

ARE YOU IN COMPLIANCE WITH THE LAW?

6450 & YOU

CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION
6450-6456
“PARALEGALS”

By
Kristine M. Custodio, ACP



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FOREWORD

This guide is intended to be a resource for the legal community to gain insight into a law that affects paralegals, attorneys, and law firms alike. The following article was published on February 27, 2008, in the San Diego Daily Transcript:

NONCOMPLIANCE WITH CODE THREATENS PARALEGAL FEES

By KRISTINE M. CUSTODIO, ADVANCED CERTIFIED PARALEGAL
San Diego Paralegal Association

Caveat emptor. Buyer beware...or, in this regard, attorneys across the state take heed that you are at risk for compromising paralegal fees if you do not take the necessary measures to ensure that the paralegals you hire and employ are qualified under Business and Professions Code Section 6450, et seq. California paralegals must meet minimum educational requirements and maintain mandatory continuing legal education (MCLE) hours. They have since 2001.

Recent California cases—Sanford v. GMRI Inc. dba Red Lobster, 04-1535 (E.D. Cal. Nov. 11, 2005), White v. GMRI Inc. dba Red Lobster, 04-0620 (E.D. Cal. Jan. 19, 2006), and Martinez v. G. Maroni Co., dba Church's Chicken #948, S06-1399 (E.D. Cal. May 1, 2007)—which resulted in the reduction and denial of paralegal fees for noncompliance with the code, give teeth to a law which has been in existence for the past seven years. At this time under the code, any person working as a paralegal must maintain a certain number of hours of MCLE. Effective as of January 1, 2007, four hours of legal ethics and four hours of general law or an area of specialized law are required every two years. The code also sets forth minimum standards as to who may be bestowed the title paralegal; synonymous are the titles "legal assistant," "attorney assistant," "freelance paralegal," "independent paralegal," and "contract paralegal" under Section 6454.

Self-monitoring of MCLE by paralegals and certification of MCLE to the paralegal's supervising attorney are mandated under Section 6450(d). Regardless of whether the paralegal works in a law firm as billable support staff or in a corporation as an hourly employee, the code obliges "any person working as a paralegal" to meet the minimum educational and MCLE requirements. Don't unnecessarily expose yourself to the risk of losing fees. As we are all taught—document, document, document. Ask your paralegals for verification of their education and training and retain the supportive documentation in employee files. In the event that savvy opposing counsel or a knowledgeable client challenges your paralegals fees, you will already be prepared.

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MISSION STATEMENT

STRENGTH THROUGH STATEWIDE ALLIANCE – PROVIDING A VOICE OF LEADERSHIP IN PROMOTING EDUCATION, VOLUNTARY EXAMINATION, AND ADVANCEMENT OF THE PARALEGAL PROFESSION.

CAPA is a statewide non-profit, mutual benefit corporation dedicated to the advancement of the paralegal professional and the proposition that paralegals gain strength through alliance. CAPA represents California paralegals working in attorney-supervised settings and CAPA supports, encourages, and promotes an active relationship among its affiliated member associations, attorneys, national, state and local Bar associations, and others in the legal community.

CAPA maintains statewide and national communications for the purpose of keeping all its members current with information relating to the paralegal profession. CAPA also serves as a forum for the pooling and dissemination of varying opinions and professional experiences. CAPA affiliated members, by discussion and consensus, work together cooperatively and respectfully to achieve goals and to maintain the highest standards of professional and ethical conduct.

In order to maximize paralegals' knowledge and expertise, CAPA supports formal education, training, continuing education, and voluntary competency testing, including without limitation the California Advanced Specialty Examinations.

By networking and sharing reciprocal resources, CAPA's affiliated associations are presented with opportunities to participate in the development of concepts, issues, and objectives which will shape the direction of the paralegal profession for the ultimate benefit of the legal profession and the California public in general.



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STRENGTH THROUGH STATEWIDE ALLIANCE

ARE YOU IN COMPLIANCE WITH THE LAW?

CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 6450-6456 "PARALEGALS"

6450. (a) "Paralegal" means a person who holds himself or herself out to be a paralegal, who is qualified by education, training, or work experience, who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity, and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practicing law in the federal courts of this state, that has been specifically delegated by the attorney to him or her. Tasks performed by a paralegal include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.

(b) Notwithstanding subdivision (a), a paralegal shall not do the following:

(1) Provide legal advice.

(2) Represent a client in court.

(3) Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal.

(4) Act as a runner or capper, as defined in Sections 6151 and 6152.

(5) Engage in conduct that constitutes the unlawful practice of law.

(6) Contract with, or be employed by, a natural person other than an attorney to perform paralegal services.

(7) In connection with providing paralegal services, induce a person to make an investment, purchase a financial product or service, or enter a transaction from which income or profit, or both, purportedly may be derived.

(8) Establish the fees to charge a client for the services the paralegal performs, which shall be established by the attorney who supervises the paralegal's work. This paragraph does not apply to fees charged by a paralegal in a contract to provide paralegal services to an attorney, law firm, corporation, governmental agency, or other entity as provided in subdivision (a).

(c) A paralegal shall possess at least one of the following:

(1) A certificate of completion of a paralegal program approved by the American Bar Association.

(2) A certificate of completion of a paralegal program at, or a degree from, a postsecondary institution that requires the successful completion of a minimum of 24 semester, or equivalent, units in law-related courses and that has been accredited by a national or regional accrediting organization or approved by the Bureau for Private Postsecondary and Vocational Education.

(3) A baccalaureate degree or an advanced degree in any subject, a minimum of one year of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks.

(4) A high school diploma or general equivalency diploma, a minimum of three years of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks. This experience and training shall be completed no later than December 31, 2003.

(d) Every two years, commencing January 1, 2007, any person that is working as a paralegal shall be required to certify completion of four hours of mandatory continuing legal education in legal ethics and four hours of mandatory continuing legal education in either general law or in an area of specialized law. All continuing legal education courses shall meet the requirements of Section 6070. Certification of these continuing education requirements shall be made with the paralegal's supervising attorney. The paralegal shall be responsible for keeping a record of the paralegal's



ARE YOU IN COMPLIANCE WITH THE LAW?

CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 6450-6456 "PARALEGALS" (CONTINUED)

(e) A paralegal does not include a nonlawyer who provides legal services directly to members of the public, or a legal document assistant or unlawful detainer assistant as defined in Section 6400, unless the person is a person described in subdivision (a).

(f) This section shall become operative on January 1, 2004.

6451. It is unlawful for a paralegal to perform any services for a consumer except as performed under the direction and supervision of the attorney, law firm, corporation, government agency, or other entity that employs or contracts with the paralegal. Nothing in this chapter shall prohibit a paralegal who is employed by an attorney, law firm, governmental agency, or other entity from providing services to a consumer served by one of these entities if those services are specifically allowed by statute, case law, court rule, or federal or state administrative rule or regulation. "Consumer" means a natural person, firm, association, organization, partnership, business trust, corporation, or public entity.

6452. (a) It is unlawful for a person to identify himself or herself as a paralegal on any advertisement, letterhead, business card or sign, or elsewhere unless he or she has met the qualifications of subdivision (c) of Section 6450 and performs all services under the direction and supervision of an attorney who is an active member of the State Bar of California or an attorney practicing law in the federal courts of this state who is responsible for all of the services performed by the paralegal. The business card of a paralegal shall include the name of the law firm where he or she is employed or a statement that he or she is employed by or contracting with a licensed attorney.

(b) An attorney who uses the services of a paralegal is liable for any harm caused as the result of the paralegal's negligence, misconduct, or violation of this chapter.

6453. A paralegal is subject to the same duty as an attorney specified in subdivision (e) of Section 6068 to maintain inviolate the confidentiality, and at every peril to himself or herself to preserve the attorney-client privilege, of a consumer for whom the paralegal has provided any of the services described in subdivision (a) of Section 6450.

6454. The terms "paralegal," "legal assistant," "attorney assistant," "freelance paralegal," "independent paralegal," and "contract paralegal" are synonymous for purposes of this chapter.

6455. (a) Any consumer injured by a violation of this chapter may file a complaint and seek redress in any municipal or superior court for injunctive relief, restitution, and damages. Attorney's fees shall be awarded in this action to the prevailing plaintiff.

(b) Any person who violates the provisions of Section 6451 or 6452 is guilty of an infraction for the first violation, which is punishable upon conviction by a fine of up to two thousand five hundred dollars (\$2,500) as to each consumer with respect to whom a violation occurs, and is guilty of a misdemeanor for the second and each subsequent violation, which is punishable upon conviction by a fine of two thousand five hundred dollars (\$2,500) as to each consumer with respect to whom a violation occurs, or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. Any person convicted of a violation of this section shall be ordered by the court to pay restitution to the victim pursuant to Section 1202.4 of the Penal Code.

