

Bond Case Briefs

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Kerkeles v. City of San Jose

Court of Appeal, Sixth District, California - December 18, 2015 - Cal.Rptr.3d - 2015 WL 9253865

After dismissal of criminal charges, former suspect brought action against city and police officer for violation of his civil rights under § 1983 and the Civil Code, abuse of process, malicious prosecution, false imprisonment, intentional and negligent infliction of emotional distress, negligence, and, against the city, negligent hiring, retention, training, supervision, and discipline.

The parties settled but reserved the issue of attorney fees. The Superior Court awarded suspect 20 percent of the attorney fees he requested under § 1988. Suspect appealed.

The Court of Appeal held that trial court's cursory explanation was insufficient to support 50 percent reduction in number of hours in suspect's attorney fee request.

Absent some clear ground for an exception, and regardless of whether the case was taken on a contingency basis, fees in a § 1983 case should be determined under the "lodestar" method, which requires the court to (1) determine the number of hours reasonably expended in obtaining the result, (2) determine a reasonable hourly rate, (3) multiply the first figure by the second figure, and (4) adjust the result to reflect other pertinent factors.

In making the attorney fee award under § 1988, the district court must strike a balance between granting sufficient fees to attract qualified counsel to civil rights cases and avoiding a windfall to counsel, and the way to do so is to compensate counsel at the prevailing rate in the community for similar work; no more, no less.

There is a strong presumption that the lodestar figure is reasonable for an attorney fee award under § 1988, and the presumption may be overcome only in certain rare and exceptional cases, supported by both specific evidence on the record and detailed findings by the lower courts.

In making an adjustment to the lodestar figure for an attorney fee award under section 1988, the court must employ a methodology that permits meaningful appellate review rather than fashioning the award on an impressionistic basis.

A downward adjustment to the lodestar figure for an attorney fee award under § 1988 may reflect inadequate documentation of the hours worked, hours that were not reasonably expended, or an amount expended for unsuccessful claims.

When a voluminous fee application is made under § 1988, the court may make across-the-board percentage cuts either in the number of hours claimed or in the final lodestar figure, but such percentage cuts to large fee requests are subject to heightened scrutiny and the use of percentages, in any case, neither discharges the district court from its responsibility to set forth a "concise but clear" explanation of its reasons for choosing a given percentage reduction nor from its duty to independently review the applicant's fee request.

Where the difference between the number of hours requested in a lawyer's § 1988 lodestar attorney fee application and the court's award is greater than 10 percent, the court must explain why it chose to cut the number of hours or the lodestar by the specific percentage it did.

After city settled former suspect's civil rights lawsuit arising from police officer's use of fabricated evidence in preliminary hearing, trial court's cursory explanation that the number of hours billed on a contingent basis in suspect's § 1988 lodestar attorney fee request was "far more time than a reasonable attorney could ever bill a paying client for" was insufficient to support the trial court's 50 percent reduction in the number of hours allowed, which was part of an overall reduction of the fee request by more than 80 percent, absent any explanation of how the trial court believed the hours were padded, of how the attorneys would have done the same work in less time for a paying client, or of how a paying client would not have accepted the same degree of effort on the case.