1981

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Recommended Citation
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PROCEDURAL CHARACTERIZATION OF POST-JUDGMENT REQUESTS FOR ATTORNEY’S FEES IN CIVIL RIGHTS CASES—ELIMINATING ARTIFICIAL BARRIERS TO AWARDS

INTRODUCTION

Over the past seventeen years, Congress has developed an important method of promoting the enforcement of civil rights through its enactment of various statutes that shift the expenses of a prevailing party’s attorney to the unsuccessful party in the action. The most widely applicable statute authorizing courts to award attorney’s fees is the Civil Rights Attorney’s Fees Awards Act of 1976, which provides that courts “in [their] discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs.” The legislative history of the 1976 Act clearly indicates Congress’ intent that prevailing plaintiffs should ordi-


narily recover their attorney's fees, unless special circumstances are present that would render an award unjust.

The 1976 Act is silent, however, concerning the manner in which courts should proceed with requests for attorney's fees made after judgment has been entered on the underlying dispute. The First Circuit has held, and the Tenth Circuit has stated in dicta, that post-judgment requests must be brought pursuant to rule 59(e) of the Federal Rules of Civil Procedure, which governs alterations and amendments to judgment and prescribes a ten day time limit for service of motions. They reason that, because there are significant areas of overlap in proving a civil rights violation and establishing the propriety of a fees award, requests for attorney's fees are properly made and determined before entry of judgment. The Fifth, Sixth, and Seventh Circuits, however, have held that attorney's fees granted under the 1976 Act are properly denominated taxable costs governed by rule 54(d), which does not set a time limit within which


9. Id.


bills of costs must be submitted.\textsuperscript{13} These courts literally construe the "as part of the costs" terminology of the 1976 Act as meaning taxable costs.\textsuperscript{14}

This Note contends that characterizing attorney's fees as taxable costs is the more logical and practicable of the two interpretations. Part I reviews congressional intent in enacting attorney's fees awards statutes in civil rights cases. Part II examines the purposes of rules 59(e) and 54(d) and the rationales for applying each to post-judgment requests for attorney's fees. Part III discusses the practical ramifications of using each rule in light of congressional intent to provide for these awards.


\textsuperscript{14} Johnson v. Snyder, No. 79-3459, slip op. at 2 (6th Cir. Jan. 23, 1981), Jones v. Dealers Tractor & Equip. Co., 634 F.2d 180, 181-82 (5th Cir. 1981) (per curiam); Bond v. Stanton, 830 F.2d 1231, 1234 (7th Cir. 1980); Van Outeghem v. Gray, 629 F.2d 489, 497 (6th Cir. 1980); Knighton v. Watkins, 616 F.2d 793, 799 (5th Cir. 1980); accord, Janicki v. Pizza, No. 78-242, slip op. at 1 (N.D. Ohio Nov. 24, 1980), Anderson v. Moras, No. 80-1632 (D. Md. Nov. 19, 1980). Theoretically, post-judgment determinations of attorney's fees under the 1976 Act may be characterized as collateral to an underlying judgment pursuant to the equitable method of awarding fees, out of the general recovery, to plaintiffs who have successfully undertaken litigation that has benefited individuals not parties to the suit. See Sprague v. Ticonic Nat'l Bank, 307 U.S. 161, 163 (1939); Trustees v. Greenough, 105 U.S. 527, 533 (1882); Memphis Sheraton Corp. v. Kirkley, 614 F.2d 131, 133 (6th Cir. 1980); Swanson v. American Consumer Indus., 517 F.2d 555, 561 (7th Cir. 1975). In Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949), the Supreme Court held that claims that are "separable from, and collateral to, rights asserted in the action" may be appealed while the rest of the case is interlocutory, id. at 546, thus creating the collateral order doctrine. See 9 J. Moore, Federal Practice \textsuperscript{5} 110.10 (2d ed. 1980). Therefore, a court that determines claims after a judgment is final essentially applies the collateral order doctrine in reverse fashion. Swanson v. American Consumer Indus., Inc., 517 F.2d 555, 560-61 (7th Cir. 1975). The application of this doctrine is proper only when the claim asserted as collateral is "separable from and not [an ingredient] of any identifiable claims for relief." Hooks v. Washington Sheraton Corp., 30 Fed. R. Serv. 2d 626, 629 (D.C. Cir. 1980). Unless the definition of collateral is broadened, however, the application of this theory to statutory awards of fees, such as the 1976 Act, seems untenable because, unlike statutory awards, equitable awards do not "saddle the unsuccessful party with the expenses but . . . impose them on the class that has benefited from them." Mills v. Electric Auto-Lite Co., 396 U.S. 375, 396-97 (1970); see Note, Reimbursement for Attorneys' Fees from the Beneficiaries of Representative Litigation, 58 Minn. L. Rev. 933, 935-36 (1974). Thus, defendant's liability is totally accounted for in such cases and the court merely apportions the cost of bringing the action out of the general damages recovered. Statutory awards of fees, on the other hand, create a new form of liability that may be substantial. See, e.g., Palmigiano v. Garrah, 616 F.2d 599, 599-600 (1st Cir.) (attorney's fee award in excess of $100,000), cert. denied, 49 U.S.L.W. (U.S. Oct. 6, 1980) (No. 79-1799); Lamphere v. Brown Univ., 610 F.2d 46, 48 (1st Cir. 1979) (attorney's fee award in excess of $200,000).
I. THE 1976 ACT—PROMOTING ENFORCEMENT OF CIVIL RIGHTS LAWS

The “American Rule” regarding attorney’s fees is that each party to a suit is responsible for paying his own attorney. In enacting attorney’s fees provisions in the area of civil rights, however, Congress has consistently recognized that the protection of civil liberties is of paramount importance. The 1976 Act specifically was enacted to ensure that parties alleging violations of their civil rights will not hesitate to bring meritorious suits under applicable civil rights statutes because they cannot afford to hire attorneys to represent them.

