

FILED

07/08/2024

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MENDOCINO

KIM TURNER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MENDOCINO

Weston, Kim *fw*
DEPUTY CLERK

WILLIAM H. MOORES, TONA)
 ELIZABETH MOORES,)
)
 Plaintiffs,)
)
 v.)
)
 IRISH BEACH WATER DISTRICT,)
 DOES 1 through 10, inclusive,)
)
 Defendants.)
 _____)
)
 GORDON MOORES, SANDY MOORES,)
 MENDOCINO COAST PROPERTIES, a)
 California Corporation, and MOORES)
 ASSOCIATES, a partnership,)
)
 Real Parties in Interest.)
 _____)

Case No. SCUK CVG 09-54665
 ORDER RE MOTION FOR ATTORNEYS'
 FEES FILED APRIL 26, 2024.
 Hearing Date June 4, 2024
 Judge: Hon. Ann Moorman
 Dept: E

On April 26, 2024, plaintiffs filed their motion for attorneys' fees pursuant to section 1036 of the Code of Civil Procedure. In total, plaintiffs seek \$632,470 in fees relating to the inverse condemnation claim litigated during phases one and two of the court trial. ¹ As noted in this Court's Order re the District's Motion to Tax Costs filed simultaneously herewith, at the conclusion of the inverse condemnation component of the trial, the trial court entered judgment for plaintiffs for inverse condemnation and awarded plaintiffs in excess of \$400,000 in compensation for that taking.²

That judgment and related compensation award were reversed by the appellate court. In doing so, the Court of Appeal vastly narrowed the taking by the District from that found by the trial court. The Court of Appeal concluded that the taking consisted only of a taking of a well easement on bare land within an existing easement. The Court of Appeal also reversed the trial court's orders for attorneys' fees and costs arising from the inverse condemnation component of the trial. The matter was remanded for a potential trial on compensation.

¹ The Court grants plaintiffs' two requests for Judicial Notice filed in connection with this motion.
² The issues addressed and fees incurred in phase three are not relevant to this motion.

On remand, the parties settled the inverse condemnation claim when the District accepted the CCP §998 offer extended by plaintiffs. The settlement substantially reduced the recovery by plaintiffs related to the inverse condemnation claim to \$25,000. In their current motion, plaintiffs seek attorneys' fees in an amount twenty-five times greater than the actual compensation received for the District's taking. It is also important to note that the conclusion reached by the Court of Appeal as to the scope of the taking was not one advanced by the plaintiffs at trial or on appeal. Rather, on appeal plaintiffs pursued compensation theories rejected by the trial court and in doing so, argued for a larger taking than even the one the trial court mistakenly found. In other words, plaintiffs narrowly prevailed on appeal in that a taking was found but nearly all of its arguments on this issue were rejected

Not surprisingly, the District objects to this exorbitant request. In its opposition of May 15, 2024, the District urges the court to reject all fee requests as unreasonable on their face because all of their theories for compensation were rejected either by the trial court or the Court of Appeal or both.³ The District also urges the court to recognize that the ultimate recovery in compensation, to wit, \$25,000 was significantly less than previous offers by the District to settle the case. Finally, the District notes that plaintiffs will benefit from development of the T-5 well (the well developed within the easement at the heart of the dispute) because most of the water coming from that well will be supplied to plaintiffs' properties located within the Unit 9 and Acreage Parcel subdivisions. (See declarations of Acker and Emrick filed May 15, 2024.)

Code of Civil Procedure §1036 provides for an award of reasonable attorneys' fees to any plaintiff who prevails in an inverse condemnation proceeding. In applying the concept of reasonableness to the request before this court, it is instructive to note the guidance provided by the appellate court on this issue:

Since we are reversing the inverse condemnation judgment, we likewise reverse the attorney fees and interest awarded in connection therewith and remand for a redetermination of *reasonable* fees following the retrial on condemnation compensation. (CCP §1036; see *Andre v. City of West Sacramento* (2001) 92 Cal.App.4th 532, 535, 537 (*Andre*) ["fees actually incurred are a ceiling to any fee award" and "fees may be reduced because they are unreasonable and pose an unnecessary burden on public funds"].) (emphasis in original.)

