

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Judge Zagel	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	06 C 3378	DATE	August 28, 2008
CASE TITLE	MICHAEL W. MACH v. WILL COUNTY SHERIFF		

**DOCKET ENTRY TEXT:**

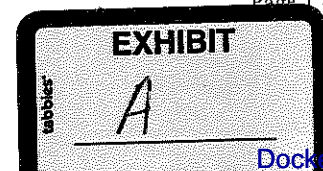
The Motion for Fees and Costs is granted in part and denied in part.

**STATEMENT**

In this case, I granted summary judgment to the Will County Sheriff who was sued by one of his deputies. The suit was prosecuted under a theory of age discrimination under the ADEA. Defendant's attorneys have asked for fees, which are allowed in ADEA cases if the plaintiff litigated in bad faith. It cost the Sheriff (and the county's taxpayers) \$65,732 to defend the case. The plaintiff wisely does not challenge the fees which are fairly low by current standards. There are disputes over costs (to which Defendant is entitled). Litigating in bad faith is a high barrier to an award of fees.

The entire case cannot be said to have been litigated in bad faith. Where Defendant has a point is that most of the contentions (offered in support of age discrimination) were abandoned at the summary judgment stage. This, Plaintiff says, shows good faith, not bad faith. I do not know that abandoning unprovable claims gets one all the way to good faith, but it does indicate the absence of bad faith. I think timing is important in these matters. I believe it is difficult to say that alleging six grounds to establish age discrimination and then abandoning five of them is, itself, litigation in bad faith. The process of discovery, which leads to abandonment, is usually good faith litigation, and this case seems to be no exception. Where I do find enough bad faith to justify fee shifting, I find it only in one circumstance. Plaintiff knew that a summary judgment motion was coming. On January 9, 2008, I set a motion schedule requiring service of a summary judgment motion by February 29, 2008. The summary judgment motion briefed and argued all six acts of age discrimination. It inflicted unnecessary costs upon Defendant. One litigates in bad faith when one leaves on the table those claims which it knows are worthless, at least if litigation continues over those claims. Based on the papers in this case, it was clear to Plaintiff's counsel, well before the defense served its motion, that five of the alleged acts of discrimination were non-starters.

I order payment of 83% of the fees for preparation of the opening brief of the motion for summary judgment. Defendant will have to break out those fees and costs from the billing records already submitted. I decline all other requests for fees.



**STATEMENT**

With respect to the Bill of Costs, I approve the amounts for fees for process, and for transcripts, but require further detail with respect to copies. Defendant is given 14 days to provide the data requested. Plaintiff may have 14 days to object, if he wishes, to the data.