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Bernard P. Codd
McDermott Will & Emery

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GROSSLY EXCESSIVE ATTORNEY'S FEE REQUESTS UNDER THE CIVIL RIGHTS ATTORNEY'S FEE AWARDS ACT: SHOULD THE ENTIRE FEE REQUEST BE DENIED?

I. INTRODUCTION

The importance of civil rights in our society is underscored by the availability of legal redress to individuals who have suffered a deprivation of those rights.¹ The vindication of civil rights, however, often depends upon the people least able to afford the legal fees involved in commencing a civil rights action.² While contingent fee arrangements³ may provide personal injury plaintiffs who cannot afford counsel the opportunity to have their day in court, such arrangements generally do not entice lawyers to accept civil rights cases that "frequently involve substantial expenditures of time and effort but produce only small monetary recoveries."⁴ Accordingly, the "vast majority of the victims of civil rights violations [cannot] . . . present their cases to the courts."⁵

In an effort to provide these victims with effective access to the judicial process,⁶ Congress enacted the Civil Rights Attorney's Fee

1. See 42 U.S.C. § 1983 (1988). Section 1983 provides that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

Id.

2. *City of Riverside v. Rivera*, 477 U.S. 561, 577 (1986) (citing 122 CONG. REC. 31832 (1976)).
3. A contingent fee is one that is contingent upon the outcome of the matter for which the attorney's services are being rendered. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.5(e) (1983) (amended 1993). The fee generally consists of a percentage of the plaintiff's recovery. *Id.*
4. *City of Riverside*, 477 U.S. at 577. In a contingent fee arrangement, a small monetary recovery for a plaintiff translates into a small fee for the plaintiff's attorney. See *supra* note 3.
5. *City of Riverside*, 477 U.S. at 576 (quoting H.R. REP. NO. 94-1558, 94th Cong., 2d Sess. 5 (1976), reprinted in 1976 U.S.C.C.A.N. 5910).
6. *Id.*

Awards Act of 1976 (the Act).⁷ Because the Act grants district courts the discretion to award reasonable attorney's fees⁸ to the prevailing

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7. 42 U.S.C. § 1988 (1988 & Supp. III 1991). Specifically, § 1988(b) of the Act provides as follows:

In any action or proceeding to enforce a provision of sections 1981, 1981(a), 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. 1681 *et seq.*], or title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d *et seq.*], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

Id. § 1988(b). Prior to enactment of the Act, the traditional American rule prohibited a prevailing party from collecting attorney's fees from the losing party. *See, e.g.,* Runyon v. McCrary, 427 U.S. 160, 182 (1976) (refusing to award attorney's fees to prevailing civil rights litigants in absence of a statute expressly authorizing such award); Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 247 (1975) (same). Because Congress believed, however, that an individual who commences a civil rights action acts as a "private attorney general," vindicating a policy that Congress consider[s] of the highest importance," *City of Riverside*, 477 U.S. at 575 (quoting H.R. REP. NO. 94-1558, 94th Cong., 2d Sess. 5 (1976)), *reprinted in* 1976 U.S.C.C.A.N. 5910 (quoting Newman v. Piggie Park Enters., Inc., 390 U.S. 400, 402 (1968)), it asserted that awarding attorney's fees to the prevailing parties in civil rights litigation was essential. *See id.* at 576 (citing S. REP. NO. 94-1011, 94th Cong., 2d Sess. (1976), *reprinted in* 1976 U.S.C.C.A.N. 5910).

8. *See* 42 U.S.C. § 1988(b). "[U]nless special circumstances would render such an award unjust," the prevailing party should "ordinarily recover an attorney's fee." *Hensley v. Eckerhart*, 461 U.S. 424, 429 (quoting S. REP. NO. 94-1011, 94th Cong., 2d Sess. 5 (1976)), *reprinted in* 1976 U.S.C.C.A.N. 5912 (quoting Newman v. Piggie Park Enters., Inc., 390 U.S. 400, 402 (1968)). Although the party requesting attorney's fees is typically a prevailing plaintiff, a prevailing defendant may also be awarded attorney's fees under the Act if the litigation to which it is a party is frivolous, unreasonable, or without foundation. *Christiansburg Garment v. EEOC*, 434 U.S. 412, 421 (1978). Thus, the burden that a defendant must meet before receiving an award of attorney's fees is higher than that which must be met by a plaintiff, who must only prevail in some aspect of the litigation to receive such an award. *See id.* at 417, 419, 422. Although *Christiansburg* involved attorney's fees under 35 U.S.C. § 2000e-5(k), rather than under the Act, the Court generally construes similar language in fee shifting statutes alike. *City of Burlington v. Dague*, 112 S. Ct. 2638, 2640 (1992). *But cf.* *Fogerty v. Fantasy, Inc.*, 114 S. Ct. 1023, 1033 (1994) (holding that the defendant need only prevail in order to recover attorney's fees in a Copyright Act case). Despite the similarities between the fee shifting language of the Copyright Act, codified at 17 U.S.C. § 505, and the Act, the *Fogerty* Court opined that the goals and objectives of the Civil Rights statute and the Copyright statute are distinguishable. *Fogerty*, 114 S. Ct. at 1028. Because the Act reflects a congressional desire for "private attorneys general," the higher standard imposed upon prevailing defendants in civil rights litigation is justified. *Id.* This distinction was downplayed by Justice Thomas in his concurring opinion in *Fogerty*, in which he argued that virtually identical language should be construed similarly and that prevailing defendants should only have to meet the same burden as prevailing plaintiffs to receive an award of attorney's fees in civil rights cases. *Id.* at 1034-36 (Thomas, J., concurring).

parties⁹ in civil rights litigation, attorneys are more willing to represent impoverished persons with legitimate civil rights grievances.¹⁰

Notwithstanding the district court's seemingly unfettered discretion to award attorney's fees under the Act, questions have arisen regarding the appropriate amount of these awards. While the Act provides that district courts have the ability to award "a reasonable attorney's fee,"¹¹ it offers no guidance as to when fees should be considered unreasonable or grossly excessive.¹² As a result, district courts are left to fashion their own definition of grossly excessive fees.

The Act also fails to address the consequences that a client and the client's attorney might face if the attorney submits a grossly excessive fee request.¹³ If the request for attorney's fees is deemed grossly excessive, may the district court deny payment of all fees, or should the court reduce the excessive fees to a reasonable amount? Even if the requested fees are not deemed grossly excessive, should a district court deny any portion of the fees that it believes is inappropriate or unjustified?

To answer these and other questions, this Comment first examines the guidance that the United States Supreme Court has provided regarding the reasonableness of attorney's fees in civil rights litigation. Because this guidance is not conclusory as to grossly excessive fees, this Comment also examines how various jurisdictions have defined and/or dealt with grossly excessive fee requests made

9. See 42 U.S.C. § 1988(b). Under the provisions of the Act, if the prevailing party is a *pro se* plaintiff, attorney's fees are not recoverable even if the *pro se* plaintiff is an attorney. *Kay v. Ehrler*, 499 U.S. 432, 438 (1991). The refusal to award attorney's fees to a *pro se* plaintiff is predicated upon the Court's belief that Congress intended for civil rights litigants to retain counsel to ensure the "effective prosecution of meritorious claims." See *id.* at 437.

10. *City of Riverside*, 477 U.S. at 578.

11. See 42 U.S.C. § 1988(b). A reasonable attorney's fee may include fees for experts utilized by the prevailing party in the litigation. *Id.* § 1988(c) (Supp. III 1991). Although the trial court must ultimately calculate the amount of reasonable attorney's fees, the prevailing party has the burden of proving that the amount requested is reasonable. *Hensley*, 461 U.S. at 433. Although *Hensley* did not address how this burden might be satisfied, at a minimum, the fee applicant should support the fee request with contemporaneous records of the time expended on the prevailing party's case. See *infra* notes 67, 145 and accompanying text. The prevailing party should also make a good faith effort to exclude from the fee request hours or expenses which are excessive, redundant, or otherwise unnecessary. *Hensley*, 461 U.S. at 434. See *infra* notes 50-51, 134-35, 146 and accompanying text discussing circumstances in which courts have determined that the hours or expenses contained within a prevailing party's fee request were excessive, redundant, and/or unnecessary.

12. 42 U.S.C. § 1988.

13. See *id.*

pursuant to the Act. This Comment then explores the appropriateness of the remedies utilized by these jurisdictions to deal with grossly excessive fee requests, and suggests alternative remedies to further the Act's goal of providing effective judicial access to civil rights plaintiffs while preventing civil rights attorneys from receiving a windfall when their client is the prevailing party. Finally, this Comment concludes with a recognition of the importance of these goals and the realization that the Supreme Court is unlikely to address the issue of grossly excessive fees under the Act until there is a true split among the federal circuits.

II. WHEN WILL FEES BE CONSIDERED GROSSLY EXCESSIVE?

A. *Supreme Court Guidelines*

Although many civil rights cases that have come before the Court involved requests for attorney's fees by the prevailing party,¹⁴ the Court has not yet made its own pronouncement on the assessment and treatment of grossly excessive fee requests under the Act. The Court has not defined a grossly excessive fee request, nor has it addressed whether a district court may deny reasonable attorney's fees when the prevailing party's fee request is deemed grossly excessive. The Court has, however, instructed the lower courts of the appropriate method for calculating a reasonable attorney's fee.¹⁵

In *Hensley v. Eckerhart*,¹⁶ the Supreme Court endorsed the twelve factor reasonableness test established by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*¹⁷ (the *Johnson Factors*) as the appropriate method for calculating a reasonable fee in civil rights litigation.¹⁸ The *Johnson Factors* are as follows: (1) the time and

14. See *Farrar v. Hobby*, 113 S. Ct. 566 (1992); *West Virginia Univ. Hosp., Inc. v. Casey*, 499 U.S. 83 (1991); *Kay v. Ehrler*, 499 U.S. 432 (1991); *City of Riverside v. Rivera*, 477 U.S. 561 (1986); *Blum v. Stenson*, 465 U.S. 886 (1984); *Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Maher v. Gagne*, 448 U.S. 122 (1980); *Runyon v. McCrary*, 427 U.S. 160 (1976); *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240 (1975).

