

News

BCLP SECURES STRING OF VICTORIES IN COURTHOUSE NEWS SERVICE CHALLENGES TO DELAYS IN COURT RECORD ACCESS

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A Bryan Cave Leighton Paisner (BCLP) team of litigators recently secured a significant award of attorneys' fees for client Courthouse News Service (CNS). On June 24, Eastern District of Virginia Judge Henry Coke Morgan awarded CNS nearly \$2 million in attorneys' fees and costs stemming from its victory in **Courthouse News Service v. Schaefer**.

The **Schaefer** fee award caps off a trio of First Amendment victories for Courthouse News Service in 2020.

Although virtually unheard of in First Amendment access litigation, a four-day bench trial was held in *Schaefer* from Jan. 31 through Feb. 5. CNS had filed suit to redress delays in access to newly filed civil complaints caused by the policies of two state court clerks in Virginia. Ruling from the bench on the last day of trial, Judge Morgan found that there is a First Amendment right of access to newly filed civil complaints; that the First Amendment right of access carries with it a right to contemporaneous access; and that contemporaneous access means access on the day a complaint is filed to the extent practicable. That ruling was followed by a 45-page opinion issued on Feb. 21. **Courthouse News Service v. Schaefer**, 429 F. Supp. 3d 196 (E.D. Va. 2020). In the case of the two Virginia state court clerks' offices at issue, Judge Morgan found that, based on the evidence presented at trial, 85-90 percent of newly filed complaints should be made available on the date filed. The district court's decision is currently on appeal to the Fourth Circuit.

In January, right before the trial in **Schaefer**, the Ninth Circuit issued a decision in **Courthouse News Service v. Planet**, 947 F.3d 581 (9th Cir. 2020), the culmination of a nine-year access battle between CNS and the clerk of California's Ventura County Superior Court. CNS challenged the practice at Ventura of withholding newly filed civil complaints from public or press view until they had been administratively "processed" by court clerks, which could take days or weeks. The Ninth Circuit twice reversed dismissals (**Courthouse News Service v. Planet**, 750 F.3d 776 (9th Cir. 2014) and **Courthouse News Service v. Planet**, 614 Fed. Appx. 912 (9th Cir. 2015)) before the Central District of California granted in part CNS' motion for summary judgment in 2016.

In its third **Planet** opinion, the Ninth Circuit affirmed the lower court's ruling that the Ventura policy of withholding access until after processing violated CNS' First Amendment right to access civil complaints. A later-adopted policy that involved scanning complaints survived scrutiny. Major holdings from **Planet** include that a First Amendment right of access applies to newly filed civil complaints; the right of access is not contingent on judicial action and instead attaches when the complaint is filed; and the right of access includes a right to timely access. The court also rejected the notion that a requester's commercial interest in obtaining court records is relevant to the First Amendment analysis.

On June 30, the Ninth Circuit confirmed that CNS is the prevailing party, notwithstanding the court's upholding of the later policy, and granted CNS' motion for attorneys' fees. The amount of fees will be determined by the district court.

Finally, on the heels of its **Planet** decision, the Ninth Circuit weighed in on a dispute between CNS and the clerk of the Orange County Superior Court in California, again based on new civil complaints being withheld for processing. The district court in **Courthouse News Service v. Yamasaki** had denied CNS' motion for a preliminary injunction, granted partial summary judgment for the clerk, and entered judgment for the clerk following a bench trial on a stipulated record. Throughout the case, the district court made rulings at odds with what the Ninth Circuit ultimately decided in *Planet*. In February, the Ninth Circuit vacated the district court's preliminary injunction order, summary judgment order and order entering final judgment, and remanded the case for further proceedings consistent with **Planet**. **Courthouse News Service v. Yamasaki**, 950 F.3d 640 (9th Cir. 2020).

*CNS was represented in the **Schaefer** case by New York Senior Counsel William Hibsher, Washington Partner Heather Goldman, and Washington Associate Bryan Harrison of BCLP and Conrad Shumadine of Willcox Savage, with additional support from San Francisco Partner Rachel Matteo-Boehm, San Francisco Partner Jonathan Fetterly, San Francisco Counsel Katherine Keating, and other current and former BCLP colleagues.*

*CNS was represented in the nearly decade-long **Planet** case by San Francisco Partner Rachel Matteo-Boehm, San Francisco Partner Roger Myers, San Francisco Counsel Katherine Keating, and San Francisco Partner Jonathan Fetterly, along with other current and former BCLP colleagues.*

CNS was represented in the Yamasaki case by San Francisco Partner Rachel Matteo-Boehm, San Francisco Partner Roger Myers, San Francisco Counsel Katherine Keating, San Francisco Partner Jonathan Fetterly, and Los Angeles Partner John Amberg, along other current and former BCLP colleagues.

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