15. The “American Rule” evolved from an early Supreme Court decision, Arcambel v. Wisemen, 3 U.S. (3 Dall.) 306 (1796), in which the Court held that the judiciary would not fashion its own rules to award attorney’s fees. Id. at 306; see Alyeska Pipeline Serv. Co. v. Wilderness Soc’y, 421 U.S. 240, 247-50 (1975). Courts have subsequently reasoned that, because the outcome of a case may be uncertain, parties should not be penalized for defending or prosecuting an action, and the poor should not be discouraged from bringing suit for fear that, if they are unsuccessful, they will have to pay their adversary’s attorney. Fleischmann Distilling Corp. v. Maier Brewing Co., 386 U.S. 714, 718 (1967); see 1 S. Speiser, Attorneys’ Fees §§ 12:3-12:9 (1973). There are, however, instances in which courts will award attorney’s fees, despite the absence of statutory authority, pursuant to principles of equity. In Trustees v. Greenough, 105 U.S. 527 (1882), for example, the Supreme Court established the common fund exception to the “American Rule.” Id. at 536. In Greenough, the Court allowed a party who had successfully brought an action that created a fund as judgment, the proceeds of which benefited many, to recover his expenses in bringing the action, including his attorney’s fee, from the fund. Id. The Court reasoned that the plaintiff had “acted the part of a trustee in relation to the common interest,” and to deny him his expenses “would not only be unjust to him, but it would give to the other parties entitled to participate in the benefits of the fund an unfair advantage.” Id. at 532. This rationale was expanded in Sprague v. Ticonic Nat’l Bank, 307 U.S. 161 (1939), in which the Court awarded attorney’s fees to a plaintiff who, because of the stare decisis effect of his action, allowed others to benefit similarly. Id. at 167-69. The equitable power to award fees was further expanded in Mills v. Electric Auto-Lite Co., 396 U.S. 375 (1970), in which the Court created the common benefit exception to the “American Rule.” This case involved a stockholders’ derivative action in which corporate directors were charged with soliciting proxy votes by misleading statements. Although no fund of any type, pre-existing or created by the litigation, was effected by the judgment, attorney’s fees were awarded because “the litigation ha[d] conferred a substantial benefit on the members of an ascertainable class, and . . . the court’s jurisdiction over the subject matter of the suit [made] possible an award that [would] operate to spread the costs proportionately among them.” Id. at 393-94. See generally Note, Attorney’s Fees, Unclaimed Funds, and Class Actions: Application of the Common Fund Doctrine, 48 Fordham L. Rev. 370 (1979).


17. A plaintiff who brings a frivolous or vexatious action will not only be denied fees, but may have defendant’s fees assessed against him. See Christiansburg Gar-
The primary goal of the 1976 Act was to encourage the private enforcement of the nation's civil rights laws. It was passed in direct response to *Alyeska Pipeline Service Co. v. Wilderness Society,* in which the Supreme Court severely limited the power of the courts to award attorney's fees. Prior to *Alyeska,* federal courts had generally awarded fees to civil rights litigants, even when the statutes under which parties asserted their claims contained no fees provision. These awards were based on a previous Supreme Court statement that a plaintiff bringing an action under Title II of the 1964 Civil Rights Act functioned as a "private attorney general," vindicating a policy that Congress considered of the highest priority. The

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19. Senate Report, *supra* note 4, at 2, *reprinted* in [1976] U.S. Code Cong. & Ad. News at 5910 ("the citizen who must sue to enforce the law [and] has little or no money with which to hire a lawyer. . . . must have the opportunity to recover what it costs [him] to vindicate these rights in court"); House Report, *supra* note 4, at 1 (the act is "designed to give . . . persons effective access to the judicial process").

18. Senate Report, *supra* note 4, at 2, *reprinted* in [1976] U.S. Code Cong. & Ad. News at 5910 ("civil rights laws depend heavily upon private enforcement"); House Report, *supra* note 4, at 1 ("effective enforcement of Federal civil rights statutes depends largely on the efforts of private citizens"). The 1976 Act was fashioned after 42 U.S.C. § 2000a-3(b) (1976), the attorney's fees provision of Title II of the Civil Rights Act of 1964. In Title II actions, the Attorney General may only intervene when there exists "a pattern or practice of resistance" to compliance with the law that is "intended to deny the full exercise of the rights" provided therein, 42 U.S.C. § 2000a-5(a) (1976), and when the "case is of general public importance." *Id.* § 2000a-3(a). Therefore, "[t]he bill reflects the fact that neither Congress nor the executive branch intend that the Federal Government should become involved, unless it appears that the public interest needs vindication." 110 Cong. Rec. 7408 (1964) (remarks of Sen. Magnuson); *see* Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 401 (1968) (per curiam) ("when the Civil Rights Act of 1964 was passed, it was evident . . . that the Nation would have to rely in part upon private litigation as a means of securing broad compliance with the law").


22. 42 U.S.C. §§ 2000a to 2000a-6 (1976). Title II provides that "[a]ll persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin." *Id.* § 2000a.

23. Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 402 (1969) (per curiam). Only the Fourth Circuit refused to apply the "private attorney general" theory for awarding attorney's fees because it did not believe that such awards were
Alyeska Court, however, held that, absent an express statutory provision, courts may not award attorney's fees except according to traditional equity principles. Thus, Congress enacted the 1976 Act "to remedy anomalous gaps in our civil rights laws created by . . . Alyeska Pipeline . . . and to achieve consistency in our civil rights laws." Congressional policy favoring the award of fees to civil rights litigants is further demonstrated by its directives regarding the proper construction of the 1976 Act. Although technically only prevailing parties may be awarded fees, a party is deemed to have prevailed in circumstances other than when he has received a favorable judgment after a full trial. For example, a plaintiff will have prevailed when he has vindicated his rights by negotiating a settlement and entering it as a consent decree, or when he has caused a defendant to cease his illegal activity voluntarily, thus rendering his cause of action within its equity power. Bradley v. School Bd., 472 F.2d 318, 327-31 (4th Cir. 1972), vacated and remanded, 416 U.S. 696 (1974).

24. 421 U.S. at 257-58, 269; see note 15 supra. In Alyeska, the Supreme Court reversed the lower court's award of attorney's fees to the Wilderness Society, which had successfully challenged the issuance of a permit authorizing Alyeska to begin construction of the Alaska pipeline. 421 U.S. at 241, 244. The Court, after rejecting the contention that courts may award attorney's fees absent statutory authorization, reasoned that Congress is best able to decide in which situations attorney's fees should be allowed. Id. at 263-64.


