State Budget Cuts and Welfare Reform

What's Your Poverty Quotient? Take Our PQ Test on the Inside Back Cover to Find Out!

In this Issue, Discover the Special Meaning "StreetWise" Has for Chicago's Homeless
Minding the Courthouse Door: Decisions Concerning Access to Federal Court Issued During the Supreme Court’s 1991-92 Term

By John Boston, Laurie Davison, Gill Deford, Matthew Diller, Shelley Jackson, and Brian Lawlor. * With the exception of John Boston, the authors of this article are part of the Federal Court Access Group, an ad hoc group of legal services attorneys organized by the National Senior Citizens Law Center to monitor developments at the Supreme Court level concerning access of the poor to federal court. Issues of concern to the Federal Court Access Group include, for example, jurisdictional matters, private rights of action, procedural issues relating to federal practice, and attorney fees. John Boston is the Director of the Prisoners’ Rights Project of The Legal Aid Society in New York City. For more information on the Federal Court Access Group, contact Matthew Diller at The Legal Aid Society, 11 Park Pl., Room 1805, New York, NY 10007, (212) 406-0745.

Last term, the Supreme Court issued a number of decisions that have significant implications for the ability of low-income individuals to obtain redress in the federal courts. The following are summaries of those decisions. /1/

I. Standards for Modification of Consent Decrees in Institutional Reform Litigation: Rufo v. Inmates of the Suffolk County Jail

In Rufo v. Inmates of the Suffolk County Jail, /2/ the Supreme Court joined most federal appeals courts in holding that a "flexible" standard governs motions for modification under Rule 60(b) of the Federal Rules of Civil Procedure in "institutional reform litigation." In an opinion joined by five of the eight justices who heard the case, Justice White provided guidance in applying this standard. /3/

The Rufo trial court had refused to modify a consent decree that barred double-celling in a jail built for single occupancy, holding that jail officials had failed to show a "grievous wrong evoked by new and unforeseen conditions," as required for modification by United States v. Swift & Co. /4/ In reversing, the Supreme Court held that Swift's "grievous wrong" standard is simply inapplicable to institutional reform litigation. In institutional reform cases, the Court held, "a party seeking modification of a consent decree must establish that a significant change in facts or law warrants revision of the decree and that the proposed modification is suitably tailored to the changed circumstance." /5/ The Court distinguished between consent decree terms "that arguably relate to the vindication of a constitutional right" and those amounting to "extraneous details . . . unrelated to remedying the underlying constitutional violation"; modification of the latter requires only a "reasonable basis." /6/
The rules are the same whether the judgment is by consent or after litigation. Rufo reaffirmed that consent judgments, while "in some respects contractual in nature," are also "subject to the rules generally applicable to other judgments and decrees." /7/

With respect to changes in law, Rufo held that modification may be warranted when the law has changed "to make legal what the decree was designed to prevent." /8/ However, mere "clarification" of the law does not justify modification unless the parties settled (or, presumably, unless the court ruled) based on a "misunderstanding" of the governing law. /9/

The Court rejected the argument that only "unforeseen and unforeseeable" changes in facts can justify modification. However, "events that actually were anticipated" at the time of the decree should ordinarily not support modification. The moving party bears the burden of showing that modification is justified, and no deference is owed to local government administrators in making that determination. /10/

Rufo firmly rejected the jail officials' argument that the district court must, in effect, redetermine the underlying constitutional questions when it is presented with a motion to modify. The Court noted that

[t]o hold that a clarification in the law automatically opens the door for relitigation of the merits of every affected consent decree would undermine the finality of such agreements and could serve as a disincentive to the negotiation of settlements in institutional reform litigation. /11/

If modification is found to be warranted, "the focus should be on whether the proposed modification is tailored to resolve the problems created by the change in circumstances." /12/ The court should "give significant weight" to the views of local government officials in deciding this question. /13/ The court should also consider the public interest, including the financial constraints on government and the undesirability of releasing potentially violent prisoners.

