepers, and the Affidavit of Eric Eberhard opining on the billing rates for those individuals. (Docket # 50-1

and 50-2); Mr. Eberhard did not opine on the reasonableness of the hours spent or the other issues raised by the Kelly Defendants. Pursuant to that same order the Kelly Defendants file this supplemental opposition.

Rabang still has failed to meet their burden to prove reasonable fees. They have not provided this Court with sufficient detail or evidence to support their fee request as reasonable. Their fee request should be reduced. Their own cited authority supports reduction of the fee request.

Rabang's request includes 233.6 hours, or \$47,044.50, for work at the District Court level, not even for work in this Court. They have provided no authority to support this request. *Cauley v. Wilson* 754 F. 2d 769 (1985), relied upon by Rabang in their reply, suggests to the contrary. The *Cauley* court, which overturned and remanded a fee award following a voluntary dismissal, stated the fees should be limited to "expenses incurred in preparing work product that will not be useful in subsequent litigation of the same claim." *Cauley*, at 772. Rabang continued

to pursue this case in District Court until it was dismissed on July 31, 2018 and continues to pursue their claims now on appeal. Their billing for District Court activities is not properly within the scope of fees for this appeal. This portion of the request should be denied.

Rabang's submissions have failed to address the issues raised by the Kelly Defendants. For example, Rabang seeks compensation for five separate attorneys totaling 55.3 hours for preparation for oral argument, including over 20 hours of time for Ms. Guard, whose resume establishes graduated from law school in 2017. Similarly, that same attorney billed almost 40 hours (a week of time) responding to the Motion for Voluntary Dismissal where Kelly Defendants had already agreed to pay reasonable fees.

When the hours claimed are excessive, whether through duplication of effort or simply too many hours, regardless of the hourly rate of the billing attorneys, the court should reduce them. *Chalmers v. City of Los Angeles*, 796 F.2d 1205 (1986) at 1214.

To the extent adequate information can be gleaned from what was provided, this Court should do what the court did in *Chalmers*:

We have carefully reviewed counsel's time records in this regard, and reduced the number of hours by what we deem to be an excessive number of hours claimed to have been expended in researching and drafting the briefs submitted in this case.

Chalmers F.2d at 1214.

Rabang still has provided insufficient detail to back up their vague, summary and heavily redacted billing entries. Once again, the authority cited by Rabang in their briefing does not support their position.

“Those hours may be reduced by the court where documentation of the hours is inadequate; if the case was overstaffed and hours are duplicated; if the hours expended are deemed excessive or otherwise unnecessary.” [*Hensley v. Eckerhart*, 461 U.S. 424], 433-34 103 S.Ct. 1933, at 1939-40, [76 L.Ed.2d 40 (1983)].

Chalmers v. City of Los Angeles, 796 F.2d 1205 at 1210 (1986)

This Court is in the best position to determine the number of hours that would reasonably have been expended. *Chalmers* at 1211.

Rabang have provided only extensively redacted bills to support the reasonableness of their requested fees. On their face the bills are addressed to the Nooksack Tribe, not to Rabang, which suggests they were created after-the-fact rather than in the ordinary course of their representation of Rabang. There has been no explanation for what these documents actually are, nor any description of the fee agreement between counsel and Rabang. Rabang has not provided this court with the basic information provided in the cases they cited in their briefing.

Virtually all of the authority relied upon by Rabang in their reply to support their fee request involve cases where fee requests were overturned and remanded because of inadequate information or excessive and duplicative time requested. Rabang's request suffers from both. The supplemental information provided by Rabang regarding the experience of counsel underscores the excessive hours requested for a first year lawyer without explanation as to the reasonable purpose or need for that time. As in the *Chalmers* case, this Court should reduce the time to a

reasonable amount, and should exclude the time sought for the District Court activities.

Dated this 21st day of November 2018.

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 1,000 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface in 14-point Times New Roman.

DATED this 25th day of August, 2017.

Respectfully Submitted,

s/Christopher H. Howard
Christopher H. Howard, WSBA #11074

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of November, 2018, I electronically filed the foregoing SUPPLEMENTAL OPPOSITION TO THE AMOUNT OF FEES REQUESTED with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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