26. Id. at 4-6, reprinted in [1976] U.S. Code Cong. & Ad. News at 5912-13; House Report, supra note 4, at 6-9. It is well-recognized that attorney's fees statutes in the area of civil rights are to be liberally construed. See Dennis v. Chang, 611 F.2d 1302, 1306 (9th Cir. 1980); Mid-Hudson Legal Serv., Inc. v. G & U, Inc., 578 F.2d 34, 37 (2d Cir. 1978); Seals v. Quarterly County Court, 562 F.2d 390, 393 (6th Cir. 1977); Donaldson v. O'Connor, 454 F. Supp. 311, 313 (N.D. Fla. 1978).


30. Plaintiff's efforts must be an important factor in causing the defendant to cease his illegal conduct. Nadeau v. Helgemoe, 581 F.2d 275, 281 (1st Cir. 1978); Fischer v. Adams, 572 F.2d 406, 410 (1st Cir. 1978); Mental Patient Civil Liberties Project v. Hospital Staff Civil Rights Comm'n, 444 F. Supp. 981, 986 (E.D. Pa. 1977).
When a plaintiff is unsuccessful in litigating certain claims in an action, or certain defendants are not found liable, most courts still award fees for work done in preparation of those claims in which the plaintiff was successful. Moreover, a minority of courts allow remuneration for work reasonably undertaken in preparation of the entire suit. Defendants, on the other hand, may be awarded fees only when plaintiff's action is frivolously or vexatiously asserted because, unlike civil rights plaintiffs, defendants are not "cloaked in a mantle of public interest." Congress, therefore, sought to encourage plaintiffs to bring worthy actions by allowing for their recovery of attorney's fees in a large number of situations and limiting the instances in which defendants may recover against them.

31. See, e.g., Morrison v. Ayoob, 627 F.2d 669, 671-72 (3d Cir. 1980) (in cases brought under the 1976 Act the focus is on relief received rather than on any formal procedural label), cert. denied, 49 U.S.L.W. 3494 (U.S. Jan. 12, 1981) (No. 80-620); Williams v. Alioto, 625 F.2d 845, 848 (9th Cir. 1980) ("[c]laims for attorneys' fees ancillary to the case survive independently under the court's equitable jurisdiction, and may be heard even though the underlying case has become moot"); petition for cert. filed, 49 U.S.L.W. 3334 (U.S. Oct. 21, 1980) (No. 80-653); Robinson v. Kimbrough, 620 F.2d 468, 475 (5th Cir. 1980) ("[e]ven though plaintiffs obtained no formal judicial relief, their lawsuit was a significant catalyst in achieving their primary objective"); Oldham v. Ehrlich, 617 F.2d 163, 168 (8th Cir. 1980) (although case rendered moot, fees were awarded); Bagby v. Beal, 606 F.2d 411, 414, 416-17 (3d Cir. 1979) (same); Ross v. Horn, 598 F.2d 1312, 1322 (3d Cir. 1979) (same), cert. denied, 100 S. Ct. 3048 (1980).


35. House Report, supra note 4, at 6 (quoting United States Steel Corp. v. United States, 519 F.2d 359, 364 (3d Cir. 1975)).

36. Senate Report, supra note 4, at 5, reprinted in [1976] U.S. Code Cong. & Ad. News at 5912 ("'private attorneys general' should not be deterred from bringing good faith actions to vindicate the fundamental rights . . . by the prospect of having to pay their opponent's counsel fees should they lose.'"); House Report, supra note 4, at 7 ("[t]o avoid [a] potential 'chilling effect' defendants may recover attorney's fees only when plaintiffs bring vexatious suits").
Furthermore, a court that refuses to award attorney's fees to prevailing plaintiffs must justify its decision. Although the 1976 Act is couched in discretionary terms, this, in itself, is not justification for a refusal. A court may neither refuse to award fees when plaintiffs are financially able to assume their fees, nor may it justify a reduction in attorney's fees on the ground that the damages awarded are substantial. Thus, a court's discretion to award fees is limited by Congress' desire that prevailing parties should be granted the costs of hiring an attorney in most cases.

II. Characterizing the Fees Request—Costs vs. Alterations of Judgment

A. Federal Rule of Civil Procedure 59(e)

Rule 59(e) of the Federal Rules of Civil Procedure provides that "[a] motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment." A timely motion made under rule 59(e) destroys the finality of the judgment and tolls the time within which a party must file an appeal until the court has ruled on the motion. Rule 59(e) was adopted to accommodate the competing interests of ensuring that parties be afforded certainty in their relations upon entry of a final order and providing them with a

38. See Sethy v. Alameda County Water Dist., 602 F.2d 894, 897 (9th Cir. 1979) ("court which denies an award of attorney's fees must [identify] . . . 'special circumstances' [that] . . . render an award unjust"), cert. denied, 444 U.S. 1046 (1980); Sargeant v. Sharp, 579 F.2d 645, 647 (1st Cir. 1978) (denial of fee request based solely on grant of discretion in the 1976 Act improper).
40. Furtado v. Bishop, 635 F.2d 915, 916-20 (1st Cir. 1980); cf. Harkless v. Sweeny Independent School Dist., 608 F.2d 594, 598 (5th Cir. 1979) (award of fees not limited to amount of damages awarded); Perez v. University of Puerto Rico, 600 F.2d 1, 2 (1st Cir. 1979) (award of nominal damages does not justify denial of an award). But see Zarcone v. Perry, 581 F.2d 1039, 1044 (2d Cir. 1978) (when prospects of large monetary recovery are good, fee award unnecessary), cert. denied, 439 U.S. 1072 (1979).
42. Federal Rule of Appellate Procedure 4(a) provides that "[t]he running of time for filing a notice of appeal is terminated as to all parties by a timely motion filed in the district court . . . under Rule 59 to alter or amend the judgment." Fed. R. App. P. 4(a), 4(a)(6).
43. A case is final when it leaves "nothing for the court to do but execute the judgment." Catlin v. United States, 324 U.S. 229, 233 (1945). A final judgment has a res judicata effect, which operates as a bar to a subsequent action upon the same
mechanism for relief from an erroneous judgment." 44 Although the Federal Rules are generally liberal in allowing enlargements of pre-

claim between the same parties or their privies. 6A J. Moore, supra note 14, § 60.02, at 4019; see, e.g., NLRB v. Local 282, Int'l Bhd. of Teamsters, 428 F.2d 994, 999 (2d Cir. 1970) (litigation of issues that have been or could have been litigated "should reach repose when final judgment . . . is entered"); Flynn v. State Bd. of Chiropractic Examiners, 418 F.2d 668, 668 (9th Cir. 1969) (final judgment on the merits settles every issue that was raised or could have been raised and is a bar to subsequent action). In Southern Pac. R.R. v. United States, 168 U.S. 1 (1897), Justice Harlan stated that the principle of finality "is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for, the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them." Id. at 49.