Whether modification is sought based on changed facts or changed law, "[a] proposed modification should not strive to rewrite a consent decree so that it conforms to the constitutional floor." /14/ The Court reaffirmed that parties may settle a case not only for "more than the Constitution itself requires . . . but also [for] more than what a court would have ordered absent the settlement." /15/

Rufo's practical implication is that counsel should prepare for modification proceedings at the time judgment is entered. Whether a changed circumstance was foreseen, whether a decree provision "relates to the vindication of a constitutional right" or is an "extraneous detail," and whether the parties proceeded on a "misunderstanding of the governing law"--all questions that Rufo makes critical to a motion to modify--refer back to the parties' intentions and state of knowledge when the decree was formulated. Plaintiffs' counsel should therefore make the necessary record at that time.

In class actions, this can be done in the judicial approval proceedings held pursuant to Rule 23(e). In making the required showing that the judgment is "fair, reasonable, and adequate," counsel can create a "legislative history" of the consent judgment, presenting the court with an
explanation of each of the judgment's terms. The most appropriate vehicle may be an affidavit or declaration by counsel, supported by evidence, such as excerpts of depositions, documents obtained during discovery, or an expert's report, prepared either for trial or specifically in support of the consent judgment. Counsel should state their understanding of the relevant law in general terms, to avoid future claims that the parties proceeded under a "misunderstanding" of the applicable law or that subsequent decisions represent more than a "clarification" of that law. Counsel should also "foresee" everything they can to support a future argument that the defendants' alleged catastrophe was in fact "actually anticipated" and does not support modification.

II. Availability of Monetary Damages Under Implied Rights of Action: Franklin v. Gwinnett County Public Schools

In Franklin v. Gwinnett County Public Schools, /16/ the Supreme Court unanimously held that monetary damages awards are appropriate relief for plaintiffs who have suffered sex discrimination in education in violation of Title IX of the Education Amendments of 1972. /17/ The opinion, written by Justice White and joined by five other justices, states unequivocally that, once a statute provides litigants with a cause of action, federal courts should presume that all appropriate remedies, including damages, are available to vindicate that right. Three justices concurred in a separate opinion. /18/

The plaintiff in Franklin was a female high school student who was subjected to sexual advances and coercive sex by one of her teachers. She alleged that the teacher's acts constituted unlawful sex discrimination under Title IX, and that the school had also violated her rights because it did little to halt the teacher's behavior and tried to stop the plaintiff from pursuing her complaint. The district court dismissed the plaintiff's action, and the Eleventh Circuit affirmed, holding that Title IX authorized only equitable, not monetary, relief.

In reversing, the Supreme Court first noted that it had already recognized an implied private right of action to enforce Title IX, /19/ and stated that Franklin presented "no occasion . . . to reconsider that decision." /20/ Because the Court viewed the task of determining the appropriate remedy for a statutory violation as "analytically distinct" from an attempt to determine whether an implied private cause of action to enforce the statute exists, it refused to examine Title IX's text or legislative history for reference to available remedies. /21/

Franklin relied on the Court's long-standing presumption that, if there is a right to sue under a federal statute and a violation is established, federal courts may "use any available remedy." /22/ The Court rejected arguments that this presumption was no longer good law, citing recent decisions reinforcing the rule that, "absent clear direction to the contrary by Congress," courts are empowered to award appropriate relief in federal statutory actions. /23/

Franklin held that there was no evidence of congressional intent to limit the remedies available in Title IX cases. When Title IX was enacted, courts regarded the denial of a remedy as the "exception, rather than the rule." /24/ The Court found that this context "demonstrates the lack
of any legislative intent to abandon the traditional presumption in favor of all available remedies." /25/

The Court rejected defendant's argument that allowing damages under Title IX would violate the separation of powers, holding that separation of powers principles are not offended when federal courts award remedies in cases in which a statute already provides a private cause of action. /26/ In addition, the Court refused to extend the reasoning of a prior ruling that damages were not available for unintentional violations of spending clause statutes /27/ to cases such as Franklin in which the law had been intentionally violated. /28/ Finally, the Court rejected defendant's argument that Title IX remedies should be limited to backpay and prospective relief, finding it in "conflict with sound logic" and noting that courts generally determine the adequacy of monetary awards before resorting to equitable remedies. /29/ The Court noted that the student plaintiff was not entitled to backpay and, since the teacher had resigned and the plaintiff had graduated, prospective relief "accords [the plaintiff] no remedy at all." /30/

III. Exhaustion of Administrative Remedies: McCarthy v. Madigan

In McCarthy v. Madigan /31/ the Court held that administrative exhaustion is not a prerequisite to federal prisoners filing suit seeking monetary damages for violations of constitutional rights under Bivens v. Six Unknown Federal Narcotics Agents. /32/ Justice Blackmun's opinion, which was joined by five other justices, relied on the fact that the administrative grievance procedure at issue imposed unreasonably short deadlines that placed individuals at risk of forfeiting their claims. Three justices concurred only in the judgment of the Court.

