

When Civility Counts: Court of Appeal Affirms Trial Court's Ruling That Prevailing Party Attorney's Fees May Be Reduced Due to Lack of Civility

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As many are aware, recoverable attorney's fees can often become the most significant factor in resolving or evaluating a matter. Counsel for the prevailing party, often working on a contingency fee, will seek a high hourly fee plus what is known as a "lodestar" factor. Trial courts often apply a lodestar factor to increase an hourly rate for the counsel for the prevailing party.

It is well settled that a court can increase a prevailing party's attorneys' fees applying the lodestar factors: (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, and (as applicable) (4) the contingent nature of the fee award. However, can a trial court consider a **reduction** of an otherwise reasonable hourly rate by a negative lodestar factor due to incivility? That question was answered in the positive in Snoek v. ExakTime Innovations, Inc. (2023) Westlaw 7014096 ("Snoek" or "Snoek case").

In Snoek, a former employee of ExakTime, Steve Snoek, sued his former employer for disability discrimination under the Fair Employment and Housing and related causes of action. The jury awarded Snoek \$130,088 in damages on his claim that ExakTime failed to engage in a good faith interactive process with him-but rejected other claims. However, his counsel, when applying for attorney's fees, had his attorney's fees reduced from \$1,144,659.36 to \$686,795.62 (40% of requested fees). The reduction occurred due to a number of factors, including the trial court's application of a negative multiplier to account for Snoek's counsel's lack of civility.<sup>1</sup>

On appeal, the California Court of Appeal affirmed. The California Court of Appeal noted that there was no dispute as to the reasonableness of Snoek's counsel's fees, which topped out at \$750 per hour for the senior partner, but agreed with counsel for ExakTime that consistent, numerous, and abusive emails from Snoek's counsel, which did little to

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<sup>1</sup> In emails, Snoek's attorneys had accused ExakTime of "exploiting the Court, utilizing 'underhanded' tactics, presenting a 'sham defense,' and, in general arguing that defense counsel perpetrated a fraud on the Court." ExakTime argued Smith's emails "served no purpose in advancing Snoeck's cause" and argued Snoeck's attorneys' fees should be reduced by the amount charged after a statutory offer, or alternatively reduced to 16.6 percent of the billed hours, proportional to their success rate. It also asked the court to apply a 25 percent "deduction of Smith's billings due to their patent excessiveness."

advance the case, could be considered in reducing an otherwise reasonable hourly rate. Fees were also reduced for other reasons, including block billing.

The Snoek case is important in that it goes well beyond employment matters. If a counsel for a prevailing party has acted in a rude, obnoxious, and feckless manner, such that counsel acted with a wholesale lack of civility, attorney's fees may be reduced. It is noted that this ruling is consistent with the California Civility Taskforce's initial September 2020 report which recommended that the State Bar amend its disciplinary rules to prohibit "repeated incivility and clarify ... that civility is not inconsistent with zealous representation."

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