44. Rule 59(e) avoids injustice potentially engendered by a strict rule of finality of judgment by making "clear that the district court possesses the power . . . to alter or amend a judgment after its entry." Fed. R. Civ. P. 59(e), Advisory Committee Notes. Rule 60 provides another basis for relief from judgment. Section (a) of the rule allows courts to correct judgments "arising from [clerical] oversight or omission" on their own motion or through a motion of any party. Fed. R. Civ. P. 60(a). Section (b) allows relief from judgment based on mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, previous satisfaction of the judgment, or any other reason justifying relief. Fed. R. Civ. P. 60(b). Rule 60(a) sets no time limit in which correction of judgment may be made, Fed. R. Civ. P. 60(a), and rule 60(b) motions must be made within one year. Fed. R. Civ. P. 60(b). Section (a) of rule 60 has been construed to encompass relief from minor clerical errors and can only be used to "make the judgment . . . speak the truth and cannot be used to make it say something other than what originally was pronounced." C. Wright & A. Miller, Federal Practice and Procedure § 2854, at 149 (1973); see United States v. Kenner, 455 F.2d 1, 6 (7th Cir. 1972); Dow v. Baird, 389 F.2d 882, 884 (10th Cir. 1968); West Va. Oil & Gas Co. v. George E. Breece Lumber Co., 213 F.2d 702, 705 (5th Cir. 1954). This section of the rule has been used to add an award of pre-judgment interest to a judgment when it was due as a matter of right, Lee v. Joseph E. Seagrans & Sons, 592 F.2d 39, 41-42 (2d Cir. 1979); Click v. White Motor Co., 458 F.2d 1287, 1294 (3d Cir. 1972); In re Merry Queen Transfer Corp., 266 F. Supp. 605, 606-07 (E.D.N.Y.), aff'd in part, rev'd in part sub nom. O'Rourke v. Merry Queen Transfer Corp., 370 F.2d 781 (2d Cir. 1967), and to add an award of costs. Alameda v. Paraffine Co., 169 F.2d 408, 409 (9th Cir. 1948); First Nat'l Bank v. National Airlines, Inc., 167 F. Supp. 167, 169 (S.D.N.Y. 1958). Although one district court has suggested that the omission of an award of attorney's fees from a judgment could "arguably [be remedied] by a motion under Rule 60" if it was an "inadvertent clerical error," Janicki v. Pizza, No. 78-242, slip op. at 2 (N.D. Ohio Nov. 24, 1980), the rule seems to be generally inapplicable to situations in which a judgment is deliberately silent as to a discretionary matter. See Chicago & N.W. Ry. v. Union Packing Co., 527 F.2d 392, 392 (8th Cir. 1976) (per curiam); Hoffman v. Celebrezze, 405 F.2d 833, 836 (8th Cir. 1969); Gray v. Dukedom Bank, 216 F.2d 105, 109-10 (6th Cir. 1954) (per curiam); United States v. Lyman, 125 F.2d 67, 70 (1st Cir. 1942); Gilroy v. Erie-Lackawanna R.R., 44 F.R.D. 3, 4 (S.D.N.Y. 1968). Although rule 60(b)(6) could theoretically be applied to post-judgment fees requests because it allows any justification for relief from judgment not contained in the other sections of rule 60, relief is not available under this provision absent exceptional and compelling
scribed time limits, rule 6(b), which governs these extensions, expressly forbids enlargement of the time prescribed by rule 59(e).

Those courts that characterize post-judgment requests for fees as amendments to judgment reason that, because attorney's fees are part of the general relief afforded in a civil rights action, requests are properly heard and decided with the merits of the case or properly considered along with the underlying dispute in settlement circumstances. See Ackermann v. United States, 340 U.S. 193, 202 (1950). See generally 7 J. Moore, supra note 14, ¶ 60.27[2], at 353.

45. Rule 6(b) provides that "[w]hen by these rules . . . an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect." Fed. R. Civ. P. 6(b).

46. Id. The Advisory Committee notes to rule 6(b) state that "[t]he question to be met under Rule 6(b) is: how far should the desire to allow correction of judgments be allowed to postpone their finality?" Id., Advisory Committee Notes. Rule 6(b) also forbids enlargement of the time allowed for other post-judgment motions that toll the time in which an appeal must be filed such as rule 50(b) motions for judgments n.o.v., rule 52(b) motions to amend or make additional findings of fact, and rule 59(b) motions for a new trial. These motions have timeliness requirements of 10 days.

