

# ATTORNEYS' FEES

## ATTORNEY'S FEES FOR PRO BONO SERVICES

By Richard Alexander, Esq.  
San Jose

Most lawyers view *pro bono* cases as those where an attorney's time is freely donated to a client. That is not always the case.

The Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. 1988, requires defendants pay the reasonable attorney's fees incurred by plaintiffs who "prevail" in civil rights actions. In *Hensley v. Eckerhart*, 103 S.Ct. 1933 (1983) the Supreme Court explained that plaintiffs "prevail," within the meaning of the act, if they obtain *some* relief on *any* significant issue in the litigation that achieves even some of the benefits they sought. *Id.* at p. 1939.

Once plaintiffs have met this "burden" they are entitled to be compensated for *all hours* they devoted to the litigation, *even on unsuccessful claims or research efforts.* *Id.* at 1940. The fact that some of the attorney's time may have been spent pursuing issues or research that was ultimately unproductive, rejected by the court, or mooted by intervening events is irrelevant to the calculation of their reasonable fees, because the statute requires that counsel must be paid "for all time reasonably expended in pursuit of the ultimate result achieved, in the same manner that an attorney traditionally is compensated by a fee-paying client for all time reasonably expended on a matter." *Id.*, at 1938, quoting S.Rep. No. 94-1011, 94th Cong., 2d Sess., at 6 (1978).



RICHARD ALEXANDER

In the usual case attorneys seeking fees for *pro bono* services under the act render a statement for their time at their normal hourly rate. Once this "lodestar" figure has been established it is increased by a "multiplier" which reflects the contingent nature of the relief, the results obtained, the novelty and complexity of the legal and factual issues, the difficulty in obtaining counsel willing to undertake such litigation and similar factors.

In determining counsel's reasonable hourly rate, courts must look to the hourly amount "which private counsel of similar experience, reputation, and skill could command in cases of similar complexity in the community." *White v. City of Richmond*, 713 F.2d 461 (9th Cir. 1983) (*White* was litigated by the Altschuler & Berzon firm). In light of Congress' admonition that fees under section 1988 are intended to be comparable to those awarded to attorneys who are engaged in complex commercial litigation [S.Rep. No. 94-1011, *supra*] courts have been making substantial awards.

The Ninth Circuit has traditionally been the most liberal in the country in awarding multipliers and it is not uncommon for such courts to award multipliers in civil rights cases of

200% or more! See, e.g., *Keith v. Volpe*, 501 F.Supp. 403 (C.D.Cal. 1980; multiplier of 350%); *Underwood v. Pierce*, No. 79-1318-HP (C.D.Cal. 1983; 350%); *Blake v. City of Los Angeles*, No. 73-1962 (C.D.Cal. 1981; 275%); *Fadhl v. Police Department*, No. C-79-2119 TEH (N.D.Cal. 1983; 250%); *Richardson v. Restaurant Marketing Associates, Inc.*, 527 F.Supp. 690 (N.D.Cal. 1981; 225%); *Western Addition Community Organization v. Alioto*, No. C-070-1335 (N.D.Cal. 1974; 200%).

In addition to attorney's fees, out-of-pocket costs and expense for photocopying, travel, filing fees, messenger, witness fees and transcripts are also compensable under section 1988. See *Thornberry v. Delta Airlines, Inc.*, 676 F.2d 1240, 1244 (9th Cir. 1982); *Dowdell v. City of Apopka*, 698 F.2d 1181, 1188-92 (11th Cir. 1983).

Finally, federal courts are unanimous in holding that prevailing plaintiffs under 42 U.S.C. 1988 are entitled to compensation for time expended by their attorneys in litigating the issue of fees. See, e.g., *Southwest Legal Defense Group v. Adams*, 657 F.2d 1118 (9th Cir. 1981). Such fees can be substantial. See, e.g., *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983) (fees on fees of \$294,325); *Blake v. City of Los Angeles, supra* (fees on fees of \$146,000); *Vulcan Society v. City of White Plains*, 533 F.Supp. 1054 (S.D.N.Y. 1982) (fees on fees of over \$75,000).

*Pro bono publico* cases for indigent clients can result in the payment of substantial attorney's fees.

Because this is a statutory cause of action, California provides a three year statute of limitations and a civil rights action may be filed in both state and federal courts. Whenever a personal injury or wrongful death occurs as a result of any "state action," always include a civil rights cause of action in order to obtain the payment of the plaintiff's attorney's fees by the defendant. ■

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