IN THE CIVIL COURT OF APPEALS
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION
PABLO, MONTANA

No. AP-93-077-CV

NORTHWEST COLLECTIONS, INC.,

Plaintiff/Appellant

v.

MARIAN J. PICHETTE

Defendant/Respondent.

Appeal from the Trial Court
of the Confederated Salish and Kootenai Tribes.
No. CV-077-93--Stephen A. Lozar, Trial Judge

Decided February 3, 1995

Before GAUTHIER, HALL, and PEREGOY, Civil Appellate Judges

OPINION OF THE COURT

PEREGOY, Chair, Civil Appellate Panel:

INTRODUCTION

This litigation involves cross-appeals arising out of an action filed by Northwest Collections ("Northwest") for collection on a debt owed by Marian J. Pichette. The trial court entered judgment for Northwest in the amount of $1,500. Pichette appealed this ruling. The court sanctioned Northwest $2,400 in attorney fees for failure to obey a pre-trial scheduling order. Northwest appealed. This opinion is limited to Northwest's appeal; Pichette's appeal

is addressed in a separate, concurrent opinion.[1]

After examining the briefs and appellate record, this Court has determined the facts and legal arguments are adequately presented in the briefs and record and that the decisional process would not be significantly aided by oral argument. The cause is therefore ordered submitted without oral argument. Cf. Ikerd v. Lacy, 852 F.2d 1256, 1257 (10th Cir. 1988).

We are called upon to decide four issues in the instant appeal, namely whether the trial court: (1) had jurisdiction to issue its order awarding sanctions; (2) erred by holding a *pro se* litigant to the same standards as an attorney; (3) abused its discretion by failing to provide Northwest with an opportunity for a hearing to contest the amount of the sanctions; and (4) abused its discretion by failing to identify a nexus linking the rule violated, the sanctionable conduct, and the amount of sanctions awarded.

The first two issues are limited to the selection, interpretation and application of legal precepts. Because they involve conclusions of law, the exercise of discretion is not involved. Therefore, we employ the fullest scope of review to determine whether the trial court correctly applied the law. Its legal determinations are not shielded by any presumption of correctness. See e.g., Steer, Inc. v. Department of Revenue, 803 P.2d 601, 603 (Mont. 1990). Questions three and four are governed by the "abuse of discretion" standard, which applies in the review of sanctions imposed for failing to obey a scheduling or pre-trial order. Ikerd v. Lacy, 852 F.2d 1256, 1258 (10th Cir. 1988).

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[1] See Pichette v. Northwest Collections, Inc., AP-93-077-CV (App. Ct. Confederated Salish and Kootenai Tribes 1995).

I. BACKGROUND

Northwest Collections commenced this action against tribal member Marian J. Pichette on September 17, 1993 for collection on a debt. Attorney Michael Sol filed the complaint on behalf of Northwest. On November 24, 1993, the trial court issued notice of a pre-trial scheduling conference for December 3, 1993. Attorney Sol did not appear. Instead, Northwest was represented at the December 3 hearing by Mr. Pat Duncan, a non-attorney who serves as the chief executive officer (CEO) of Northwest.[2]

During the pre-trial conference, the court ordered Pichette's attorney, Joann Jayne, to draft the pre-trial order. The court also directed Duncan to provide Jayne with trial exhibits and a witness list to aid preparation of the pre-trial order by December 17.

Attorney Jayne had no contact with Northwest for two weeks following the pre-trial conference. On December 17, the day the pre-trial order was due, Jayne contacted Duncan about the exhibits. In response, Northwest faxed six (6) documents which Jayne received at 1:10 P.M. on December 17. These documents subsequently became trial exhibits 6-11.

Counsel for Pichette felt it was "impossible" to file the pre-trial order by the 4:30 P.M. closing time on December 17 due to what she claimed was Northwest's "untimely submission" of the trial exhibits. She was also concerned that Northwest did not submit a witness list. Based on these concerns, Pichette filed a Motion for Sanction against Northwest under M.C.A. 25, Chapter 20, Rule 16(f) "for failure to participate in good faith in the Pre-Trial Order." The Motion for Sanction was filed December 17, the same day the pre-trial order was due.