15. See *Hensley v. Eckerhart*, 461 U.S. 424 (1983).

16. *Id.* The plaintiffs in *Hensley* filed a request for attorney's fees under the Act after prevailing on certain claims of constitutional violations at a Missouri state hospital. *Id.* at 426.

17. 488 F.2d 714 (5th Cir. 1974).

18. *Hensley*, 461 U.S. at 429-30 n.3. The calculation of a reasonable fee should begin with the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate, *id.* at 433, the result of which is sometimes referred to as the "lodestar" amount. *Hall v. Borough of Roselle*, 747 F.2d 838, 839 n.2 (3d Cir. 1984). A reasonable hourly rate is the prevailing market

labor required; (2) the novelty and the difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship; and (12) awards in similar cases.¹⁹ In *Hensley*, the Court placed the greatest importance on the eighth *Johnson* Factor, which measures the degree of success obtained by a plaintiff.²⁰ Under the Act, however, a plaintiff does not have to be successful on all of its claims to receive attorney's fees as the prevailing party.²¹ Rather, if a plaintiff succeeds on any significant issue, thereby achieving some of its goals in bringing suit, reasonable attorney's fees may be awarded.²²

rate in the relevant community. *Blum v. Stenson*, 465 U.S. 886, 895 (1984) (holding that the prevailing market rate applies whether the plaintiff is represented by private or non-profit counsel). *But cf.* *New York State Ass'n for Retarded Children v. Carey*, 711 F.2d 1136, 1152-53 (2d Cir. 1983) (holding that when litigation is lengthy, the reasonable hourly rate should be that which was in effect during the litigation, and not the hourly rate in effect at the conclusion of the case).

19. *Johnson*, 488 F.2d at 717-19. Both houses of Congress referred to the *Johnson* Factors when the Act was enacted. *Hensley*, 461 U.S. at 429-30. The *Johnson* Factors are substantially similar to the factors for determining a reasonable fee set forth in the Model Rules of Professional Conduct (the Model Rules). The factors in the Model Rules are:

1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; 2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; 3) the fee customarily charged in the locality for similar legal services; 4) the amount involved and the results obtained; 5) the time limitations imposed by the client or by the circumstances; 6) the nature and length of the professional relationship with the client; 7) the experience, reputation, and ability of the lawyer or lawyers performing the service; and 8) whether the fee is fixed or contingent.

MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.5(a) (1983) (amended 1993). The Model Rules have been adopted by more than two-thirds of the jurisdictions in this country and have largely supplemented their predecessor, the Model Code of Professional Responsibility (the Model Code). ABA, ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT, 1-2 (J.P. Gray ed., 2d ed. 1992). Although the Model Code prohibited clearly excessive fees, *id.* at 71, the Model Rules do not distinguish between excessive and grossly excessive fees. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.5(a) (1983) (amended 1993).

20. *Hensley*, 461 U.S. at 435-36.

21. *Id.* at 433-36.

22. *Id.* at 435. Similarly, prevailing parties in pre-trial settlements may be awarded

If a plaintiff's unsuccessful claims originate from the same common core of facts as the plaintiff's successful claims, thereby making it difficult to separate the hours which the plaintiff's counsel expended on a claim-by-claim basis, the district court should "focus on the significance of the overall relief obtained . . . in relation to the hours reasonably expended in the litigation."²³ The fee award should not be reduced simply because the plaintiff did not prevail on every claim.²⁴ As long as the plaintiff obtains "excellent results," the plaintiff's attorney should recover the entire amount of reasonable attorney's fees.²⁵

Where "exceptional success" has been achieved, the prevailing party's attorney may also be awarded a bonus, or an "enhanced award."²⁶ Decisions subsequent to *Hensley*, however, indicate that

attorney's fees if they achieve a significant measure of the results sought. *Maher v. Gagne*, 448 U.S. 122, 129 (1980). The plaintiff in *Maher* challenged certain regulations governing Connecticut's Aid to Families with Dependent Children program, alleging that her level of benefits under that program was reduced when she was denied credit for substantial portions of her work-related expenses. *Id.* at 124. Because a pre-trial settlement provided the plaintiff with a substantial increase in her benefits, she achieved a significant measure of the results sought, and an award of attorney's fees was therefore appropriate. *Id.* at 126.

23. *Hensley*, 461 U.S. at 435.

24. *Id.* Although the court should determine reasonable attorney's fees based on the prevailing party's overall success, in a plurality opinion the Supreme Court recognized that the attorney's fees do not have to be proportional to the actual damages received by the plaintiff. *City of Riverside v. Rivera*, 477 U.S. 561, 576 (1986).

25. *Hensley*, 461 U.S. at 435. Although the Court did not elaborate on what might constitute "excellent results," it referred to *Swann v. Charlotte-Mecklenberg Board of Education*, 66 F.R.D. 483 (W.D.N.C. 1975), as a case where the fee award was partially based on the excellent results obtained. *Hensley*, 461 U.S. at 431. Although the *Swann* plaintiffs were not successful on all of their claims, they succeeded in obtaining the complete desegregation of the Charlotte-Mecklenberg school district, despite widespread opposition to their cause. *Swann*, 66 F.R.D. at 484-85. Such opposition included the President of the United States, Congress, the state government, and the local school board. *Id.* at 485. Under the circumstances, the plaintiffs obtained "essentially complete relief." *Hensley*, 461 U.S. at 431.

26. *Hensley*, 461 U.S. at 435. Because the *Hensley* Court did not elaborate on when a success would be exceptional enough to justify the award of a bonus to the prevailing party's counsel, it is helpful to examine the circumstances under which a bonus has previously been awarded. In *Davis v. County of Los Angeles*, 8 Empl. Prac. Sec. (CCH) ¶ 9444 (C.D. Cal. June 5, 1974), the plaintiffs obtained a court order which required the Los Angeles County Fire Department to institute an affirmative-action program for hiring minorities. *Id.* ¶ 9444, at 5047-48. Although the plaintiffs were not successful on all of their claims, their success in obtaining the court order was exceptional enough to justify the award of an approximately \$7000 bonus to the plaintiffs' attorney, in addition to an award of attorney's fees and expenses in the amount of \$53,000. *Id.* ¶ 9444, at 5048.

bonuses are disfavored by the Court and should only be awarded in rare circumstances.²⁷

More recently, in *Farrar v. Hobby*,²⁸ the Court held that when a civil rights plaintiff is awarded only nominal damages, he has failed to prove a compensable injury²⁹ and is therefore not entitled to attorney's fees.³⁰ The Court reasoned that the damages awarded in a civil rights action "[are] designed 'to compensate injuries caused by the . . . deprivation' [of civil rights]";³¹ therefore, "[w]hen a plaintiff recovers only nominal damages," he has failed to prove an essential element of his claim for monetary relief, and "the only reasonable fee is usually no fee at all."³²

While the above guidelines are certainly useful to district courts attempting to determine the amount of reasonable fees to be awarded under the Act, they offer minimal assistance to courts faced with

27. See, e.g., *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546 (1986). The Court opined that because a lawyer is obligated to perform to the best of his ability for his client, the lawyer should not receive a fee enhancement for doing so. *Id.* at 565-66. Further, because an attorney's skill, the complexity of the case, and the results obtained are all factors which are considered when calculating the lodestar amount, the Court felt that such factors should not serve as independent bases for enhancing the fee award. *Id.*

On reargument to determine whether an enhancement was appropriate as a means of compensating the plaintiff's attorney for assuming the risk of loss in the case, the Court opined that an enhancement is inappropriate when the client is obligated to pay attorney's fees whether the case is won or lost. *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 715 n.3, 716 (1987).

28. 113 S. Ct. 566 (1992).

29. *Id.* at 575.

30. *Id.* In *Farrar*, the Supreme Court upheld the reversal of an award of approximately \$300,000 in attorney's fees and expenses to a plaintiff who sought \$17,000,000 in damages, but was awarded only \$1. *Id.* at 570-71, 575. The plaintiff "asked for a bundle and got a pittance. While . . . this pittance is enough to render him a prevailing party, it does not by itself prevent his victory from being purely technical." *Id.* at 578 (O'Connor, J., concurring).

31. *Id.* at 575 (quoting *Memphis Community Sch. Dist. v. Stachura*, 477 U.S. 299, 309 (1986) (quoting *Carrey v. Piphus*, 435 U.S. 247, 265 (1978))) (emphasis in original).

32. In a concurring opinion in *Farrar*, Justice O'Connor suggested consideration of the following factors to determine whether a party's victory is nominal or de minimis: (1) the differences between the judgment recovered and the judgment sought, (2) the significance of the legal issue on which the plaintiff prevailed, and (3) the public purpose served by the litigation. *Id.* at 578-79 (O'Connor, J., concurring). Applying these factors to the circumstances of the case, Justice O'Connor concluded that it was proper to deny all reasonable attorney's fees. *Id.* at 579. Justice O'Connor reasoned that the difference between the \$17,000,000 sought and the \$1 obtained was significant, that recovering \$1 lacked legal significance, and that because an award of \$1 would not deter future lawless conduct, the litigation served no public purpose. *Id.* at 578-79.

determining whether the requested attorney's fees are grossly excessive.

