

EMPLOYMENT LAW UPDATE

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Flannery v. Prentice, 26 Cal.4th 572 (August 13, 2001).

In the absence of an enforceable fee agreement to the contrary, attorneys' fee awards under FEHA belong to the attorney

by Jason A. Geller and Farand C. Kan

In a significant decision impacting the attorney-client relationship, the California Supreme Court addressed the issue of to whom attorneys' fees awarded under the Fair Employment and Housing Act ("FEHA") belong when the attorney and client do not have an agreement that addresses the issue.

In the underlying case, plaintiff Leslie Flannery sued her former employer, the California Highway Patrol, alleging violations of FEHA. The jury awarded Flannery \$250,000 in damages, and an additional \$1,088,231 in attorneys' fees, which was ultimately reduced to roughly \$970,000. Flannery and her attorneys did not enter into a written fee agreement, and her attorneys claimed that the fee award belonged to them, not Flannery.

Thereafter, Flannery filed an action against her attorneys Prentice & Scott and Bley & Bley seeking damages and a finding that she was entitled to the attorneys' fees awarded in the underlying case. Flannery contended that she and defendant attorneys had

orally entered into a contingent fee agreement entitling her attorneys to only 40% of the net award of the jury.

In determining whether the fee award belonged to Flannery or her attorneys, the California Supreme Court reviewed the language of FEHA, which permits the court in its discretion to "award to the prevailing party reasonable attorneys' fees and costs, including expert witness fees . . ." The Court examined the underlying purpose of FEHA and recognized that FEHA is intended to safeguard the right of Californians to seek, obtain, and hold employment without experiencing discrimination. With this purpose in mind, the Court held that giving the fees awarded under FEHA to the client, not the attorney, in the absence of an *enforceable* agreement to the contrary, "would diminish the certainty that attorneys who undertake FEHA cases will be fully compensated, and to that extent . . . would dilute [FEHA's] effectiveness at encouraging counsel to undertake FEHA litigation." In support of its holding, the Supreme Court also

considered several public policy concerns such as the encouragement of legitimate FEHA claims and fairness to the parties. The Court also noted that statutory attorneys' fees were not intended to compensate the successful plaintiff for damages suffered, but rather were intended to compensate the attorneys who labored for the verdict.

Flannery v. Prentice emphasizes the importance of having clear, written fee agreements that address the issue of to whom an attorneys' fee award belongs, among other matters. While it is rare that a prevailing defendant is awarded its fees in FEHA litigation (i.e. if the plaintiff's case is deemed "frivolous"), defense counsel and their employer clients are advised to address this issue in their fee agreements as well.

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