IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

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| ERIC FORRER,<br><br>Plaintiff,<br><br>v.<br><br>STATE OF ALASKA, and LUCINDA MAHONEY, Commissioner of the Alaska Department of Revenue in her Capacity as an official of the State of Alaska,<br><br>Defendants. | ) | Case No.: 1JU-18-00699 CI |

ORDER ON MOTION FOR ATTORNEY'S FEES AND COSTS ON REMAND

## I. Introduction

On February 25, 2021, the court issued a Scheduling Order on Remand, directing Plaintiff, Eric Forrer, to file any request for attorney's fees and costs no later than March 22, 2021. Forrer filed a Motion for Attorney's Fees and Costs on Remand on March 22, 2021, requesting an award of $182,291.

On April 5, 2021, the State filed an Opposition to Motion for Attorney's Fees, making several arguments as to why Forrer's request for an award of $182,291.00 in attorney's fees and costs is unreasonable. The State argues that Forrer is entitled instead to an award of attorney's fees in an amount not to exceed $113,505.

For the reasons detailed below, the court awards Forrer full reasonable attorney's fees and costs in the amount of $151,693.

## II. Law

Alaska Statute 09.60.010 permits a constitutional claimant to recover "full reasonable attorney fees,"[1] but only for "that portion of the services" devoted to constitutional issues on which the claimant prevailed.[2] In other words, a claimant is entitled to recover attorney's fees devoted in any reasonably connected way to the constitutional claims on which it prevailed.[3]

A superior court's assessment of an attorney's fees award begins with the prevailing party's actual fees, but it does not end there.[4] The court must exercise its discretion to determine whether the fees claimed are objectively reasonable.[5] There is no exhaustive list of factors a court may or should consider in this process.[6] Courts generally approach the question by separately evaluating the reasonableness of the hourly rate charged and the number of hours billed.[7] The factors listed in Alaska Bar Rule 35(a) may be used to assess the reasonableness of counsel's requested hourly rate.[8] The factors listed in Alaska Civil Rule 82(b)(3) may be used in assessing whether the number of hours claimed is reasonable.[9]

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[1] AS 09.60.010(c).
[2] AS 09.60.010(d).
[3] *Meyer v. Stand for Salmon*, 450 P.3d 689, 691 (Alaska 2019).
[4] *Valdez Fisheries Dev. Ass'n, Inc. v. Froines*, 217 P.3d 830, 834 (Alaska 2009).
[5] *Id.* at 833.
[6] *Id.*
[7] *Id.*
[8] *Froines*, 217 P.3d at 833 n. 17.
[9] *Id.*

## III. Decision

Forrer seeks an award of attorney's fees in the amount of $182,291.00. This amount consists of $132,370 for services rendered by Joseph Geldhof (378.2 hours x $350/hour), $41,946 for Sonja Kawasaki (139.82 hours x $300/hour), $6,975 for Jack McGee (31 hours x $225/hour) and $1,000 in honorarium for additional counsel.

The State contends that the amount sought by Forrer is unreasonable and that the court should instead award Forrer an amount not to exceed $113,505. In opposition, the State argues the following: Kawasaki's hourly rate should be reduced to $200; the hours expended on procedural matters in which Forrer did not prevail should be excluded; a twenty percent (20%) across-the-board reduction should be applied against the actual hours billed by both Geldhof and Kawasaki due to block billing entries; and honorarium fees should be excluded from Forrer's award.[10]

### A. Kawasaki's hourly rate should be reduced to $200.

The State argues Kawasaki's hourly rate of $300 is unreasonable based on the extent of her legal experience. The State instead proposes that Kawasaki's hourly rate should be $200, as was determined by the Alaska Supreme Court on appeal. Forrer argues that Kawasaki's value as an attorney warrants an hourly rate of $300, and if not, at least $250 hourly.

Forrer submitted an affidavit from Kawasaki's supervisor, State Senator Bill Wielechowski, detailing the quality and amount of years of Kawasaki's legal

[10] Forrer stated that the $3,000 he sought in fees for expert consulting were not included in his request for attorney's fees. Instead, he incorporated these costs into his Cost Bill submitted separately.

experience in support of a $300 hourly rate. Citing Alaska Bar Rule 2(e)(2), Forrer argues that the Alaska Bar Association considers law clerking for a judge as "active practice of law," which are years of experience that should be credited to Kawasaki.