McCarthy discusses the general principles for determining when exhaustion will be required as a prudential matter in situations in which Congress has not clearly spoken to the issue. /33/ The Court stated that "federal courts must balance the interest of the individual in retaining prompt access to a federal judicial forum against the countervailing institutional interests favoring exhaustion." /34/

Elaborating on this balancing test, the Court identified three factors that can weigh heavily against requiring exhaustion. First, it explained that requiring exhaustion of administrative remedies may be inappropriate if such a requirement would cause "undue prejudice to subsequent assertion of a court action." /35/ Examples of such "undue prejudice" would include delay caused by unreasonable or indefinite time frames for administrative action, and the threat of irreparable harm if immediate judicial review is unavailable. Second, the Court stated that the existence of doubt as to whether the administrative process could grant effective relief counsels against requiring exhaustion. This lack of effectiveness may take a number of forms, such as lack of power to grant the relief requested, lack of institutional competence to resolve a particular type of issue, or challenges to the administrative procedures themselves. The third factor that the Court identified as weighing against exhaustion is a showing that the agency is biased or has already predetermined the issue to be decided.

In applying these principles to the issue at hand, the Court held that an exhaustion requirement would be inappropriate for two reasons. First, it found that there was sufficient doubt as to whether the administrative procedure established by the Bureau of Prisons provided a damage
remedy. Second, the Court concluded that the Bureau's administrative procedure imposes "short, successive filing deadlines that create a high risk of forfeiture of a claim for failure to comply." /36/ The Court found that the deadlines, a series of 15- and 30-day filing and appeal periods, "are a likely trap for the inexperienced and unwary inmate, ordinarily indigent and unrepresented by counsel. . . ." /37/ The Court did not find it significant that these deadlines could be extended for a "valid" reason, because the Bureau's regulations did not explain what kind of reason would be considered valid, and because "prison officials--perhaps the very officials subject to suit--are charged with determining what is a 'valid' reason." /38/

In a footnote, the Court stated that, if the plaintiff had sought injunctive relief, the administrative procedure would probably have been capable of producing corrective action. /39/ The Court indicated that, in such a situation, the short administrative deadlines imposed on the prisoner would have mattered less because the harm would have been of a continuing nature so that new grievances could be filed.

IV. Dismissal of Actions Brought In Forma Pauperis: Denton v. Hernandez

In recent years, the federal in forma pauperis statute, 28 U.S.C. Sec. 1915, has been under increased scrutiny by the Supreme Court--largely in Section 1983 civil rights cases filed by prisoners--because of concern that "a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." /40/

Denton v. Hernandez /41/ interprets 28 U.S.C. Sec. 1915(d), which permits dismissal of the action if the district court is "satisfied that the action is frivolous or malicious," and establishes the standard for appellate review of such a dismissal. The result of the Court's decision in Denton is that complaints may be dismissed more easily under section 1915(d) than under Rule 12(b)(6) when factual allegations are clearly baseless.

Over a two-year period, the plaintiff in Denton had filed five separate Section 1983 civil rights lawsuits against California penal officials in which he alleged that he had been drugged and sexually abused by inmates and prison personnel. Each of these actions had been filed in forma pauperis. Viewing the facts alleged in the five cases as "wholly fanciful," the district court dismissed all the cases as "frivolous," pursuant to section 1915(d). A split panel of the Ninth Circuit reversed, holding that an in forma pauperis complaint has an "arguable basis in fact" for the purposes of section 1915 whenever the facts alleged cannot be rebutted by judicially noticeable facts. /42/