B. *The Lower Courts*

Because the Supreme Court has not defined grossly excessive fees in the context of the Act,³³ the lower courts have established their own definitions and boundaries regarding such fees. The Fourth Circuit has held that a fee request is grossly excessive when it "shocks the conscience of the court."³⁴ In the Seventh Circuit, grossly excessive fees are those which are "obviously inflated to an intolerable degree."³⁵ West Virginia³⁶ and Minnesota³⁷ apply the prudent lawyer standard,³⁸ where a clearly excessive fee³⁹ is found to exist "when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee."⁴⁰

33. See *supra* notes 14-32 and accompanying text.

34. *Fair Hous. Council v. Landow*, 999 F.2d 92, 96 (4th Cir. 1993). The "shocks the conscience of the court" standard originated over 60 years ago in a workmen's compensation case in which the California supreme court opined: "[I]f a fee is charged so exorbitant and wholly disproportionate to the services performed as to shock the conscience of those to whose attention it is called, such a case warrants disciplinary action by this court." *In re Goldstone*, 6 P.2d 513, 516 (Cal. 1931). In *Goldstone*, the court's conscience was shocked when an attorney, whose client was awarded \$882.96, charged \$310 for services which consisted of reviewing the client's workmen's compensation file, contacting the insurance carrier, and travelling with the client to the insurance carrier's office to retrieve the client's check. *Id.* at 513, 515.

35. *Brown v. Stackler*, 612 F.2d 1057, 1059 (7th Cir. 1980). See *infra* notes 89-95 and accompanying text.

36. See, e.g., *Committee on Legal Ethics v. Gallaher*, 376 S.E.2d 346, 348 (W. Va. 1988) (ordering the attorney to pay \$750 in restitution to the client from whom the attorney collected a 50% contingency fee of \$2250 in a tort action).

37. See, e.g., *Thomton, Sperry & Jensen, Ltd. v. Anderson*, 352 N.W.2d 467, 469 (Minn. Ct. App. 1984) (affirming the district court's reduction of fees awarded by jury from \$71,297.81 to \$29,350, after the attorney charged the client \$92,855 in a partition action).

38. The prudent lawyer standard is the objective standard relied upon by the Code of Professional Responsibility. MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2-106(B) (1980).

39. Because the determination of whether fees are grossly excessive or clearly excessive are seemingly interrelated, these terms are used interchangeably throughout this Comment.

40. MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2-106(B).

III. THE TREATMENT OF GROSSLY EXCESSIVE FEE REQUESTS BY THE LOWER COURTS

Just as the lower courts' definitions of grossly excessive fees vary, so too does their treatment of those fees. In the First,⁴¹ Fourth,⁴² and Seventh⁴³ Circuits, district courts may deny reasonable attorney's fees to the prevailing litigant when the fee request is grossly excessive.⁴⁴ Courts in other jurisdictions have merely reduced the grossly excessive fees to an amount considered reasonable.⁴⁵ Each of these treatments is separately explored in this Comment.

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41. See *Lewis v. Kendrick*, 944 F.2d 949, 958 (1st Cir. 1991); see also *infra* notes 52-62 and accompanying text.
 42. See *Fair Hous. Council v. Landow*, 999 F.2d 92, 97-98 (4th Cir. 1993); see also *infra* notes 70-86 and accompanying text.
 43. See *Brown v. Stackler*, 612 F.2d 1057, 1059 (7th Cir. 1980); see also *infra* notes 87-95 and accompanying text.
 44. Other circuits have indicated that they might deny requests for attorney's fees under the Act upon the presentation of facts justifying such action, which might include a denial based upon grossly excessive fees. See, e.g., *Hall v. Borough of Roselle*, 747 F.2d 838, 841-42 (3d Cir. 1984) (deciding that *Brown*, 612 F.2d 1057, was inapplicable in a case where requested fees were merely excessive and not grossly exaggerated); *New York State Ass'n for Retarded Children v. Carey*, 711 F.2d 1136, 1147-48 (2d Cir. 1983) (opining that when a fee request is not supported with contemporaneous time records, a denial of all fees may be justified); see also *Keener v. Department of the Army*, 136 F.R.D. 140, 150 (M.D. Tenn. 1991) (denying an award of grossly exaggerated attorney's fees pursuant to 42 U.S.C. § 2000e-5(k) to the prevailing plaintiff in a Title VII civil rights case), *aff'd*, 956 F.2d 269 (6th Cir. 1992). Although the Sixth Circuit has not had the occasion to decide the consequences of filing a request for grossly excessive fees in the context of the Act, it denied attorney's fees under a similar statute in *Keener*, where the plaintiff's attorney kept sloppy time records, exaggerated his hourly rate by 33%, billed two government agencies for the same work, and on several occasions claimed more than 24 billable hours in one day. *Keener*, 136 F.R.D. at 144-49.
 45. See, e.g., *Standley v. Chilhowee R-IV Sch. Dist.*, 5 F.3d 319, 324-35 (1993) (reducing the amount of the fee award by 70% because success was limited; the fee was also reduced because the attorney sought reimbursement for computer-based legal research, which is typically part of attorney's overhead that should be reflected in hourly rate); *DiFilippo v. Morizio*, 759 F.2d 231, 236 (2d Cir. 1985) (remanding for recalculation of the attorney's fee, where 192 of the 302 hours billed by the attorney were clearly excessive); *Ladies Ctr., Inc. v. Thone*, 645 F.2d 645, 646-48 (8th Cir. 1981) (reducing fees from the requested amount of approximately \$250,000 to \$30,000 because the attorney was inefficient, engaged in duplicative efforts, and the request was generally excessive); *McKevitt v. City of Meriden*, 822 F. Supp. 78, 81 (D. Conn. 1993) (reducing requested fees from \$150,000 to \$11,800 due to the plaintiff's low degree of success); *Dillenbeck v. Hayes*, 830 F. Supp. 673, 675-76 (N.D.N.Y. 1993) (reducing requested fees of \$29,101.50 to \$2,118.50 because of the duplicative and unnecessary efforts of two attorneys, when one would have been sufficient, and because of the low quality of the legal representation); *Jane L. v. Bangerter*, 828 F. Supp. 1544, 1547-53 (D. Utah 1993) (reducing

Because not every jurisdiction has had an opportunity to address excessive fee requests in the context of civil rights litigation, it is also helpful to look beyond the civil rights arena to see how courts have interpreted and remedied grossly excessive fee requests in other matters. In other types of civil actions, many courts have invoked disciplinary measures against attorneys who have submitted grossly excessive fee requests.⁴⁶ Those disciplinary measures range from requiring an attorney to refund the excessive fees⁴⁷ to ordering that the attorney be suspended⁴⁸ or disbarred.⁴⁹

requested fees from \$661,987.44 to \$69,656.37 because of the plaintiff's limited success, the failure to adequately document time, and the failure to limit excessive rates for out-of-state attorneys).

46. *See, e.g., Keener*, 136 F.R.D. at 151. The *Keener* court assessed sanctions against an attorney who submitted a fee request with outrageously inflated hours. *Id.* at 151. The court reasoned that the submission violated the Rule 11 requirement that all papers submitted to a court be well-grounded in fact. *Id.* at 150-51. Rule 11 of the Federal Rules of Civil Procedure requires that every paper submitted to the court by a party represented by counsel must be signed by the attorney of record. *See* FED. R. CIV. P. 11. The attorney's signature is an affirmation that the attorney has read the paper, and that the material contained therein is well-grounded in fact to the best of the attorney's knowledge. *See id.* If a paper is signed in violation of Rule 11, the court shall impose an appropriate sanction upon the individual who signed the paper. *See id.* In *Keener*, the attorney's sanction was the completion of a course in legal ethics. *Keener*, 136 F.R.D. at 151. Although *Keener* was a Title VII civil rights case, where the award of fees is controlled by 42 U.S.C. § 2000e-5(k), both that statute and 42 U.S.C. § 1988(b) authorize "the court, in its discretion, [to] allow the prevailing party . . . a reasonable attorney's fee." 42 U.S.C. § 1988(b); 42 U.S.C. § 2000e-5(k) (1988). In addition, "[a]lthough [42 U.S.C. § 2000e-5(k)] and § 1988 are separate and distinct statutory bases for awards of attorney's fees, both employ the 'prevailing party' concept and both have received similar construction." *Doe v. Busbee*, 684 F.2d 1375, 1381 n.3 (11th Cir. 1982).
47. *See, e.g., Committee On Legal Ethics v. Gallaher*, 376 S.E.2d 346, 351 (W. Va. 1988) (ordering restitution and publicly reprimanding an attorney who charged a 50% contingency fee in a tort case); *In re Kinast*, 357 N.W.2d 282, 286-87 (Wis. 1984) (ordering a refund of the excessive fee, a public reprimand, and the payment of the costs of the disciplinary proceedings).
48. *See, e.g., In re Goldstone*, 6 P.2d 513, 516 (Cal. 1931) (ordering a three month suspension for an attorney who charged clearly excessive fees in a workmen's compensation case); *In re Richardson*, 602 A.2d 179, 182 (D.C. 1992) (suspending an attorney for 91 days because he charged clearly excessive fees in an estate action); *In re Gerard*, 634 N.E.2d 51, 53-54 (Ind. 1994) (ordering one year suspension for an attorney who charged a client clearly excessive fees to recover a certificate of deposit; although fraudulent conduct was also present, collecting an excessive fee was alone sufficient to warrant discipline); *In re Farmer*, 747 P.2d 97, 100 (Kan. 1987) (ordering a one year suspension for an attorney who collected excessive fees in a tort case; the attorney was also ordered to take and pass the Multistate Professional Responsibility Examination), *reinstatement granted*, 767 P.2d 1319 (1989); *In re Tobin*, 628 N.E.2d 1268, 1273 (Mass. 1994) (ordering an 18 month suspension for an attorney who charged excessive fees and made false and fraudulent statements while

Where fees are grossly excessive because they contain requests for costs unrelated to the litigation, many courts have not hesitated to disallow the non-compensable costs.⁵⁰ Although the inclusion of non-compensable costs in an attorney's fee request is generally not singularly sufficient to mandate the denial of reasonable attorney's fees, when non-compensable costs are coupled with other deficiencies, a denial of all requested fees may result.⁵¹

A. Jurisdictions That Deny Fees When the Request Is Grossly Excessive

1. The First Circuit

The First Circuit is one of three circuits that expressly recognizes a district court's discretion to deny all fees to a prevailing litigant under the Act if the fee request is grossly excessive.⁵² As the court

handling a probate estate).

