

***Snoeck v. ExakTime Innovations***  
**2023 DJDAR 10712**

**A trial court may consider an attorney’s pervasive incivility in determining the reasonableness of the requested fees, and may apply, in its discretion, a positive or negative multiplier to adjust the lodestar calculation**

**FACTS/ PROCEDURE**

Plaintiff Steve Snoeck was employed by ExakTime as a sales representative. Snoeck had a pre-existing sleep apnea problem which caused him to routinely fall asleep throughout the workday, including weekly meetings. After several warnings, and worsening symptoms, ExakTime offered and Snoeck took a leave of absence to address his medical problem. Snoeck delayed his return to work several times. While on leave, ExakTime terminated his employment.

Snoeck then sued ExakTime, asserting multiple claims under California’s Fair Employment and Housing Act (FEHA), which prohibits adverse employment actions or related employment practices against individuals with physical disabilities. Snoeck alleged that ExakTime, among other things, failed to reasonably accommodate his disability, discriminated against him based on his disability, and failed to engage in FEHA’s required interactive process to determine effective reasonable accommodations for his disability. At trial, a jury returned a verdict in ExakTime’s favor on all but one cause of action, awarded Snoeck damages totaling over \$130,000. Snoeck moved unsuccessfully for judgment notwithstanding the verdict. The Court of Appeal affirmed.

On remand, Snoeck moved for attorney’s fees under FEHA’s fee recovery provisions, requesting a lodestar amount of \$1,193,870 plus a 1.75 multiplier, for a total of \$2,089,272. In opposing Snoeck’s motion, besides arguing that Snoeck’s fee demand was generally excessive, ExakTime also challenged the reasonableness of the fee request on the grounds that Snoeck’s counsel had engaged in “deceptive, improper and unprofessional conduct” during the trial court proceedings.

**HOLDING/DISCUSSION**

**Holding:** After briefing, the trial court awarded Snoeck only \$686,795 in fees. The trial court reached this result by first applying a 20% reduction across the board based on Snoeck’s counsel’s overstaffing and other billing concerns, and then applying a 1.2 positive multiplier to compensate Snoeck’s counsel for the contingent nature of its retention and the four-year duration of the litigation. These adjustments resulted in a revised lodestar figure of \$1,144,659. However, most significantly, the trial court then applied a 40% negative adjustment to this figure to account for Snoeck’s counsel’s lack of civility toward both ExakTime’s counsel and the trial court. The Court of Appeal affirmed.

The Appellate Court held that the trial court had discretion to find that Snoeck’s counsel’s civility in its totality, throughout the course of the litigation, “resulted in inefficient, fractious, and thus more costly, litigation.” “In order to calculate an attorney fee award under the FEHA, courts generally use the well-established lodestar method. The lodestar amount is simply the product of the number of hours spent on the case, times an applicable hourly rate.” (*Caldera v. Department of Corrections & Rehabilitation* (2020) 48 Cal.App.5th 601, 607, 261 Cal.Rptr.3d 835) The trial court then has the discretion to increase or reduce the lodestar figure by applying a positive or negative “multiplier” based on a variety of factors. (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1249, 166 Cal.Rptr.3d 676) Those factors include, among others, the novelty and difficulty of the issues presented, the skill demonstrated in litigating them, and the contingent nature of the fee award. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 [104 Cal.Rptr.2d 377, 17 P.3d 735].)

“Civility is an aspect of skill.” Applying this premise, the Court cited numerous instances of Snoeck’s counsel’s incivility during the trial court proceedings that demonstrated support for the trial court’s decision to reduce Snoeck’s fee demand by 40%. These included: Snoeck’s counsel’s accusations that ExakTime’s counsel “lied,” “committed fraud,” and engaged in a “brazen con” and “sleazy” and “cringeworthy conduct.” The Court also cited examples of Snoeck’s counsel’s incivility not just toward ExakTime but also toward the trial court, finding that Snoeck’s counsel’s tone toward the trial court was “belittling and antagonistic” and “verged on the contemptuous.”

The Court therefore held that these and other acts of incivility demonstrated Snoeck’s counsel’s lack of skill and justified the trial court’s 40% lodestar reduction. The Court explained: “The [trial] court thus could have found the lodestar dollar figure here exceeded the fair market value for [Snoeck’s counsel’s] legal services given his lack of civility. As the court in *Karton v. Ari Design & Construction, Inc.* (2021) 61 Cal.App.5th 734 [276 Cal.Rptr.3d 46], put it, “excellent lawyers deserve higher fees, and excellent lawyers are civil.” “Civility is an ethical component of professionalism. Civility is desirable in litigation, not only because it is ethically required for its own sake, but also because it is socially advantageous: it lowers the costs of dispute resolution. The American legal profession exists to help people resolve disputes cheaply, swiftly, fairly, and justly. Incivility between counsel is sand in the gears.” (*Id.*)