

Sue Jeffers is a legal consultant to the League. You may reach her at [sjeffers@mml.org](mailto:sjeffers@mml.org).

# Open Meetings Act violation and attorney fees

## FACTS:

Kenneth Speicher (plaintiff) sued the Columbia Township Board of Election Commissioners alleging that the Board violated the Open Meetings Act (OMA). The trial court ruled in plaintiff's favor and found that the defendant twice violated the OMA. The court denied plaintiff's request for injunctive relief but granted his request for attorney fees and costs. Plaintiff then filed a motion requesting attorney fees and costs totaling \$32,484.25. Defendant responded that the requested amount was clearly excessive.

MCL 15.271(4) provides that a successful plaintiff is entitled to recover his or her "actual attorney fees" incurred in an OMA action.

If a public body is not complying with this act [OMA], and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.



## QUESTION # 1:

**Are "actual attorney fees" limited by ethical standards set forth in the Michigan Rules of Professional Conduct (MRPC), and, in particular, MRPC 1.5(a) that bars attorneys from charging illegal or clearly excessive fees?**

### **Answer to #1 (according to the trial court):**

Yes. The trial court ruled that the requested attorney fees were clearly excessive and reduced the amount to \$7,500.

### **Answer to #1 (according the court of appeals):**

Yes. The court of appeals found that courts have the authority and obligation to take affirmative action to enforce the ethical standards set forth by the MRPC and that the rules of professional conduct apply to cases involving the imposition of attorney fees and fees charged by attorneys. The court found that principle applies even when a plaintiff is requesting that defendant be ordered to pay the attorney fees. The court of appeals remanded, however, for an evidentiary hearing to determine the appropriate amount of attorney fees that were incurred with reference to the factors contained in MRPC 1.5(a).

## QUESTION # 2:

**Are "actual attorney fees" limited to fees related to the OMA claims?**

### **Answer to #2 (according to the trial court):**

Yes. The trial court ruled that the award of "actual attorney fees" must relate to the OMA claims and not to other claims made in the same lawsuit. Since plaintiff's lawsuit included claims of election law violations, the court deducted those fees related to the election law claims.

### **Answer to #2 (according to the court of appeals):**

Yes. The court of appeals noted that the plain language of MCL 15.271(4) requires that the fees charged must be "for the action," i.e., the claims for violation of the OMA. Again, the court of appeals remanded to the trial court for an evidentiary hearing to clarify the exact number of hours allocated to the OMA action.

*Speicher v Columbia Township Board of Election Commissioners*, No. 307368 (Dec. 20, 2012).

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