In Maryland, an attorney who charged his client in excess of a 50% contingency fee in a tort case received an 18 month suspension. Attorney Grievance Comm'n v. Korotki, 318 Md. 646, 672, 569 A.2d 1224, 1237 (1990). The *Korotki* court reasoned that in a tort case, a contingency fee in excess of 50% will generally be considered clearly excessive, because at that level of compensation the attorney's interest in the case will exceed the client's interest. *See id.* at 665, 569 A.2d at 1233-34.

49. Disbarment is ordinarily an extreme sanction that is justified when other aggravating circumstances are present, such as conversion of client funds. *See, e.g., Florida Bar v. Della-Donna*, 583 So. 2d 307, 308-09, 312 (Fla. 1991) (ordering a five year disbarment for charging clearly excessive fees, intentionally misusing estate funds, and a conflict of interest); *In re Swiggum*, 125 N.W.2d 169 (Minn. 1963) (disbarring an attorney for conversion of client funds and charging excessive fees); *Mississippi State Bar Ass'n v. Moyo*, 525 So. 2d 1289, 1298-99 (Miss. 1988) (disbarring an attorney for solicitation of a minor client, conversion of client funds, and charging excessive fees in a tort case).
50. *See, e.g., Jane L. v. Bangerter*, 828 F. Supp. 1544, 1550 (D. Utah 1993) (denying reimbursement of expenses for placement of propagandist advertising in newspapers over 2,000 miles from the site of trial, lobbying legislators, and holding press conferences) (*see infra* notes 143-46 and accompanying text); *Pontarelli v. Stone*, 781 F. Supp. 114, 123 (D.R.I. 1992) (denying fees resulting from time spent on another case and for lobbying the state legislature) (*see infra* notes 63-69 and accompanying text); *Keener*, 136 F.R.D. at 143 (denying fees for work unrelated to a Title VII claim, including services performed in connection with the sale of the plaintiff's home, an automobile accident, and social security and civil service retirement claims) (*see supra* note 46).
51. *See, e.g., Keener*, 136 F.R.D. at 149-50 (denying all requested fees because of poor documentation, double-billing, unnecessary efforts, entering into a fee splitting agreement with client, and requesting reimbursement of unrelated expenses) (*see supra* note 46 and accompanying text); *Pontarelli*, 781 F. Supp. at 125 (denying all requested fees because of insufficient documentation, misrepresentations, and unrelated expenses) (*see infra* notes 63-69 and accompanying text).
52. The remaining two circuits are the Fourth Circuit and the Seventh Circuit. *See*

observed in *Lewis v. Kendrick*,⁵³ “[t]he fee provisions in [the Act] are intended to enable injured parties to obtain counsel, not to enable counsel to obtain munificent fees.”⁵⁴ The plaintiff in *Lewis* filed an action against the City of Brockton and two of its police officers alleging a host of constitutional violations and the violation of certain state law claims.⁵⁵ The total amount of damages sought by the plaintiff’s action was \$300,000.⁵⁶

Following a ten day trial, the jury returned a special verdict against the police officers under section 1983, and awarded the plaintiff \$1000.⁵⁷ Although this was the sole civil rights claim upon which the plaintiff prevailed, the plaintiff was nevertheless entitled to submit a request for attorney’s fees under the Act.⁵⁸ The plaintiff’s request resulted in an award of over \$50,000 in attorney’s fees and expenses.⁵⁹

On appeal, the First Circuit reversed the award of attorney’s fees, observing that the “[p]laintiff . . . failed entirely, or largely, in everything.”⁶⁰ Under the circumstances, the court thought it was outrageous that the plaintiff’s counsel submitted a fee request charging the full 952.25 hours expended on the plaintiff’s case, without making a downward adjustment of those hours due to the plaintiff’s limited success.⁶¹ While the First Circuit acknowledged that the denial of the entire amount of fees was “strong medicine,” it reasoned that because requested attorney’s fees are “required to be in good faith and in reasonable compliance with judicial pronouncements, and not

discussion *infra* parts III.A.2-3. Three other circuits have indicated that they might deny attorney’s fees under the Act if presented with a suitable case. See *supra* note 44.

53. 944 F.2d 949 (1st Cir. 1991).

54. *Id.* at 956.

55. *Id.* at 951.

56. *Id.*

57. *Id.* The remaining claims against the officers were either dismissed or the plaintiffs did not prevail upon those claims. *Id.* The jury also rendered a verdict against the city on the plaintiff’s negligence claim and awarded \$3000. *Id.*

58. See *id.* at 956.

59. See *id.* at 951.

60. *Id.* at 955. Although the plaintiff’s complaint contained numerous allegations of constitutional violations, all that was proven during the trial was a “simple street arrest and detention for bail, based on a mistaken assessment of probable cause in a two-party altercation.” *Id.* at 956.

61. *Id.* The court’s disdain for the plaintiff’s counsel is perhaps best demonstrated by the following passage:

To turn a single wrongful arrest into a half year’s work, and seek payment therefor, with costs, amounting to 140 times the worth of the injury, is, to use a benign word, inexcusable. We should not tolerate, even by a partial award, such an imposition by counsel on the defendants, and on the court. In the exercise of the statutory discretion, we reverse the award of fees altogether.

Id.

an opening gambit in negotiations to reach an ultimate result," such relief was appropriate.⁶²

Although predicated upon different grounds, a denial of all requested fees was also found to be warranted by the United States District Court for the District of Rhode Island in *Pontarelli v. Stone*.⁶³ In *Pontarelli*, a prevailing plaintiff⁶⁴ submitted a request for attorney's fees pursuant to the Act, in which fees of \$511,951 and costs of \$203,268.28 were requested.⁶⁵ All of the requested fees and expenses were denied when a review of the attorney's fee application disclosed certain misrepresentations made by the plaintiff's attorney⁶⁶ and the attorney's failure to keep contemporaneous time records.⁶⁷ The court also criticized the request for compensation of non-compensable fees.⁶⁸ Finally, the court invited the Chief Disciplinary Counsel of

62. *Id.* at 958 (Breyer, J., dissenting). In a dissenting opinion, Chief Judge Breyer (now Supreme Court Justice Breyer) opined that the court of appeals should not mandate fee denial, but should allow the district court the discretion to determine whether such a denial is appropriate when the requested fees are excessive. *Id.* at 959 (Breyer, J., dissenting). Judge Breyer observed that "[o]ther courts of appeals have *permitted* district courts to find that overreaching constitutes a 'special circumstance' warranting fee forfeiture; they have not *required* a district court to do so." *Id.* (Breyer, J., dissenting) (citing *Hall v. Borough of Roselle*, 747 F.2d 838, 841-42 (3d Cir. 1984) and *Brown v. Stackler*, 612 F.2d 1057, 1059 (7th Cir. 1980)) (emphasis in the original). Judge Breyer further suggested that when a plaintiff achieves a token victory, as the plaintiffs did in *Lewis*, it would be reasonable for the district court to award a token attorney's fee. *See id.* at 956, 959 (Breyer, J., dissenting).

63. 781 F. Supp. 114 (D.R.I. 1992).

64. *Id.* at 117-18. Because the plaintiff's suit against one of the defendants was totally unfounded, the court awarded attorney's fees to that defendant. *Id.* at 126-27.

65. *Id.* at 118.

66. *Id.* at 122-23. Specifically, the time records maintained by the plaintiff's attorney claimed more than 24 billable hours in a single day, and sought the reimbursement of travel expenses on days during which the attorney had previously asserted that she was hospitalized. *Id.* at 121-22.

67. *Id.* During the fee request hearing, the plaintiff's attorney admitted that the time records she submitted were estimates of the time spent on the case and that those estimates were made as late as three years after the services were performed. *Id.* In determining that the failure to submit contemporaneous time records was sufficient to justify a denial of all attorney's fees, the court followed the First Circuit's policy that except in extraordinary circumstances, the absence of detailed contemporaneous time records will result in either a substantial reduction in awarded fees or, in egregious cases, the denial of all requested fees. *Id.* at 120-21 (citing *Grendel's Den, Inc. v. Larkin*, 749 F.2d 945, 952 (1st Cir. 1984)). In *Grendel's Den*, the requested attorney's fees and expenses of successful civil rights litigants were reduced from the over \$250,000 awarded by the district court to approximately \$114,000. *Grendel's Den*, 749 F.2d at 948-49, 960. Although the defendants argued on appeal that the requested fees were grossly excessive, the court consistently characterized the request as excessive. *Id.* at 949, 953-55.