47. Gurule v. Wilson, 635 F.2d 782, 787-88 (10th Cir. 1980); White v. New Hampshire Dep't of Employment Security, 629 F.2d 697, 704 (1st Cir. 1980); Hirschkop v. Snead, 475 F. Supp. 59, 60-61 (E.D. Va. 1979). If a plaintiff requests attorney's fees in his pleadings and the court fails to act on this request, there is strong authority that such a judgment is not a final, appealable order. See Liberty Mut. Ins. Co. v. Wetzel, 424 U.S. 737, 742-44 (1976); Gurule v. Wilson, 635 F.2d 782, 786-88 (10th Cir. 1980); Johnson v. University of Bridgeport, 629 F.2d 828, 830 (2d Cir. 1980); Richerson v. Jones, 551 F.2d 918, 922 (3d Cir. 1977). Thus, arguably, the question whether rule 59(e) is applicable to post-judgment requests for attorney's fees may be limited to situations in which the party requesting fees failed to do so expressly before judgment is entered. Furthermore, it is arguable that even if a plaintiff does not expressly request his attorney's fee before entry of judgment, the court should still make an award. This result would comport with the liberal policy of the Federal Rules of Civil Procedure. Rule 54(c) provides that "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." Fed. R. Civ. P. 54(c). This rule has consistently been applied in a liberal fashion. See, e.g., Walton v. Eaton Corp., 563 F.2d 66, 72 n.7 (3d Cir. 1977) (compensatory damages awarded although only punitive damages were pleaded); Troutman v. Modlin, 353 F.2d 382, 384-85 (8th Cir. 1965) (jury award of $10,000 proper even though only $2,000 in ad damnum clause); Rental Dev. Corp. of Am. v. Lavery, 304 F.2d 839, 842 (6th Cir. 1962) (failure to request cancellation of lease in landlord-tenant action deemed no bar to such relief); Massachusetts Bonding & Ins. Co. v. New York, 259 F.2d 33, 40 (2d Cir. 1958) ("[I]t is the court's responsibility to award relief required by the facts on any proper ground, regardless of the theories urged by the parties."); Hamill v. Maryland Cas. Co., 209 F.2d 338, 340 (10th Cir. 1954) (party may recover "upon any theory legally sustainable under established facts regardless of the demand in the pleadings").
negotiations. This evidences the desire to merge all substantive issues in a dispute into one final judgment to avoid the potential for multiple appeals from a single case. The reasoning of these courts is questionable, however, because requests for attorney's fees are materially different from the motions usually asserted under rule 59(e). Requests typically governed by this rule include motions for vacation, reargument or reconsideration of a judgment, reconsid-

48. White v. New Hampshire Dep't of Employment Security, 629 F.2d 697, 705 (1st Cir. 1980). A judgment that is a consent agreement of the parties, see note 29 supra, and does not provide for attorney's fees or expressly reserve the issue is a final order and, therefore, subject to the time limitations of rule 59(e). See Hart Schaffner & Marx v. Alexander's Dep't Stores, Inc., 341 F.2d 101, 102 (2d Cir. 1965) (per curiam) ("consent decrees 'are to be read within their four corners . . . because they represent the agreement of the parties, and not the independent examination of the subject-matter by the court'"); Artvale, Inc. v. Rugby Fabrics Corp., 303 F.2d 283, 284 (2d Cir. 1962) (per curiam) ("consent decree represents an agreement by the parties which the court cannot expand or contract"). But see Chance v. Board of Examiners, 79 F.R.D. 122, 126 (S.D.N.Y. 1978) ("consent decree is a judicial act, not a private contract, and may be amended by the issuing court").

49. Gurule v. Wilson, 635 F.2d 782, 788 (10th Cir. 1980); White v. New Hampshire Dep't of Employment Security, 629 F.2d 697, 701 (1st Cir. 1980).

50. Courts holding that post-judgment requests for attorney's fees in civil rights cases are governed by rule 59(e) contend that the weight of authority supports this proposition. White v. New Hampshire Dep't of Employment Security, 629 F.2d 697, 700 & n.4 (1st Cir. 1980); Hirschkop v. Sneed, 475 F. Supp. 59, 62-64 (E.D. Va. 1979). A close examination of the cases cited by these courts provides little evidence that the issue is settled. See, e.g., Fase v. Seafarers Welfare & Pension Plan, 599 F.2d 112, 114 n.3 (2d Cir. 1978) (court denied fees request while expressly leaving unresolved whether request governed by rule 59(e)); DuBuit v. Harwell Enterprises, Inc., 540 F.2d 690, 693 (4th Cir. 1976) (second request for attorney's fees made after 10 days held alteration of judgment because judgment denied first request); Laufenberg, Inc. v. Goldblatt Bros., 187 F.2d 823, 825 (7th Cir. 1951) (court stated fee determinations should be made as part of final judgment without explicit reference to rule 59(e)); Hill v. TVA, 84 F.R.D. 226, 227-28 (E.D. Tenn. 1978) (request made 28 months after entry of judgment held untimely without reference to whether the decision made pursuant to rule 59(e) or rule 60). Two cases cited by the White court involved requests under the now abandoned "private attorney general" theory of awarding attorney's fees. See Gonzalez v. Gonzalez, 385 F. Supp. 1226, 1243-44 (D.P.R. 1974), vacated and remanded on other grounds, 536 F.2d 1042 (2d Cir. 1972); Knighton v. Watkins, 616 F.2d 795, 797 (5th Cir. 1980). Two cases cited by the White court involved requests under the now abandoned "private attorney general" theory of awarding attorney's fees. See Gonzalez v. Gonzalez, 385 F. Supp. 1226, 1243-44 (D.P.R. 1974), vacated and remanded on other grounds, 536 F.2d 1042 (1st Cir. 1976); Stacy v. Williams, 50 F.R.D. 52, 55 (N.D. Miss. 1970), aff'd, 446 F.2d 1366 (5th Cir. 1971). Requests for equitable awards of attorney's fees under this theory have been distinguished from statutory awards because "an equitable award of fees . . . [is] not part of the costs awarded after litigation, but should be sought as part of the litigation itself." Richerson v. Jones, 572 F.2d 89 (3d Cir. 1978); Sonnenblick-Goldman Corp. v. Nowalk, 420 F.2d 858 (3d Cir. 1970); Parks v. "Mr. Ford," 69 F.R.D. 305 (E.D. Pa. 1975); Sampson v. Ampex Corp., 335 F. Supp. 242 (S.D.N.Y. 1971), aff'd, 463 F.2d 1042 (2d Cir. 1972).

eration of summary judgment, and addition of pre-judgment interest to a judgment. These motions are essentially requests that a court reevaluate its holdings of law and fact to determine whether the judgment was correct.

Post-judgment requests for attorney's fees in civil rights cases, however, do "not [seek] a change in the judgment, but merely [seek] what is due because of the judgment." In determining that fees should be granted or the amount a plaintiff should recover, courts need not alter their decision on the merits of the case. Because a court's discretion concerning the appropriateness of an award is very narrow, it considers the substance of its underlying decision only to verify that the plaintiff has, in fact, prevailed. Moreover, although the court has broad discretion to fix the amount of an award, it examines specific facts that are independent of its underlying decision when making this determination. For example, the court considers the time and labor expended by counsel, the novelty and difficulty of the case, the skill required in properly handling the case, any unusual time limitations imposed on the litigants, the experience, ability, and reputation of counsel, the undesirability of being associated with the cause, and awards granted in similar cases.

