

PRESS RELEASE

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**DRI –*The Voice of the Defense Bar* Files Amicus Brief in U.S. Supreme Court Case
*Filarsky v. Delia***

Defense Bar Objects to Ruling Affecting Privately Retained Attorneys

CHICAGO – (Nov. 22, 2011) – DRI – *The Voice of the Defense Bar* filed an amicus curiae brief in the case of *Filarsky v. Delia*. The U.S. Supreme Court granted certiorari on September 27 to review the Ninth Circuit Court of Appeals’ decision in the case. In its brief, DRI argues against the decision of the Ninth Circuit, which held that if a private attorney is sued while performing work for a municipal client, that attorney is not entitled to qualified immunity even when an attorney directly employed by the municipality would receive qualified immunity. The Ninth Circuit’s decision, if upheld, will put private attorneys in jeopardy of legal action due to their “private” status.

The dispute in this case involves the alleged violation of a city employee’s civil rights during an internal affairs investigation that involved other city employees and a privately employed attorney, Steve A. Filarsky, retained by the city. The plaintiff, Nicholas B. Delia, a firefighter, had been issued multiple off-duty work orders by a physician, effective between August 10, 2006, and September 3, 2006. During that time, Delia was filmed buying building supplies, including several rolls of fiberglass building insulation. Based on these observations, the city began a formal internal affairs investigation to determine whether Delia was off work on false pretenses. During the investigation, Filarsky asked Delia whether the purchased insulation had been installed. Delia said it had not, and was ordered to go to his home, followed by city personnel involved in the investigation, and place the insulation in his yard for their inspection. Delia complied with the order and later sued the city, the city employees involved in the investigation, and Filarsky, for violating his right to be free from unreasonable search and seizure under the Fourth and Fourteenth Amendments.

The United States District Court for the Central District of California granted summary judgment in favor of all defendants. Delia appealed the decision. The Ninth Circuit Court of Appeals determined that although Delia’s constitutional rights had been violated, his rights were not clearly established at the time of the constitutional violation, and thus the city and its employees were eligible for qualified immunity. But the court held that Filarsky was categorically ineligible for qualified immunity because he was a private attorney retained by the government, and not a full-time government employee.

The Ninth Circuit’s ruling puts many of DRI’s members at risk of being held liable whenever they perform work for the government.

“If the Ninth Circuit ruling stands, it will put all private attorneys retained by state or local government in jeopardy of legal action,” stated DRI member Jonathan Cohn. “This will not only impact private attorneys but also governments in their efforts to hire the best possible legal consultants.”

Jonathan Cohn is a partner with Sidley Austin in Washington, D.C., and authored the brief on behalf of DRI. [Click here](#) to view the brief in its entirety.

About DRI – The Voice of the Defense Bar

DRI – *The Voice of the Defense Bar* is an international organization of defense attorneys and corporate counsel that is recognized as a thought leader and an advocate for the defense bar at the national and state level, as well as in Europe. With more than 22,000 members, DRI provides members and their clients with access to world-class education, legal resources and numerous marketing and networking opportunities that facilitate career and law firm growth. For more information, log on to www.dri.org.

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