Forrer's argument is unpersuasive.

When determining the reasonableness of attorney's fees, factors to be considered under Alaska Bar Rule 35(a) are "the fees customarily charged in the locality for similar legal services," and "the experience… of the attorney… performing the services."[11] In determining an award of attorney's fees on appeal, the Alaska Supreme Court reduced the hourly rate for Kawasaki to $200. Neither the affidavit from State Senator Wielechowski's nor Forrer's motion articulated a justifiable reason as to why Kawasaki's hourly rate should be any higher in the superior court proceedings—when Kawasaki had less experience—than in the appellate court proceedings.

The Alaska Supreme Court found a $200 hourly rate for Kawasaki to be both reasonable and customary for an attorney with comparable experience in Juneau, which this court finds both persuasive and authoritative. Therefore, Kawasaki's hourly rate will be reduced to $200.

[11] Alaska Bar R. 35(a)(3), (7).

### B. Some of the hours expended on procedural matters were not made in reasonable furtherance of the constitutional claim and, therefore, should be excluded.

The State contends that the hours Forrer's attorneys expended on arguments in support of procedural matters should not be included in Forrer's award of attorney's fees. Specifically, the State objects to including time spent communicating with the media, dealing with clerical tasks, attempting to convert the State's motion to dismiss to one for summary judgment, demanding a jury trial, and litigating a motion to compel discovery. The State notes that, although Forrer prevailed on all his constitutional claims, Forrer did not prevail on certain procedural matters.

Some aspects of the State's argument have merit.

Alaska Statute 09.60.010 permits a constitutional claimant to recover "full reasonable attorney fees,"[12] which is to say that a claimant is entitled to recover attorney's fees devoted in any reasonably connected way to the constitutional claims on which it prevailed.[13]

Forrer's motion to convert the State's motion to dismiss to one for summary judgment, was made in reasonable furtherance of the constitutional claims on which Forrer ultimately prevailed. The motion was timely, in the sense that the question raised needed to be resolved prior to addressing the State's motion to dismiss. Although Forrer did not prevail in seeking to convert the State's motion to dismiss, pursuit of this motion was not frivolous.

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[12] AS 09.60.010(c).
[13] *Meyer v. Stand for Salmon*, 450 P.3d 689, 691 (Alaska 2019).

In contrast, demand for a jury trial and motion to compel discovery were not made in reasonable furtherance of the constitutional claims on which Forrer ultimately prevailed. Specifically, the demand and motion were premature, in the sense that the questions raised did not need to be resolved prior to addressing the State's motion to dismiss.

Forrer challenged the constitutionality of statute in question on its face, and the litigation was turned on the State motion to dismiss on the pleadings. A jury does not decide a question of law on a motion to dismiss on the pleadings. Discovery is not necessary to decide a question of law on a motion to dismiss on the pleadings. Under these circumstances the demand for a jury trial and motion to compel were premature, and litigation of these issues was not necessary to further Forrer's constitutional claims at that juncture of the litigation.

Finally, Forrer makes no argument as to why he should be compensated for the time his attorneys spent communicating with the media and dealing with clerical tasks. Forrer notes his effort to exclude costs associated with clerical duties by noting "NO CHARGE" in the relevant portions of the billing statement. Nonetheless, there were portions of the billing statements that included clerical duties for which Forrer did not include the notation of "NO CHARGE". Therefore, the court will not compensate Forrer for the time his attorneys spent communicating with the media. The court will also not compensate Forrer for the time his attorneys indicated they performed clerical tasks, unless there was a note of "NO CHARGE" for those clerical tasks.

For the reasons explained above, in making an award of attorney's fees, the court will exclude the hours Forrer's attorneys expended on the demand for a jury trial, motion to compel discovery, communication with the media, and handling clerical tasks. Because Forrer attorneys used block billing entries in many instances, a precise determination of exclusion of hours is addressed in the section immediately below regarding block billing.

### C. Some attorney services should not be compensated or should be compensated at a reduced rate because block billing entries make it difficult or impossible for the court to assess the reasonableness of the hours expended and other services were not reasonably incurred

The State contends that the court should apply an across-the-board reduction of twenty percent (20%) of the hours billed for Geldhof and Kawasaki due to their block billing entries. The State presented case law and studies on how block billing entries by attorneys could increase attorney fees by as much as thirty percent (30%). The State argues that the use of block billing by Forrer's attorneys makes it impossible for the State and the court to assess the reasonableness of the hours Forrer expended on each item entry billed.