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[2] It is undisputed that attorney Sol failed to participate in this action after he filed the complaint, although he never moved to withdraw his appearance.

The court held a hearing on the sanctions motion on January 28, 1994. Again, attorney Sol did not appear, although the record indicates he received advance written notice. Northwest was represented by Ms. Bonnie Duncan, a non-attorney employee. Pichette was represented by attorney Jayne. The trial court found Northwest delivered the documents to Jayne on December 17. However, it concluded Northwest "disobeyed" the December 3 order by failing to submit the exhibits in a "timely fashion." It further concluded attorney Jayne could not prepare the pre-trial order by December 17 "due to Plaintiff's failure to provide her the necessary facts and documents." Accordingly, the trial judge sanctioned Northwest on January 28, 1994 and ordered:

> That the Plaintiff pay Attorney fees at Seventy-Five Dollars ($75.00) per hour. An amount shall be provided by Defendant's attorney to the Court. The Plaintiff shall pay the Court the amount to be provided by Defendant's attorney.

On June 3, 1993, following an April trial, the court entered a $1,500 judgment for Northwest on the merits. Pichette moved for reconsideration on June 17. On June 22 she filed an affidavit requesting attorney fees for 32 hours. Two days later the trial court ordered Northwest to pay attorney fees totaling $2,400. On July 5, 1993 Northwest appealed the sanction. The trial court denied Pichette's motion for reconsideration on July 12, and on July 22 she appealed the judgment on the merits.

II. DISCUSSION

A. Jurisdiction of Tribal Court to Issue the Sanction Order

Northwest contends the trial court lacked jurisdiction to award the sanctions in question. It asserts final judgement on the merits was entered on June 3, 1994--three weeks before the court issued its June 24 sanction. Relying principally on International Controls Corp v. Vesco,

535 F.2d 742, 748-49 (1-2nd. Cir. 1976), Northwest argues the court divested itself of jurisdiction when it entered the June 3 "final" order. We disagree.

While a final judgment generally ends the litigation on the merits, "it is the timely and sufficient notice of appeal which divests the district court of authority to proceed further with respect to such matters." See Vesco at 747; 9 Moore, Federal Practice, Par. 203.11. This is a judge-made rule designed to prevent confusion and waste of time that may accompany putting the same issues before two courts at the same time. It is not absolute. See 9 Moore, Federal Practice, Par. 203.11 n. 16, citing In re Thorpe, 655 F.2d 997, 998 (9th Cir. 1981).

In this case, Northwest did not appeal the attorney fee sanction until July 5, nor did Pichette appeal the underlying judgment until July 22--both well after June 3, the day Northwest contends the trial court divested itself of jurisdiction. Accordingly, the trial court retained jurisdiction over the case until Pichette perfected her appeal on July 22. It therefore had the requisite authority to issue the sanction order on June 24.

In any event, a judgment is not final until it is set forth on a separate document and entered in the record. See 9 Moore, Federal Practice, Par. 110.08[3].[3] Even if it is properly

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[3] Rule 58 of the Federal Rules of Civil Procedure provides in relevant part: "Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided by Rule 79(a)." Rule 79(a) directs the clerk of the district court to enter "all papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts and judgements" in chronological order in the civil docket. Therefore, read literally, an order, regardless of its character, must meet two requirements to become an appealable judgment. First, it must be set forth on a separate document, i.e., "distinct from any opinion or memorandum." Second, it must be entered by the clerk on the civil docket. See 9 Moore, Federal Practice, Par. 110.08[2]. The consequences of not conforming to these requirements are significant. Since a decision of the district (or tribal) court is ordinarily not final until a final judgment is entered, an appeal may not be taken until such entry is completed. 9 Moore, Federal Practice, Par. 204.14.

