

Supreme Court Limits Recovery of Actual Attorney Fees, Court Costs In Open Meetings Act Cases

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Hilary A. Ballentine
(313) 983-4419
hballentine@plunkettcooney.com

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Perhaps one of the major incentives for plaintiffs to pursue claims brought under the Open Meetings Act (OMA) is the possibility of recovering attorney's fees and costs if they are successful in the action.

A provision of the OMA allows for recovery of court costs and actual attorney's fees, if a person brings a civil suit "for injunctive relief to compel compliance or to enjoin further noncompliance" and "succeeds in obtaining relief in the action."

The latter part of this statutory provision has caused much confusion in the courts, and it has produced a series of cases that allow plaintiffs to recover their attorney's fees even for minor, technical violations of the Act that do not result in the issuance of an injunction.

In its *Speicher v Columbia Township Board of Trustees* opinion, the Michigan Supreme Court abrogated that line of cases, holding that a plaintiff must seek and actually obtain injunction relief in order to recover attorney's fees and costs. The Supreme Court based its decision not only on the precise wording of the statute itself, but also on the statutory scheme as a whole.

As a result of the Supreme Court's ruling, municipalities are sure to see plaintiffs pushing more forcefully for injunctive relief in OMA cases than ever before. However, given the general difficulty in demonstrating that the extraordinary remedy of injunctive relief is appropriate, the Supreme Court's decision in *Speicher* should result in fewer attorney fee awards to plaintiffs.

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