

[Level of Success a Key Factor in Civil Rights Fee Award Cases.](#)

Posted on February 6, 2009 by [John "Jack" S. Pierce](#)

The 9th Circuit has recently overturned an attorneys' fee award of \$200,000 by the District Court in a civil rights case, holding that the District Court failed to consider the level of success obtained by the plaintiff in that matter. See *Ian McCowan v. City of Fontana* 550 F3d 918 (2008)

In that case McCowan had been arrested and "tased" by officers of the Fontana police department who had mistakenly believed that he was in possession of illegal drugs. After his release, he sued the officers and the City of Fontana for civil rights violations in the U.S. District Court for the Central District of California alleging the use of excessive force, the making of an arrest without probable cause and deliberate indifference on the part of the city of Fontana.

McCowan prevailed on only one of his nine claims and recovered only \$20,000 in damages after seeking damages in excess of \$75,000. The District Court's award of \$200,000 in legal fees and costs was appealed to the 9th Circuit and was overturned.

The 9th Circuit, applying the LODESTAR method of analysis, held that the reasonableness of a civil rights attorney fee award in a 42 USCA 1988 case is determined primarily by reference to the "*level of success*" achieved by the plaintiff. It further held that civil rights attorney fees must be "*adjusted downward*" where the plaintiff has obtained limited success on his pleaded claims and the redult does not confer a meaningful public benefit. The 9th circuit reversed after finding that McCowan's lawsuit did not confer a benefit to the public since the claims were brought against two officers and not the entire police department and settlement did not result in a change in any policy of the police department.

The 9th Circuit remanded the case to the District Court for reconsideration of the fee issue consistent with the 9th Circuit's opinion.