

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-2388  
No. 93-2591  
No. 93-2655

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JACK SWISHER,

Plaintiff-Appellant,

versus

TEXAS WORKERS' COMPENSATION COMMISSION, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CA-H-92-2023)

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(December 30, 1994)

Before JONES and STEWART, Circuit Judges, and DUPLANTIER\*, District Judge.

PER CURIAM:\*\*

The court has carefully reviewed the parties' briefs in light of the rulings of the district court and in so doing finds no reversible error of fact or law. The individual defendants as well as the state of Texas were properly dismissed from the litigation.

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\* District Judge of the Eastern District of Louisiana, sitting by designation.

\*\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Further, Swisher was not entitled to recover attorney's fees under 42 U.S.C. § 1988. Even in the dubious event that Swisher could be considered a "prevailing party" in the litigation, he could be so considered only against the state. The state is not a "person" that can be liable under § 1983, and therefore the state cannot be liable for attorney's fees under § 1988.

The judgment of the trial court is **AFFIRMED**.