53. Smith v. Hudson, 600 F.2d 60 (6th Cir.), cert. denied, 444 U.S. 986 (1979); Seshachalam v. Creighton Univ. School of Medicine, 545 F.2d 1147 (8th Cir. 1976), appeal dismissed, 549 F.2d 79 (8th Cir.), cert. denied, 433 U.S. 909 (1977); Peabody Coal Co. v. UMW, 484 F.2d 78 (6th Cir. 1973); Motteler v. J.A. Jones Constr. Co., 447 F.2d 954 (7th Cir. 1971); Maryland Tuna Corp. v. The Ms. Benares, 429 F.2d 307 (2d Cir. 1970); Gainey v. Brotherhood of Ry. & S.S. Clerks, 303 F.2d 716 (3d Cir. 1962).


55. Dove v. Codesco, 569 F.2d 807, 809 (4th Cir. 1978); see 9 J. Moore, supra note 14, ¶ 204.12[1], at 4-67; 11 C. Wright & A. Miller, supra note 44, ¶ 2817, at 111-12.


57. Bond v. Stanton, 630 F.2d 1231, 1233 (7th Cir. 1980); Dawson v. Patrnick, 600 F.2d 70, 79 (7th Cir. 1979); Bonnes v. Long, 599 F.2d 1316, 1318 (4th Cir. 1979); Davis v. Murphy, 587 F.2d 362, 364 (7th Cir. 1978).

58. See notes 26-40 supra and accompanying text.

59. The amount of a fees award is within the sound discretion of district courts. Muscare v. Quinn, 614 F.2d 577, 579-80 (7th Cir. 1980); Harkless v. Sweeney Independent School Dist., 608 F.2d 594, 596 (5th Cir. 1979); Lund v. Affleck, 587 F.2d 75, 78 (1st Cir. 1978); King v. Greenblatt, 560 F.2d 1024, 1027 (1st Cir. 1977), cert. denied, 438 U.S. 916 (1978).


ATTORNEY’S FEES

Determinations of awards of attorney’s fees are a natural post-judgment consideration in which remuneration is granted to a plaintiff, not for his damages, but for the legal expense of successfully prosecuting a civil rights action. The requirement that a party must prevail to be entitled to attorney’s fees indicates that a plaintiff’s success in a dispute is a condition precedent to an award. The request for an award of attorney’s fees is, therefore, logically made only upon satisfaction of this condition, which may entail the entry of a favorable judgment.

B. Federal Rule of Civil Procedure 54(d)

The better view is that post-judgment requests for attorney’s fees be deemed taxable costs. Costs are generally assessed after the close of the trial, and their determination is tangential to the merits of the case. Rule 54(d) provides that the clerk of the court may tax costs. Submission of a bill of costs under rule 54(d) differs from a rule 59(e) motion because it does not affect the finality of judgment.


Awards of attorney’s fees are not made to punish a defendant, but to encourage enforcement of civil rights laws. Pickett v. Milam, 579 F.2d 1118, 1120-21 (8th Cir. 1978); Rosenfeld v. Southern Pac. Co., 519 F.2d 527, 530 (9th Cir. 1975) (per curiam); see Lockheed Minority Solidarity Coalition v. Lockheed Missiles & Space Co., 406 F. Supp. 828 (N.D. Cal. 1976).

See notes 27-36 supra and accompanying text.


6 J. Moore, supra note 14, ¶ 54.77[9], at 1753 (“as a general rule the awarding of costs should normally await the rendition of a final judgment”); 10 C. Wright & A. Miller, supra note 44, ¶ 2679, at 239 (“it generally is understood that the appropriate time for taxing costs is after a decision has been reached in the action”).


Rule 58 of the Federal Rules of Civil Procedure provides that “[e]ntry of the judgment shall not be delayed for the taxing of costs.” Id. This provision, an amend-
or toll the time within which an appeal must be made.\textsuperscript{69} Thus, there is no express time within which a bill of costs must be submitted.\textsuperscript{70}

It has been argued, however, that attorney's fees are "qualitatively different" from costs because determinations of fee awards involve the court's discretion\textsuperscript{71} and cannot be routinely taxed by the clerk of the court as can conventional costs.\textsuperscript{72} Furthermore, under other statutes, the variety of fees and disbursements that may be taxed by the court are explicitly delineated.\textsuperscript{73} The primary federal statute allowing costs, 28 U.S.C. § 1920,\textsuperscript{74} for example, includes as taxable costs fees of the clerk and marshal, and fees and disbursements for printing and witnesses.\textsuperscript{75} It does not include attorney's fees as an expense to be taxed by the court clerk.

It has never been suggested, however, that taxable costs must be limited to those items enumerated in 28 U.S.C. § 1920, or that Congress may not enact other statutes allowing parties to recover different items as taxable costs.\textsuperscript{76} In holding that post-judgment requests

\begin{footnotes}


\item[71] See note 61 supra and accompanying text.


\item[75] Id. § 1920 (1), (3). Additionally, § 1920 provides that the judge or clerk may assess costs for "[f]ees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; . . . [f]ees for exemplification and copies of papers necessarily obtained for use in the case; [and] [d]ocket fees under section 1923 of this title." Id. § 1920 (2), (4), (5).

\item[76] One court has stated that "[i]t seems logical to conclude that by this language Congress was choosing only to authorize recovery of one discrete type of costs—attorney's fees—and that other costs are to be awarded under separate authority." Vecchione v. Wohlgemuth, 481 F. Supp. 776, 799 (E.D. Pa. 1979). Although courts sometimes award costs not expressly granted by a statute, their discretion "should be sparingly exercised." Farmer v. Arabian Am. Oil Co., 379 U.S. 227, 235 (1964); see, e.g., Guajardo v. Estelle, 432 F. Supp. 1373, 1388 (S.D. Tex. 1977) (court allowed travel expenses, telephone calls, LEXIS time, and paralegal services as costs in ab-
\end{footnotes}
for attorney's fees are governed by rule 54(d), some courts maintain that the phrase "as part of the costs" indicates that Congress viewed attorney's fees recoverable under the 1976 Act as a new item of taxable costs. In fact, in Hutto v. Finney, the Supreme Court, although not addressing the applicability of rule 54(d) to attorney's fees under the 1976 Act, noted that "Congress [may] amend its definition of taxable costs" and that the 1976 Act represents "Congress' decision to authorize an award of attorney's fees as an item of costs."

