

[Does Negotiating a Fee Award along with Substantive Relief Create a Conflict of Interest?](#)

Posted on January 7, 2011 by [Gary A. Bresee](#)

An interesting article was published in *California Lawyer*, January 2011 issue, regarding attorneys' fees, and in particular, negotiating the amount of those fees during settlement discussions. *Negotiating Attorneys Fees, Id.* at 12, "Expert Advice," by Adam W. Hofmann, from the San Francisco office of Hanson Bridgett. The author recognizes that attorneys representing plaintiffs in civil rights and public interest cases usually bifurcate the settlement negotiations, with an attempt to reach agreement on the substantive issues first. The right to attorneys' fees, and the amounts thereof, are typically delayed until after the substantive issues have been resolved. Plaintiffs lawyers usually claim that bifurcation is necessary to avoid an ethical conflict between the client's claim and the lawyer's interest in getting paid.

The author argues, however, that such strategy may, in some cases, be a tactical mistake. The tactic of negotiating the fees simultaneously with the substantive claims may arguably avoid the inherent conflict that usually arises.

The answer is, of course, that it all depends on your case. Negotiating the issues simultaneously, and demanding an excessive amount of fees (at least in the eyes of the defendant) could cause a stumbling block in the negotiations over the substantive claims. Creating such an obstacle to the settlement talks at that point would mean plaintiff gets nothing, so the conflict could be real at that point. Because many actions are driven by the fee claim -- the recovery of fees being the primary motivation for bringing suit in the first place -- the conflict of interest should always be considered. The avoidance of that conflict is no doubt heavily dependent upon the case and the particular circumstances in each negotiation.

An interesting article, and worth your time to read; especially if you find yourself confronting this conflict question.