6456. An individual employed by the state as a paralegal, legal assistant, legal analyst, or similar title, is exempt from the provisions of this chapter.

NOTE: AB 1761 was codified in 2000 as Business and Professions Code Section 6450, et seq. and became effective January 1, 2001.





**CALIFORNIA BUSINESS AND PROFESSIONS CODE
SECTION 6450-6456
“PARALEGALS”**

SELF TEST

Circle the best answer.

- | | | |
|--|---|---|
| 1. Under Section 6454, paralegal and legal assistant are not synonymous terms. | T | F |
| 2. Under Section 6454(d), the mandatory continuing legal education (MCLE) requirements include two hours of legal ethics and two hours of general or a specialized area of law every four years. | T | F |
| 3. Business and Professions Code Section 6450, et seq. were codified on January 1, 2001. | T | F |
| 4. Paralegals are not required to certify MCLE with their supervising attorney. | T | F |
| 5. An individual employed by the state as a paralegal, legal assistant, legal analyst, or similar title, is exempt from the provisions of this chapter. | T | F |

Answers:
1. F
2. F

3. T
4. F

5. T

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PARALEGAL MCLE TRACKING CHART

California Business & Professions Code Section 6450(d):

Every two years, commencing January 1, 2007, any person that is working as a paralegal shall be required to certify completion of four hours of mandatory continuing legal education in legal ethics and four hours of mandatory continuing legal education in either general law or in an area of specialized law. All continuing legal education courses shall meet the requirements of Section 6070.

Certification of these continuing education requirements shall be made with the paralegal's supervising attorney. The paralegal shall be responsible for keeping a record of the paralegal's certifications.

Date	MCLE Course Description	No. of Hours
General Law/Specialized Area of Law (minimum 4 hours required)		
Compliance Period:		
Legal Ethics (minimum 4 hours required)		
Compliance Period:		
Total:		

I, _____, hereby certify to _____, my supervising attorney, that I have completed the MCLE requirements in legal ethics and general/specialized law as mandated by Business and Professions Code Section 6450, et seq., for the period specified above.

Dated: _____

Signature: _____

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APPENDIX A

RELATED CASES

Research provided courtesy of Andy Viets, Esq.

BUSINESS & PROFESSIONS CODE §6450 CASES

Court of Appeal, First District, Division 5, California.

Michael H. CLEMENT Corporation, Plaintiff and Appellant,

v.

Joel KELLER et al., Defendants and Appellants.

No. A101500.

(Contra Costa County Super. Ct. No. C93-03437).

May 27, 2004

Not Officially Published

2004 WL 1175265

SIMONS, J.

In the nonpublished opinion of Michael H. Clement Corp. v. Keller (Oct. 1, 2001, A090584) (Clement II), we upheld a challenge to special assessments levied by the City of Antioch under the Landscaping and Lighting Act of 1972 (the Act) (Sts. & Hy.Code, § 22500 et seq.).FN1 Following remand, the trial court awarded attorney fees to Michael H. Clement Corporation (MHCC) under the private attorney general theory of Code of Civil Procedure section 1021.5 (hereafter section 1021.5). The City of Antioch and its council members (collectively, the City) appeal that award. Alternatively, MHCC appeals the attorney fee award contending it is entitled to additional compensation for paralegal services. We reject the parties' contentions and affirm.

...

MHCC's Appeal

MHCC contends the trial court erred in awarding only \$7,000 of the \$132,643.76 sought in fees for paralegal services MHCC claimed were performed by Jeanette Yu.

Yu's February 2002 declaration filed in support of the attorney fee motion stated the following: She has a bachelor of science degree in bioengineering, and, since 1984, has been employed by MHCC where she programs the machine tools, designs databases used in its business, and acts as an account manager. Since MHCC began protesting the City assessments, Yu has also functioned as the litigation manager, overseeing the conduct of the litigation and organizing documentation. She has also "worked in a legal assistant/paralegal capacity" under the direction of the attorneys representing MHCC in this litigation, with the understanding that she would be compensated only if the litigation was successful. While so engaged, she was unable to attend to her regular duties at MHCC. Yu's services in support of this litigation have included researching the Act, reviewing documents, communicating with attorneys regarding evidence, responding to motions, preparing for trial and appeal, drafting protest letters, reviewing pleadings, memoranda and briefs prepared by attorneys, and fact checking. In the nearly 10 year course of the litigation, she "recorded 1,894.91 hours [regarding the underlying action] and [MHCC] paid \$10,796.67 in direct costs." The supporting declaration of MHCC's attorney, Paul Kleven, stated that although Yu has had no formal legal training, her research and analytical skills are "superior to most paralegals," and she provided invaluable assistance, which was instrumental in MHCC's prevailing in Clement II. The City opposed the paralegal fees sought for Yu on the ground that she was not a paralegal pursuant to Business & Professions Code section 6450.



APPENDIX A

RELATED CASES

**Court of Appeal, First District, Division 5, California.
Michael H. CLEMENT Corporation, Plaintiff and Appellant,
v.
Joel KELLER et al., Defendants and Appellants.
No. A101500.
(Contra Costa County Super. Ct. No. C93-03437).
May 27, 2004
Not Officially Published
2004 WL 1175265
(CONTINUED)**

In its August 2, 2002 attorney fee order, the trial court first noted compliance with the educational requirements of Business & Professions Code section 6450 is not a prerequisite to recovery of paralegal fees. The court found that Yu was not employed by MHCC as a paralegal and there was no evidence that \$70 is her normal or customary rate or that MHCC has actually compensated her at this rate. Instead, the court found that Yu's regular hourly pay rate is \$7 per hour. The court also found that "it does not appear" that all of the hours charged were necessary for the conduct of the litigation or "necessarily performed with an expectation of compensation." The court concluded that an award in the amount claimed "would constitute a significant windfall to [MHCC]." The court permitted recovery of 1,000 hours of Yu's time at a rate of \$7 per hour, "consistent with her actual compensation rate."

*9 The trial court is the best judge of the value of professional services rendered in its court, and its judgment will not be disturbed on appeal unless the reviewing court is convinced that it is clearly wrong. (Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132.) In addition, the court's judgment or order is presumed correct on appeal and all intendments and presumptions are indulged in favor of its correctness. (In re Marriage of Arceneaux (1990) 51 Cal.3d 1130, 1133.) Thus, a party challenging a judgment or order has the burden of demonstrating reversible error with an adequate record. (Ballard v. Uribe (1986) 41 Cal.3d 564, 574.) Failure to provide an adequate record on an issue requires that the issue be resolved against the appellant. (Hernandez v. California Hospital Medical Center (2000) 78 Cal.App.4th 498, 502.)

In this case the parties opted to submit appellant's and respondent's appendices rather than a clerk's transcript. (Cal. Rules of Court, rule 5.1) MHCC's points and authorities memorandum in support of its attorney fee motion refers to an "Exhibit A" attached to Yu's declaration. While Yu's declaration is included within the City's appendix, there are no exhibits attached thereto. The City's opposition to the attorney fee motion refers to 30 pages of billing records by Yu attached to her declaration, but again, no such billing records are contained within the record before us. Finally, MHCC's reply memorandum refers to a "supplemental declaration" by Yu and an "Exhibit A" attached thereto. Again, the record contains no supplemental declaration by Yu or any such attachment.

Due to MHCC's failure to include within the appellate record many of the documents considered by the trial court in regard to the fees requested for Yu's services, MHCC's claim of error regarding these fees must be resolved in favor of the judgment.



APPENDIX A

RELATED CASES

**United States District Court,
E.D. California.
James SANFORD, Plaintiff,
v.
GMRI, INC. dba Red Lobster, Defendant.
No. CV.S 04 1535 DFL CMK.
Nov. 14, 2005
Not Reported in F.Supp.2d
2005 WL 4782697**

MEMORANDUM OF OPINION AND ORDER

DAVID F. LEVI, District Judge.

Plaintiff James Sanford ("Sanford") moves for attorneys' fees and costs in the amount of \$18,268.09 following the settlement of his ADA accessibility lawsuit against defendant GMRI, Inc. ("GMRI"). GMRI challenges the reasonableness of the requested fee award. For the following reasons, the court awards \$8,132.67 in attorneys' fees and costs.

I.

Sanford, a quadriplegic, filed his lawsuit on August 5, 2004, claiming that he experienced numerous access barriers on his visits to GMRI's Red Lobster restaurant. On August 18, 2005, the parties filed a settlement agreement and the case was dismissed. Sanford released all of his equitable relief claims in exchange for \$8,000 in monetary damages and GMRI's promise to remove or remedy the remaining architectural barriers. (Mot. at 2.) The resolution of the attorneys' fees issue was left for this motion. (Id.)

II.