68. *Pontarelli*, 781 F. Supp. at 123. The plaintiff's request for attorney's fees

the Rhode Island Supreme Court to investigate the plaintiff's attorney for possible disciplinary action relating to the fee request.⁶⁹

2. The Fourth Circuit

In one of the more recent decisions to address grossly excessive fees under the Act, the Fourth Circuit held that district courts have the discretion to deny all fees in civil rights cases when the fee request is grossly excessive.⁷⁰ The Fourth Circuit reasoned that affording such discretion to the district court is necessary to discourage greed;⁷¹ otherwise, if a claimant knew that submitting an unreasonable request would merely result in the denial of any excessive fees, there would be no incentive for the claimant to act reasonably in submitting the fee request in the first instance.⁷²

The court's decision arose in the context of litigation commenced by the Fair Housing Council (the FHC) against the owner of an apartment building, alleging, *inter alia*, the violation of certain provisions of both the Fair Housing Act⁷³ and the Civil Rights Act.⁷⁴ The only claim upon which the FHC prevailed was its claim that the defendant breached the terms of a prior settlement agreement between the parties.⁷⁵ Because the FHC succeeded on at least one of its claims,

included a request for time that the attorney spent on a separate case and for time spent by the attorney while lobbying the Rhode Island General Assembly for legislation favorable to the plaintiff. *Id.*

69. *Id.* at 127.

70. *Fair Hous. Council v. Landow*, 999 F.2d 92, 96 (4th Cir. 1993). In reaching its conclusion, the court relied upon the Supreme Court decisions in *Farrar v. Hobby* and *Hensley v. Eckerhart*. See *supra* notes 16, 18-26, 28-32 and accompanying text. Specifically, the Fourth Circuit held that the district court must consider "the degree of the plaintiff's overall success," *Landow*, 999 F.2d at 97 (quoting *Farrar v. Hobby*, 113 S. Ct. 566, 574 (1992)), and that "work on [the] unsuccessful claim[s] cannot be deemed to have been expended in pursuit of the ultimate result achieved." *Id.* (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)).

71. *Id.* at 96-97.

72. *Id.* at 98.

73. 42 U.S.C. §§ 3601-3631 (1988 & Supp. V 1993).

74. 42 U.S.C. §§ 1981-82 (1988). Specifically, it was alleged that the defendant violated the plaintiffs' civil rights by discriminating against blacks in providing housing opportunities. *Landow*, 999 F.2d at 94.

75. *Landow*, 999 F.2d at 94-95. The court granted specific performance by entering an order that required Landow to comply with all of the terms of the settlement agreement. *Id.* However, the court denied the FHC's request for compensatory and punitive damages because it failed to prove that any damages resulted from Landow's breach of the settlement agreement. *Id.* The court also denied the FHC's request for attorney's fees arising from Landow's breach, reasoning that Maryland law does not provide for such an award in simple contract cases. *Id.*

it submitted a request for attorney's fees and expenses in the total amount of \$537,113.⁷⁶

While the district court did not dispute that the FHC was entitled to recover reasonable attorney's fees as the prevailing plaintiff under the Act, it declared that "if there are motions for attorneys' fees and expenses that should be disallowed in their entirety simply because of the outrageously excessive amount requested, the . . . [plaintiff's] motion would fit the bill."⁷⁷ Notwithstanding this sentiment, the court refused to deny the fee request in its entirety, believing that such a denial would be overturned by the court of appeals.⁷⁸ The district court instead awarded the FHC the sum of \$20,000, opining that this amount was a reasonable fee for a five day trial involving a relatively simple and straightforward contract dispute.⁷⁹

When the FHC appealed the \$20,000 fee award to the Fourth Circuit, the award was overturned.⁸⁰ In examining whether the district court was justified in denying the FHC's fee request in its entirety, the Fourth Circuit answered in the affirmative.⁸¹ Where, despite its limited success, the FHC excluded only a small portion of its fees and failed to specifically allocate those fees between successful and unsuccessful claims, the court of appeals asserted that the FHC "intended to submit an outrageously excessive fee petition in the hope that the district court would at least award some, preferably high, percentage of the requested fees."⁸²

In an effort to prevent future maneuvers of this nature by the prevailing parties in civil rights litigation, the court of appeals cautioned those parties to submit only reasonable fee requests and to

76. *Id.* Although the FHC claimed that it incurred fees and expenses of \$604,113, it voluntarily deducted \$67,000 in fees that were attributable to its unsuccessful claims. *Id.* The court observed, however, that the FHC's fee request failed to identify the type of work and resulting fees which it excluded from the fee request. *Id.* Rather, the FHC's time sheets contained only general descriptions of the work performed. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* The court was apparently referring to the fact that the FHC only prevailed on the contract dispute. *See id.* at 98. Had the FHC prevailed on its racial discrimination claims, it likely would have been entitled to a higher award, since the court noted that the FHC devoted the overwhelming majority of its time attempting to prove that Landow discriminated against blacks. *See id.* at 94, 98.

80. *Id.* at 98-99. The district court noted, however, that "should this matter be appealed and the appellate court find that this court had discretion to deny all legal fees here, the award of legal fees made herein should be rescinded without remand." *Id.* at 95.

81. *Id.* at 96.

82. *Id.* at 98.

provide the necessary assistance to enable the district court to determine a reasonable fee.⁸³ At a minimum, the prevailing party

must make every effort to submit time records which specifically allocate the time spent on each [of its] claim[s] [T]hose records should [also] attempt to specifically describe the work which the fee applicant allocated to unsuccessful claims so as to assist the district court in determining the reasonableness of the fee request.⁸⁴

Although the court recognized the difficulties which might be encountered in allocating fees among successful and unsuccessful claims, especially where those claims spring from a common core of facts,⁸⁵ the court asserted that such difficulties should not excuse a claimant from making a good faith effort to separate and detail the fees.⁸⁶

3. The Seventh Circuit

Of the three jurisdictions that deny fees when the request is grossly excessive,⁸⁷ the Seventh Circuit has perhaps been the most inclined to deny the entire amount of fees.⁸⁸ The first case in which the Seventh Circuit denied all requested fees was *Brown v. Stackler*,⁸⁹ a case in which the plaintiff challenged the constitutionality of Illinois statutes prohibiting the advertising of prescription eyeglass prices.⁹⁰ Although the plaintiff's counsel was aware of a similar case pending before the Supreme Court that would directly impact the plaintiff's

83. *Id.*

84. *Id.* at 97.

85. *Id.*

86. *Id.* Although a prevailing party may contend that the unsuccessful claims sprang from the same common core of facts as the successful claims, thereby making it impossible to allocate the fees among the claims, the court of appeals warned that "blind adherence to this argument runs the risk of incurring a complete denial of fees." *Id.*

87. In addition to the Seventh Circuit, both the First Circuit and the Fourth Circuit deny fees when the request is grossly excessive. See *supra* notes 52-86 and accompanying text.

88. The Seventh Circuit has not, however, mandated this result. See, e.g., *Roe v. City of Chicago*, 586 F. Supp. 513, 514 (N.D. Ill. 1984) (reducing an excessive fee request to a reasonable amount); *Patterson v. Youngstown Sheet & Tube Co.*, 518 F. Supp. 1, 6 (N.D. Ind. 1980) (reducing an excessive fee request by a factor of 12 to a reasonable amount), *aff'd*, 659 F.2d 736 (7th Cir.), *cert. denied*, 454 U.S. 1100 (1981); *Forkes v. Busse*, 510 F. Supp. 122 (E.D. Wis. 1981) (awarding fees notwithstanding their excessiveness, because the fee shifting statute applicable to illegal wiretapping used the mandatory language of "shall award" rather than the discretionary language of "may award").

89. 612 F.2d 1057 (7th Cir. 1980).

90. *Id.* at 1058.

case,⁹¹ counsel nevertheless expended over 800 hours on the plaintiff's behalf.⁹²

In reviewing the plaintiff's request for attorney's fees, the Seventh Circuit held that because an expenditure of over 800 hours was unreasonable in light of the pending Supreme Court case, a denial of all fees was appropriate.⁹³ The court opined that "it was utterly unreasonable [for the plaintiff's attorney] to expend . . . [800 hours] on a plain and simple case, which would almost automatically be disposed of by the decision in the . . . [Virginia Pharmacy] case whose determination was being awaited."⁹⁴ By denying the requested fees, the court hoped to "encourag[e] counsel to maintain adequate records and submit reasonable, carefully calculated, and conscientiously measured claims when seeking statutory counsel fees."⁹⁵

The Seventh Circuit recently revisited the issue of excessive attorney's fees in *Cartwright v. Stamper*.⁹⁶ In *Cartwright*, the plaintiffs alleged that the Indiana State Police violated their Fourth Amendment rights by unlawfully entering their apartment.⁹⁷ The jury agreed that the plaintiffs' Fourth Amendment rights were violated, but awarded nominal damages totalling five dollars.⁹⁸

Following the jury's verdict, the plaintiffs submitted a request for attorney's fees in the amount of \$111,851.75.⁹⁹ After performing the lodestar analysis recommended by *Hensley v. Eckerhart*,¹⁰⁰ the district court reduced the requested fees to \$79,312.50.¹⁰¹ This amount was further reduced by one-third, to \$52,875, because the plaintiffs were not successful on all of their claims.¹⁰² On appeal, the Seventh Circuit reversed the district court's award of attorney's fees,¹⁰³

91. *Id.* at 1058-59. In *Virginia Pharmacy Board v. Consumer Council*, 425 U.S. 748 (1976), the plaintiff was also challenging a state statute prohibiting the advertising of prescription eyeglass prices. *Brown*, 612 F.2d at 1058-59. Ultimately, the Supreme Court's decision in *Virginia Pharmacy* had a favorable impact on the plaintiff's claim in *Brown*. *Id.*

92. *Brown*, 612 F.2d at 1059.

