

[Ninth Circuit Reverses Trial Court's McCowan Decision on Prevailing Party Fees](#)

Posted on April 30, 2009 by [Gary A. Bresee](#)

We reported on the Ninth Circuit's opinion in *McCowan v. City of Fontana* [here](#), holding that the District Court failed to consider the level of success obtained by the plaintiff in a civil rights action. See *Ian McCowan v. City of Fontana* 550 F3d 918 (2008). 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. In his subsequent excessive force case, McCowan prevailed on only one of his nine claims and recovered only \$20,000 in damages via settlement, despite alleging damages in excess of \$75,000. The District Court's award of \$200,000 in legal fees and costs was overturned by the 9th Circuit.

On April 24, 2009, the Ninth Circuit recently denied McCowan's petition for panel rehearing and rehearing *en banc*. See *Ian McCowan v. City of Fontana*, 08 C.D.O.S. 4957 (April 24, 2009). However, the court also took the opportunity to *amend* its original opinion, issued December 24, 2008, by clearly explaining the tasks required by the District Court after remand. The following instructions can be found in the conclusion of the amended opinion, but were not included in the original decision:

"When awarding attorney fees on remand, the district court should adequately explain the reasonable number of hours and hourly rate it uses in calculating the fee, and appropriately adjust the award to account for McCowan's limited success on claims and damages, and for any public benefit derived from his suit."

The original Ninth Circuit opinion had merely "reversed and remanded for reconsideration of the issue of attorneys' fees and costs consistent with" the opinion. This quote is an excellent amendment to the opinion, because it provides the court (and the rest of us) with a clear step-by-step approach to analyzing these fee applications in the context of prevailing party suits. If the December 2008 *McCowan* opinion was considered an important decision, then this amended opinion is now a "must read" for all prevailing parties.