The ADA provides that a court "in its discretion, may allow the prevailing party ... a reasonable attorney's fee, including litigation expenses, and costs." 42 U.S.C. § 12205. Courts have held that a prevailing party under this statute "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Barrios v. Cal. Interscholastic Fed'n*, 277 F.3d 1128, 1134 (9th Cir.2002). A plaintiff who enters into a legally enforceable settlement agreement is considered a prevailing party. *Id.*

...

A. Reasonable Hours

...

2. Other Factors

GMRI challenges the reasonableness of Sanford's claimed paralegal fees. (Opp'n at 8-9.) Sanford seeks to recover paralegal-level rates for individuals that Hubbard has previously categorized as legal assistants. Under California Business & Professional Code § 6450(c), a person is qualified as a paralegal if: (1) she possesses a certificate of completion of a paralegal program from an ABA-approved or other accredited post-secondary institution; (2) she possesses a baccalaureate degree and has completed one year of law-related experience under the supervision of a qualified attorney; FN3 or (3) she possesses a high school diploma or GED and has completed three years of law-related experience under the supervision of a qualified attorney before December 31, 2003. GMRI challenges each of the five individuals listed as paralegals.

FN3. A "qualified attorney" is an attorney who has been admitted to and has practiced before federal or California courts for at least three years.



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Not Reported in F.Supp.2d
2005 WL 4782697**

(CONTINUED)

First, it alleges that Sanford must present the court with a “written declaration ... stating that [each individual] is qualified to perform paralegal tasks.” Cal. Bus. & Prof.Code § 6450(c)(3). Hubbard's declaration generally states that each of the individuals is qualified to perform paralegal tasks. (Hubbard Decl. ¶ 22.) Therefore, Sanford has met this requirement.

Next, GMRI challenges each of the individuals based on her failure to meet the § 6450 requirements listed above. (Opp'n at 9-11 .) Sanford concedes that Christa Duncan will not be a qualified paralegal until she receives her certificate of completion from a paralegal program. (Reply at 9.) In addition, it appears that Alisha Petras is not a qualified paralegal because: (1) she does not have a baccalaureate degree or paralegal certification; and (2) Sanford has not shown that she completed three years of law-related experience under a qualified attorney before December 2003.FN4 (Hubbard Decl. ¶ 22.) Finally, Melisa Dotson and Elva Garcia hold baccalaureate degrees, but they did not complete their one year of law-related service under a qualified attorney until June of this year. (Reply at 6; Dotson Decl. ¶ 4.) Therefore, any time attributed to Dotson and Garcia before June 2005 should not have been billed at a paralegal rate.

FN4. Sanford asserts that Petras was billed at a paralegal rate in White and that the same fee should be paid here. However, the issue was not squarely presented in White; therefore, Sanford's argument is unavailing.

On the other hand, GMRI's challenge to Bonnie Vonderhaar should fail. GMRI argues that Vonderhaar does not qualify because Sanford fails to present evidence that she completed one year of legal experience under the supervision of a qualified attorney. (Opp'n at 9-10.) However, she satisfies § 6450(c) because she holds a paralegal certificate from a NALA-approved institution. Therefore, she is a qualified paralegal in California. (Vonderhaar Decl. ¶ 3 .)

In sum, Duncan and Petras should have been categorized as legal assistants for the entire case, and Dotson and Garcia should have been categorized as legal assistants for any time billed before June 2005. Sanford does not provide a proposed fee for legal assistants. Therefore, Sanford can only recover paralegal rates for Vonderhaar's time and Dotson's and Garcia's time post-June 2005. The resulting fee award is \$225.00 out of the total \$1,680.00 billed, or a reduction of \$1,455.00.

FN5.GMRI also argues that the court should reduce any fee award because of the nature of plaintiff's litigation tactics. (Opp'n at 12.) GMRI argues that this case does not raise novel or complex questions of law, is not an “undesirable case,” and does not require a lot of time and labor. (Opp'n at 12.) In White, the court rejected these arguments, finding that GMRI was simply criticizing Hubbard's practice. The same arguments are rejected here.



APPENDIX A

RELATED CASES

**United States District Court,
E.D. California.
Sherie WHITE, Plaintiff,
v.
GMRI, INC., dba Red Lobster, Defendant.
No. CIV. S-04-0620 WBS KJM.
April 12, 2006
Not Reported in F.Supp.2d
2006 WL 947768**

MEMORANDUM AND ORDER RE: PLAINTIFF'S MOTION FOR RECONSIDERATION

WILLIAM B. SHUBB, District Judge.

Pursuant to Federal Rule of Civil Procedure 59(e), plaintiff Sherie White moves for reconsideration of and relief from the court's January 19, 2006 order regarding attorneys' fees, litigation expenses, and costs.

I. Factual and Procedural Background

Plaintiff filed suit in March, 2004, seeking injunctive and declaratory relief, statutory damages, \$100,000 in general and special damages, attorneys' fees, interest, and punitive damages under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12300, and California law. (Compl.) On November 15, 2005, the parties filed a settlement agreement and the case was dismissed. (Stipulated Req. for Dismissal and Order.) Subsequent to the settlement and dismissal, plaintiff filed a motion for attorneys' fees seeking fees and costs in the amount of \$26,736.94. (Pl.'s Mot. for Attys' Fees 2.)

This court awarded a reduced amount of fees, expenses, and costs after, among other things, (1) denying the request of plaintiff's attorneys Lynn and Scottlynn Hubbard (hereinafter referred to as "the Hubbards") for a cost of living increase in their attorneys' fees and awarding them, respectively, \$250 and \$150 an hour as reasonable rates, and (2) denying of all fees billed for Alisha Petras. After the deductions, the court awarded plaintiff a total of \$15,013.19. (Jan. 19, 2006 Order 16.) Plaintiff filed this motion for reconsideration on February 2, 2006. Plaintiff now moves the court to reconsider its findings as to (1) the reasonable hourly rate for the Hubbards and (2) the denial of all fees billed for Ms. Petras.

II. Discussion

C. Fees for Alisha Petras

*4 In the previous order the court also reduced plaintiff's fees for paralegal work done by Ms. Petras because plaintiff failed to provide a written declaration in accordance with California Business and Professions Code §6450(c)(4) (requiring that an alleged paralegal with less than a baccalaureate degree obtain "a written declaration from [a supervising] attorney stating that the person is qualified to perform paralegal tasks"). (Jan. 19, 2005 Order 12-14 .) Plaintiff now argues that the declaration of Max Arnold, submitted with defendants sur-reply, constitutes newly discovered evidence that mandates reconsideration. (See Pl.'s Mot. for Recons. 3.)



APPENDIX A

RELATED CASES

**United States District Court,
E.D. California.
Sherie WHITE, Plaintiff,
v.
GMRI, INC., dba Red Lobster, Defendant.
No. CIV. S-04-0620 WBS KJM.
April 12, 2006
Not Reported in F.Supp.2d
2006 WL 947768**

MEMORANDUM AND ORDER RE: PLAINTIFF'S MOTION FOR RECONSIDERATION
(CONTINUED)

Before a court can grant a motion for reconsideration based on newly discovered evidence, the movant must show: "(1) the evidence was discovered after [judgment], (2) the exercise of due diligence would not have resulted in the evidence being discovered in an earlier stage and (3) the newly discovered evidence is of such magnitude that production of it earlier would likely have changed the outcome of the case." *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992-93 (9th Cir.2001) (quoting *Defenders of Wildlife v. Bernal*, 204 F.3d 920, 929 (9th Cir.2000)). Additionally, the local rules require that the movant state " why the facts or circumstances were not shown at the time of the prior motion." E.D. Cal. R. 78-230(k)(4) (emphasis added).

Plaintiff has not provided this court with newly discovered evidence because the Arnold declaration was submitted to this Court prior to its judgment on the matter. Moreover, the evidence on which plaintiff primarily relies to establish that Ms. Petras was indeed a paralegal, another Arnold declaration made during Ms. Petras' malpractice suit against Mr. Arnold, was available when the court first heard the motion for attorneys' fees. (Petras Decl. Ex. D (Decl. in *Petras v. Arnold*, No. 231932 (Cal. Super Ct. filed June 24, 2004)).) Plaintiff took a risk by not undertaking the "long and arduous" task of unearthing this declaration to support her original motion; the fact that she only appreciated its potential value after the motion was fully briefed does not justify reconsideration of the court's prior order.



APPENDIX A

RELATED CASES

**United States District Court,
E.D. California.**

Tony MARTINEZ, Plaintiff,

v.

G. MARONI CO., dba Church's Chicken # 948, and Maroni-Lutfi Property Management, LP, Defendants.

No. Civ. S-06-1399 DFL GGH.