"Arguably, an appeal before entry of judgment is not an appeal from a final order and

set forth and entered, its finality can be destroyed by the timely filing of several post-trial motions, including one filed under Fed.R.Civ.P. 52(b):

> **(b) Amendment.** Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

Pichette's motion for reconsideration of the June 3 decision is precisely this type of motion. Therefore, even if the June 3 order was somehow final and precluded the court from acting further in the matter, Pichette's June 17 motion destroyed any possible finality it may have had. The trial court therefore had the necessary authority to impose the June 24 sanction.

B. *Pro Se* Litigants

Northwest contests the court's conclusion that it did not "obey" the order to produce trial exhibits in a "timely manner" sufficient to allow Pichette's counsel to prepare the pre-trial order by December 17, 1993. It contends it acted *pro se* through its chief executive officer, and that the trial court erred in holding it to the same standard applied to attorneys.

Pichette argues on appeal that Northwest could not be a *pro se* litigant because it was represented by attorney of record Michael Sol. Notwithstanding, Pichette does not dispute that Northwest was represented at the proceedings in question by laypersons, not an attorney at law.

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cannot be heard and decided by the court of appeals. This matter is not merely a technical one because until the entry of judgment, orders remain within the control of the district court and can be changed. It is the judgment that is entered that gives the final form to the decision of the district court and until entry of judgment there is nothing to appeal from. Accordingly, if a notice of appeal is filed and it later appears that the record contains no judgement, the appeal will be dismissed as premature." Id.

She further concedes Sol did nothing after signing the complaint, and cites his failure to appear at both the pre-trial conference and the hearing on her motion for sanctions to suggest he is at fault here. Rather than move for sanctions against attorney Sol, Pichette inexplicably contends Northwest is bound by and responsible for the attorney's inaction. She relies on Link v. Wabash Railroad Co., 370 U.S. 626, 633 (1962) to support this proposition. Her reliance on Link is misplaced. There, the Supreme Court sanctioned the attorney for failure to appear at a pre-trial conference, not the client. Here, Pichette has not challenged Sol's representation. Rather, she agrees the issue is whether Northwest as a *pro se* litigant can be permissibly held to the same standards as an attorney. In effect, Pichette admits, and we agree, that Northwest acted *pro se* during the proceedings in question.

Pro se litigants "are commonly required to comply with standards less stringent than those applied to expertly trained members of the legal profession."[4] Bates v. Jean, 745 F.2d 1146, 1150 (7th Cir. 1984). Most district courts are "extraordinarily patient and understandably lenient" with *pro se* litigants who are unfamiliar with the rules of procedure. Harris v. Callwood, 844 F.2d 1254, 1261 (6th Cir. 1988) (Ryan, J., dissenting).

The record indicates the December 3 order was limited to trial exhibits and a witness list.

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[4] Many courts have refused to allow corporations to appear through a lay representative. Courts which have refused to allow corporations to appear *pro se* have recognized that corporations are artificial entities which can act only through agents, i.e., attorneys at law. See e.g., Eagle Associates v. Bank of Montreal, 926 F.2d 1305, 1308 (2nd Cir. 1991). However, the legislative body of the Confederated Salish and Kootenai Tribes has provided otherwise pursuant to Rule 2.5 of the Rules of Practice in Civil Actions and Proceedings in the Tribal Court. Rule 2.5(a) provides in relevant part that "A corporation, firm, association, or other organized entity...may be represented by its chief executive officer or by an employee who is authorized in writing by the chief executive officer to represent the entity in a civil action or proceeding."

As Pichette concedes, Northwest provided the trial exhibits on December 17.[5] Accordingly, Northwest substantially complied with the December 3 order, notwithstanding that it did not produce a witness list by December 17.[6]

In any event, Northwest as a *pro se* litigant as a matter of law cannot be held to the same exacting standards as a member of the bar. Because Northwest did not "completely" disobey the December 3 order or act in bad faith, and because it can't be held to the same standards as an attorney, we reverse the imposition of sanctions against it. See e.g., Roy v. American Professional Marketing, Inc., 117 F.R.D. 687, 689 (W.D. Okla. 1987).