93. *Id.*

94. *Id.*

95. *Id.*

96. 7 F.3d 106 (7th Cir. 1993).

97. *Id.* at 107. The Fourth Amendment protects individuals from illegal searches and seizures. U.S. CONST. amend. IV. The unlawful entry into a person's home may constitute an illegal search or seizure depending upon whether the police search the premises or arrest the occupants. See *Cartwright*, 7 F.3d at 107.

98. *Cartwright*, 7 F.3d at 107-08.

99. *Id.* at 108.

100. 461 U.S. 424, 433-34 (1983); see *supra* notes 16-19 and accompanying text.

101. *Cartwright*, 7 F.3d at 108.

102. *Id.* at 107-08.

103. *Id.* at 109-10.

reasoning that the plaintiff's victory was *de minimis*.¹⁰⁴

The Seventh Circuit has also denied all attorney's fees when the prevailing plaintiff unnecessarily prolonged the litigation, thus accruing higher fees.¹⁰⁵ Finally, the Seventh Circuit has awarded attorney's fees to a prevailing defendant for the defense of frivolous state law claims arising from the same common core of facts as the plaintiff's frivolous civil rights claims.¹⁰⁶

B. Jurisdictions That Reduce or Recalculate Grossly Excessive Fees to a Reasonable Amount

1. The Second Circuit

The leading case in the Second Circuit involving excessive fee requests in civil rights litigation is *DiFilippo v. Morizio*,¹⁰⁷ where the

104. *Id.* at 110. The Seventh Circuit concluded that the plaintiff's victory was *de minimis* based upon its application of the three factors recommended for such a determination by Justice O'Connor in her concurring opinion in *Farrar v. Hobby*. *Id.* at 109-10 (referring to *Farrar v. Hobby*, 113 S. Ct. 566 (1992)); see also *supra* note 32. Specifically, the *Cartwright* court found that: (1) there was a vast difference between the substantial compensatory and punitive damages sought by the plaintiff and the five dollars in damages actually awarded; (2) the significance of the legal issue slightly favored the plaintiffs because the jury found that the defendant had violated their Fourth Amendment rights; and (3) because the jury did not award punitive damages, the litigation did not serve a public purpose. *Cartwright*, 7 F.3d at 109-10. After weighing these factors, the court held that factors one and three weighed heavily in favor of the determination that the plaintiff's victory was *de minimis*. *Id.* at 110.

105. See *Vocca v. Playboy Hotel of Chicago, Inc.*, 686 F.2d 605 (7th Cir. 1982). The litigation in *Vocca* was unnecessarily prolonged by a plaintiff who rejected an early settlement offer that was close to the amount upon which the parties ultimately agreed. *Id.* at 606-07; cf. *Zabkowicz v. West Bend Co.*, 789 F.2d 540, 549-50 (7th Cir. 1986) (holding that the rejection of a settlement offer on the morning of trial does not unnecessarily prolong litigation and should not result in the denial of fees). In addition to accruing higher fees, the plaintiff in *Vocca* submitted documentation which was insufficient to support its fee request. *Vocca*, 686 F.2d at 607. One deficiency was the failure to separate the attorney's hours from clerical hours at a lower billing rate. *Id.*; cf. *FMC Corp. v. Varonos*, 892 F.2d 1308, 1316-18 (7th Cir. 1990) (overturning a denial of all fees where the prevailing party submitted all of its time records to the court in anticipation that the court would calculate the time reasonably expended on its successful claims; reasoning that the plaintiff should be given an opportunity to organize and simplify its fee request).

106. See *Munson v. Milwaukee Bd. of Sch. Directors*, 969 F.2d 266, 270 (7th Cir. 1992) (holding that allegations of civil rights violations stemming from a wrongful discharge were frivolous and groundless where the plaintiff was discharged from his job as a school principal because he violated school board regulations).

107. 759 F.2d 231 (2d Cir. 1985).

plaintiff was awarded \$2250 against a landlord that intentionally discriminated against the plaintiff on the basis of race.¹⁰⁸ When the plaintiff submitted a request for attorney's fees in the amount of \$27,832.82, the district court ordered a one-half reduction in those fees because of the low amount of the plaintiff's recovery and the straightforward and non-novel nature of the case.¹⁰⁹

On appeal, the Second Circuit rejected the lower court's reduction of the fees merely because the amount of the plaintiff's recovery was low.¹¹⁰ However, after making an independent determination that nearly two-thirds of the time that the plaintiff's counsel claimed to have spent on the case was clearly excessive, the court remanded the case to the district court to recalculate the allowable fees.¹¹¹

The Second Circuit's preference for recalculating or reducing excessive fees to an amount that is reasonable was recently underscored by two district court civil rights cases. In *Dillenbeck v. Hayes*,¹¹² the district court reduced the requested attorney's fees by a factor of fourteen after the plaintiff was awarded \$1 on a \$900,000 claim for cruel and unusual punishment.¹¹³ Similarly, in *McKevitt v. City of Meriden*,¹¹⁴ the district court reduced the requested attorney's fees by a factor of nine because the plaintiffs were not completely successful on all of their claims.¹¹⁵

In an analysis peculiar to the Second Circuit, the court of appeals has held that before determining whether a requested fee is reasonable, the district court should determine whether the merits of a plaintiff's claims were strong enough to cause the plaintiff's counsel to recognize the high probability of a large damage award.¹¹⁶ If so, the district court has the discretion to deny fees.¹¹⁷ The Second Circuit bases this approach on the premise that awarding fees to counsel who accepted a case because of the probability of a large

108. *Id.* at 233. The caucasian plaintiff in *DiFilippo* attempted to rent an apartment from the defendant landlord, but was refused because her daughter, who would share the apartment, was of mixed race. *Id.* The landlord's refusal to rent to the plaintiff was based upon the desire to "keep the neighborhood white." *Id.*

109. *Id.* at 234-35.

110. *Id.* at 235.

111. *Id.* at 235-36.

112. 830 F. Supp. 673 (N.D.N.Y. 1993).

113. *Id.* at 676. The *Dillenbeck* court opined that such a reduction was appropriate under the reasoning espoused by the Supreme Court in *Farrar v. Hobby*, 113 S. Ct. 566 (1992). *Dillenbeck*, 830 F. Supp. at 674-76; see also *supra* notes 28-32 and accompanying text.

114. 822 F. Supp. 78 (D. Conn. 1993).

115. *Id.* at 80-81. The sole plaintiff to recover on a civil rights claim was awarded compensatory, but not punitive, damages. *Id.* at 80.

116. *Kerr v. Quinn*, 692 F.2d 875, 877 (2d Cir. 1982).

117. *Id.*

damage award would contravene one of the basic purposes of the Act—to attract counsel to cases where the probable damages might be otherwise unattractive.¹¹⁸

2. The Third Circuit

In *Hall v. Borough of Roselle*,¹¹⁹ the plaintiff's counsel submitted a request for fees after obtaining a pre-trial settlement of the plaintiff's claims for compensatory damages.¹²⁰ The amount of fees requested was \$26,375, representing 211 hours of services performed.¹²¹ Despite the defendants' protest that such fees were unreasonable in a "simple tort action for assault,"¹²² the district court awarded the plaintiff \$15,080 in fees and \$595.10 in expenses.¹²³ This award included an additional \$5000 bonus because "of the difficulties inherent in this kind of case and the contingent nature of the fee, depending as it must on recovery."¹²⁴

When the defendants appealed the award to the court of appeals, they urged the application of *Brown v. Stackler*,¹²⁵ which calls for the denial of the entire fee request when the fees are grossly excessive.¹²⁶ The court held that the application of *Brown* was inappropriate because the fees in the instant case were neither grossly exaggerated nor absurd.¹²⁷ On the contrary, the court found that the plaintiff's counsel had "undoubtedly expended the hours claimed but . . . in some instances . . . spent more time on various tasks than

118. *Id.* at 877-78.

119. 747 F.2d 838 (3d Cir. 1984).

120. *Id.* at 840. The settlement arose from allegations that Roselle police officers violated the plaintiff's civil rights by assaulting him. *Id.* Prior to a trial on the plaintiff's claim, the parties entered into a settlement. *Id.* at 841. The plaintiff subsequently submitted its request for attorney's fees. *Id.* at 840. Citing the difficult and contingent nature of the case, the district court added \$5000 to the lodestar figure. *Id.*

121. *Id.*

122. *Id.*

123. *Id.* The court concluded that this amount of fees was appropriate by reducing the hours for which compensation was sought from 211 to 125 hours, and multiplying those hours by the \$80 hourly rate which the court fixed as reasonable based on the attorneys' experience and the nature of the litigation. *Id.*

124. *Id.*

125. 612 F.2d 1057 (7th Cir. 1980); see *supra* notes 90-94 and accompanying text.

126. *Hall*, 747 F.2d at 841; see also *supra* notes 90-94 and accompanying text.