May 2, 2007

Not Reported in F.Supp.2d

2007 WL 1302739

Memorandum of Opinion and Order

DAVID F. LEVI, United States District Judge.

Plaintiff Tony Martinez moves for attorneys' fees in the amount of \$6,958.25 following his pre-trial settlement with defendants G. Maroni Co., doing business as Church's Chicken, and Maroni-Lutfi Property Management. Defendants challenge the requested fee award. For the following reasons, the court awards \$1804.08 in attorneys' fees and costs.

I.

On June 22, 2006, Martinez filed this action against defendants, alleging forty-one violations of the Americans with Disabilities Act (ADA) and related state statutes. Defendants made a Federal Rule of Civil Procedure 68 offer of judgment to plaintiff on August 16 and filed a motion to dismiss on August 17. On August 23, plaintiff accepted defendants' Rule 68 offer. On September 6, judgment entered based upon the agreement. The parties left the issue of attorneys' fees for this motion.

The forty-one barriers alleged by plaintiff do not directly correspond to the modifications specified in the settlement agreement. Under the settlement agreement, defendants paid plaintiff \$4,001 and agreed to: (1) add tow away parking signs; (2) add a van-accessible parking place with signage; (3) remove outdoor seating; (4) add the proper ISA sticker at the entrance closest to the van-accessible parking; (5) remove a partition in the women's restroom; (6) lower the toilet paper dispensers in both the men's and women's restrooms; and (7) check and maintain the sinks in the men's and women's restrooms for proper knee clearance and insulation.

Under a prior settlement agreement with a different plaintiff in a separate ADA action, defendants agreed to remedy "the lack of a van-accessible parking space" at the restaurant. When plaintiff filed this action, the specified time in which to remedy barriers under the prior agreement had not expired.

II.

The ADA and Unruh Civil Rights Act provide that a prevailing party should recover reasonable attorney's fees.
...



APPENDIX A

RELATED CASES

**United States District Court,
E.D. California.
Tony MARTINEZ, Plaintiff,
v.**

**G. MARONI CO., dba Church's Chicken # 948, and Maroni-Lutfi Property Management, LP, Defendants.
No. Civ. S-06-1399 DFL GGH.
May 2, 2007
Not Reported in F.Supp.2d
2007 WL 1302739**

Memorandum of Opinion and Order
(CONTINUED)

Plaintiff seeks \$5,950 for 30.9 attorney hours, \$491.25 for 6.55 paralegal hours, and \$517 for costs and expenses, for a total requested award of \$6,958.25. Defendants argue that plaintiff's fee should be reduced in the following manner: ... (2) all paralegal time should be disallowed[.]

B. Paralegal Fees

Plaintiff seeks compensation for paralegal work at \$75 per hour. Defendants argue that paralegal fees should not be reimbursed because plaintiff's paralegal declarations do not state the required qualifications under Cal. Bus. & Prof.Code § 6450 and the requested fees relate to mostly secretarial or administrative tasks. The court grants paralegal fees but reduces them based upon the substance of work performed. The court previously found paralegal Bonnie Vonderhaar qualified under § 6450. Sanford, 2005 WL 4782697, at *4. Although it previously found Crista Duncan unqualified, *id.*, she since has satisfied § 6450 through completion of the U.C. Davis paralegal program. As for the substance of the work billed, plaintiff seeks fees at the paralegal rate for copying, faxing, and mailing documents. “[F]iling and serving documents are secretarial tasks that cannot be billed at a paralegal rate, regardless of who performs them.” Martinez, 2005 WL 3287233, at *7. The court reduces plaintiff's paralegal fees by 2.2 hours for tasks more appropriately handled by a secretary than a paralegal.FN2

FN2. The court denies paralegal fees for the following work: Crista Duncan, 7/03/06 (both entries); Crista Duncan, 7/14/06; Bonnie Vonderhaar, 7/27/06 (both entries, with the exception of 0.2 hours allowed for meeting with calendar clerk); Crista Duncan, 8/03/06.



APPENDIX A

RELATED CASES

**United States District Court,
C.D. California.
Jerry DORAN
v.
VICORP RESTAURANTS, INC., et al.
No. SACV 04-506 JVS(EX).
Sept. 20, 2005
407 F. Supp.2d 1120**

Background: Patron, a paraplegic who required use of a wheelchair and a mobility-equipped vehicle when traveling in public, brought action against corporation that operated a restaurant in which patron encountered architectural barriers that denied him full and equal access to the establishment, seeking declaratory, injunctive, and monetary relief, and alleging claims for violation of the Americans with Disabilities Act (ADA), violation of California's Health and Safety Code, violation of California's Unruh Act, violation of California's Unfair Business Practices Act, and negligence. After parties entered into a settlement agreement in which patron released all claims in exchange for specific injunctive relief, \$5,000 in monetary damages, and patron's reasonable costs and attorneys' fees, patron moved for attorneys' fees, including litigation expenses and costs.

Holdings: The District Court, Selna, J., held that:

...
(3) hourly rate charged for work performed by legal assistants was not reasonable, and, thus, would be reduced.
...

Defendants also ask the Court to adjust the hourly rate charged by the legal assistants in this matter. As noted above, Doran seeks an award of \$7,425.00 for this time, which represents 43.75 hours @ \$75.00/hr. + 63.75 hours @ \$65.00/hr. (Hubbard Decl., Exh. A.) According to Defendants, some of the time included in this calculation was spent on clerical tasks that either should not be billed, or should be billed at a lower rate of \$30.00/hr. (Opp'n, pp. 7-9.) The Court agrees and finds that a reasonable rate for time spent on clerical tasks is \$30.00/hr. Although it may be correct that legal assistants are now considered paralegals (Cal. Bus. & Prof. Code, § 6450), clerical work should be compensated at appropriate rates for that type of work regardless of who performs the tasks.FN5

FN5. Clerical tasks are not among the duties for a paralegal enumerated in Section 6450(a) of the Business & Professions Code.



APPENDIX A

RELATED CASES

**United States District Court,
E.D. California.
Tony MARTINEZ, Plaintiff,
v.
LONGS DRUG STORES, INC., Defendant.
No. CIVS031843DFLCMK.
Nov. 28, 2005
Not Reported in F.Supp.2d
2005 WL 3287233**

MEMORANDUM OF OPINION AND ORDER

LEVI, J.

Plaintiff Tony Martinez moves for attorneys' fees in the amount of \$34,967.06 following the disposition of his ADA suit against defendant Longs Drug Stores, Inc. ("Longs"). Longs challenges the reasonableness of the requested fee award. For the reasons discussed below, Martinez is awarded \$11,972.47 in attorneys' fees and expenses.

I.

Martinez filed this suit on September 5, 2003 against Longs, Arden Way No. 2, LLC ("Arden"), and several unnamed defendants claiming that he "encountered architectural barriers that denied him full and equal access" to Longs Drug Store # 463 (the "store"). (Compl. ¶¶ 1, 18.) In the complaint, Martinez did not list the barriers that he encountered at the store. However, in his August 6, 2004 deposition, Martinez described eight specific barriers that allegedly hindered his access to the store. Four days later, Martinez's expert completed an accessibility report that identified twenty-one violations of the ADA Accessibility Guidelines ("ADAAG") at the store.

Martinez and Longs each moved for summary judgment on the twenty-one alleged violations. See Martinez v. Longs Drug Stores, CIV-S-03-1843 DFL CMK slip op. at 1 (E.D.Cal. Aug. 25, 2005). Martinez's motion was granted on five of the alleged barriers. Id. at 15. Longs' motion was granted on the other sixteen. Id. The summary judgment order disposed of all issues in the case except for an award of attorneys' fees. Id.

Martinez now moves for attorneys' fees in the amount of \$27,196.25 and expenses in the amount of \$7,770.81. (Mot. at 4.) Longs opposes the motion. The matter was submitted on the papers.

...

K. Unreasonable Charges

Finally, Longs argues that awarding fees for the following charges would be unreasonable: (1) paralegal work that was secretarial in nature; (2) calendar reviews and meetings by support staff; ...

1. Paralegal Work

Longs argues that it is unreasonable for Martinez to request fees at paralegal rates for time spent filing and serving documents because those are secretarial tasks. (Opp'n at 11-12.) Martinez claims that all of the paralegal time for which he seeks an award was spent on work that was appropriate for paralegals. (Reply at 12.)

In his declaration, Hubbard's associate describes paralegal work as drafting complaints, preparing joint status reports, propounding discovery, and preparing motions, statements, and expert disclosures.FN3 (Scott H. Decl. ¶¶ 29 -30.) He does not mention the appropriateness of having paralegals serve or file documents.