In the final analysis, the trial court placed the burden to draft the pre-trial order by December 17, 1993 on Pichette's counsel, not Northwest or its attorney of record. However, by her own reckoning, attorney Jayne "waited for two weeks," i.e., the day the pre-trial order was due, to contact Northwest for the information. As a trained member of the legal profession and officer of the Tribal Court, Jayne unequivocally had an affirmative duty to take the steps necessary to assure timely submission of the pre-trial order. This duty included making reasonable efforts to assure timely receipt of Northwest's exhibits and witness list, or any other information pertinent to preparation of the pre-trial order. Diligent execution of these duties

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[5] The pre-trial order shows that these six documents are listed on less than one-half page. In this modern day of computers and word-processing, it should have been a relatively simple matter to enter documents 6-11 on the pre-trial order and file it with the court prior to the close of business on December 17. It appears such would have taken less time than research and preparation of the motion for sanction prepared and filed by Pichette the same day the pre-trial order was due.

[6] It would have been a relatively simple matter, and indeed routine, to amend the pre-trial order after December 17 once Northwest's witnesses were identified. In any event, the most effective and cost-efficient procedure on December 17 was to seek an extension of time for filing the pre-trial order, assuming *arguendo* it was not possible to file it that day.

could have facilitated timely submission of the pre-trial order, thereby eliminating the unnecessary, costly and wasteful sanction proceedings in both the trial and appellate courts.

C. Hearing on the Amount of the Sanction

Northwest contends the trial court violated due process by failing to provide it with the opportunity of a hearing to contest the amount of the sanction imposed. We agree.[7]

Procedural due process requires notice and hearing before any governmental deprivation of a significant property interest. Miranda v. Southern Pacific Transp. Co., 710 F.2d 516, 522 (9th Cir. 1983), *citing* Boddie v. Connecticut, 401 U.S. 371, 379 (1971). A district court has no authority to impose sanctions for violation of pre-trial or scheduling orders without notice and an opportunity to be heard. Ford v. Alfaro, 785 F.2d 835, 840 (9th Cir. 1986). Further, the district court is required to hold a hearing to consider the propriety or reasonableness of the sanction. Pennwalt Corp. v. Durand-Wayland, Inc., 708 F.2d 492, 495 (9th Cir. 1983). See also McFarland v. Gregory, 425 F.2d 443, 450 (2nd Cir. 1970) (sanctioned party should have opportunity to cross-examine person on whose affidavit the penalty rested). Imposition of sanctions without providing an opportunity for a hearing to contest the amount of the sanction is an abuse of discretion. Id. See also, In re Kuntsler, 914 F.2d 505, 522 (4th Cir. 1990).

In the instant case the Tribal Court ordered Northwest to pay Pichette attorney fees at the rate of $75 per hour, with the amount to be subsequently determined by Pichette's attorney. In effect, the court wrote Pichette a blank check. Two days after Pichette's counsel filed her

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[7] Pichette relies on Harrell v. United States, 117 F.R.D. 86, 89 (E.D.N.C. 1987) to intimate Rule 16(f) does not require a hearing prior to the imposition of sanctions. Pichette quotes Harrell out of context. Harrell, plainly indicates such a hearing is required. See Harrell at 89, citing Ford v. Alfaro, 785 F.2d 835 (9th Cir. 1986).

hours, the court sanctioned Northwest $2,400---the entire amount Jayne sought---without affording Northwest an opportunity for a hearing to challenge the amount awarded, i.e., the hourly rate and number of hours submitted, or to cross-examine attorney Jayne. We hold the court's action and inaction violated Northwest's right to due process, and constituted an abuse of discretion.

D. Basis Supporting Imposition of Sanctions

Northwest argues the Tribal Court abused its discretion by failing to identify a nexus linking the rule violated, the sanctionable conduct and the amount of the sanctions awarded. This argument too has merit.

