

Civil Rights Attorney's Fees

Qualifying as a Prevailing Party Offers No Guarantees

by Darren M. Gelber

With the enactment of the Civil Rights Attorney's Fees Awards Act of 1976,¹ a court may allow a prevailing party in a Section 1983 civil rights lawsuit to recover reasonable attorney's fees as part of the award. One of the stated goals of the statute was to attract lawyers to represent plaintiffs in civil rights cases.² Almost 10 years after the statute's enactment, in 1985, the United States Court of Appeals for the Third Circuit issued a published report titled *Court Awarded Attorney's Fees*³ that analyzed the then-prevailing law governing attorney fee applications in a variety of contexts. In the report, it was noted that several members of the task force expressed the view "that few awards in recent years in the social action context have been so discouraging that few attorneys will accept a civil rights case."⁴

The view expressed in the Third Circuit task force report was quite prescient, as subsequent developments have made the likelihood of earning a respectable attorney fee award in a Section 1983 case even more difficult.

In 1992, the United States Supreme Court decided *Farrar v. Hobby*,⁵ a case in which the plaintiffs owned and operated a school for delinquent and disturbed teenagers. After one of the students died, one of the owners was indicted on murder charges for willful failure to administer medical treatment and provide timely hospitalization. William Hobby was then the lieutenant governor of Texas, and actively participated in events that led to the closing of the school. The plaintiffs sued Hobby and others for monetary and injunctive relief under 42 U.S.C. Section 1983. At the conclusion of the trial, the jury found Hobby had committed acts under color of state law that deprived the plaintiff of his federally protected constitutional rights, but at the same time, found Hobby's conduct did not proximately cause any damages.

Following return of this verdict, the district court dismissed

the plaintiffs' complaint. On appeal, the Fifth Circuit found that dismissal of the complaint was erroneous, and the jury's verdict required that judgment be entered against Hobby for nominal damages.

Consequently, the plaintiffs sought attorney's fees as a prevailing party under 42 U.S.C. Section 1988, an application that the district court granted. On a second appeal to the Fifth Circuit, a divided panel reversed the fee award.⁶ The ruling was based on the Fifth Circuit's determination that the award of nominal damages did not make the plaintiff a 'prevailing party.' After granting *certiorari*, the United States Supreme Court reversed this aspect of the Fifth Circuit's holding:

We therefore hold that a plaintiff who wins nominal damages is a prevailing party under §1988. When a court awards nominal damages, it neither enters judgment for defendant on the merits nor declares defendant's legal immunity to suit. To be sure, a judicial pronouncement that the defendant has violated the constitution, unaccompanied by an enforceable judgment on the merits, does not render the plaintiff a prevailing party. Of itself "the moral satisfaction [that] results from any favorable statement of law" cannot bestow prevailing party status. No material alteration of the legal relationship between the parties occurs until the plaintiff becomes entitled to enforce a judgment, consent decree, or settlement against the defendant. A plaintiff may demand payment for nominal damages no less than he may demand payment for millions of dollars in compensatory damages. A judgment for damages in any amount, whether compensatory or nominal, modifies the defendant's behavior for the plaintiff's benefit by forcing the defendant to pay an amount of money he otherwise would not pay. As a result, the Court of Appeals for the Fifth Circuit erred in holding that petitioners' nominal damages award failed to render them prevailing parties.⁷

However, having won the battle, the plaintiffs in *Farrar* then lost the war. The Supreme Court held that the degree of the plaintiffs' overall success in the litigation effects the reasonableness of a fee award. Indeed, the Court found "the most critical factor" in determining the reasonableness of a fee award is the degree of success obtained. In the *Farrar* case, the plaintiffs had demanded \$17 million in compensatory damages, and only ended up with an award of nominal damages. Under these circumstances, the Supreme Court held the plaintiffs were entitled to no fee at all.⁸

A recent unpublished opinion from the New Jersey Superior Court, Appellate Division, highlights the risks undertaken by plaintiff's counsel in agreeing to represent a client in a 1983 case. In *Mota v. Lynch, et als.*,⁹ Bayonne police officers responded to an address based on a 911 hang-up call. When officers arrived, Eliezer Mota Sr. answered the door, told officers everything was fine inside of the residence, and denied making any call to 911. Officers pushed him aside, entered his residence, and arrested him. The officers then proceed to the kitchen, where Mrs. Mota was present. When officers placed their hands on Mrs. Mota, Eliezer Mota Jr. attempted to intervene. Officers then grabbed Mota Jr. by his arms and neck, slammed him into a wall, and kneed him in his groin area. They then took him to the kitchen, slammed him into the kitchen sink, and slammed his face onto the floor. He was handcuffed, and kicked by officers. Mota Jr. sustained injuries to his abdomen, collarbone, arm, wrists and lip. The Motas filed a civil rights lawsuit against the Bayonne police officers involved in the incident.