APPENDIX A

RELATED CASES

**United States District Court,
E.D. California.
Tony MARTINEZ, Plaintiff,
v.
LONGS DRUG STORES, INC., Defendant.
No. CIVS031843DFLCMK.
Nov. 28, 2005
Not Reported in F.Supp.2d
2005 WL 3287233**

MEMORANDUM OF OPINION AND ORDER (CONTINUED)

FN3. This description is in-line with that provided by the U.S. Department of Labor. In its Occupational Outlook Handbook, the Labor Department describes paralegal work as follows: One of a paralegal's most important tasks is helping lawyers prepare for closings, hearings, trials, and corporate meetings. Paralegals investigate the facts of cases and ensure that all relevant information is considered. They also identify appropriate laws, judicial decisions, legal articles, and other materials that are relevant to assigned cases. After they analyze and organize the information, paralegals may prepare written reports that attorneys use in determining how cases should be handled. Should attorneys decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments, draft pleadings and motions to be filed with the court, obtain affidavits, and assist attorneys during trials. Paralegals also organize and track files of all important case documents and make them available and easily accessible to attorneys. In addition to this preparatory work, paralegals also perform a number of other vital functions. For example, they help draft contracts, mortgages, separation agreements, and trust instruments. They also may assist in preparing tax returns and planning estates. See Bureau of Labor Statistics, Occupational Outlook Handbook, available at <http://www.bls.gov/oco/ocos114.htm>. Filing and serving documents appear to be tasks for which paralegals are overqualified.

In *Missouri v. Jenkins*, 491 U.S. 274, 288 n. 10, 109 S.Ct. 2643 (1989), the Supreme Court stated that "purely clerical or secretarial tasks should not be billed at a paralegal rate, regardless of who performs them." The Ninth Circuit interpreted this statement as allowing prevailing plaintiffs in fee-shifting actions to recover fees for secretarial services. *Burt v. Hennessey*, 929 F.2d 457, 459 (9th Cir.1991).

The court finds that filing and serving documents are secretarial tasks that cannot be billed at a paralegal rate, regardless of who performs them. Martinez has the burden of establishing a reasonable rate for such activity. The rate cannot be the same as that charged for paralegal work. *Missouri*, 491 U.S. at 288 n. 10. Because Martinez failed to establish a reasonable rate for this time, the court denies his request for fees for the 8.2 hours of time a paralegal spent filing and serving various documents.

2. Calendar Reviews and Meetings

Longs argues that the thirteen billing entries described as "Meet with calendar clerk re Review and update calendar" are improperly billed meetings between support staff. (Opp'n at 12.) It requests that all time charged for these meetings be cut from the fee award. The court finds that it is reasonable for a legal professional to keep the calendar clerk informed of developments in the case.

However, a paralegal billed eighteen minutes for nine of these meetings and ninety minutes for one. This length of time is too long for a legal professional to spend updating a calendar clerk. Therefore, the court will exercise its discretion and reduce the time awarded for these meetings to .2 hours per meeting. As a result, the award for paralegal time will be reduced by 2.2 hours.



APPENDIX A

RELATED CASES

**United States District Court,
E.D. California.
Tony MARTINEZ, Plaintiff,
v.
LONGS DRUG STORES, INC., Defendant.
No. CIVS031843DFLCMK.
Nov. 28, 2005
Not Reported in F.Supp.2d
2005 WL 3287233**

MEMORANDUM OF OPINION AND ORDER
(CONTINUED)

Longs also challenges the charges for support staff “meetings” and a fax that a paralegal sent to Hubbard on 2/01/05. (Id. at 13.) This objection is unfounded. Only a few time entries could be construed as meetings for support staff, and the records reflect that only one person billed time for each alleged meeting. The court finds that these entries are reasonable and denies Longs' request to strike them from the award.

*8 Billing a paralegal's time to send a fax to a partner is unreasonable. This is secretarial work and, as discussed above, should be billed at a lesser rate. Again, Martinez has failed to satisfy his burden of producing a reasonable rate for such work. Therefore, the .3 hours of paralegal time will be removed from the award.



APPENDIX A

RELATED CASES

RECOVERABILITY OF PARALEGAL FEES IN GENERAL

Supreme Court of the United States

MISSOURI, et al., Petitioners

v.

Kalima JENKINS, by her friend, Kamau AGYEI, et al.

No. 88-64.

Argued Feb. 21, 1989

Decided June 19, 1989

491 U.S. 274, 109 S.Ct. 2463

Syllabus¹

In this major school desegregation litigation in Kansas City, Missouri, in which various desegregation remedies were granted against the State of Missouri and other defendants, the plaintiff class was represented by a Kansas City lawyer (Benson) and by the NAACP Legal Defense and Educational Fund, Inc. (LDF). Benson and the LDF requested attorney's fees under the Civil Rights Attorney's Fees Awards Act of 1976 (42 U.S.C. § 1988), which provides with respect to such litigation that the court, in its discretion, may allow the prevailing party, other than the United States, "a reasonable attorney's fee as part of the costs." In calculating the hourly rates for Benson's, his associates', and the LDF attorneys' fees, the District Court took account of delay in payment by using current market rates rather than those applicable at the time the services were rendered. Both Benson and the LDF employed numerous paralegals, law clerks, and recent law graduates, and the court awarded fees for their work based on market rates, again using current rather than historic rates in order to compensate for the delay in payment. The Court of Appeals affirmed.

Held:

...
2. The District Court correctly compensated the work of paralegals, law clerks, and recent law graduates at the market rates for their services, rather than at their cost to the attorneys. Clearly, "a reasonable attorney's fee" as used in § 1988 cannot have been meant to compensate only work performed personally by members of the bar. Rather, that term must refer to a reasonable fee for an attorney's work product, and thus must take into account the work not only of attorneys, but also the work of paralegals and the like. A reasonable attorney's fee under § 1988 is one calculated on the basis of rates and practices prevailing in the relevant market and one that grants the successful civil rights plaintiff a "fully compensatory fee," comparable to what "is traditional with attorneys compensated by a fee-paying client." In this case, where the practice in the relevant market is to bill the work of paralegals separately, the District Court's decision to award separate compensation for paralegals, law clerks, and recent law graduates at prevailing market rates was fully in accord with § 1988. Pp. 2469-2472.

¹The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader.



APPENDIX A

RELATED CASES

**United States Court of Appeals,
Eleventh Circuit.
Marie Lucie JEAN, et al., Plaintiffs-Appellees,
v.
Alan C. NELSON, et al., Defendants-Appellants.
No. 86-5887
Dec. 27, 1988
863 F.2d 759**

CLARK, Circuit Judge:

In another chapter of what has been a long, complex, and bitterly contested lawsuit, the United States has challenged an award of attorney's fees and costs pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. Supplied with the Supreme Court's first EAJA decision, *Pierce v. Underwood*, 487 U.S. 552, 108 S.Ct. 2541, 101 L.Ed.2d 490 (1988), we have concluded that the district court did not abuse its discretion in finding that the plaintiffs are entitled to an award of attorney's fees, expenses and costs.

...

The district court awarded reimbursement for time spent by paralegals and law clerks where the work was that normally done by an attorney. The hourly rate awarded was \$40. This is the rate at which the law firm whose paralegals and clerks were involved bills its clients. The government challenges the rate awarded, and contends that paralegal time is recompensable only at the actual cost to the plaintiffs' counsel. In the context of a Title VII case, we have held that paralegal time is recoverable as "part of a prevailing party's award for attorney's fees and expenses, [but] only to the extent that the paralegal performs work traditionally done by an attorney." *Allen v. United States Steel Corp.*, 665 F.2d 689, 697 (5th Cir. Unit B 1982). The same analysis applies here. To hold otherwise would be counterproductive because excluding reimbursement for such work might encourage attorneys to handle entire cases themselves, thereby achieving the same results at a higher overall cost. See *Berman v. Schweiker*, 531 F.Supp. 1149, 1154-55 (N.D.Ill.1982), *aff'd*, 713 F.2d 1290 (7th Cir.1983). We affirm the award of law clerk and paralegal fees.



APPENDIX A

RELATED CASES

**United States Court of Appeals,
Federal Circuit.
RICHLIN SECURITY SERVICE COMPANY, Appellant,**

v.

Michael CHERTOFF, Secretary of Homeland Security, Appellee.

No. 2006-1055

Dec. 26, 2006

Rehearing En Banc Denied April 3, 2007

472 F.3d 1370

Facts

Gilbert J. Ginsburg is an attorney who began representing Richlin in 1994 after the underlying case had been litigated for some time. Over the course of his representation, Ginsburg used paralegals and separately billed his client (Richlin) for their services at market rates. Between 1994 and May 23, 2003 (when Richlin filed its EAJA application), Ginsburg's paralegal billing rates increased from \$50 per hour to \$80 per hour to \$95 per hour to \$135 per hour.