127. *Hall*, 747 F.2d at 842. Although the *Hall* court refused to follow *Brown*, it cautioned lawyers that they are "quasi-officers of the court and . . . are expected to be careful and scrupulously honest in their representations to the court." *Id.* at 841-42. Considerations of judgment and ethical sensitivity in billing may not be abandoned because fee responsibility is shifted under the Act. *Id.* at 842.

was reasonably necessary, or . . . spent [time] in connection with other proceedings that did not directly contribute to this case."¹²⁸

Although the court refused to deny all fees, it reduced the plaintiff's award due to his counsel's failure to justify the amount of the fees requested in view of the nature of the case.¹²⁹ Because the case was relatively straightforward, the court further reduced the fee award by the additional \$5000 bonus authorized by the district court.¹³⁰

3. The Eighth Circuit

In a pair of abortion rights cases, the Eighth Circuit approved the district court's discretion to reduce the fee requests of prevailing parties in civil rights litigation when the amounts requested were excessive.¹³¹ Specifically, in *Ladies Center, Nebraska, Inc. v. Thone*,¹³² the court determined that a fee request of approximately \$250,000 was extravagant and therefore upheld the district court's award of \$26,400.¹³³ The court of appeals reasoned that the lower court's recalculation of the fee was appropriate because the plaintiff's attorneys billed the defendant for time spent learning about abortion law and for the duplicative efforts of multiple attorneys.¹³⁴ The recalculation was also warranted because the attorneys' inefficient use of their time increased the amount of fees that would have been charged had their time been used more efficiently.¹³⁵

The Eighth Circuit's approach to excessive fee requests was recently reasserted in *Standley v. Chilhowee R-IV School District*.¹³⁶

128. *Id.* at 842.

129. *Id.* at 843-44. Although not in the context of the Act, the Third Circuit has held that if a court determines that a reduction in fees is warranted, a prevailing plaintiff must reimburse its counsel for the difference between the fee awarded and the contracted fee, if the contracted fee is contingent upon the plaintiff's recovery. *Sullivan v. Crown Paper Bd. Co.*, 719 F.2d 667, 670 (3d Cir. 1983). The award of attorneys' fees in *Sullivan* was made under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634 (1988 & Supp. V 1993), as controlled by 29 U.S.C. § 216(b) (1988). *Sullivan*, 719 F.2d at 669 n.1. The *Sullivan* court observed that "[i]t has been the practice of federal courts to treat the various fee-shifting anti-discrimination statutes as governed by the same standards." *Id.* (citations omitted).

130. *Hall*, 747 F.2d at 843-44.

131. *Ladies Ctr., Nebraska, Inc. v. Thone*, 645 F.2d 645, 648 (8th Cir. 1981); *Womens Servs., P.C. v. Thone*, 645 F.2d 649, 650 (8th Cir. 1981).

132. 645 F.2d 645 (8th Cir. 1981).

133. *Id.* at 648.

134. *Id.* at 647.

135. *Ladies Ctr.*, 645 F.2d at 647-48. The court's conclusion that the attorneys made inefficient use of their time was based upon its experience with the amount of time usually required to prepare for a two week trial. *Id.*

136. 5 F.3d 319 (8th Cir. 1993).

In *Standley*, the court of appeals affirmed the district court's reduction of attorney's fees by seventy percent because of the plaintiff's limited success on the merits.¹³⁷ The court also approved the district court's denial of expenses arising from computer-based legal research, reasoning that such expenses "must be factored into the attorneys' hourly rate."¹³⁸

4. The Ninth Circuit

In the only civil rights case to come before the Ninth Circuit on the issue of attorney's fees, the court of appeals treated excessive and grossly excessive fees alike.¹³⁹ In *Cabrales v. County of Los Angeles*,¹⁴⁰ the court determined that the \$250 hourly rate charged by each of the plaintiff's two attorneys was excessive, and therefore reduced the hourly rates to \$225 and \$175, respectively.¹⁴¹ The court also found that the 164.75 hours and 228.5 hours allegedly expended on the case by the plaintiff's attorneys were grossly exaggerated, and ordered a reduction of those hours to 115.75 hours and 120 hours, respectively.¹⁴²

5. The Tenth Circuit

The Tenth Circuit has not specifically addressed the issue of excessive fee requests under the Act. Nevertheless, in *Jane L. v. Bangerter*,¹⁴³ a case from within this circuit, the fees and expenses requested by the plaintiff were reduced by a factor of ten because of the plaintiff's limited success,¹⁴⁴ a lack of adequate documentation

137. *Id.* at 324.

138. *Id.* at 325.

139. *Cabrales v. County of Los Angeles*, 875 F.2d 740, 741 (9th Cir.), *cert. denied*, 494 U.S. 1091 (1989).

140. 875 F.2d 740 (9th Cir. 1987).

141. *Id.* at 740. The court noted that the plaintiff's attorneys were allowed \$225 and \$175 per hour for their trial representation, rather than the \$250 per hour they were seeking for their appellate representation. *Id.* Because the \$225 and \$175 hourly rates were reasonable, those were the rates that would be used to calculate fees for the attorneys' appellate representation of the plaintiff. *Id.*

142. *Id.* at 740-41. The court did not elaborate as to why the hours claimed were grossly exaggerated, but noted several entries on the attorneys' time sheets to support its conclusion. *Id.*

143. 828 F. Supp. 1544 (D. Utah 1993). The plaintiff successfully challenged the constitutionality of certain portions of Utah's Abortion Fee Act. *Id.* at 1547 & n.3 (referring to UTAH CODE ANN. §§ 76-7-301(2), 304(2) (1990 & Supp. 1992)).

144. *Id.* at 1553.

to support the time allegedly expended by plaintiff's attorneys,¹⁴⁵ and non-compensable fees and expenses.¹⁴⁶ Additionally, because the court determined that several of the plaintiff's constitutional claims were frivolous or meritless, the court awarded reasonable attorney's fees to the defendant's attorneys for the cost of defending such claims.¹⁴⁷

In addition to the Third Circuit,¹⁴⁸ the Tenth Circuit has also addressed the extent of a plaintiff's liability to his attorney when the actual fees awarded are less than the fee the plaintiff contracted to pay the attorney.¹⁴⁹ In *Cooper v. Singer*,¹⁵⁰ the court of appeals held that when a plaintiff's fee award is less than the attorney-client contract fee in a contingency case, the attorney is expected to reduce his fee to the amount of the plaintiff's fee award.¹⁵¹ On the other hand, if the plaintiff's fee award exceeds the amount the plaintiff contracted to pay the attorney in a contingency case, the attorney is entitled to the full amount of the award.¹⁵²

6. The Eleventh Circuit

The Court of Appeals for the Eleventh Circuit also favors the reduction of excessive fee requests to a more reasonable amount. In

145. *Id.* at 1548. The court instructed the attorneys that contemporaneous time records "must reveal . . . all hours for which compensation is requested and how those hours were allotted to specific tasks—for example, how many hours were spent researching, how many interviewing the client, how many drafting the complaint, and so on." *Id.* (citing *Ramos v. Lamm*, 713 F.2d 546, 553 (10th Cir. 1983)).

146. *Id.* The non-compensable expenses included those that were incurred through excessive travel between New York and Utah by New York lawyers when the case was being adequately handled by local Utah counsel, *id.* at 1549; retaining New York lawyers who charged twice the hourly rate of similarly skilled Utah counsel, *id.* at 1551-52; holding press conferences, *id.* at 1550; lobbying legislators, *id.*; and preparing propagandist advertising. *Id.* at 1550 n.8.

147. *Id.* at 1554-57. Specifically, the court held that the plaintiff's claim that her right to an abortion was protected by the Thirteenth Amendment's prohibition against involuntary servitude was without merit. *Id.* at 1554. The plaintiff's claim that Utah's Abortion Fee Act violated the Establishment Clause because its preamble embodied a prohibited religious viewpoint, and because it mirrored the position of the Church of Jesus Christ of Latter Day Saints concerning the rights of the unborn, was also viewed as frivolous in light of a recent Supreme Court decision regarding a similar statute. *Id.* at 1555 (referring to *Harris v. McRae*, 448 U.S. 297 (1980)).

148. *See supra* note 129.

149. *Cooper v. Singer*, 719 F.2d 1496 (10th Cir. 1983) (en banc).

150. *Id.*

151. *Id.* at 1506-07. The *Cooper* court reasoned that the intention of Congress was that fee awards under the Act should "fulfill the client's fee obligation" to the attorney. *Id.* at 1504. The *Cooper* decision is diametric to the Third Circuit's decision in *Sullivan v. Crown Paper Board Co.*, 719 F.2d 667 (3d Cir. 1983). *See supra* note 129.

152. *Cooper*, 719 F.2d at 1507.

the case of *Loranger v. Stierheim*,¹⁵³ the plaintiff appealed a district court order awarding attorney's fees of \$50,400 upon a request for fees and expenses in excess of \$950,000.¹⁵⁴ The primary reason for the reduction was the district court's inability to separate the hours that the plaintiff's attorney devoted to compensable and non-compensable claims.¹⁵⁵

On appeal, the court agreed that the district court should not have undertaken the "imprecise and tortuous task of determining compensable hours based on . . . [the plaintiff's] fee request."¹⁵⁶ The court noted, however, that notwithstanding the "patently excessive" fees,¹⁵⁷ the district court should have required the plaintiff to resubmit his fee request in a manner that would allow the court to separate fees and expenses among the compensable and non-compensable civil rights claims.¹⁵⁸

As for the method of recalculation, the court of appeals explained that "[w]hen faced with a massive fee application . . . an hour-by-hour review is both impractical and a waste of judicial resources."¹⁵⁹ Accordingly, the court opined that it would be sufficient for the district court "to provide a concise but clear explanation of its reasons" for any reductions in requested attorney's fees.¹⁶⁰ The district court does not have to engage in a detailed analysis to determine the number of reasonable hours expended by the attorney on the successful claims.¹⁶¹

IV. APPROPRIATENESS OF AVAILABLE REMEDIES

An individual who files a civil rights claim against another party generally does so because that individual believes that he has been treated unfairly. Although the individual's underlying objective is generally to protect his own civil rights and remedy past violations, the civil rights of other individuals are often protected through any legal victory. Perhaps this is why Congress has referred to the individuals who file civil rights claims as "private attorney gen-

153. 10 F.3d 776 (11th Cir. 1994). This civil rights dispute arose when officials of Dade County, Florida issued citations to the plaintiff that required him to cut a 30 foot hedge on his property. *Id.* at 778.