(COA opinion at p.48.)

The appellate court further stated:

Accordingly, when the trial court revisits attorney fees at the conclusion of the proceedings on remand, it should view with extreme skepticism fees associated with the plaintiffs' legally untenable theories that the District "took," and they were therefore entitled to compensation for, the "T-5 well" and all the water that has been, and can be, drawn through that well.

³ In addition to all briefing, the Court has considered the declarations of Emrick, Acker and Morrow in deciding this motion as well as all exhibits attached thereto.

(COA opinion at p.48, n.29/)

Initially, plaintiffs seek \$537,379 “attributable the McMullen firm’s work on phases one and two. In drawing the following conclusions, the Court reviewed the actual invoices prepared by McMullen’s firm and relied on those invoices as well as exhibit 2 to the moving papers. Exhibit 7 to McMullen’s declaration proved unusable and unreliable.

Taking to heart the guidance offered by the Court of Appeal, and reviewing the records submitted in connection with this motion, the Court declines to award fees related to developing and presenting at trial and in writing the theories of valuation presented at phase two by the plaintiffs. This results in a reduction of \$187,733 from the \$599,206 in fees incurred by plaintiffs for phases one and two (trial court level only). (See Exhibit 2 to moving papers for total fees incurred.) This amount represents fees incurred and reflected on invoices dated between April 22, 2014, and June 20, 2015.

For the same reason, the court declines to award fees from September and October 2009 which total \$2818.50 as those fees related directly to researching a water appraiser, the \$10,918.75 and \$13,268.75 in fees invoiced on June 28, 2012 and July 27, 2012 respectively as those relate to development of valuation theories ultimately rejected as well as theories to support a request for attorneys’ fees. Similarly, the Court rejects the request for fees in the amount of \$4050.00 invoiced on September 28, 2012, \$6306.25 invoiced on October 25, 2012, \$10,175 invoiced on November 26, 2012, \$800 of the fees invoiced on December 19, 2012, and \$912.50 of the fees invoiced on January 24, 2013 as they again relate to developing expert valuation theories and/or arguments for attorney fees. The Court will not award the \$8593 invoiced in March 2013 as they relate to a motion for a preliminary injunction that was unnecessary to the limited success plaintiffs achieved. This results in a further diminution of \$57, 842,75 in a potential fee award.

The Court also declines to award the \$3011.50 requested as fees related to McMullen’s firm’s motion for prejudgment interest. (See Second Request for Judicial Notice). The award of prejudgment interest was reversed in its entirety and is therefore not an issue on which plaintiff prevailed.

The Court also declines to award the \$6,352 in fees (\$6412 minus a \$60 filing fee accounted for in the motion to tax costs) related to preparation of the previous motion for attorney fees) (See paragraph 36 of the McMullen declaration submitted as part of plaintiffs’ First Request for Judicial Notice.)

The Court’s decision to exclude these fees from a potential award results in a reduction of \$254, 939.25. Worth noting is the fact that the Court has not excluded fees associated with arguments concerning the scope of the taking that also were rejected by the Court of Appeal.

As for the remaining \$282,439.75 in fees requested relating to work performed by McMullen’s firm, the Court notes that it far exceeds the ultimate recovery of \$25,000. Even in cases where a party is entitled to attorneys’ fees, courts have determined that fees

exceeding the award of damages can be unreasonable and that sometimes a reasonable fee is “zero.” (*Choate v. County of Orange* (2000) 86 Cal.App.4th 312, 345.)