After a jury trial of Mota Jr.'s claims, a jury found the officers had violated his civil rights by using excessive force to subdue and arrest him. However, the jury awarded only one dollar in damages. Based upon the award of one dol-

lar in damages, the trial court determined Mota Jr. was a prevailing party, and awarded his attorneys more than \$100,000 in fees. The defendants appealed.

In its opinion, the Appellate Division held that the trial court has erred in not considering the very limited degree of success obtained by Mota Jr. in obtaining damages in the amount of only one dollar. The Appellate Division held that this limited degree of success required that the court assess the impact of the very limited recovery upon the attorney fee application. The Appellate Division vacated the award of attorney's fees, and remanded the case to the trial judge for further proceedings.

The Appellate Division opinion in *Mota* is but the latest in a series of opinions from New Jersey courts expressing great willingness to apply the reasoning in *Farrar* to deny plaintiffs' counsel an award of attorney's fees in cases in which only limited success is obtained at trial. For example, a plaintiff who filed a lawsuit under the Open Public Records Act was properly denied attorney's fees as a prevailing party when the government agency defendant voluntarily disclosed the records that were the subject of the lawsuit after it was filed, and not as a result of any judgment or settlement obtained by the plaintiff.¹⁰ In another matter, a plaintiff who proved an actionable case of sexual harassment in violation of the Law Against Discrimination, but who was awarded only nominal damages, saw her attorney fee award vacated and the matter remanded to the trial court to determine "whether to award minimal attorney's fees or no fees at all."¹¹ In yet another case, an employee who filed a wrongful discharge discrimination complaint against his employer, and who was subsequently voluntarily reemployed during the pendency of the litigation, was not entitled to attorney's fees when the lawsuit itself was not found to be the

catalyst resulting in the reemployment.¹²

Nonetheless, in what perhaps may be the only development in this area of law that is beneficial to the plaintiff's bar, when a civil rights type of claim is resolved by way of settlement of a lawsuit alleging relief under a fee shifting statute, a plaintiff who obtains significant benefits as a result of the settlement may still be entitled to recover attorney's fees, because the lawsuit itself filed under a fee shifting statute was the genesis of the relief obtained.¹³

Lessons Learned

Litigating a viable civil rights case is difficult enough. Counsel must grapple with such issues as analyzing whether the available evidence can prove a plaintiff's claims, because frequently there are no objectively neutral third-party witnesses, and the plaintiff, especially in a police excessive force case, may not be the most credible person in the eyes of the fact finder. Next, counsel must assess whether issues of qualified immunity will preclude a finding of liability on the part of an offending police officer. Additionally, counsel often must be prepared to advance, out-of-pocket, the costs of litigation, including expensive deposition transcript fees and expert witness fees, and forego contemporaneous payment for services rendered under an hourly arrangement in favor of a contingent fee arrangement, which virtually all civil rights plaintiffs seek in making the determination to retain counsel. As if all of this wasn't difficult enough, imagine litigating a case for two to three years, and finally having a jury make a determination that a defendant violated the constitutional rights of the plaintiff and but only award nominal damages. As set forth above, such a determination could make countless hours of hard work subject to a complete denial of a fee application award.

In 1985, the Third Circuit task force observed that the manner in which courts decided fee applications in civil rights cases might have the effect of discouraging attorneys from representing plaintiffs in such cases. The recent trend of courts to follow the rule in *Farrar* and deny attorney fee applications when modest or no damages are awarded, further complicates the problem. The lesson: If an attorney expects to be paid for services at the end of a civil rights case, he or she better be pretty certain the fact finder can be convinced to award actual damages in an amount that will justify the full award of fees. ⚡

Endnotes

1. 42 U.S.C. §1988.
2. S. Rep. No. 1011, 94th Cong., Second Sess. 6, Reprinted in 1976 U.S. Code Cong. and Ad News 5908, 5913 (1976).
3. 108 F.R.D. 237 (3d Cir. 1985).
4. *Id.* at 249.
5. 506 U.S. 103 (1992).
6. *See Farrar v. Kain*, F. 2d 1311 (5th Cir. 1991).
7. 506 U.S. at 112-13.
8. *Id.* at 114-16.
9. 2013 N.J. Super. Unpub. LEXIS 1681 (App. Div. July 8, 2013).
10. *Mason v. City of Hoboken*, 196 N.J. 51 (2008).
11. *Tarr v. Ciasulli*, 181 N.J. 70, 86 (2004).
12. *Jackson v. Georgia Pacific*, 296 N.J. Super. 1 (App. Div. 1996).
13. *Warrington v. Village Supermarket*, 328 N.J. Super. 410 (App. Div. 2000); *see also, Stocton v. Rhulen*, 302 N.J. Super. 236 (App. Div. 1997).

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