

## Attorney/Spouse Exception Allows Civil Rights Plaintiff to Obtain Fees

September 28, 2011 by [David J. McMahon](#)

In [Rickle v. County of Los Angeles](#), 2011 DJDAR 12634 (2011), the [U.S. Court of Appeal for the Ninth Circuit](#) held that a successful civil rights plaintiff may recover a reasonable attorney fee, even when represented by a spouse.

The plaintiff and her attorney were married and owned property where they both resided. Commencing in 2001, the couple jointly initiated complaints to the County of Los Angeles regarding their neighbors' improper land use. A permanent injunction was eventually issued against the neighbors. However, the couple continued to complain to the County, which allegedly did not take further action.

Later, the wife, as the sole plaintiff, filed a federal civil rights action under [42 U.S.C. Section 1983](#) against the County. She was represented by her attorney husband, and another lawyer. The suit alleged that the County had harassed the wife because of the complaints she made about the County's failure to enforce building codes and ordinances. The parties eventually settled. As the prevailing party, the wife moved to recover attorney fees under the [Civil Rights Attorney's Fees Awards Act](#).

Although the district court granted the request for attorney fees with respect to co-counsel, it denied the request with respect to the husband. The trial court concluded that an attorney fee award under Section 1988 of the Act was proper only if an "independent, emotionally detached counsel performed services."

The Ninth Circuit partially reversed the trial court's decision.

The Ninth Circuit noted that Section 1988 clearly does not allow an award of attorney fees to pro per plaintiffs, who are attorneys and represent themselves in civil rights cases. This is consistent with the general rule throughout the United States. However, the Ninth Circuit clarified that case law does not "automatically" bar a successful civil rights plaintiff from recovering attorney fees, even if represented by a spouse.

Although married couples may have emotional bonds, there is no reason to presume that attorney-spouses are "unable to provide independent, dispassionate legal advice." The Ninth Circuit vacated the order of the district court. It remanded the case for further proceedings.