In *Farrar v. Hobby* (1992) 506 U.S. 103, plaintiffs sought \$17 million in damages from six defendants, but recovered only \$1 from one of them. Despite this, they were awarded \$280,000 in attorney fees. The Supreme Court reversed finding that while the plaintiffs were prevailing parties, their failure to recover actual damages or establish a significant precedent militated against any fee award. With regard to the reasonableness prong of 42 U.S.C.A § 1988 fees, the Court noted that

[w]hen a plaintiff recovers only nominal damages because of [a] failure to prove an essential element of his claim for monetary relief ... the only reasonable fee is usually no fee at all. (506 U.S. at p. 115 [113 S.Ct. at 575].) The moral satisfaction of knowing there was a constitutional rights violation, standing alone, did not justify a fee award there. (*Id.* at p. 114 [113 S.Ct. at 574].) Fees may only be considered in relation to the extent of success obtained by the plaintiffs via damages or other relief.

(*Id.* at 114-116, 113 S.Ct. at 575.)

“Nominal damages” is not limited to an award in the amount of \$1 but includes an award that may properly be classified as 'de minimis'. (*Morales v. City of San Rafael* (9th Cir. 1996) 96 F.3d 359, mod. 108 F.3d 981 (*See also Adams v. Rivera* (S.D.N.Y. 1998) 13 F.Supp.2d 550 [denying 42 U.S.C. § 1988 fees to plaintiff who sought over \$1.4 million in compensatory and punitive damages in excessive force case but recovered only \$1,000.]

The ultimate recovery in this inverse condemnation proceeding is de minimis considering plaintiff sought \$3.2 million at trial. In addition, the trial court’s award of \$400,000 was also found not to be in line with the actual scope of the taking. Essentially, the recovery of \$25,000 is less than 1% of the amount sought and less than 6% of the trial court’s compensation award that did not withstand scrutiny.

As the District points out, a plaintiff who achieves only partial or limited success, the product of hours reasonably expended on the litigation times a reasonable rate, may be an excessive amount. (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 435-36.) The fees requested here are excessive.

Plaintiffs argue that the litigation concerned fundamental rights. (See moving papers at p.6.) This may be true in theory but not in reality. The Court of Appeal concluded that the existing easement was burdened by an additional easement but that that did not mean there was an additional loss to the underlying fee estate. There was no loss or damage to the fee estate owned by Moores from the location or development of the T-5 well. Second, infrastructure used to distribute the water pre-existed the litigation and was not owned by plaintiffs. That same infrastructure will serve the T-5 well. Also, and perhaps most importantly, plaintiffs are benefiting far more than other property owners from the T-5 well as the water coming from it benefits Moores’ real property interests. The fundamental right argument is nothing more than

hyperbole not based on fact. There was no important precedent set in this case. Plaintiffs failed to prove that any actual fundamental right associated with free use of one's private property was damaged or interfered with as a result of the District's taking.

Having these reasons in mind, the Court reduces the award of attorneys' fees to \$28,244 for work performed by McMullen's firm. This award allows plaintiffs a reasonable amount of fees incurred for the harm caused by the District.

Regarding the \$41,932 in fees sought for Colin Morrow's appellate representation, the court declines to award these fees. While \$41,932 represents a reduction from the \$104,832 billed to plaintiffs for the entire appeal which included non-condemnation issues, plaintiffs extremely limited and frankly pyrrhic, success must be considered. All of plaintiffs' theories regarding the scope of the taking and their theories of valuation or compensation were rejected. The reviewing Court's conclusion regarding the scope of the taking was not a theory advanced by plaintiff but only by the District. Plaintiffs' cross appeal was rejected. The Court of Appeal declined to award costs. No important precedent was established because of the appeal. For each of these reasons, including those advanced above, the Court declines to award the \$41,932 in fees billed for Morrow's representation on appeal.

For the same reasons discussed herein, the Court also declines to award the \$44,738 in fees sought for Morrow's post-remittitur work pertaining to the inverse condemnation claims. (See Morrow declaration filed April 26, 2024 at paragraph (5).) The Court will award \$5550 in fees incurred for attending the mediation held in early August 2022, \$2400 in fees incurred for attending the mediation held September 28, 2022, \$2820 in fees incurred for attending the mediation held on December 19, 2022 and \$1170 (\$990 in fees earned January 24 and 26, 2023 and \$180 earned on March 17, 2023) relating to drafting and revising proposed settlement agreements and the CCP §998 settlement offer. Aggregating these fees, the court awards \$11,940 in fees for Morrow's post-remittitur representation.

