

Fee fight is back on

Garnishment of state property weighed

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Civil-rights lawyers say they will take any steps necessary, including garnishing the property of the state or certain state officials, after the Maryland Board of Public Works last month again refused to honor a federal court order to pay their attorneys' fees in a voter-registration case.

When the board refused the first court order in 2009, the amount stood at \$60,000. The refusal sparked an appeal and two more trips to the U.S. District Court, bringing the total to nearly \$200,000.

"It is rare for the state to ignore a federal order, and they are not going to get away with it here," said Andrew D. Freeman, an attorney at **Brown Goldstein Levy LLP** and one of plaintiffs' attorneys. "This silly political grandstanding by the governor and comptroller is outrageous."

Another one of the plaintiffs' attorneys, Deborah A. Jeon, the legal director of the **ACLU Foundation of Maryland**, noted that the state had 30 days to appeal the federal court's September order and failed to do so.

"Instead, it brought the item before the Board of Public Works after the time had elapsed," she said. "They didn't appeal the judgment. It's a final judgment. ... By not appealing and letting it become final and then disappearing the item, the state is flouting the judgment of the federal court."

One attorney who was not involved with the case said the plaintiffs' attorneys are likely to collect the money.

"It's rare that defendants who are not judgment-proof can successfully get out of a court award of attorneys' fees," said Saul E. Kerpelman, of Baltimore-based **Saul E. Kerpelman & Associates**. His firm frequently represents plaintiffs suing the **Housing Authority of Baltimore City** over lead-paint poisoning.

Neither Freeman nor Jeon would provide specifics as to how they would garnish the money from the state or the individual officials who were the named defendants in the suit.

The attorneys' fee order stems from the settlement of a 5-year-old civil rights lawsuit over a **Maryland Transit Administration** regulation that prevented voter registration at bus and train stations.

The case, filed in January 2007, was placed on the inactive docket in March 2007 pending settlement negotiations. As a part of the negotiations, the MTA agreed to suspend enforcement of the challenged provisions and to work with the plaintiffs to come up with different regulations.

However, the plaintiffs found the newly drafted regulations unacceptable and had the case reopened.

In August 2008, the court granted summary judgment in favor of the plaintiffs.

The parties then tried to negotiate a settlement regarding attorneys' fees. In October 2008, both sides agreed to a \$60,000 payment, but the Board of Public Works declined to approve it in March 2009.

The plaintiffs then asked Judge Richard D. Bennett to award more

than \$174,000 in attorneys' fees and costs. Bennett denied that motion, but the **4th U.S. Circuit Court of Appeals** held in August 2011 that the plaintiffs were entitled to attorneys' fees and sent the case back to Bennett to determine the amount.

He ordered payment of \$192,855 in fees and \$6,642 in expenses on Sept. 28.

Assistant Attorney General Matthew J. Fader submitted the item for approval by the Board of Public Works, but it failed to pass at the board's Dec. 19 meeting.

At the meeting, Fader said he anticipated that the plaintiffs would seek to garnish state funds. When asked how this would be accomplished, he said: "There isn't a road map for how they would do it."

In voting against the measure, Gov. Martin O'Malley noted that "as soon as I was elected, we changed the policy."

Comptroller Peter Franchot was also not moved.

"With all due respect to the 4th Circuit, I'm going to vote no," he said at the meeting. "I'm happy to see what compliance the plaintiffs plan to pursue."

Joe Shapiro, a spokesman for Franchot, said Wednesday that the comptroller is firm that this isn't something he sees as necessary to spend taxpayer money on.

"The ball is in the plaintiff's court," Shapiro said. "They have to try to take action."