



CLAIMING AND COLLECTING ATTORNEYS' FEES: AN INTRODUCTION

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Topic 3: Co-Counsel Agreements

Key Topics:

- How Will Decisions be Made?
- How Will Costs be Allocated?
- How Will the Recovery of Fees and Costs be Handled?
- How Will the Work be Allocated?

How Will the Work be Allocated?

Agree upon who will be primarily responsible for:

- factual research
 - legal research
 - conducting and responding to discovery
 - consulting with and advising the Class Representatives on the progress of the case.
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How Will Decisions be Made?

Agree to:

- Regularly confer regarding preparation, planning and presentation of the case;
 - Consult with everyone prior to taking any strategic actions;
 - Establish lead counsel or an executive committee with authority to make key strategic decisions.
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How Will Costs be Allocated?

- Each attorney to keep detailed, contemporaneous records of all necessary costs, disbursements and expenses –list them by type in the agreement;
 - Each Counsel to advance his or her own general office overhead, travel, and lodging expenses;
 - Who will pay for depositions, transcripts of depositions and hearings, expert fees and, if applicable, costs of mailing notice to a class?
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How Will Fees and Costs that are Recovered be Handled?

- Reimburse for all litigation costs and attorney expenses off the top.
 - If court awarded attorneys' fees – fees to be paid as specified by the court; or
 - If lump sum amount provided for in settlement - divide based on relative contributions to the litigation using a lode star calculation.
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Topic 5: COMPLAINT: PLEADING REQUIREMENTS

- Award Plaintiff the costs of this action, including the fees and costs of experts, together with reasonable attorneys' fees;



Topic 8: INTRODUCTION TO FILING THE FEE PETITION

- Tips for what to Include:
 - Fed. R. Civ. P. 54(d)(2)(B) requires that you specify the judgment and the statute, rule, or other ground entitling the movant to the award;
 - As background: defendant's bad conduct
 - Reasonableness of your litigation efforts
 - Unreasonableness of defense tactics – prolonging the litigation
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MORE TIPS FOR THE PETITION

- terrific result you obtained, including any equitable relief
 - your reasonable attempts to settle
 - delete any excessive or duplicative time up front
 - distinguish work on various claims unless all overlap
 - classify work devoted to various activities, such as discovery, hearings, settlement
 - specify work by various attorneys, law clerks and paralegals
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EVEN MORE TIPS

- if the case has been ongoing for a substantial period of time ask for interest, or for current hourly rates
 - include an affidavit of your expertise, experience, billing rate
 - include supporting affidavit(s) covering:
 - if possible, your skill and reputation;
 - prevailing rates in the community from an impressive attorney with personal knowledge of those rates, or a fee survey
 - reasonableness of the number of hours on the case
 - whether billing separately for paralegal or clerk time is customary in the community
 - calculate the amount of the fee requested (or a fair estimate – R. 54(d)(2)).
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TIMELINESS OF THE PETITION

- Fed. R. Civ. P. 54(d)(2)(B): Unless a statute or court order provides otherwise, the motion [for attorney fees] must: (i) be filed no later than 14 days after the entry of judgment;
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RATES

- Check with other public interest attorneys in your area and run a Westlaw search to see what kinds of rates your judge has awarded– or her colleagues on the bench, if she doesn't have much of a track record;
 - Conduct a survey of billing rates, by number of years of experience, in your community;
 - Check the laffey matrix – www.laffeymatrix.com
 - Consider focusing on a particular segment of lawyers if that will buttress your claim for higher rates due to the complexity of the law you have litigated.
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COMMON DEFENSE RESPONSES

- Lack of success
 - Unreasonable hourly rates
 - Unnecessary work
 - Duplicative work
 - Menial work
 - Inadequate description of work performed
 - Billing time blocks too large
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More defense responses:

- Fees requested disproportionate to result
 - Supporting affidavits deficient –e.g. expert not knowledgeable about rates for the particular field of the litigation
 - Previous court awards for plaintiff's counsel (or their ilk) have been much lower
 - Defense counsel's rates are much lower
 - It was unnecessary to use out of town counsel
 - Technical errors in billing records
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