Rule 16(f) of the Montana Rules of Civil Procedure allows a district court to impose sanctions for violations of scheduling or pretrial orders. In pertinent part it provides:

> If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, of if a party or a party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just...In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust. (Emphasis supplied).

The primary purpose of sanctions for failure to comply with pretrial scheduling orders is to ensure reasonable management requirements for case preparation. The secondary purpose is to compensate opposing parties for inconvenience and expense incurred as a result of noncompliance with such court orders. Matter of Sanction of Baker, 744 F.2d 1438,1441 (10th Cir. 1984). The district court is vested with "very broad" discretion in fashioning appropriate

sanctions under Rule 16(f) for failure to comply with scheduling or pretrial orders. Estate of Costner, 121 F.R.D. 690, 694 (W.D.Okl. 1988). The exercise of discretion in imposing sanctions must be decided by examining the totality of the circumstances, including the specific case on review, the total management problems for courts, and access and cost problems for litigants. Matter of Sanction of Baker, 744 F.2d at 1440. Because sanctions rest well within the province of district courts, courts of appeal review them only for manifest abuse of discretion. Jones v. Winnepesaukee Realty, 990 F.2d 1 (1st Cir. 1993).

Rule 16(f) by its own terms limits sanctions to fees and expenses incurred as a result of noncompliance with the rule.[8] In the absence of a finding of bad faith, there must be a sufficient nexus between noncompliance with the rules and the amount of fees and expenses awarded as a sanction. Turnbull v. Wilcken, 893 F.2d 256, 259 (10th Cir. 1990). Recovery should never exceed those expenses and fees that were reasonably incurred as a result of noncompliance with Rule 16(f). Matter of Yagman, 796 F.2d 1165, 1185 (9th Cir. 1986). In order to determine reasonableness, the court must make some evaluation of the fee breakdown submitted by counsel. Id.

The Tribal Court's award in this case fails in all of these respects. First, as set forth above, Northwest substantially complied with the December 3 scheduling order. Cf. Roy v. American Professional Marketing, Inc., 117 F.R.D. 687, 689 (W.D.Okl. 1987) (sanctions appropriate where attorney and client completely failed to comply with pretrial scheduling order and totally failed to prepare case for trial). Because it acted *pro se* in the matters at issue, Northwest cannot be held to the same standard as an attorney. Rule 16(f) sanctions therefore

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[8] See underlined portion of Rule 16(f) emphasized on page 10.

cannot lie vis-a-vis Northwest in this case.

Further, the court awarded the entire amount of fees Jayne requested, without specifying how the amounts awarded were related to the alleged violation(s) of Rule 16(f), i.e., it neglected to specify what costs, if any, were incurred as a result of what the court concluded was Northwest's failure to "obey" its December 3 order. Because this omission contravened the express requirements of Rule 16(f), it constituted a manifest abuse of discretion amounting to reversible error.

Finally, the court failed to evaluate the fee breakdown submitted by Jayne. The record suggests the court never intended to evaluate Jayne's fee request. As noted above, the court sanctioned Northwest on January 28, ordering that fees would be subsequently awarded to Pichette in an amount to be determined by Jayne. Although the court concluded the fee request was "reasonable," it did not enter any factual findings to support this conclusion, and we discern none. Such arbitrary (and advance) approval of Jayne's fees constituted an abuse of discretion.[9]

The sanction award in this case also fails to satisfy the "totality of circumstances" test set forth in Matter of Sanction of Baker. Here, judgment on the merits was entered for Northwest in the amount of $1,500, yet the Tribal Court sanctioned Northwest $2,400--$900 more than it

