

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-013656

05/28/2024

HONORABLE KATHERINE COOPER

CLERK OF THE COURT
M. R. Diaz
Deputy

TOM HORNE

JOHN DOUGLAS WILENCHIK

v.

KATIE HOBBS, et al.

DAVID ANDREW GAONA

NATHAN T ARROWSMITH
ROBERT D HAWS
JUDGE COOPER

RULING RE APPLICATIONS FOR ATTORNEYS' FEES & COSTS

Pending are the fully-briefed Applications for Attorneys' Fees by Governor Katie Hobbs, the Attorney General, and the School District defendants on filed March 27, April 11, and April 25, 2024, respectively.

On March 5 and 27, 2024, the Court found Defendants entitled to recover their reasonable attorneys' fees under A.R.S. § 12-348.01.

The Court has reviewed Defendants' respective Applications, Plaintiff's Responses, the Replies, the applicable law, and the supporting documentation, including the Declaration of Robert Haws and attached fee ledgers in support of the School Districts' Application, the Declaration of D. Andrew Gaona and fee ledgers for Governor Hobbs' Application, and the Declaration of Joshua D. Bendor and fee ledger supporting the Attorney General's Application. The Court has considered the criteria for determining what is reasonable this case, including counsels' qualifications, the type of work involved, the services performed, the outcome, the billing rates, and the hours expended. *Schweiger v. China Doll Rest., Inc.*, 138 Ariz. 183, 187 (App. 1983).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-013656

05/28/2024

The Court finds that the Applications submitted by Governor Hobbs and the Attorney General show that the fees requested by them are reasonable. In making this determination, the Court considered Plaintiff's opposition, including the objection to fees for Governor Hobbs' in-house counsel. Government attorneys, like private attorneys, may recover fees. *State ex rel. Corbin v. Tocco*, 173 Ariz. 587, 590 (App. 1992). Mr. Dul based his billing rate on the prevailing market rate, ie Mr. Gaona's outside counsel rate. Mr. Dul expended 18.2 hours. His work was relevant and substantive. He revised the Motion to Dismiss, Reply, and fee application; reviewed documents; and advised his client. Mr. Dul's fees are reasonable and supported by the Application.

The School Districts' Application, however, fails to present sufficient information to support the request for fees.

The Districts' Application is comprised of 10 different billing statements, one for each District defendant. No two statements are the same in terms of entries or total fees billed. The fees range from \$6,340 to \$19,635.

The Districts' Reply explains the difference in billing statements as follows. It states that counsel billed the Districts by dividing equally the tasks performed on their collective behalf (i.e. one-tenth to each district). In addition, each District was charged 100% for any task unique to that district. While this approach may have been counsel's intent, it is not reflected in the billing statements themselves.

The Court reviewed each statement and identified the aggregate charges, ie those tasks performed on behalf of the Districts collectively and presumably divided equally. These charges include the work expressly related to the Motion to Dismiss, the Reply, and oral argument on the Motion to Dismiss. Instead of consistently equal divisions, the Court found Creighton School District billed for a larger percentage of the aggregate work than any other district.

Next, the Court examined the Creighton ledger for services performed for Creighton only to determine whether these individual charges would account for Creighton's larger bill. The Court found charges for counsel's communications with Superintendent Mann and other miscellaneous tasks. These charges, however, do not explain the for the disparity between Creighton's fees of \$19,635 and the amounts billed to the other nine districts, such as \$6,255 to Laveen Elementary, \$7,350 to Mesa Unified, and \$6,565 to Avondale Elementary. In other words, Creighton's billing statement does not reflect \$12,000 to \$13,000 of work for Creighton only. A fee application should describe the fee agreement between the attorney and client. Rule 54(g)(4). It should disclose the compensation agreement to enable the court to determine if the fees requested are reasonable. *See Jerman v. O'Leary*, 145 Ariz. 397, 403 (App. 1985) (vital for trial court to know what the agreement was in order to award fees). Did Creighton agree to bear a

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-013656

05/28/2024

larger share of the defense? Was the time billed to Creighton re-allocated somehow via an agreement with the Arizona Risk Retention Pool, the insurer identified on the billing statements? The Court can only guess as to the reason for Creighton’s substantially larger tab.

Further, the Districts’ Application fails to explain why the total fees incurred are nearly twice the amount expended by Governor Hobbs and the Attorney General for essentially the same work product. The Districts’ fees total \$79,355 as compared to Governor Hobbs’ \$44,247.50 and the Attorney General’s \$38,360.

This case resolved on Defendants’ Motions to Dismiss. Governor Hobbs, the Attorney General, and the School Districts filed separate dismissal motions and replies. Their counsel participated in oral argument after which the Court ruled in Defendants’ their favor. The Motions and Replies asserted the same legal arguments as to Plaintiff’s lack of standing and failure to name an indispensable party. Each defendant also addressed the lack of any justiciable claim against that defendant. Thus, the School Districts’ Motion and Reply asserted the same legal arguments as presented by Governor Hobbs and the Attorney General with an emphasis on the Districts’ compliance with A.R.S. 15-756.02(A) (requiring districts to implement a Board-approved immersion model). Yet, without explanation, the Districts’ incurred more fees than their co-defendants for this work. A summary of time entered for work related to the Motion, Reply, and oral argument illustrates this point.

Governor Hobbs	Attorney General	District Defendants
Motion: 33.1 hours	Motion: 40.3 hours	Motion: 82.1 hours
Reply: 38.7	Reply: 30.7	Reply: 41.7
O/A: 12.9	O/A: 16.6	O/A: 27.5
Total: 84.7	Total: 87.6	Total: 151.3

The Districts’ Application simply fails to explain what happened. While the Court appreciates that Plaintiff sued, and defense counsel represented, ten school districts, the bulk of their defense consisted of a single work product – a motion to dismiss. They received the same defense involving the same tasks. They benefitted from the same type of legal services that Governor Hobbs and the Attorney General received for half the cost.

The Court finds that, like Governor Hobbs and the Attorney General, the Districts are entitled to a fee award as a successful party. The Court finds a reasonable amount to be \$41,303 based on the average of fees incurred by Governor Hobbs and Attorney General for similar legal services rendered in this case. This average brings the Districts’ Application within a reasonable range based on market rates for similar services, comparable quality, the type of work performed, and the outcome. The Court does not apportion the award among the Districts. There

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-013656

05/28/2024

is no set formula for apportioning fees and, as stated, the Districts' Applications fails to provide sufficient information to support separate awards. *Schweiger*, 138 Ariz. at 189. The Districts may allocate the award as they wish.

Accordingly, **IT IS ORDERED** awarding:

Governor Hobbs \$37,877.50 for the services of Coppersmith Brockelman PLC and \$6,370 for the work performed by Governor Hobbs' General Counsel, for a total of \$44,247.50.

Attorney General \$38,360 for attorneys' fees.

The School Districts \$41,303 for attorneys' fees.

IT IS FURTHER ORDERED that Defendants shall submit a proposed form of Judgment by **June 7, 2024**.