

Ends And Means: Federal Appeals Judge Reflects On Attorney Fee Award Against EEOC

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The EEOC has been more aggressive in the last few years than at any time during my 25 years of practice. It seems a fair question whether its high publicity focus on things like [social media](#) and, what I think most plaintiffs' employment lawyers would agree are routine, [release agreements](#) are the best use of its resources – compared, for example, to efficiently doing its less sexy day-to-day work of promptly processing the charges that are brought before it. This recent post from the [Workplace Prof Blog](#) is another great resource on labor and employment law developments. The post involved a recent decision of the federal Fourth Circuit Court of Appeals, where that court upheld a significant award of attorney fees against the EEOC. Five and a half years after a charge had been filed, the EEOC filed a lawsuit alleging discrimination by a logistics company against a class of non-Hispanics and, the court noted, did not identify individual class members and sought relief that would have been impossible to grant given the passage of time. A separate concurring opinion from Judge Wilkinson on the three-judge panel seemed to wisely put it all in perspective:

"The story of this litigation is regrettable because the EEOC provides primary recourse to those victims of discrimination that persists in our society to an unfortunate extent. The reference to statutory goals and missions, however, cannot be divorced from the manner in which those purposes are implemented. . . . Surely [the delay and its consequences as acknowledged by the EEOC] is not and must not become the norm. It is not far-fetched to believe that the nation's deep commitment to combatting discrimination will be affected for good or ill by the esteem in which this important agency is held."

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