

THE SUPREME COURT OF WASHINGTON

WASHINGTON ELECTION INTEGRITY)	
COALITION UNITED,)	
)	CLERK’S RULING SETTING
Petitioner)	AMOUNT OF ATTORNEY FEES
)	AND EXPENSES
v.)	
)	No. 100303-0
JAY INSLEE,)	
)	
Respondent.)	
)	

By Order filed on March 2, 2022, a Department of the Court granted the Respondent Jay Inslee’s Motion for Sanctions and imposed sanctions against both Petitioner, Washington Election Integrity Coalition United, and its counsel. The Court awarded the Respondent reasonable attorney fees and expenses incurred in this matter pursuant to RAP 18.9(a).

On March 11, 2022, the Court received the “DECLARATION OF KARL D. SMITH DETAILING REQUEST FOR ATTORNEYS’ FEES (RAP 18.1)” and the “DECLARATION OF CAMILLE MCDORMAN DETAILING REQUEST FOR ATTORNEYS’ FEES (RAP 18.1)” which requests that a total of \$28,384.70 be awarded to the Respondent for attorney fees and expenses incurred in this matter. On March 21, 2022, the Petitioner filed an objection to the attorney fees entitled “ANSWER AND OBJECTIONS TO DECLARATIONS REQUESTING ATTORNEYS’ FEES (RAP 18.1(e)).” On March 28, 2022, the Respondent filed a “REPLY IN SUPPORT OF FEE APPLICATION.”

In its objection the Petitioner and Petitioner's counsel argue generally that 1) The Respondent is in violation of RAP 18.1 because they did not add a section to their opening brief regarding fees; 2) Sanctions should not be awarded because the Court's Order was void of findings; 3) That the hourly rates charged by the Petitioner's counsel are unsupported; and 4) That the time expended by the Petitioner was excessive and unreasonable.

The Order entered by this Court on March 2, 2022, awards attorney fees and expenses as sanctions pursuant to RAP 18.9 not RAP 18.1. RAP 18.9 does not require that a party must devote a section of its opening brief to the request for fees as required in RAP 18.1(b). Therefore, I do not find that the Respondent is in violation of RAP 18.1. The Petitioner also argues that sanctions should not have been awarded because the Court's Order was void of findings. The Supreme Court already made the decision to award fees as a sanction in the case. As Deputy Clerk, my role is only to determine the amount of fees that will be awarded. Therefore, this ruling determines the amount of fees to be awarded in accordance with the Court's order. The Petitioner further argues that the State attorneys will get paid regardless of how much they bill and therefore should not be awarded their requested fees. The Respondent correctly argues in its reply to the objection that attorney fees may be awarded regardless of whether the Respondent's attorneys are private counsel or state attorneys. *Blair v. Wash. State Univ.*, 108 Wn.2d 558, 740 P.2d 1379 (1987). Therefore, the Petitioner's argument that fees should not be awarded because the Respondent's counsel are public attorneys does not hold merit.

This Court employs the "lodestar" method to determine the amount of attorney fees to award. Under that method, the Court first determines whether the hourly rates claimed by the counsel for the prevailing party were reasonable and then whether the number of hours expended

by counsel were reasonable. *Bowers v. Transamerica Title Ins., Co.*, 100 Wn.2d 581, 593-94, 675 P.2d 193 (1983). The party requesting the attorney fees must provide basic documentation of the work performed sufficient to inform the Court of the number of hours worked, the type of work, and the category of the attorneys or other professionals who performed the work. *Id.*, 597.

The affidavits indicate an hourly rate of \$284 per hour was charged for the time expended by the Deputy Solicitor General of the State of Washington, Karl Smith, and \$333 per hour was charged for time expended by Assistant Attorney General, Camille McDorman. In light of both counsel's years of experience, I find that the hourly rate for appellate work is reasonable. Regardless of what matrix was used to determine the hourly rates, the fees charged by both attorneys in the case are reasonable rates for any appellate attorneys practicing in Washington State.

The Petitioner objects to several charges included by the Respondent including expenses associated with briefing the client, conducting moot court, and the drafting of the motion for sanctions. Briefing the client is an essential role of counsel in any case. The fact that the Respondent's counsel are state attorneys do not change their obligations as attorneys to their client, Governor Inslee. The affidavit filed by Respondent counsel provided appropriate documentation of the work performed. The lodestar method only requires that basic documentation of work performed is provided in its affidavit. *Bowers*, 597. The drafting of the motion for sanctions and oral argument preparation are also inherent to the representation of their client.

It is noted that the motion for sanctions filed by the Respondent requests that the Petitioner be ordered to pay attorney fees incurred prior to Petitioner's counsel's appearance in

the case, and that counsel be ordered to pay attorney fees incurred after she appeared. The Petitioner's counsel did not appear in the case until December 10, 2021. Therefore, fees and expenses incurred prior to that date shall be paid by the Petitioner and not counsel. Fees and expenses incurred after that date shall be paid by Petitioner's counsel.

Accordingly, the Respondent, Jay Inslee, is awarded reasonable attorney fees and expenses in the total amount of \$28,384.70. \$9,588.80 of that amount shall be paid by the Petitioner, WA Election Integrity Coalition United. The remaining amount of \$18,795.90 shall be paid by Petitioner's counsel, Virginia Shogren.

A party aggrieved by this ruling may file a motion to modify the ruling not later than 30 days after this date; see RAP 17.7.

DATED at Olympia, Washington, this 17th day of May, 2022.



Sarah R. Pendleton
Supreme Court Deputy Clerk