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## Attorneys' Fees in Federal Civil Rights Lawsuits Part One

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### ❖ **Introduction**

Ordinarily, in the U.S. legal system, each party to a lawsuit pays their own legal fees, whether they win or lose. See [Alyeska Pipeline Service Co. v. Wilderness Society](#), #73-1977, 421 U.S. 240 (1975). The Civil Rights Attorney's Fee Award Act of 1976, [42 U.S.C. Sec. 1988](#), however, allows a court, in its discretion, to award reasonable attorneys' fees as part of costs to a prevailing party in federal civil rights lawsuits, including cases brought under [42 U.S.C. Sec. 1983](#), the statute most commonly used to bring actions in federal or state court .

Accordingly, the cost to the losing party of paying the attorneys' fees of the prevailing party can be substantial. Such fees may be awarded in cases in which the prevailing plaintiff was awarded damages, but also may be awarded in cases in which the plaintiff was awarded injunctive or declaratory relief.

A large body of case law has developed as to when such fees should be awarded, how the amount to be awarded should be calculated, and when a court should exercise its discretion by not awarding such fees.

Additionally, courts have developed principles concerning under what circumstances it is appropriate to award attorneys' fees under the statute to prevailing defendants who have successfully defended themselves against federal civil rights claims.

This article is intended to serve only as a brief introduction to the topic of attorneys' fees awards in federal civil rights lawsuits in general. A special set of statutory limitations applies to such attorneys' fees awards in lawsuits brought by prisoners, codified in the Prison Litigation Reform Act (PLRA), [42 U.S.C. Sec. 1997e\(d\)](#). This article does not address PLRA issues.

At the conclusion of Part One, there is a listing of relevant resources. Part Two will discuss awards to prevailing defendants and settlements.

### ❖ Awards to Prevailing Plaintiffs

Courts normally do award attorneys' fees under Sec. 1988 to prevailing plaintiffs in federal civil rights lawsuits. The statute authorizes the award of only "reasonable" attorneys' fees. How is it determined what fees are reasonable?

In [Hensley v. Eckerhart](#), #81-1244, 461 U.S. 424 (1983), the U.S. Supreme Court announced general guidelines for calculating a reasonable attorney's fee under Sec. 1988. It stated that the "most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate."

This figure, often called the "lodestar," is presumed to be the authorized reasonable fee contemplated by 1988. The Court cautioned, however, that the judge should "exclude from this initial fee calculation" hours that were not "reasonably expended" on the litigation.

Hensley then discussed other considerations that might lead the trial court to adjust the lodestar figure upward or downward, including the "important factor of the 'results obtained'." When a prevailing plaintiff has succeeded on only some of his or her claims, an award of fees for time expended on unsuccessful claims may not be appropriate.

In such situations, the Court held that the judge should consider whether or not the plaintiff's unsuccessful claims were related to the claims on which he succeeded, and whether the plaintiff achieved a level of success that makes it appropriate to award attorney's fees for hours reasonably expended on unsuccessful claims:

"In [some] cases the plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories. Much of counsel's time will be devoted

generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims. Instead the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.”

Therefore, *Hensley* emphasized that where “a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee,” and that “the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit.”

Relevant factors a court may consider in determining a reasonable amount of attorneys’ fees include: (1) time and labor required, (2) the novelty and difficulty of the questions, (3) the skill required to perform the legal service, (4) opportunity costs for taking the case, (5) the attorney’s customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the undesirability of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.

The fact that an attorney entered into a contingent fee agreement with the plaintiff does not limit the amount of attorneys’ fees to be awarded in a civil rights case, according to [\*Blanchard v. Bergeron\*](#), #87-1485, 489 U.S. 87 (1989).

In that case, a jury awarded petitioner \$10,000 in damages on a claim that a sheriff’s deputy had beaten the plaintiff. The trial court then awarded him \$7,500 in attorney’s fees. An appeals court reduced the fees award to \$4,000, based on a 40% contingency fee agreement between the plaintiff and his lawyer, but the U.S. Supreme Court disagreed, ruling that “reasonable” attorneys’ fees may still be awarded by the court, which may award an amount in excess of the agreement.

