



National Police Accountability Project

A Project of the National Lawyers Guild

ATTORNEY FEES *for* NEW YORK SENATE BILL 1991

The attorney fee framework proposed in SB 1991 is critical to ensure New Yorkers who experience government abuse can obtain counsel to file their case. The proposed provision closely resembles fee shifting regimes in other civil rights statutes and will have a negligible or overall positive impact on the budgets of municipalities sued under the law.

Attorney Fees Are Necessary to Ensure Plaintiffs Have Adequate Representation

Civil rights cases often do not involve large damage awards for plaintiffs. In some cases, a damage award would be insufficient to compensate a plaintiff for their injuries and the attorney for their services. Accordingly, fee shifting is essential to help victims of police misconduct obtain counsel irrespective of the damage value of their case. Without an attorney's fee provision, many meritorious cases will never be filed.

Plaintiffs Are Almost Always Entitled to Attorney Fees in Federal Cases

Plaintiffs who prevail in federal civil rights cases are entitled to attorney fees under the Civil Rights Attorneys Fee Award Act of 1976 (42 USC 1988). A prevailing federal civil rights plaintiff *will* be awarded attorney fees unless “special circumstances would make an award unjust.”¹ Even though the language of 42 USC 1988 may appear discretionary, courts have narrow discretion and almost never deny a plaintiff's attorney fee award.² SB 1991's mandatory attorney fee provision is consistent with the attorney fee framework municipalities are already subject to in federal civil rights litigation.

Other State Civil Rights Statutes Provide for Mandatory Fees

Both Colorado and New Jersey state civil rights statutes provide for mandatory attorney fees. In both states, a prevailing plaintiff is entitled to reasonable fees for civil rights actions.³ Attorney fees are also available in Colorado and New Jersey injunctive relief cases where the government voluntarily changes its illegal practices in response to the lawsuit.⁴

Attorney Fees Account for a Small Percentage of Municipal Budgets

As with other litigation costs, attorney fees account for a miniscule percentage of a municipal budget. Attorney fees and other costs make up less than 1% of the average city's annual expenditures.⁵ Even though attorney fees are essential to ensuring individuals can vindicate their civil rights, they have a relatively insignificant fiscal impact on municipalities.

¹ *Hensley v. Eckerhardt*, 461 U.S. 424, 429 (1983) (“a S. Rep. No. 94-1558 (1976)”).

² *N.Y. Gaslight Club Inc. v. Carey*, 447 U.S. 54, 68 (1980); *McQueary v. Conway*, 614 F.3d 591, 604 (6th Cir. 2010); *Saint John's Organic Farm v. Gem Cnty. Mosquito Abatement Dist.*, 574 F.3d 1054, 1064 (9th Cir. 2009).

³ Colo. Rev. Stat. 13-21-131 (2021); N.J. Rev. Stat 10:6-2 (2020).

⁴ *Id.*

⁵ Joanna Schwartz, *How Governments Pay: Lawsuits, Budgets, and Police Reform*, 63 UCLA L. Rev. 1144, 1165 (2016).