

Sixth Circuit Takes A Hard Look At Statutory Attorney's Fees

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In a [published opinion](#) last week, the *Sixth Circuit* examined and rejected the award of more than \$500,000 in attorney's fees to ***People First of Tennessee*** in relation to its work in 2008 on a contempt motion against the State of Tennessee for violating court orders related to the closure of a state mental health facility. In so doing, the court stressed the necessity of a causal connection between work performed and results obtained in order to receive statutory attorney's fees under 42 U.S.C. § 1988, and that such fees cannot merely issue in search of a successful action to attach to.

The litigation underlying the appeal began in 1992 when the United States sued Tennessee over its operation of an institutional home for people with mental disabilities. The district court found against Tennessee and issued a comprehensive consent decree to remediate the situation, after which People First intervened in the case on behalf of the facility's residents as a class. Over the course of litigation, multiple contempt findings, settlements, and contempt orders issued against Tennessee. After having received over \$3.6 million in fees during this litigation, in 2011 People First filed its nineteenth application for fees, alleging it was owed an additional \$800,000 in connection with its work on a stricken contempt motion and "general monitoring" of the ongoing execution of the decrees.

In overturning the district court's ultimate award of \$557,711 to People First, the Sixth Circuit stressed the necessity of a causal connection between such a fee award and the order or success produced by the work behind those fees. While acknowledging that § 1988 fee awards can issue for work performed in the course of defending work performed enforcing a prior decree, here People First's contempt motion that allegedly produced the fees in question had been stricken from the docket in 2009 and never renewed. Thus, the court observed that "People First [is] in the difficult position of seeking fees for a motion that the district court never granted," and so could not recover the fees under § 1988.

The court went on to analyze Tennessee's separate appeal of \$100,000 of fees, which had been awarded for People First's "general monitoring work." Citing Supreme Court precedent, the Sixth Circuit noted that, in these cases, "general monitoring fees" must be backed by work that was necessary to enforce a prior order. The court also noted a circuit split as to whether "post-judgment monitoring work can be compensable without a court order." However, the court found it unnecessary to weigh in on this split, because it held that People First had not made a prima facie showing that its \$100,000 of monitoring work was necessary in light of a court-appointed monitor who had performed \$10.6 million-worth of monitoring.

The court did note that People First's work had benefitted the class of persons on whose behalf it intervened, and pointed out several times that People First had been compensated on eighteen separate occasions for its work. However, the court indicated in no uncertain terms that, given the strictures of § 1988, a prima facie case of necessity and a causal connection between work performed and actual results obtained is vital to obtain fees incurred in the process of defending a prior decree.

This post was written with contributions from Ryan Goellner.

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National Law Review, Volume V, Number 47

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