The Supreme Court rejected the Ninth Circuit's analysis for determining "factual frivolousness." /43/ Writing for a seven-to-two majority, Justice O'Connor explained that, in applying section 1915(d), "a court is not bound, as it usually is when making determinations based solely on the pleadings, to accept without question the truth of plaintiffs' allegations." /44/ The Court acknowledged that the determination of "factual frivolousness" under section 1915 "must be weighted in favor of the plaintiff." /45/ The Court held that "clearly baseless"
facts include allegations that are "fanciful," "fantastic," and "delusional," but not those that the district court simply views as "unlikely." /46/

The Court refused to give a more specific standard for identifying factual claims that are "clearly baseless." /47/ Instead, it stated that district courts are "all too familiar" with factually frivolous claims /48/ and are in the best position to determine whether factual allegations are frivolous. Consistent with this view, the Court held that appellate review of such determinations by a district court is properly done under an abuse of discretion standard. /49/

Even under such a standard, the Court held that it would be appropriate for an appellate court to consider whether the plaintiff was proceeding pro se, whether the court inappropriately resolved genuine issues of disputed fact, or whether the court applied erroneous legal conclusions. The reviewing court also should consider whether the district court provided a statement of its rationale for dismissal that facilitates "intelligent appellate review." Lastly, if the dismissal was with prejudice or without leave to amend, the reviewing court should consider whether this disposition was an abuse of discretion. /50/

V. Use of "Multipliers" in Awarding Fees in Contingent Fee Cases: City of Burlington v. Dague

In City of Burlington v. Dague, /51/ returning to an issue it had left open five years before, /52/ the Court rejected the common approach of utilizing a "multiplier" or enhancement to reflect the risk inherent in contingent fee cases. Although the specific ruling came under the fee provision of the Solid Waste Disposal Act, /53/ the analysis was directed at all fee-shifting provisions authorizing a court to order defendants to pay reasonable attorney fees to the prevailing plaintiff.

Writing for a six-to-three majority, Justice Scalia relied on policy grounds to support the Court's determination. First, he noted that there should be no additional compensation for the difficulty of the case because that is already reflected in the lodestar through extra hours worked or the higher rates paid to more skilled attorneys. /54/ Second, he concluded that a risk enhancement "encourages nonmeritorious claims to be brought as well" as meritorious ones. /55/

He rejected the approach espoused by Justice O'Connor in her concurring opinion in Delaware Valley, /56/ concluding that the method was inapplicable. /57/ He also concluded that enhancement was not compatible with other fee-shifting statutes, in part because to do so effectively compensates attorneys for cases in which they were unsuccessful. /58/ Finally, Justice Scalia determined that the Court had previously rejected the contingent fee model as inconsistent with the lodestar model, and that to allow an enhancement for the risk of not prevailing "would be to concoct a hybrid scheme that resorts to the contingent fee model to increase a fee award but not to reduce it." /59/
VI. Cases to Be Decided in the 1991-92 Term

At the end of the 1991-92 term, there were 65 cases that the Supreme Court had agreed to review, but in which it had not yet heard arguments or rendered a decision. Among these pending cases, the following are of special interest to the legal services community:

- Barr v. Flores. /60/ Review of Ninth Circuit decision holding that a blanket policy of the INS authorizing detention of alien children pending deportation proceedings unless there is an adult relative or legal guardian available to assume custody violates the habeas corpus guarantee of the Constitution.

- Barr v. Catholic Social Services, Inc. /61/ Review of Ninth Circuit decision holding that the federal district court may exercise equitable powers to extend the 12-month period during which aliens may apply for amnesty under the Immigration Reform and Control Act, /62/ where the INS erroneously interpreted that Act and, as a result, deprived aliens of the benefit of the full statutory period for filing amnesty applications.

- Rowland v. California Men's Colony. /63/ Review of a Ninth Circuit decision holding that, upon showing it is indigent, an association of prison inmates may qualify as a "person" eligible to proceed in forma pauperis in federal court under 28 U.S.C. Sec. 1915.

- Puerto Rico Aqueduct & Sewer Authority v. Metcalf & Eddy Inc. /64/ Review of a First Circuit decision that it lacked jurisdiction to review an interlocutory order denying defendant's motion to dismiss based on defendant's claim that it enjoyed Eleventh Amendment immunity from suit.