EAJA provides: [a]n agency that conducts an adversary adjudication shall award, to a prevailing party ... Fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust. 5 U.S.C. § 504(a)(1) (emphasis added). Subsection 504(b)(1) defines the term "fees and expenses": "fees and other expenses" includes the reasonable expenses of expert witnesses, *1373 the reasonable cost of any study, analysis, engineering report, test, or project which is found by the agency to be necessary for the preparation of the party's case, and reasonable attorney or agent fees (The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the agency involved, and (ii) attorney or agent fees shall not be awarded in excess of \$125 per hour unless the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee.) (emphasis added). To recover "fees and expenses," the prevailing party must submit an application to the agency within 30 days of "a final disposition." 5 U.S.C. § 504(a)(2). The application must include "an itemized statement from any attorney, agent, or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed." *Id.*

In the EAJA application, Richlin sought reimbursement for \$51,793.75 in attorney's fees for work on the underlying cases and \$14,225.00 in attorney's fees for preparing the EAJA application. Richlin also applied for reimbursement of paralegal services at the rate billed to Richlin for paralegal time, with the exception of services for the period after June 1, 2004 (when Ginsburg's billing rate for paralegals had increased to \$135 per hour). Although it is unclear how Richlin computed the amount claimed for paralegal services, it appears that for services performed after June 1, 2004, Richlin capped the fee request at \$95 per hour. Richlin ultimately sought reimbursement for \$45,141.10 for 523.8 hours of paralegal time for work on the underlying cases. It also sought an additional \$6,760.00 for 68.2 hours of paralegal work preparing the EAJA application.



APPENDIX A

RELATED CASES

**United States Court of Appeals,
Federal Circuit.
RICHLIN SECURITY SERVICE COMPANY, Appellant,
v.
Michael CHERTOFF, Secretary of Homeland Security, Appellee.
No. 2006-1055
Dec. 26, 2006
Rehearing En Banc Denied April 3, 2007
472 F.3d 1370**

(CONTINUED)

On June 30, 2005, the Board issued a decision finding that “Richlin ha[d] established that it meets the size and net worth requirements for an EAJA award and ... that Richlin was a prevailing party.” The Board then concluded that the government's denial of Richlin's claim was not “substantially justified” under EAJA. See Richlin Sec. Serv. Co., DOTCAB Nos. 3034E and 3035E, 05-2 BCA ¶ 33,021 (2005). The Board found that the government's argument that Richlin bore the risk of the mutual mistake of misclassifying its employees was not substantially justified because the contracts expressly placed the risk of misclassification on the government. Accordingly, the Board held that Richlin was entitled to recover attorney's fees, awarding \$43,313 in attorney's fees for the underlying cases and \$7,126 in attorney's fees for the preparation of the EAJA application.

Regarding reimbursement for paralegal services, the Board reasoned that EAJA does not expressly provide for the reimbursement of paralegal services at the market rate and that the common definition of “attorney” does not include paralegals. Moreover, the Board noted that EAJA's legislative history defines “expenses” to include “paralegal time (billed at cost).” S.Rep. No. 98-586, 98th Cong., *1374 2d Sess., at 15 (Aug. 8, 1984). As there was no information in the record before the Board regarding the actual cost to Ginsburg of the paralegal services, the Board took “judicial notice of paralegal salaries in the Washington D.C. area as reflected on the internet.” The Board awarded paralegal expenses at a rate of \$35 per hour, which it found to be “a reasonable cost to the firm.” Accordingly, for paralegal services in connection with underlying cases, the Board awarded \$9,394. For services in connection with the EAJA application, the Board awarded \$1,200.

Holdings

The Court of Appeals, held that:

- (1) amounts for services provided by paralegals not authorized to represent clients may be recovered under EAJA only at cost as part of recovery of “expenses,” and
- (2) paralegal services are not included in “attorney's fees” under the EAJA.

THIS CASE IS ON APPEAL TO THE UNITED STATES SUPREME COURT. ORAL ARGUMENT WAS HELD ON MARCH 19, 2008. THE COURT'S OPINION WILL PROBABLY BE ISSUED WITHIN THE NEXT FEW MONTHS.



APPENDIX A

RELATED CASES

Court of Appeal, Fourth District, Division 2, California.
Judi L. GUINN, et al., Plaintiffs and Appellants,
v.
James L. DOTSON, Defendant and Appellant.
No. E010247
March 15, 1994
23 Cal.App.4th 262, 28 Cal.Rptr.2d 409

I

PROCEDURAL BACKGROUND

Appellants, Judi L. Guinn and Steven L. Guinn (Guinns), filed a complaint for negligence, dangerous condition of public property, trespass, *265 nuisance, inverse condemnation, and negligent infliction of emotional distress against respondent, James L. Dotson (Dotson), the City of Beaumont (City) and certain contractors regarding the construction of a street in the city

...

After sustaining the demurrer to the second amended complaint without leave to amend, Judge Phillips signed the judgment of dismissal as to defendant Dotson.

Thereafter, Dotson filed a motion for an award of expenses, including attorney's fees, under section 411.35, subdivision (h), requesting \$7,813.75. Guinns filed an opposition claiming they had complied with section 411.35 by filing a certificate of merit. The court ordered Guinns and Richard to pay attorney's fees in the amount of \$4,987.50 to Dotson. In its ruling granting the motion and in its subsequent order, the court did not award to Dotson as expenses paralegal fees nor did it award to Dotson attorney's fees and paralegal fees for time spent preparing the motion for an award of expenses.

...

In his appeal, Dotson contends the court abused its discretion in refusing to award to him as reasonable expenses under section 411.35, subdivision (h), paralegal fees and also attorney's fees and paralegal fees incurred in making and arguing the motion for an award of expenses. Amicus briefs were filed in support of Dotson's appeal by California Council of Civil Engineers and Land Surveyors (civil engineers) and National Federation of Paralegal Associations, Inc. The latter brief was joined by Legal Assistants Management Association, California Alliance of Paralegal Associations, Central Coast Legal Assistants Association, Inland Counties Association of Paralegals, Los Angeles Paralegal Association, Sacramento Association of Legal Assistants, San Diego Association of Legal Assistants and San Francisco Association of Legal Assistants (paralegal associations).

...



APPENDIX A

RELATED CASES

Court of Appeal, Fourth District, Division 2, California.

Judi L. GUINN, et al., Plaintiffs and Appellants,

v.

James L. DOTSON, Defendant and Appellant.

No. E010247

March 15, 1994

23 Cal.App.4th 262, 28 Cal.Rptr.2d 409

(CONTINUED)

B. Dotson's Appeal

1. Paralegal Fees as an Element of Attorney's Fees in an Award of Reasonable Expenses, Including Attorney's Fees under Section 411.35, Subdivision (h)

Dotson contends that the trial court, in awarding attorney's fees as reasonable expenses under section 411.35, abused its discretion in not including reasonable fees for paralegals employed by Dotson's attorneys. The trial court without hearing argument on the issue simply stated: "... Counsel [Dotson's attorney], I want you to prepare an order, but I want you to go through your declaration on your attorney fees and delete the law clerk *268 time and also the time charged for the preparation of this motion. I do not believe that's the intent of that statute." (Emphasis added.)

Subdivision (h) of section 411.35 states, "If the trial judge finds there has been a failure to comply with this section, the court may order a party, a party's attorney, or both, to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of the failure to comply with this section."

An award of attorney's fees is within the trial court's discretion and that decision will be reversed only if there has been a prejudicial abuse of discretion. (*Baggett v. Gates* (1982) 32 Cal.3d 128, 142-143, 185 Cal.Rptr. 232, 649 P.2d 874.) In this case, however, it appears that the trial court determined that the attorney fees insofar as they included paralegal fees could not be awarded as a matter of law based on its interpretation of section 411.35, subdivision (h). Unfortunately, the court did not state its reasoning in arriving at that conclusion.

To determine whether the Legislature intended "attorney's fees," as used in subdivision (h) of section 411.35, to include paralegal fees as an element, we may look to the judicial construction of similar language in an analogous statute. (*Belridge Farms v. Agricultural Labor Relations Bd.* (1978) 21 Cal.3d 551, 557, 147 Cal.Rptr. 165, 580 P.2d 665.) In *Bussey v. Affleck* (1990) 225 Cal.App.3d 1162, 275 Cal.Rptr. 646, the court interpreted the language of section 1033.5 which defined recoverable costs including attorney's fees authorized by statute. That court held that where a contract provides for payment of costs and attorney's fees, a court may allow as attorney's fees any expenses ordinarily billed to a client which are not included in the overhead component of the attorney's hourly rate. (*Id.*, at pp. 1165-1166, 275 Cal.Rptr. 646.) In the present case, Dotson was billed by his attorneys separately for paralegal fees at an hourly rate. This was in addition to attorney's fees which were billed at a separate hourly rate. There was no evidence that the attorney's hourly rate included as an overhead component the costs to the attorney for his paralegal employees.