On the other hand, the Supreme Court has ruled that it is permissible for attorneys to waive fees in settlement agreements, even when the settlement agreement is conditioned on such a waiver. [\*Evans v. Jeff D.\*](#) #84-1288.475 U.S. 717 (1986).

In [\*City of Riverside v. Rivera\*](#), #85-224, 477 U.S. 561 (1986), the Supreme Court allowed civil rights plaintiffs to recover huge attorney’s fees in a modest case.

The case involved a lawsuit by eight Chicano individuals who were at a party when police, acting without a warrant, broke up the gathering using tear gas and allegedly unnecessary force, and arrested four of the plaintiffs on charges ultimately dismissed.

A total of \$33,350 in compensatory and punitive damages was awarded to the plaintiffs. The court then awarded attorneys' fees of \$245,456.25. Upholding the award, the Court rejected the argument that the fees were excessive merely because they greatly exceeded the damages awarded.

In part, the Court stated, that is because a civil rights action for damages does not benefit only the individuals whose rights were violated, but may also "vindicate important civil and constitutional rights that cannot be valued solely in monetary terms." Reasonable attorney's fees under 1988, therefore, "are not conditioned upon" and "need not be proportionate" to an award of money damages.

Insisting that such fees be proportionate to the damages awarded, the Court commented, might make it difficult or impossible for plaintiffs with meritorious civil rights claims involving relatively small damages to find competent counsel to obtain redress from the courts.

On the other hand, in [\*Farrar v. Hobby\*](#), #91-990, 506 U.S. 103 (1992), the Court held that a civil rights plaintiff solely seeking monetary damages who was awarded only \$1 in nominal damages was a "prevailing party," but was not entitled to an attorneys' fee award of \$280,000.

The Court stated that, in such cases, "the only reasonable fee is usually no fee at all." This decision does not bar attorneys' fees awards in cases where plaintiffs are awarded injunctive and/or declaratory relief, but fail to seek or to be awarded money damages.

What about instances where the plaintiffs do not technically prevail in their court claim, but the filing and pursuing of their suit arguably brings about a change in government policy or behavior? In [\*Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources\*](#), #99-1848, 532 U.S. 598 (2001), the U.S. Supreme Court rejected this "catalyst theory" for the award of attorneys' fees in federal lawsuits. It ruled that a plaintiff, in order to be entitled to an attorneys' fee award must receive a court judgment on the merits or a court-ordered consent decree; a voluntary change in the behavior of the defendant will not suffice.

Some other cases of interest in this area include:

- [\*Webb v. Board of Ed of Dyer County\*](#), #83-1360, 471 U.S. 234 (1985), in which the U.S. Supreme Court ruled that a “prevailing party” cannot recover attorney’s fees under Sec. 1988 for the time spent first pursuing administrative remedies.
- [\*Perdue v. Kenny A.\*](#), #08–970, 130 S. Ct. 1662 (2010) in which the U.S. Supreme Court discusses guidelines for the “extraordinary circumstances” in which a court may enhance an award of attorneys’ fees for superior work and results, provided that it states a detailed explanation for why.
- [\*D’Aguanno v. Gallagher\*](#), #93-3097, 50 F.3d 877 (11th Cir. 1995), in which a federal appeals court ruled that qualified immunity protects individual civil rights defendants from liability for costs and attorneys’ fees even in actions for injunctive and declaratory relief.

#### ❖ Resources

The following are some useful resources related to the subject of this article. .

- [Attorneys’ Fees & Costs: For Defendants](#). Summaries of cases reported in AELE publications.
- [Attorneys’ Fees & Costs: For Plaintiffs](#). Summaries of cases reported in AELE publications.
- [“Attorney’s Fees Law: Resources, News & Information For Practicing Lawyers.”](#)
- [Prison Litigation Reform Act: Attorneys’ Fees](#). Summaries of cases reported in AELE publications.
- [“Section 1983 Blog: Attorney’s Fees In Civil Rights Cases: A Brief Summary.”](#)

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