The Court will award the \$8430 in fees earned in connection with the instant fee motion. The amount is reasonable given the breadth of the motion.⁴ (*See Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1141.)

In conclusion and for the reasons set forth herein, the Court awards fees to plaintiffs pursuant to CCP §1036 in the amount of \$48,614.00

IT IS SO ORDERED.

Dated: July 6, 2024


ANN MOORMAN
Judge of the Superior Court

⁴ The Court does not address the hourly rates charged by Morrow or McMullen or any attorney in McMullen's firm. The hourly rates are reasonable based on the experience of counsel and attorneys' fees charged by attorneys in this community of which this Court is familiar. The District does not challenge the reasonableness of the hourly rates.

**Superior Court of California, County of Mendocino
PROOF OF SERVICE**

Case: **SCUK-CVG-2009-54665** **MOORES, WILLIAM VS. IRISH BEACH WATER**

Document Served: **ORDER RE MOTION FOR ATTORNEYS' FEES FILED APRIL 26, 2024**

I declare that I am employed by the Superior Court of California, in and for the County of Mendocino; I am over the age of eighteen years and not a party to the within action. My business address is:

- Mendocino County Courthouse, 100 North State Street, Ukiah, CA 95482
- Ten Mile Branch, 700 South Franklin Street, Fort Bragg, CA 95437

I am familiar with the Superior Court of Mendocino County's practice whereby each document is placed in the Attorneys' boxes, located in Room 107 of the Mendocino County Courthouse or at the Ten Mile Branch, transmitted by fax or e-mail, and/or placed in an envelope that is sealed with appropriate postage is placed thereon and placed in the appropriate mail receptacle which is deposited in a U.S. mailbox at or before the close of the business day.

On the date of the declaration, I served copies of the attached document(s) on the below listed party(s) by placing or transmitting a true copy thereof to the party(s) in the manner indicated below.

Party Served	Ukiah US Mail	Ten Mile US Mail	Ukiah Attorney Box	Ten Mile Attorney Box	Inter Office Mail	Fax	E-mail
Colin Morrow cmorrow@vmm-law.com	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Matthew Emerick matthew@mlelaw.com	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed at:

- Ukiah, California
- Fort Bragg, California

Date: 7/8/2024

KIM TURNER, Clerk of the Court


By: KIM WESTON, Deputy Clerk

JUL 08 2024

CLERK OF MENDOCINO COUNTY
SUPERIOR COURT OF CALIFORNIA
Jayne Korman

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MENDOCINO

* * * * *

WILLIAM H. MOORES, TONA)	Case No. SCUK CVG 09-54665
ELIZABETH MOORES,)	
)	ORDER RE MOTION TO TAX/STRIKE
Plaintiffs,)	COSTS
)	
v.)	
)	
IRISH BEACH WATER DISTRICT,)	Hearing Date June 4, 2024
DOES 1 through 10, inclusive,)	Judge: Hon. Ann Moorman
)	Dept: E
Defendants.)	
_____)	
)	
GORDON MOORES, SANDY MOORES,)	
MENDOCINO COAST PROPERTIES, a)	
California Corporation, and MOORES)	
ASSOCIATES, a partnership,)	
)	
Real Parties in Interest.)	
_____)	

On April 23, 2024, defendant IBWD filed its motion to strike and tax costs. The motion was brought after plaintiffs filed their memorandum of costs on April 9, 2024, seeking \$206,875.52 in litigation related costs. These costs are an accumulation of expenses incurred during phases one and two of the three phase court trial that resulted in judgment for plaintiffs for inverse condemnation and an award in excess of \$400,000 in compensation.¹

That judgment and related compensation award were reversed by the appellate court. In doing so, the Court of Appeal vastly narrowed the taking by the District to a taking of an additional well easement within an existing easement. The Court of Appeal also reversed the trial court's orders for attorneys' fees and costs arising from the inverse condemnation component of the trial. The matter was remanded for a potential trial on compensation.