Admittedly, the discretionary nature of a fees determination will require the courts to engage in a different practice than that generally used for conventional costs. This should not, however, militate against the use of rule 54(d). Costs may be, and sometimes are, taxed by the judge. When the trial judge has special knowledge concerning items that are taxable as costs, it is proper that he, rather than the clerk, determine their amount. Attorney's fees should be deemed to fall within this category of taxable costs.

III. Furthering Congressional Policy
UNDERLYING THE 1976 ACT

Although there is no legislative history concerning the proper procedural characterization of post-judgment requests for attorney's fees
under the 1976 Act, congressional policy underlying the 1976 Act supports the conclusion that fees requests be deemed costs. Denying plaintiffs their just compensation on a technical procedural ground contravenes congressional policy to encourage the bringing of suits that further the enforcement of civil rights laws. Those courts that have adopted the rule 59(e) approach, however, have reasoned that a party's expectation that a final judgment embody a total resolution of a dispute is best served by requiring that awards of attorney's fees be deemed alterations of judgment. The rationale supporting this analysis is that the interest in finality of judgment outweighs any potential injustice that may result by limiting the time period within which fees requests may be made.

Although the general policies favoring judicial economy and finality of judgment are clearly important, they should not be considered apart from the legislative purpose underlying a specific statute. Courts that employ rule 59(e) place plaintiffs, otherwise entitled to fees, at a great disadvantage. Those plaintiffs who have prevailed in their action but fail to serve their fees motions within ten days will, without exception, be denied the fees the law presumes they should receive. Moreover, even if an attorney, with full knowledge of the timeliness requirement, diligently attempts to serve his fees motion

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Hvass, 355 U.S. 570, 575-76 (1958); see 28 U.S.C. § 2071 (1976) ("The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business.").

82. Knighton v. Watkins, 616 F.2d 795, 798 & n.2 (5th Cir. 1980); Janicki v. Pizza, No. 78-242, slip op. at 1-2 (N.D. Ohio Nov. 24, 1980); see Bond v. Stanton, 630 F.2d 1231, 1234 (7th Cir. 1980) (refusing prevailing parties recovery of attorneys' fees for time spent appealing the case and preparing the fees application contravenes the policy of the 1976 Act).


85. See 3 C. Sands, Sutherland's Statutes and Statutory Construction § 67.02, at 219 (4th ed. 1974) ("There is widespread preference for the method of interpreting procedural statutes which insures that a case will not be disposed of on the basis of procedural technicalities but will be considered on its merits and decided on the basis of the substantive rights of the parties."); id. § 72.05, at 392-93 (4th ed. 1974) ("Remedial policies expressed in civil rights laws may be judicially extended through the influence they have in the interpretation of other legislation.").

within ten days after judgment is entered, the evidentiary burden imposed by courts may make this time requirement impracticable. The burden of persuading a court to award the amount of attorney's fees requested is on the requesting party. Attorneys must submit affidavits that contain detailed information sufficient to allow the court to measure the time reasonably spent preparing for and conducting the action. In fact, the amount of information submitted may be so great and its character so complex that courts often require fees requests to be briefed and argued at a hearing before they will determine the amount to be awarded.

Most courts that award attorney's fees only for work done on claims on which plaintiff has prevailed require that fees applications delineate the amount of work done in relation to each specific claim litigated. A plaintiff will not know on which issues he has prevailed, however, until judgment is entered. This precludes plaintiffs from preparing their fees applications in advance to alleviate the time constraints of rule 59(e). The combination of the evidentiary burden and the strict time requirement of rule 59(e) may, therefore, lead to a reduction of the amount of fees awarded because plaintiffs may be unable to present an adequate and reasonable accounting of their attorney's fees. In Scheriff v. Beck, for example, a district court

88. King v. Greenblatt, 560 F.2d 1024, 1027 (1st Cir. 1977), cert. denied, 438 U.S. 916 (1978); Pearson v. Western Elec. Co., 542 F.2d 1150, 1153 (10th Cir. 1976); Merola v. Atlantic Richfield Co., 515 F.2d 165, 167 n.2 (3d Cir. 1975); Maloney-Crawford Tank Corp. v. Saunder Tank Co., 511 F.2d 10, 14 (10th Cir. 1975); Stanford Daily v. Zurcher, 64 F.R.D. 680, 681-82 (N.D. Cal. 1974), aff'd per curiam, 550 F.2d 464 (9th Cir. 1977), reversed on other grounds, 436 U.S. 547 (1978). The data provided must be "fairly definite information as to the way in which that time was spent (discovery, oral argument, negotiation, etc.) and by whom [the work was done] (senior partners, junior partners, or associates)." City of Detroit v. Grinnell Corp., 495 F.2d 448, 471 (2d Cir. 1974).
91. See, e.g., King v. Greenblatt, 560 F.2d 1024, 1027 (1st Cir. 1977) ("[B]ills which simply list a certain number of hours and lack such important specifics as dates and the nature of work performed ... should be refused."); cert. denied, 433 U.S. 916 (1978); Imprisoned Citizens Union v. Shapp, 473 F. Supp. 1017, 1022 (E.D. Pa. 1979) (claim excluded because not supported); Heigler v. Gatter, 463 F. Supp. 802, 803 (E.D. Pa. 1978) (claim reduced 20% because of unsupportable records).
held that a plaintiff who had prevailed against one of two defendants was entitled to only fifty percent of his total request because he did not properly set forth the amount of time spent on the successful claim.93

The First Circuit, which presently applies rule 59(e), has concurred with this view, stating that it "would not view with sympathy any claim [brought on appeal] that a district court abused its discretion in awarding unreasonably low attorney's fees in a suit in which plaintiffs were only partially successful if counsel's records do not provide a proper basis for determining how much time was spent on particular claims."94 Moreover, a plaintiff may not attempt to circumvent the ten day limitation by submitting a general motion and amending it after ten days because this is tantamount to an extension of time under rule 59(e), which is forbidden by the rules.95