A fee award under 42 U.S.C. § 1988, which provides for a reasonable attorney's fee as part of costs, includes paralegal fees billed at market rate. (*Missouri v. Jenkins* (1989) 491 U.S. 274, 284-288, 109 S.Ct. 2463, 2469-2471, 105 L.Ed.2d 229.) This award depends on the prevailing practice in a given area and should fully compensate the attorney for his or *269 her work product. (*Ibid.*) As observed in *Sundance v. Municipal Court*



APPENDIX A

RELATED CASES

Court of Appeal, Fourth District, Division 2, California.

Judi L. GUINN, et al., Plaintiffs and Appellants,

v.

James L. DOTSON, Defendant and Appellant.

No. E010247

March 15, 1994

23 Cal.App.4th 262, 28 Cal.Rptr.2d 409

(CONTINUED)

1987) 192 Cal.App.3d 268, 237 Cal.Rptr. 269, awards of attorney's fees for paralegal time have become commonplace in California and are appropriate under section 1021.5 which provides for an award of attorney's fees to a successful party in an action to enforce an important right affecting the public interest. (*Id.*, at p. 274, 237 Cal.Rptr. 269.) Further, in *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 951, 218 Cal.Rptr. 839, the court construed "reasonable attorney's fees" as used in section 1036 which provides for an award of such to a successful plaintiff in an inverse condemnation suit, to include "necessary support services for attorneys, e.g., ... paralegal services."

The amici curiae have attached numerous exhibits to their briefs to support their argument that the Legislature intended to include in the "generic" phrase "attorneys fee," fees of paralegal assistants employed by the attorney and who performed services related to the instant case. The Guinns interposed no objection to these briefs or the supporting exhibits. We, therefore, will take judicial notice of the exhibits. (Evid.Code, §§ 452, 459.)

Exhibit 44 to Paralegal Associations' amicus brief is a 1991 salary survey of members of the Inland Counties (Riverside and San Bernardino counties) Association of Paralegals. While not a scientifically conducted survey, the results reveal that 81.5 per cent of those paralegals responding reported the time for their services is billed to clients at a competitive hourly market rate; not in the amount of their wages as part of the overhead of the employing attorneys. As for Guinns' argument that recovery of paralegal fees would allow double recovery because the **414 paralegals are part of the attorney's cost of operation, there is no windfall if separate billing of paralegal time is consistent with market rates and practices. (*Missouri v. Jenkins*, supra, 491 U.S. at pp. 284-288, 109 S.Ct. at pp. 2469-2471.)

It appears that the prevailing practice in the Inland Counties is to bill separately for paralegal service time at a reasonable market value rate. An award of attorney's fees which does not compensate for paralegal service time would not fully compensate the attorney. (See, Annot., *Attorneys Fees: Cost of Services Provided by Paralegals or the Like as Compensable Element of Award in State Court.* (1989) 73 ALR4th 938.)

Therefore, we conclude that "attorney's fees" as used in section 411.35, subdivision (h) includes as a compensable element thereof reasonable paralegal fees billed to Dotson in this case. We further conclude that as to those paralegal services deemed reasonable by the court, it should apply as a reasonable fee rate for such services the fair market rate for similar services *270 in Riverside and San Bernardino Counties because the paralegal services to Dotson were provided in Riverside County. The trial court erred in not considering reasonable paralegal services to be awardable as part of the attorney's fees component of reasonable expenses under section 411.35, subdivision (h).



APPENDIX A

RELATED CASES

Court of Appeal, Second District, Division 4, California.
Robert SUNDANCE, et al., Plaintiffs, Respondents and Cross-Appellants,
v.
MUNICIPAL COURT for the Los Angeles Judicial District of Los Angeles County, et al., Defendants,
Appellants;
City of Los Angeles, et al., Defendants and Respondents;
The PEOPLE of the State of California, Real Party in Interest.
B017363.
May 29, 1987
Review Denied Aug. 20, 1987
192 Cal.App.3d 268, 237 Cal.Rptr. 269

This is an appeal from the award of \$536,000 in attorneys' fees to plaintiffs in a class action. The defendants, other than the City of Los Angeles, attack the award. The plaintiffs cross-appeal from the same award. We reverse and remand.

In 1975, the plaintiffs-four public inebriates and one taxpayer-brought a class action suit against various governmental entities in the City and County of Los Angeles to challenge the prosecution of public inebriates under California's public intoxication statute (Pen.Code, § 647, subd. (f)). This litigation resulted in a court order significantly changing the procedures for the incarceration and treatment of public inebriates. It is now final. (See *Sundance v. Municipal Court* (1986) 42 Cal.3d 1101, 232 Cal.Rptr. 814, 729 P.2d 80.) In this appeal, the County defendants contest the trial court's award to plaintiffs of \$536,000 in attorneys' fees under Code of Civil Procedure section 1021.5. They contend that the current appeal is premature, that the instant action did not result in a benefit to a large class of persons, and that the apportionment of liability for payment between the City and County equally is improper. The plaintiffs cross-appeal, contending that the trial court erroneously excluded from the award 458 hours of attorneys' time expended on legal theories on which the plaintiffs did not prevail, and 850 hours of paralegal time, which was volunteered.

...
The trial court also declined to award plaintiffs compensation for 850 hours of paralegal time because it was of unknown value and volunteered. In recent years, awards of attorneys' fees for paralegal time have become commonplace, largely without protest. (See, e.g., *Citizens Against Rent Control v. City of Berkeley* (1986) 181 Cal.App.3d 213, 232, 226 Cal.Rptr. 265; *County of San Luis Obispo v. Abalone Alliance* (1986) 178 Cal.App.3d 848, 869, 223 Cal.Rptr. 846; *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 951, 218 Cal.Rptr. 839; *Beach Colony II v. California Coastal Com.* (1985) 166 Cal.App.3d 106, 110, 212 Cal.Rptr. 485; *Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1002, 1005, 185 Cal.Rptr. 145.) Moreover, it is now clear that the fact that services were volunteered is not a ground for diminishing an award of attorneys' fees. As *Serrano v. Unruh*, supra, 32 Cal.3d at 640-644, 186 Cal.Rptr. 754, 652 P.2d 985, indicated, the amount of the award is to be made on the basis of the reasonable market value of the services rendered, and not on the salary *275 paid. Exclusion of paralegal time from the award on the ground that it was volunteered, therefore, was improper. On the record before us, however, we are unable to address the question of whether the amount of paralegal time was reasonably expended in the course of this litigation. We leave this issue to be addressed by the trial court on remand.



APPENDIX B

FREQUENTLY ASKED QUESTIONS (FAQs)

NOTE: AB 1761 was codified in 2000 as Business and Professions Code Section 6450, et seq. and became effective January 1, 2001.

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California Legislature



MARILYN C. BREWER
ASSEMBLYWOMAN, SEVENTIETH DISTRICT

COMMITTEES
APPROPRIATIONS
HUMAN SERVICES

MEMORANDUM

Date: November 2, 2000
To: The Archived Record of AB 1761
From: Assemblywoman Marilyn Brewer
Regarding: The Most Frequently Asked Questions Regarding
AB 1761

On September 13, 2000, Governor Gray Davis signed AB 1761; a bill which defines the term paralegal/legal assistant as an individual who works under the supervision of an attorney who must meet certain educational criteria and must complete continuing education. The intent of this bill is to differentiate those who work under the supervision of an attorney and those who provide services directly to the public. For those who work under the supervision of an attorney, the only intended change to the profession is a higher standard of education and mandatory continuing education to utilize the title of paralegal. The duties of those who work under the supervision of an attorney have not changed and the bill codifies existing case law.

The following is a list of the most frequently asked questions since the codification of the bill by Governor Davis.

Registration:

1. *Who do I have to be registered with to call myself a paralegal?*

AB 1761 does not require paralegals to be registered. Only Legal Document Assistants (LDAs) are required to register. LDAs are those who work directly for the public and type legal documents and are governed by Business & Professions Code Chapter 5.5.

2. *Who is the governing body?*

AB 1761 does not create a governing body for the paralegal profession. However, the bill does create a new crime, and therefore, will be enforced by the courts and the consumer who brings a cause of action against an individual who violated this law. In essence, it is the consumer who will enforce the provisions of AB 1761.

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Provided courtesy of the California Alliance of Paralegal Associations (CAPA)
STRENGTH THROUGH STATEWIDE ALLIANCE



APPENDIX B

FAQs

(CONTINUED)

Education:

1. *What if I do not possess a paralegal certificate but I have worked for attorneys for over 10 years? Can I call myself a paralegal? Will I be grandfathered in?*

The new Business & Professions Code Section 6450(c)(4) specifically grandfathers in paralegals who have been trained by and have been working for an attorney for at least three years by January 1, 2004. A signed declaration by the paralegal's supervising attorney is required under the code. This declaration should be kept with the paralegal and the paralegal's supervising attorney.