On remand, the parties settled the inverse condemnation claim when the District accepted the CCP §998 offer extended by plaintiffs. The settlement substantially reduced the recovery by plaintiffs related to the inverse condemnation claim to \$25,000. This is the only claim on which plaintiffs prevailed in phases one and two.

¹ The expenses incurred in phase three are not relevant to this motion to tax costs

The Court has considered all post appeal briefing on the issue of costs arising from phases one and two including declarations from counsel with attached exhibits and the District's request for judicial notice filed April 23, 2024. The Court agrees with plaintiffs that any information presented in this briefing that flowed from pretrial settlement discussions is not for the Court to consider. The Court heard arguments from the parties at the hearing on the motion to tax costs on June 4, 2024.

Sections 1032(b) and 1033.5 of the Code of Civil Procedure govern the determination as to when and whether costs are recoverable for a prevailing party. Generally speaking, unless prohibited by statute, costs are recoverable to the prevailing party. In this case, plaintiffs prevailed on the inverse condemnation claim and, as such, they are entitled to recover their costs of suit. Those costs of suit include: 1) \$1,179 in filing fees, 2) \$8240 in deposition costs,² 3) \$420 in service of process costs, 4) \$644 in witness fees, 5) \$403 in court reporter fees (item 11) and 6) \$3098 for models, enlargements and photocopies of exhibits. Defendant does not challenge the validity of these costs.

Plaintiff also seeks miscellaneous costs in the amount of \$191,083. This sum was itemized as part of a cost memorandum submitted on July 30, 2015 of which the Court takes judicial notice (see line 16 to 2024 memorandum of costs which is further detailed in attachment 13 to Exh. 1 of the Request for Judicial Notice). Plaintiffs concede the Court should strike the request for \$215.31 in meals and conference call expenses, \$65.17 for postage and \$142.10 for photocopies. Plaintiff seeks \$3631.20 in reporting costs and argues that these are court reporter "fees" A close look at the dates reveals that all but \$30 are costs related to obtaining transcripts of trial testimony that the court did not order. Therefore, the court will strike \$3,601.20 as not recoverable pursuant to CCP §1033.5(a)(11). Aside from expert fees, that leaves allowable costs from line 16 of the 2024 cost memorandum as follows: \$30 in reporter fees, \$481 for mileage and \$9 for exhibit copying.

As part of the \$191,083, plaintiffs seek \$180,574 in expert fees. These fees are also itemized on attachment 13 to the cost memorandum submitted in July 2015. For inverse condemnation actions, CCP §1036 permits the recovery of reasonable disbursements, costs, expenses including appraisal and engineering fees actually incurred.

Addressing the requests individually, the Court rules as follows:

Celesa Plaister – Ms. Plaister only testified on the subject of pre-judgment interest, an award of which the Court of Appeal rejected and reversed. There is no pending claim for prejudgment interest. This Court finds the \$3,000 Plaister fee incurred to be unrelated to the issue on which plaintiff prevailed and is not allowable. The Court will tax or strike that fee in its entirety.

John Mackie – There was no substantiation submitted in the original 2015 cost memorandum for Mr. Mackie's fees and therefore the Court will strike/tax the \$800 requested in relation to Mackie for lack of proper documentation.

² Defendant asks the court to strike the deposition costs related to experts in the amount of \$1,124.61. The Court agrees to do so for the reasons advanced by the District and for the reasons provided herein for not awarding expert witness costs.

Dee Jaspar – the fees incurred for Mr. Jaspar were based on his theory for compensation developed by plaintiff BEFORE trial and which this Court found to be implausible. The theory was also rejected by the Court of Appeal. The \$84,179 fee for Mr. Jaspar sought herein is on its face unreasonable in light of the Court’s rejection of the theory at trial and the *de minimis* recovery of \$25,000 upon remand. The Court also observes that the ultimate award of \$25,000 had no relationship to Jaspar’s theory or opinion regarding damages. In other words, Jaspar’s work was unnecessary for the ultimate recovery. The Court will strike/tax the \$84,179.39 in its entirety.