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[9] While the issue is not before us and we do not decide, we take well Northwest's assertion that Jayne's fees are excessive as a matter of law. For example, her affidavit appears to include the total number of hours she expended to write the pre-trial order, i.e., it requests fees for time that would necessarily have been expended in any event. Such expenses, or the lion's share thereof, could not have been incurred as a result of "noncompliance" with Rule 16(f), and therefore are not compensable as sanctions thereunder. Jayne also requested and was awarded attorney fees for "typing." However, typing is simply not compensable at the rate of $75 per hour. Further, the court awarded Jayne seven hours ($525) for research and preparation of her reply brief, although it consisted of little more than one page and contained no citations to legal authority.

recovered on the judgment. This was plainly excessive, considering the amount of the underlying claim at issue. Further, this case has not been a management problem for the court. The record indicates the court rescheduled the trial date two times, both unrelated to the issues at bar. Finally, there are cost factors to bear in mind: Pichette was represented by *pro bono* counsel, while Northwest was forced to expend substantial sums to prosecute its claim.

As set forth above, there is no factual or legal foundation to support the award of sanctions against Northwest. We accordingly hold the Tribal Court's sanction constituted a manifest abuse of discretion.

E. Type of Showing Necessary for an Award of Attorney Fees

While the issue is not precisely before us, the Court *sua sponte* sets forth the parameters of a factual showing prospectively necessary for an award of attorney fees in the Tribal Court. As a general matter, any such award is driven by the reasonable hourly rate and number of hours reasonably expended.

1. Type of Factual Showing Necessary to Establish the Prevailing Hourly Rate for Similar Work in the Community

Generally, the hourly rate depends on the experience of the attorney and the type of work involved. Nat. Ass'n. of Concerned Veterans v. Sec. of Defense, 675 F.2d 1319, 1325 (D.C. Cir. 1982). Courts have indicated relevant considerations include the number of years of experience as an attorney, the level of skill necessary to prosecute the case, time limitations, the attorney's reputation, and the undesirability of the case. Id. Another important factor in determining a reasonable hourly rate is whether counsel has exercised billing judgment by not billing at the market rate or for the full amount of time expended on the case. Concerned Veterans at 1326. These facts "must be considered in calculating counsel's true billing rate."

Id.[10]

Courts generally require a fee applicant to provide specific evidence of the prevailing community rate for the type of work for which an award is sought. Id. Useful guidelines in setting an appropriate rate include affidavits reciting the precise fees that attorneys with similar qualifications have received from fee-paying clients in comparable cases, and recent fees awarded by courts or through settlement to attorneys of comparable reputation and experience performing similar work. Id. The relevant "community" for establishing the reasonable hourly rate for practice in the Tribal Court of the Confederated Salish and Kootenai Tribes shall generally be the area between and inclusive of Kalispell and Missoula.

The "best evidence" is the hourly rate customarily charged by the attorney seeking an award or by such attorney's law firm. Id. Specific evidence showing the actual billing practice of counsel during the relevant time period has significant probative value. This is consistent with the Supreme Court's ruling that the primary factor a court should use to determine a reasonable hourly rate is the rate that can be commanded by the attorney in the marketplace. See Major v. Treen, 700 F.Supp. 1422, 1434 (E.D. La. 1988), citing Blum v. Stenson, 465 U.S. 886 (1984). In the alternative, also useful are affidavits stating the hourly rate is based on the

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[10] Attorney salaries are not a relevant consideration in the reasonable hourly rate calculus. See e.g., Copeland v. Marshall, 641 F.2d 880, 898-99 (D.C. Cir. 1980). The rationale is that calculations based on attorney salaries will unfairly penalize attorneys working for public interest law firms by yielding lower fee awards than those calculated under a "market value" system. Id. As stated by the Copeland court:

> "Indeed, to appraise the reasonable value of an attorney's time by '[r]eference to absolute salary levels is about as reasonable as deriving the reasonable value of a federal judge's time from his or her salary.'" Id. at 899 (citations omitted).

affiant's personal knowledge about the specific rates charged by other lawyers or rates for similar litigation. Concerned Veterans at 1325-26.