- Harper v. Virginia Department of Taxation. /65/ Review of a Virginia Supreme Court decision declining to apply a United States Supreme Court decision retroactively, notwithstanding the principles for retroactive application of Supreme Court decisions set forth in James B. Beam Distilling Co. v. Georgia. /66/

- Soldal v. Cook County. /67/ Review of a Seventh Circuit decision holding that a trailer park that evicted tenants without judicial process acted under color of state law because sheriffs were present to prevent interference with the eviction, but that towing of a mobile home off the premises was not a seizure within the meaning of the Fourth Amendment.

- Sullivan v. Schaefer, /68/ Seeking review of an Eighth Circuit decision holding that the district court could retain jurisdiction of a "sentence four" remand in a social security case for purposes of timely filing of a fee petition under the Equal Access to Justice Act.

footnotes

1. Perhaps the most far-reaching decision affecting the availability of federal forums to claims raised by people of low income was Suter v. Artist M., 112 S. Ct. 1360 (1992) (Clearinghouse


3. While all eight justices who heard the case agreed with the standard that was adopted, two justices dissented because they viewed the district court's actions as within its discretion. Id. at 768 (Stevens, J., dissenting). Additionally, Justice O'Connor filed an opinion concurring in the judgment. Id. at 765.


5. Rufo, 112 S. Ct. at 765.

6. Id. at 760, n.7.

7. Id. at 757.

8. Id. at 762.

9. Id. at 763.

10. Id. at 760.

11. Id. at 763.

12. Id. at 764.

13. Id.

14. Id.

15. Id. at 762-63.


18. Franklin, 112 S. Ct. at 1038 (Scalia, J., concurring).


20. Franklin, 112 S. Ct. at 1032.

21. Id. at 1032-33.
22. Id. at 1033 (citing Bell v. Hood, 327 U.S. 678 (1946), and earlier cases recognizing "the power of the judiciary to award appropriate remedies to redress injuries actionable in federal court.").

23. Id. at 1035.

24. Id. at 1036 (citation omitted).

25. Id. In addition, the Court found that no subsequent amendments to Title IX limited the scope of available remedies. Id. at 1036-37.

26. Id. at 1037.


29. Id. at 1038.

30. Id.


33. The Court reiterated that, "[w]here Congress specifically mandates, exhaustion is required." McCarthy, 112 S. Ct. at 1086.

34. Id. at 1087.

35. Id.

36. Id. In a separate concurrence, three justices disagreed with this part of the Court's holding. Id. at 1092 (Rehnquist, J., concurring in the judgment).

37. Id. at 1090.

38. Id. at 1090-91. The Court rejected the reasoning of the Tenth Circuit that administrative exhaustion should be required because it would assist the court by creating a factual record. See McCarthy v. Madigan, 914 F.2d 1411 (10th Cir. 1990). The Court noted that, while the administrative procedure might assist the court by gathering evidence, it did not provide for the creation of a formal factual record that could be relied on by a court to decide the case. McCarthy, 112 S. Ct. at 1092.

39. Id. at 1091, n.5.


42. See Hernandez v. Denton, 861 F.2d 1421, 1426 (9th Cir. 1988). The same Ninth Circuit panel again upheld its reversal of the district court after a later remand by the Supreme Court. See Hernandez v. Denton, 929 F.2d 1374 (9th Cir. 1990).

43. Denton, 112 S. Ct. at 1733.

44. Id.

45. Id.

46. Id.

47. Id. at 1734.

48. Id. (quoting Neitzke, 490 U.S. at 328).

49. Id.

50. Id. The Court explained that a dismissal with prejudice would prevent the filing of a subsequent complaint in forma pauperis. It would not, however, prejudice the filing of a paid complaint. Id.


53. 42 U.S.C. Sec. 6972(e).

54. Dague, 112 S. Ct. at 2641.

55. Id. at 2641-42.

56. Delaware Valley, 483 U.S. at 733 (O'Connor, J., concurring) (suggesting that contingency enhancements be based on the market for particular classes of cases and requiring a showing that without an enhancement, the party would have substantial difficulties obtaining counsel).

57. Dague, 112 S. Ct. at 2642.

58. Id.

59. Id. at 2643.