154. *Id.* at 779.

155. *Id.* at 782.

156. *Id.*

157. The court made its "patently excessive" determination based upon its evaluation of the amount of time required to prepare for cases of this nature. *Id.*

158. *Id.* at 782.

159. *Id.* at 783.

160. *Id.*

161. *Id.* Because the defendant did not seek a denial of fees, the court did not discuss this remedy for dealing with excessive fee requests. *Id.* at 782 n.8.

eral[s],” upon whom the government relies to enforce our civil rights.¹⁶²

Unfortunately, the enforcement of civil rights is made more difficult for these private attorney generals if they cannot find counsel willing to represent them in court. If the potential attorneys are confronted with the possible denial of their fees, they may be understandingly hesitant to represent indigent clients, who are often those most in need of such representation.¹⁶³

Instead of unwittingly penalizing existing and potential civil rights plaintiffs by denying attorney's fees when the amount requested is grossly excessive, a more equitable solution would be for the federal government to provide financial support to the private attorney generals who enforce meritorious claims, even where those claims result in either a de minimis victory or no victory at all. Using this method of compensation, even if a plaintiff fails to prevail on any of its claims, a determination that those claims were meritorious could at least entitle the plaintiff to partial compensation from the government at a predetermined rate.¹⁶⁴ By not discouraging the litigation of meritorious civil rights claims, this solution would promote the public interest and offer a measure of protection to defendants, who would not be required to assume the burden of a plaintiff's legal bill when only a de minimis victory has been obtained.

Absent the adoption of such a solution, however, a defendant in civil rights litigation still has the right to be treated fairly. Just as a defendant is liable for damages for treating a plaintiff unfairly, so

162. *City of Riverside v. Rivera*, 477 U.S. 561, 575 (1986) (quoting H.R. REP. NO. 94-1558, 94th Cong., 2d Sess. (1976), reprinted in 1976 U.S.C.C.A.N. 5910)).

163. See *supra* notes 2-5 and accompanying text. *But cf.* *Fair Hous. Council v. Landow*, 999 F.2d 92, 96-97 (4th Cir. 1993) (asserting that the denial of all fees as penalty for grossly excessive fees will not adversely impact acceptance of future cases by attorneys who rely upon fee awards to fund their representation in civil rights cases).

164. A similar proposal suggests that the court hold a pre-trial conference to determine the merits of a plaintiff's claims. See Tim K. Garrett, Recent Development, *Civil Rights Attorney's Fees: Hensley's Path to Confusion*, 39 VAN. L. REV. 359, 386-87 (1986). If a plaintiff later prevailed on claims determined to be meritorious at the pre-trial conference, that plaintiff would be entitled to receive the attorney's fees incurred in litigating those claims. *Id.* at 387. Attorney's fees for claims determined at the pre-trial conference to be of questionable merit would not be compensated unless the plaintiff prevailed on those claims, in which case the plaintiff would be entitled to enhanced attorney's fees. *Id.* The rationale behind this proposal is that if the plaintiff's attorney knew in advance which claims would be compensable, he could not pad his bill with requests for litigating claims of questionable merit. *Id.* at 388. This would then lessen the likelihood of excessive fee requests. *Id.*

too should a plaintiff be liable to a defendant for unfair treatment. When that unfair treatment takes the form of a plaintiff's request for excessive legal fees, it seems only appropriate that the measure of damages should be the complete denial of those fees.

Failure to adequately document a fee request is likewise unfair to the defendant and creates an unnecessary burden for a court determining a reasonable fee award.¹⁶⁵ Rather than arbitrarily reducing the requested fees or denying a reasonable fee award, the district court should withhold any award of fees until the attorneys provide the necessary documentation to support the amount requested.

Finally, although no court has yet denied reasonable attorney's fees in civil rights litigation solely because certain fees and expenses were deemed non-compensable,¹⁶⁶ it seems appropriate to allow district courts the discretion to deny all requested fees or exact an otherwise substantial penalty against fee applicants who pad their bills with clearly non-compensable expenses.¹⁶⁷ Without the discretion to penalize, courts are without the power to adequately control the unreasonable fee requests.

Within the foregoing analysis, of course, it is imperative to recognize that a court should protect innocent litigants from being penalized by their attorneys' attempts to overcharge the losing party. If the attorney's fees are contingent upon the amount of the client's recovery, or if the client was paying the attorney on an hourly basis with the understanding that the client would be reimbursed from any fees awarded, it would be reasonable for the court to fashion an equitable attorney's fee. The calculation of this equitable amount should include consideration of the amount of the plaintiff's recovery, the plaintiff's ability to pay,¹⁶⁸ and the scope of the attorney's misconduct. A plaintiff's liability could, therefore, range from paying the entire amount of an equitable fee to having no liability whatsoever.

165. See *supra* notes 67, 84, 105, 145, 155.

166. See, e.g., *supra* note 146 and accompanying text.

167. See, e.g., *supra* note 146 and accompanying text.

168. The increasing burden placed upon municipalities, and ultimately the taxpayers, responsible for the payment of attorney's fees in civil rights litigation has led to the proposal that the prevailing plaintiff should contribute to those fees if the plaintiff receives a monetary award and such contribution would not result in undue hardship. Orrin G. Hatch, *The Legal Fees Equity Act: Relief to the Attorneys' Fees Quagmire*, 5 & 6 BENCHMARK 261, 262, 267 (1986). Among Senator Hatch's additional proposals, which he introduced in S.B. 1580 during the 99th Congress, are: (1) a cap on the hourly rate civil rights lawyers can claim under the Act, (2) no fees subsequent to an offer of settlement if the plaintiff rejects the offer and, upon prevailing, is not awarded a better settlement, and (3) no award of fees until a judgment is final. *Id.* at 267.

Alternatively, an extension of the holding in *Cooper v. Singer*¹⁶⁹ could be applied. Although *Cooper* is limited to cases where a contingent fee arrangement exists,¹⁷⁰ under this alternative, regardless of the fee arrangement, if there is no award of attorney's fees because of an attorney's overreaching, the attorney would be required to forfeit his fee. In any event, a client should not incur liability for attorney's fees that, but for the attorney's overreaching, would normally have been shifted to the losing party.

V. CONCLUSION

It is essential to maintain the dignity of the legal profession. If the public views lawyers as being less than honest in their roles as quasi-officers of the court,¹⁷¹ even in matters concerning their fees, the public's faith in the legal system will erode. The public might then assume that it too is absolved from the responsibility of being honest in dealings with the court.

Of course, in addition to protecting the dignity of the legal profession, it is also important to protect the rights and interests of the individual litigants before the court and the public at large. All of these goals may be more easily achieved if the courts more sharply define what constitutes a grossly excessive fee request under the Act.

Perhaps fee requests greater than ten times that which the district court determines is reasonable should be presumed grossly excessive. As evidenced by the relatively small number of cases involving fee requests which were excessive by a factor of ten,¹⁷² such a requirement should not adversely impact upon the availability of attorneys for those civil rights plaintiffs who otherwise could not afford counsel. Further, if attorneys make a greater effort to adhere to the *Johnson Factors*¹⁷³ when preparing their fee requests, they should remain comfortably within the acceptable range of requested fees, and thus avoid what might be considered a harsh denial of all fees.

169. 719 F.2d 1496 (10th Cir. 1983); see *supra* notes 149-52 and accompanying text.

170. See *Cooper*, 719 F.2d at 1506-07.

171. Lawyers are "quasi-officers of the court and they are expected to be careful and scrupulously honest in their representations to the court." *Hall v. Borough of Roselle*, 747 F.2d 838, 841-42 (3d Cir. 1984).

172. See *Fair Hous. Council v. Landow*, 999 F.2d 92 (4th Cir. 1993) (*supra* notes 70-86 and accompanying text); *Lewis v. Kendrick*, 944 F.2d 949 (1st Cir. 1991) (*supra* notes 53-62 and accompanying text); *Ladies Ctr., Nebraska, Inc. v. Thone*, 645 F.2d 645, 648 (8th Cir. 1981) (*supra* notes 132-35 and accompanying text); *Brown v. Stackler*, 612 F.2d 1057 (7th Cir. 1980) (*supra* notes 89-95 and accompanying text); *Dillenbeck v. Hayes*, 830 F. Supp. 673 (N.D.N.Y. 1993) (*supra* notes 112-13 and accompanying text).

173. See *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (4th Cir. 1974); see also *supra* text accompanying note 19.

At present, it is unnecessary for the Supreme Court to decide whether the appropriate remedy for the submission of a grossly excessive fee request is the denial of reasonable fees. Because there is no true split among the federal circuit courts, the issue is not ripe for consideration. In the jurisdictions that have addressed the issue, the determination of whether to reduce or deny excessive fee requests is a matter left to the discretion of the district court.

Bernard P. Codd