Robert Dietrich – The \$49,221 in fees incurred for Dietrich’s services were substantially incurred before trial. His theory for compensation was also rejected by the trial court and further rejected by the Court of Appeal. This cost is not reasonable as his theory had no relationship to the final “taking” determination made by the Court of Appeal nor the ultimate \$25,000 paid by the District for the taking. Given the *de minimis* recovery, the Court will strike/tax all of \$49,221 in fees sought.

Deborah Stephenson – The \$29,596 in fees incurred for Ms. Stephenson’s contribution were substantially incurred before trial. The trial court accepted her theory for determining compensation, but the Court of Appeal rejected it. Like Dietrich’s, her theory of valuation had no relationship to the ultimate recovery and the request is excessive in light of the \$25,000 recovery. The Court will tax this request at 95% thus allowing \$1480 as an allowable cost.

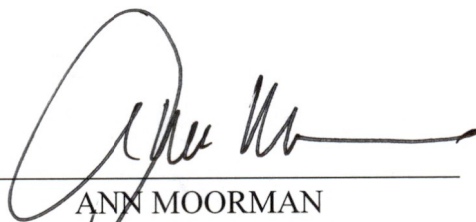
Jim Ronco – Ronco’s fees of \$3,000 related to his research, and deposition testimony concerning ownership of the roads and whether or not the District or Moores had any relevant ownership interests beyond the easement pertaining to the Unit 9 well. This testimony was salient and relevant to the Court of Appeal’s ultimate determination in the case. Given the *de minimis* recovery, the Court will tax the cost by two-thirds resulting in an allowable cost of \$1000. This allowable expense is reasonable and likely necessary based on the findings by the Court of Appeal.

Mike Ming – The \$10,747 in expert fees sought for Mr. Ming’s contribution is not reasonable nor was it necessary to attain the ultimate recovery of \$25,000. The Court will strike/tax that fee in its entirety.

Therefore, the total amount of costs awarded is \$16,984.

IT IS SO ORDERED.

Dated: July 6, 2024


ANN MOORMAN
Judge of the Superior Court

**Superior Court of California, County of Mendocino
PROOF OF SERVICE**

Case: **SCUK-CVG-2009-54665** **MOORES, WILLIAM VS. IRISH BEACH WATER**

Document Served: **ORDER RE MOTION TO TAX/STRIKE COSTS**

I declare that I am employed by the Superior Court of California, in and for the County of Mendocino; I am over the age of eighteen years and not a party to the within action. My business address is:

- Mendocino County Courthouse, 100 North State Street, Ukiah, CA 95482
- Ten Mile Branch, 700 South Franklin Street, Fort Bragg, CA 95437

I am familiar with the Superior Court of Mendocino County's practice whereby each document is placed in the Attorneys' boxes, located in Room 107 of the Mendocino County Courthouse or at the Ten Mile Branch, transmitted by fax or e-mail, and/or placed in an envelope that is sealed with appropriate postage is placed thereon and placed in the appropriate mail receptacle which is deposited in a U.S. mailbox at or before the close of the business day.

On the date of the declaration, I served copies of the attached document(s) on the below listed party(s) by placing or transmitting a true copy thereof to the party(s) in the manner indicated below.

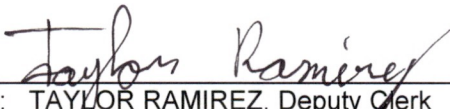
Party Served	Ukiah US Mail	Ten Mile US Mail	Ukiah Attorney Box	Ten Mile Attorney Box	Inter Office Mail	Fax	E-mail
COLIN MORROW cmorrow@vmm-law.com	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MATTHEW EMERICK matthew@mlelaw.com	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed at:

- Ukiah, California
- Fort Bragg, California

Date: 7/8/2024

KIM TURNER, Clerk of the Court


By: TAYLOR RAMIREZ, Deputy Clerk