2. *To whom should I certify that I have met the initial education requirements of Business & Professions Code 6450?*

AB 1761 does not expressly require a paralegal to certify their education with anyone or a state entity. However, it does require paralegals to keep a record of their certifications.

Practical application of the law dictates that a paralegal would have to certify their education with the supervising attorney since he/she is held liable by the paralegal's actions. In addition, paralegals should be prepared to certify their qualifications to clients, in case the question ever arises.

3. *What if my school was not ABA approved before I graduated? Is my paralegal certificate invalid?*

Your paralegal certificate is valid under Business & Professions Code Section 6450(c)(1)(2), as long as it meets the following criteria:

- (1) A certificate of completion of a paralegal program approved by the American Bar Association;
 - (2) A certificate of completion of a paralegal program at, or a degree from a post-secondary institution that requires the successful completion of a minimum of 24 semester, or equivalent, units in law-related courses and that has been accredited by a national regional accrediting organization or approved by the Bureau for Private Post-secondary and Vocational Education.
4. *What if I come from another state to work in California? Can I qualify under the code?*

There would be no problem with a paralegal coming from another state to work in California as long as the educational requirements are met.

5. *What if I work for a national law firm in another state other than California, can my firm send me to California to work on specific cases with them? Will I have to certify continuing education?*

It would be acceptable if the paralegal is temporarily working on a case for its law firm which is located out of California. For example, if the firm is in both California and Arizona,



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FAQs

(CONTINUED)

and the California firm has a need for additional help on a specified case, the firm may send an Arizona paralegal to work on the case, as long as the paralegal is working for a California Attorney who is a member of the State Bar of California and that paralegal qualifies as a paralegal from the state in which they came. It would be acceptable for a law firm to send an "out of state" paralegal to work on specific cases. Continuing education for those working in California temporarily is recommended but is not mandatory.

Continuing Education

1. *What happens if the continuing education criteria are not met?*

If the educational criteria are not met by the paralegal, the individual is in violation of the Code.

2. *To whom does the paralegal certify his or her continuing education?*

AB 1761 requires the paralegal to certify his or her continuing education with his or her supervising attorney. There is no state or local agency or association who will monitor the requirements. Paralegals should keep a record of their certifications.

3. *Who will monitor paralegals to ensure these qualifications are met? What governing body will enforce the code?*

No governing body has been created to monitor the continuing education of paralegals. Again, it was not the intent of the author to create a governing body for the paralegal profession. However, the bill does create a new crime; and therefore, will be enforced by the courts and the consumer who brings a cause of action against an individual who violated the provisions of Business & Professions Code 6450.

4. *What if I am a Certified Legal Assistant (CLA) with the National Association of Legal Assistants, or a Registered Paralegal (RP) with the National Federation of Paralegal Associations? Can I use those credits for my continuing education?*

The National Association of Legal Assistants has a voluntary certification test (Certified Legal Assistant or CLA) which requires continuing education to keep the credential. The National Federation of Paralegal Associations also has a voluntary test (PACE) which also requires continuing education. California paralegals must now maintain continuing education requirements which are approved by the State Bar of California (MCLE credits). Historically, both the National Association of Legal Assistants and the National Federation of Paralegal Associations have honored MCLA credits. However, it is still ultimately the decision of either association as to what courses will be accepted.

5. *Can I utilize self-study programs if they are MCLE approved by the State Bar of California?*

Yes. As long as the courses meet the requirements of Business & Professions Code 6070.



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FAQs

(CONTINUED)

6. *What if I write a legal article or teach a legal course? Will it meet the criteria as continuing education?*

No. The Code is specific in regards to its continuing educational criteria.

School Criteria

1. *What if my school became ABA approved after I graduated? Can I still call myself a paralegal?*

Yes, as long as the educational criteria are met. If the educational criteria are not met, then you will need to qualify under Section (c)(2)(3) or (4).

2. *What if I come from out of state?*

In order to become a paralegal in California, those coming from out of state must meet the qualifications of California paralegals, unless they are working with their law firm on a temporary or loan basis.

3. *If someone graduates from a non-ABA accredited school, but the program has 21 units, can that student return to school for the 3 additional units to meet the requirement?*

Yes. The school should then reissue a new certificate to those who have completed the 3 additional units.

4. *What if someone is in the process of meeting the training requirements but is not totally completed with the training by 2003, as required by AB 1761? For instance, the person has 2 years and ten months of training, can they call themselves paralegals?*

No. The requirements are clear.

Duties:

1. *Have the duties a paralegal performed prior to the enactment of the bill changed?*

No. The duties a paralegal performs under the supervision of an attorney have not changed, nor has the level of supervision.

2. *What are the duties a paralegal may perform?*

A paralegal may still perform the tasks, including but not limited to, case planning, development and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney.



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FAQs

(CONTINUED)

Prohibited Activities:

1. *What are the prohibited activities of a paralegal?*

A paralegal is governed by the same Code of Ethics and Canons of their supervising attorney. The following restrictions have been specifically laid out in the Code:

- (b) Notwithstanding subdivision (a), a paralegal shall not do any of the following:
- (1) Provide legal advice;
 - (2) Represent a client in court;
 - (3) Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal;
 - (4) Act as a runner or capper as defined in Sections 6151 and 6152;
 - (5) Engage in conduct that constitutes the unlawful practice of law;
 - (6) Contract with, or be employed by, a natural person other than an attorney to perform legal services;
 - (7) In connection with providing paralegal services, induce a person to make an investment, purchase financial product or service, or enter a transaction from which income or profit, or both, purportedly may be derived;
 - (8) Establish fees to charge a client for the services the paralegal performs, which shall be established by the attorney who supervises the paralegals' work. (This does not apply to fees charged by paralegals in a contract to provide legal services to an attorney, law firm, corporation, governmental agency, etc.)

2. *Are the prohibitions any different than they were prior to the enactment of Business & Professions Code 6450?*

No. These activities were prohibited prior to the enactment of AB 1761.

Dual Duties – LDA and Paralegal

1. *What if I work as a Legal Document Assistant (as defined in Business & Professions Code 6408) and I also contract with attorneys? Can I advertise as a paralegal?*

A person can only advertise as a paralegal to prospective contracting attorneys. Paralegals do not work directly for members of the public. Under AB 1761, a paralegal does not have clients- his or her supervising attorney does. To advertise as a paralegal directly to members of the public would be confusing to public and in violation of the Code. In other words, to advertise paralegal services to a prospective client for whom the individual can only type legal forms is misleading and illegal.

An individual can still contract with attorneys and can also perform work as a Legal Document Assistant. When performing paralegal tasks, the individual must meet the criteria of Business and Professions Code 6450. When working directly for the public, the Legal Document Assistant must be registered with the County Clerk/Recorder's office and post a



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(CONTINUED)

\$25,000 bond. An individual who does both, has two different professions, therefore must qualify under both statutes, and keep them separate.

2. *Do I have to have two sets of business cards and, if so, what should they say?*

As described above, a person can be both a paralegal and a Legal Document Assistant; however, to avoid running afoul of either statute, certain precautions should be taken. Namely, a dual duty professional should have two sets of business cards and letterhead for each activity.

The business card for Legal Document Assistants must include their registration number and a statement that they do not work for attorneys. A business card for a paralegal shall include the name of the law firm where that individual is employed and clarification that the person is not an attorney or a statement that he or she is employed by contracting with a California licensed attorney.

Penalties for Violations:

1. *What are the penalties for not abiding by Business & Professions Code 6450?*

AB 1761 provides for both criminal and civil causes of action for violation of the law.

Specifically, any consumer who is injured by a violation of this Code may file a complaint and seek redress in any municipal or superior court for injunctive relief, restitution, and damages.

Any person who violates this act is guilty of an infraction for the first offense which is punishable upon conviction, for a fine up to \$2,500 as to each consumer a violation occurs and a misdemeanor for the second and each subsequent violation which is punishable upon conviction of a fine of up to \$2,500 as to each consumer with respect to each violation, or imprisonment in a county jail for not more than one year, or both with respect to each violation that occurs.

Requirements of Attorneys:

1. *As an attorney, do I have to keep a record of my paralegals?*

The law does not require you to, but given that the supervising attorney is liable for the actions of the paralegal, it is in your best interest to do so.

2. *Should I check with my malpractice carrier to see if I should increase my malpractice insurance?*

No. The paralegal, as defined under AB 1761, is still governed by the same Code of Ethics and same Canons as the supervising attorney. It is not the intent of the author to change the duties of the paralegal, but to elevate the profession with the recognition it so well deserves.



Any questions?

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