

## The California Supreme Court Holds Appellate Attorney Fees Can Be Requested After Satisfaction of Judgment



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**U**nder the American rule, each party to a civil case generally pays for his or her own attorney fees regardless of outcome. But if there is a fee-shifting statute or a contract between parties, the loser may have to pay the winner's fees. The idea behind the rule is that parties to a contract should be able to decide whether fee shifting would be beneficial to them and that the legislature can authorize fee shifting where public policy requires it. However, under the Enforcement of Judgments Law, once the loser satisfies the judgment, the winner cannot ask for enforcement attorney fees. The idea behind this rule is that losers who pay are entitled to certainty and finality. This raises the question: Can a winner be made whole when the loser forces the winner to defend the judgment on appeal or to enforce the judgment but the loser nonetheless pays the judgment before the winner asks for attorney fees? The answer is usually, but not always. The California Supreme Court recently addressed this in *Conservatorship of McQueen*. ((2014) 59 Cal.4th 602, 605.)

Ida McQueen is a mentally and physically disabled woman who was born in 1935 and cannot read or write. McQueen's late father established a trust for her, giving her the right to live in the family's residence, which was held in the trust, and to receive the trust's net income during her lifetime. The defendant, an attorney, prepared the order

creating the trust and was counsel for the trust. However, while McQueen was in a nursing facility, the defendant obtained McQueen's mark on a power of attorney in favor of her sister. McQueen's uncle, acting as trustee, sold the family residence without McQueen's consent or authorization from the probate court. Then the defendant distributed the proceeds to McQueen's family members but gave nothing to McQueen.

The plaintiff was appointed limited conservator of McQueen's estate and sued the defendant and others. A jury found the defendant liable for financial elder abuse. Because the financial elder abuse statute contains a fee-shifting provision, the trial court ordered the defendant to pay the plaintiff's prejudgment attorney fees. The defendant appealed, but the plaintiff defended the judgment and the court of appeal affirmed. The plaintiff also enforced the judgment by bringing a separate fraudulent transfer case against the defendant and others alleging that the defendant was attempting to avoid payment of the judgment. The plaintiff dismissed the case in exchange for one of the properties being transferred back to the defendant. As a result, the defendant satisfied the judgment. The plaintiff then moved for attorney fees incurred in the appeal and separate enforcement lawsuit. Although the trial court granted the motion for fees, the court of appeal reversed.



According to the court of appeal, under the Enforcement of Judgments Law, satisfaction barred any further fees. The California Supreme Court reversed and upheld the appellate fees, but affirmed the denial of enforcement fees.

## Satisfaction of Judgment Does Not Limit the Time to Ask for Appellate Attorney Fees

The California Supreme Court held that a party who successfully defends a judgment in its favor on appeal in a case involving attorney fee shifting can request appellate attorney fees regardless of whether the judgment has already been satisfied. Writing for a unanimous court, Associate Justice Kathryn M. Werdegar explained that satisfaction and the Enforcement of Judgments Law do not limit the time within which a party may move for appellate attorney fees for a direct appeal. The Enforcement of Judgments Law generally provides that a party may recover attorney fees for enforcing a judgment if the underlying judgment includes an award of fees to that party and a request for enforcement fees is “made before the judgment is *satisfied* in full, but not later than two years after the costs have been incurred.” (Code Civ. Proc., § 685.080 [italics added].) The court found defending a judgment on appeal is distinguishable from enforcing a judgment:

“plaintiff’s efforts in opposing defendant’s appeal of the judgment were not undertaken to *enforce* the judgment but to defend it against reversal or modification.” (59 Cal.4th at 605 [italics in original].) The court further explained, “[w]here a statute provides for attorney fees, they are generally available both at trial and on appeal . . . , and the procedure for their recovery is set out by court rule . . . .” (59 Cal.4th at 605.)

## Satisfaction of Judgment Immediately Cuts Off the Time to Ask for Enforcement Attorney Fees

The California Supreme Court held that a party cannot request fees for enforcing a judgment after the judgment has been satisfied. The court explained, “when a fee-shifting statute provides the substantive authority for an award of attorney fees, any such fees incurred in enforcement of judgment are within the scope of [the Enforcement of Judgments Law].” (59 Cal.4th at 614.) The court further held that satisfaction immediately cuts off the time to ask for fees under the “explicit, unambiguous language . . .” of the Enforcement of Judgments Law. (59 Cal.4th at 615.) The court reasoned that a party “cannot accept a pay-

ment as full satisfaction of the judgment, then file a memorandum or motion for additional enforcement costs and fees.” (59 Cal.4th at 616). However, the court found that a party who seeks recovery of enforcement fees can usually, but not always, postpone satisfaction of judgment until after he or she requests the fees: “[a] judgment creditor who has yet to file a memorandum of costs . . . or cost motion . . . is not generally at the mercy of the judgment debtor as to the timing of satisfaction.” (59 Cal.4th at 615.) According to the court, a party can delay satisfaction by not presenting an uncertified check to a bank or “rejecting”<sup>1</sup> a certified check, but it cannot avoid satisfaction if the judgment is paid in full by cash.

## Tips for Winners and Losers in Attorney Fee Cases

Under the California Supreme Court’s holding, the deadline for recovery of attorney fees for a direct appeal is governed by the California Rules of Court. Specifically, a request for fees for a noninterlocutory appeal in an unlimited civil case must be made “[w]ithin 40 days after the clerk sends notice of issuance of remittitur” under rules 3.1702(c) and 8.278(c)(1).<sup>2</sup> So winners in those cases should file their motion for appellate attorney fees by then. But before an appeal, losers in the trial court should evaluate whether the chance of reversal is worth the risk of an appellate attorney fee award because the additional fees cannot be avoided by early payment of the judgment.

The Enforcement of Judgments Law governs the deadline to request attorney fees for enforcement, including an appeal on an enforcement action. Generally, a request for fees must be made within two years of when they were incurred and *before satisfaction of judgment*. According to the California Supreme Court, satisfaction of judgment occurs when, among other things, judgment is paid in full by: (1) an uncertified check that is presented to and honored by a bank; (2) a certified check that is accepted by the winner; or (3) cash. Losers in the trial court should pay their judgment in full as soon as possible to avoid any enforcement fees. If they think they may face such fees, they should pay their judgment in cash or possibly wire transfer to cut off the time to request fees. Conversely, as

soon as a substantial amount of attorney time is expended on enforcement, winners should file their motion for fees and then file supplemental motions for additional fees as necessary. If they receive an uncertified check for the judgment, they should not cash or deposit it until after filing their final motion for fees. Similarly, if they receive a certified check, they should reject it before their final motion.

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### Notes

1. The court found “[e]ven if payment is by certified check or similar instrument, the *acceptance* of which arguably constitutes satisfaction . . . , the judgment creditor retains, at the least, the option of rejecting the certified check and filing the motion or memorandum for enforcement costs and fees.” (59 Cal.4th at 615 [italics in original].) But the court did not define what constitutes “rejecting” a certified check.

2. Rules 3.1702(c) and 8.891(c)(1) govern the deadline for recovering appellate attorney fees in a noninterlocutory appeal in a limited civil case. Rules 3.1702(b), 8.104, 8.108, 8.822, and 8.823 govern the deadline for fees in interlocutory appeals in unlimited and limited civil cases.