Some of the State's arguments have merit.

After a detailed review of the statements, the court finds that the use of block billing by Forrer's attorneys often makes it difficult or impossible for the court to assess the reasonableness of the hours expended. Therefore, where the block billing indicates that a substantial portion or the entirety of the services provided were

devoted to pursuit of claims that were not made in reasonable furtherance of the constitutional claims, the court excludes any award. Where the block billing indicates that a relatively smaller fraction of the services provided were devoted to pursuit of claims that were not made in reasonable furtherance of the constitutional claims, the court reduces the hours by twenty percent.[14]

Specifically, the court finds that certain block billing indicates that substantial portion or the entirety of the services provided were devoted to pursuit of claims that were not made in reasonable furtherance of the constitutional claims for 3.0 hours of Kawasaki's time[15] and 20.3 hours of Geldhof's time.[16] Therefore, the court reduces Forrer's award for attorney's fees by 23.3 hours.

The court also finds that certain block billing indicates that a relatively smaller fraction of the services provided were devoted to pursuit of claims that were not made in reasonable furtherance of the constitutional claims for reduces for 46.7 hours of Geldhof's time.[17] Therefore, the court reduces Forrer's award on these hours by twenty percent, a deduction of 9.34 hours.

Kawasaki's use of block billing for legal work performed over the course of multiple days does not, in and of itself, make it impossible for the court to assess the

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[14] The court also reduces the hours for services for communication with the media and performance of clerical tasks that are not accompanied by a note of "NO CHARGE".
[15] Entries on July 20 & 21, and August 7 & 8, 2021.
[16] Entries on May 15, July 17 & 21, and August 2, 7 & 21, 2018.
[17] Entries on April 25, July 18, 22 & 23, August 3, 8. 14 & 23, and October 1, 2018.

reasonableness of the hours billed. Kawasaki's use of block billing was done to bill hours for legal work that carried over into the next day.

Nevertheless, the court must exercise its discretion to determine whether the amount of hours worked by Forrer's attorneys is objectively reasonable. The court may use the factors listed in Alaska Civil Rule 82(b)(3) in assessing whether the number of hours claimed is reasonable.

There are specific entries listed in the billing statements submitted by Forrer's attorneys where the number of hours expended appear excessive or duplicative. Specifically, there is an eight-day period where Kawasaki devoted 116.07 hours to researching and drafting a response to the State's motion to dismiss.[18] This equates to 14.5 hours a day. It is not reasonable to assume that Kawasaki sustained productive, efficient brief writing and research for this entire period of time.

Moreover, during the same eight-day period Geldhof devoted 46.7 hours to researching and drafting a response to the State's motion to dismiss. Although the issues in the case were complex, they were not so complex as to warrant the combined effort of the two attorneys for 163.4 hours. Under these facts and circumstances the court finds that a reasonable award is achieved by reducing the time Kawasaki devoted to researching and drafting a response by twenty percent. Therefore, the court reduces Forrer's award on Kawasaki's 116.07 hours by twenty percent, a deduction of 23.21 hours.

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[18] October 1-8, 2018.

### D. Honorarium fees should be excluded from Forrer's award of attorney's fees.

Forrer's attorneys included fees associated with honorarium attorneys in their billing of attorney's fees. The State contested the inclusion of these fees in Forrer's award of attorney's fees. Forrer subsequently withdrew the cost associated with honorarium attorneys. Accordingly, the fees attributable to Forrer's honorarium attorneys will be excluded from Forrer's award of attorney fees.

## IV. Conclusion

Based on the facts and circumstances in this case, the court finds a total amount of $151,693 to be reasonable and necessarily incurred for an award of attorney's fees. The court finds the reasonable hourly rate for Kawasaki's services is $200. The court reduces Geldhof's billed hours by 29.64 and reduces Kawasaki's billed hours by 26.21. The court disallows the honorarium initially sought by Forrer.

The award of $151,693 consists of $121,996 for services rendered by Geldhof (348.56 x $350/hour), $22,722 for Kawasaki (113.61 x $200/hour), and $6,975 for Jack McGee (31 hours x $225/hour).

**SO ORDERED** this 2nd day of June, 2021.

Jude Pate
Superior Court Judge

**CERTIFICATION**
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