Once the fee applicant has provided adequate support for the requested hourly rate, the burden shifts to the opposing party to go forward with evidence that the rate is erroneous. Concerned Veterans, 675 F.2d at 1326. In such cases, the opposing party is required to provide equally specific countervailing evidence showing that a lower hourly rate is warranted. Id.

2. Type of Factual Showing Necessary to Establish the Number of Hours Expended on the Case is Reasonable

An applicant for attorney fees is entitled only to an award for time reasonably expended. Concerned Veterans, 675 F.2d at 1327. Applications must contain sufficiently detailed information concerning the hours logged and work accomplished to permit the court to make an independent determination whether or not the hours claimed are justified. Id. The better practice is to prepare detailed summaries based on contemporaneous, standardized time records, preferably computerized, which accurately reflect the work performed each day by each attorney for whom fees are sought. Id. A sufficient application providing adequate support for hours claimed consists of "some fairly definite information as to the hours devoted to various general activities, e.g., pre-trial discovery, settlement negotiations, etc." Copeland, 641 F.2d at 891.

While fee applications need not present the exact number of minutes spent nor the precise activity to which each hour was devoted, nor the specific attainments of the attorney, the best practice is to break each hour into fractions, either quarters or tenths, delineating what activity the particular time was devoted to. Id. In any event, courts are not required to "engage in a minute examination of each theory or claim advanced and what results it did or did not produce." Concerned Veterans at 1332-33.

Fees are not recoverable for non-productive, excessive or duplicative time, or generally for time expended on issues on which the party seeking recovery did not ultimately prevail.[11] Concerned Veterans at 1327. Fee applicants are therefore well advised to exercise "billing judgment" and indicate whether nonproductive or excessive time or time expended on unsuccessful claims was excluded. If time was excluded, fee applicants are further advised to state the nature of the work and the number of hours deleted. Id. at 1327-28.

Once the fee applicant has met its burden, the opposing party is required to go forward with detailed evidence showing why the applicant's request should be reduced or denied. Id. at 1337-38. As set forth by the Concerned Veterans court:

> Neither broadly based, ill-aimed attacks, nor nit-picking claims by the [opposing party] should be countenanced. District courts should examine with care the 'issues' raised by opposing parties. If they appear to be more of a blunderbuss attack than a precise and well-founded challenge, the [opposing party] has failed to carry its burden, and, assuming that [the fee applicant] has met his threshold burden, the fees requested by [the applicant] should be awarded. Id. at 1338.

The foregoing factors are not absolute standards. Rather, they are intended to guide the exercise of judicial discretion regarding the type of evidence sufficient to justify an award of attorney fees for which proper application has been made in the courts of the Confederated Salish and Kootenai Tribes.

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[11] Instructing that no compensation was due for time spent litigating issues upon which the fee applicant did not prevail, the D.C. Circuit emphasized "the courts should adopt a practical approach to this inquiry and time should be excluded 'only when claims asserted are truly fractionable.'" Id., fn. 13 at 1327 (citations omitted). This is because "sometimes it will be the case that a lawsuit will seek recovery under a variety of legal theories complaining essentially of the same injury. A district judge must take care not to reduce a fee award arbitrarily simply because a plaintiff did not prevail under one or more of these legal theories. No reduction in fee is appropriate where the 'issue was all part and parcel of one matter.'" Copeland, 641 F.2d at 892, fn. 18. (citation omitted).

CONCLUSION

For the reasons set forth above, we hold the trial court: (1) had jurisdiction to issue the order awarding sanctions; (2) erred as a matter of law by holding Northwest, as a *pro se* litigant, to the same standards as an attorney; (3) abused its discretion by failing to provide Northwest with an opportunity for a hearing to challenge the amount of the sanctions; and (4) manifestly abused its discretion by failing to identify the required nexus linking the rule violated, the sanctionable conduct and the amount of thesanction awarded. Accordingly, we reverse and set aside the trial court's imposition of sanctions against Northwest.

REVERSED AND REMANDED

Robert M. Peregoy, Chair
Civil Appellate Panel