The application of rule 59(e) to fees requests made after a consent decree has been entered can also adversely affect civil rights plaintiffs attempting to negotiate a settlement of their dispute. The First Circuit has held that the policy of finality supports the concurrent determination of the plaintiff's attorney's fee and his general recovery,96 and has stated that it saw nothing wrong with resolving fees issues during the settlement negotiations.97 The stringent time requirement of rule 59(e) may, in fact, cause plaintiffs to negotiate attorney's fees at the same time they are attempting to resolve the underlying dispute. The plaintiff's attorney, however, will be placed in an ethically dilemma in this instance because settlement of fees, "although made in the name of the plaintiff, is really one by the attorney."98 The

93. Id. at 1259.
95. Martinez v. Trainor, 556 F.2d 818, 820 (7th Cir. 1977) (per curiam) ("if a party could file a skeleton motion and later fill it in, the purpose of the time limitation would be defeated"). See also 6A J. Moore, supra note 14, ¶ 59.12[3], at 59-253 to 59-254 ("if a party desires to support or oppose a [rule 59(e)] motion by affidavits, service should be in accordance with the general provision of Rule 6(d)").
96. White v. New Hampshire Dep't of Employment Security, 629 F.2d 697, 699 (1st Cir. 1980); accord, Gurule v. Wilson, 635 F.2d 782, 787-88 (10th Cir. 1980).
98. Regalado v. Johnson, 79 F.R.D. 447, 451 (E.D. Ill. 1978); accord, Mendoza v. United States, 623 F.2d 1338, 1352 (9th Cir. 1980) ("we cannot indiscriminately assume . . . that the amount of fees have no influence on the ultimate settlement obtained for the class"); Prandini v. National Tea Co., 557 F.2d 1015, 1021 (3d Cir. 1977) (conflict of interest problems "are real and practical—present in all cases where the defendant pays the plaintiff's lawyers"); Jamison v. Butcher & Sherrerd, 68 F.R.D. 479, 484 (E.D. Pa. 1975) (concurrent negotiation "leaves the unfortunate impression the defendants are buying their way out of a lawsuit by direct compensation of plaintiff's lawyer"); J. Moore, Manual for Complex Litigation § 1.46, at 74 (1971) ("[w]hen counsel for the class negotiates simultaneously for the settlement fund and for individual counsel fees there is an inherent conflict of interest"). See
amount he recovers as his fee will usually constitute his entire re-
muneration because civil rights plaintiffs rarely can afford the costs of
having an attorney represent them. Therefore, plaintiff's attorney
may be compelled to negotiate for himself at the same time he is
attempting to settle the issue of damages. This potential for "sweet-
heart contracts" — when plaintiff's attorney negotiates a tradeoff of
his client's relief for an enhanced fee — has led other courts to
forbid or strongly object to simultaneous negotiation of attorney's
fees and the underlying civil rights controversy.

Courts that characterize fees as taxable costs, on the other hand,
have sufficient flexibility to effectuate Congress' intent that fees be
awarded without risk that plaintiff's recovery will be unjustly
reduced. Arguably, the separate disposition of attorney's fees may
result in multiple appeals and thwart parties' expectations that upon
entry of judgment, or shortly thereafter, the resolution of their suit
will become final. The use of rule 54(d), however, need not neces-
sarily have these results. Although rule 54(d) sets no express time
limit within which a bill of costs must be filed, it must be read in
conjunction with the requirement of rule 1 that every action be
determined as quickly as possible. Courts have, therefore, refused
to tax costs when the party requesting them did so after the expira-
tion of an unreasonable time. Moreover, the danger that multiple
generally Levin, Practical, Ethical and Legal Considerations Involved in the Settle-
ment of Cases in Which Statutory Attorney's Fees Are Authorized, 14 Clearinghouse
Rev. 515 (1980); Note, Attorneys' Fees—Conflict Created by the Simultaneous Nego-
tiation and Settlement of Damages and Statutorily Authorized Attorneys' Fees in a
Title VII Class Action—Prandini v. National Tea Co., 557 F.2d 1015 (3d Cir. 1977),

100. Prandini v. National Tea Co., 557 F.2d 1015, 1021 (3d Cir. 1977). Although
there is no presumption that lawyers will violate their fiduciary duty, the Third Cir-
cuit noted in Prandini that "[t]he court does have the duty to see to it that the
administration of justice has the appearance of propriety as well as being so in fact."
Id.
101. Id.
103. The Third Circuit requires that district courts approve the damage element of
the agreement before the parties may negotiate attorney's fees. Prandini v. National
Tea Co., 557 F.2d 1015, 1021 (3d Cir. 1977); cf. Mendoza v. United States, 623 F.2d
1338, 1352-53 (9th Cir. 1980) (court strongly discourages concurrent negotiation).
104. See pt. II(B) supra.
105. Gurule v. Wilson, 635 F.2d 782, 787 (10th Cir. 1980); White v. New Hamp-
shire Dept' of Employment Security, 629 F.2d 697, 701 (1st Cir. 1980).
107. Id. Rule 1 states that the Federal Rules of Civil Procedure "shall be con-
strued to secure the just, speedy, and inexpensive determination of every action."
Id.
1964); United States v. Pinto, 44 F.R.D. 357, 358-59 (W.D. Mich. 1968); see Terket
appeals will result from the application of rule 54(d) can be lessened by the adoption of the Seventh Circuit’s suggestion that “[a] party dissatisfied with the court’s ruling . . . apply . . . for consolidation with the pending appeal of the merits.”

**Conclusion**

Congress and the courts have made clear the importance of awarding attorneys’ fees to successful plaintiffs in civil rights actions. Judicial grants of fees are made to prevailing plaintiffs almost as a matter of course. Furthermore, the underlying goal of the Federal Rules of Civil Procedure is that substantial justice should triumph over technical requirements. Denominating post-judgment fee requests as alterations of judgment creates a technical barrier to plaintiffs’ recovery of fees. Characterizing attorneys’ fees as taxable costs, on the other hand, allows courts to fashion a complete remedy for those whose civil rights have been violated. Applying rule 54(d), therefore, ensures that deserving plaintiffs will not be unjustly denied the fees to which they are entitled.

*Edward M. Roth*

v. Lund, 623 F.2d 29, 34 (7th Cir. 1980) (“district courts . . . should proceed with attorneys’ fees motions . . . as expeditiously as possible”).