

[Fees Incurred for Monitoring Settlement Agreement Compliance are Recoverable Under 42 U.S.C. § 1988](#)

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In *Prison Legal News v. Schwarzenegger*, 2010 DJDAR 8612 (9th Circuit 2010) the court decided whether, and to what extent the publisher of, a monthly prison news magazine may recover attorneys' fees from the State of California for monitoring the State's compliance with a prior settlement agreement.

The publisher [Prison Legal News](#) ("Legal News") settled claims against the [California Department of Corrections and Rehabilitation](#) ("CDCR") relating to [First](#) and [Fourth Amendment](#) claims relating to dissemination of the magazine and other literature in correctional facilities. After entering into negotiations, the parties resolved the dispute and CDCR agreed to pay Legal News' attorney fees for the period up until the agreement was executed by the parties. Legal News also reserved the right to pursue claims for attorney fees for work performed after signing the agreement.

Subsequent to execution of the settlement agreement, Legal News filed a complaint against CDCR under [42 U.S.C. § 1983](#) pursuant to the procedures set out in the settlement agreement. The parties notified the district court of the settlement, sought dismissal without prejudice, and stipulated that Legal News was entitled to \$320,000 in attorney fees for work done through December 11, 2006. The court granted dismissal and confirmed the attorney fee award. In October of 2007, Legal News moved for a further fee award in the sum of \$137,672.79. The district court substantially granted that motion. The court awarded Legal News \$137,502 in attorney fees for the period between September 1, 2007, and October 15, 2008.

Subsequently, Legal News brought a second motion for fees in the sum of \$143,322.96. The CDCR argued that Legal News was not entitled to additional fees for work performed in simply monitoring compliance with the settlement agreement.

The Ninth Circuit affirmed in part noting that [§ 1988](#) provides that in actions brought under § 1983, courts may award the prevailing party reasonable attorney fees. A plaintiff who obtains a legally enforceable settlement agreement qualifies as a prevailing party. The court stated that § 1988 authorizes attorney fees awards for monitoring compliance with the parties' settlement agreement. This is true even where that monitoring does not lead to a judgment or order.

The Ninth Circuit concluded that Legal News was entitled to recover attorney fees for monitoring the CDCR's compliance.