



Supreme Court Limits Enhanced Attorneys’ Fees Under Federal Fee-Shifting Laws to “Extraordinary” Circumstances

A partially divided U.S. Supreme Court agreed that lower courts in federal civil rights and related actions—including cases under the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.*, and the Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.*—have the discretion to award prevailing parties enhanced attorneys’ fees beyond the typical lodestar calculation, which is based on the hourly rates prevailing in the community. However, enhancements may only be made in “extraordinary” circumstances, for reasons that are clearly spelled out by the court and supported by specific evidence. *Perdue v. Kenny A.*, 2010 WL 1558980 (U.S. Sup. Ct. Apr. 21, 2010).

Reasonable attorneys’ fees may be awarded to prevailing parties in civil rights actions under 42 U.S.C. §1988. Here, the prevailing parties had litigated a lengthy and complex class action against the State of Georgia for deficiencies in the state’s foster-care system regarding essential medical and mental health services, which led to the parties negotiating, and the lower court approving, a detailed consent decree. The prevailing lawyers requested \$7 million in fees, based on the lodestar calculation (the number of hours they worked multiplied by the prevailing rates in the community for lawyers of

their experience). They also requested \$7 million more in fee enhancements for superior work and results, supported by affidavits claiming that the lodestar would be insufficient to induce lawyers of comparable skill and experience to litigate this case. The lower court awarded a total of about \$10.5 million, cutting the lodestar request to \$6 million and enhancing that award by \$4.5 million (75 percent). The Eleventh Circuit affirmed.

Justice Alito wrote the Court's opinion, joined by Chief Justice Roberts and Justices Scalia, Kennedy, and Thomas. The majority agreed that the lodestar calculation for attorneys' fees may be increased for superior performance, but only in "extraordinary" circumstances. The Court noted that the lodestar approach has achieved dominance in the federal courts because it has several important virtues, including that it is "readily administrable," is objective, and produces reasonably predictable results.

The majority reasoned that, over the years, the Court had established six important rules governing attorneys' fees in these federal civil rights cases, which support its decision in this case. First, a "reasonable" fee is one that will induce a capable lawyer to decide to represent plaintiffs who have a meritorious civil rights case, but is not meant to improve the financial position of lawyers in general. Second, a strong presumption exists that a fee based on a lodestar calculation is sufficient. Third, while enhancement may be awarded in rare and exceptional cases, the Court has never sustained an enhancement that was based on the quality of the lawyer's performance. Fourth, most, if not all, the relevant factors for calculating a reasonable fee are part of the lodestar. Thus, an enhancement may not be based on a factor that already is part of the lodestar calculation, such as the novelty and complexity of a case or the quality of the lawyer's performance. Fifth and Sixth, the party that requests an enhancement bears the burden of

proving that it is necessary, and must produce “specific evidence” that supports such an award to ensure that the calculation is objective and capable of being reviewed on appeal.

Based on these six principles, the majority specifically rejected the contention that a lodestar fee may not be enhanced. However, there is a strong presumption that the lodestar is reasonable, which may be overcome only in those rare circumstances where it can be shown that the lodestar does not take into adequate account a legitimate factor that may be considered in awarding a reasonable fee. The majority considered the quality of the lawyer’s performance plus the results that were obtained as one factor to consider when deciding whether to enhance an award. The Court reiterated that the circumstances in which this factor would not be adequately considered as part of the normal lodestar calculation were rare and exceptional. Moreover, enhancements of any kind should never be awarded without specific evidence that the lodestar fee would be inadequate to attract competent counsel.

The Court discussed three situations in which an enhancement might be appropriate: (1) where the method used to determine the hourly rate does not adequately measure the lawyer’s true market value, as indicated by specific proof linking the lawyer’s actual ability to the prevailing market rate; (2) where the lawyer’s representation includes extraordinary expenses, and the litigation is exceptionally lengthy; and (3) where there has been exceptional delay in the payment of fees. With regard to both the second and third situations, any enhancement must be based on a calculation that is reasonable, objective, and capable of being reviewed on appeal. At the same time, the majority noted that enhancements are inappropriate if they are based on departures from hourly billing,

or on the practice of paying lawyers a reduced hourly rate, but giving them a bonus for obtaining specified results.

Here, the majority ruled that the lower court had failed to provide proper justification for enhancing the lodestar fee by 75 percent. The court's discretion in such cases is not unlimited. Judges still "must provide a reasonably specific explanation for all aspects of a fee determination, including any enhancement." As a result, the decision was reversed and "remanded for proceedings consistent with this opinion."

Justice Kennedy concurred to emphasize that enhancements, although permissible, occur only "in the rarest of circumstances." Justice Thomas also concurred to opine that he believed that the Court's precise limitations means that "the lodestar calculation will in virtually every case already reflect all indicia of attorney performance relevant to a fee award."

Justice Breyer, joined by Justices Stevens, Ginsburg, and Sotomayor, dissented in part. Breyer observed that the lodestar "was never intended to be conclusive in all circumstances. . . [W]hen superior attorney performance . . . leads to 'exceptional success an enhance award may be justified.'" Also, the dissent disagreed with the majority's consideration of whether the lower courts "correctly determined *in this case that* exceptional circumstances justify a lodestar enhancement." That question was not properly before the Court.

In any case, the dissenters opined that they did not think the lower court had abused its discretion. First, the record revealed that in suing to obtain essential medical and mental health services for children in Georgia's foster-care system, "the lawyers' objective . . . was unusually important and fully consistent with the civil-rights statute...."

These lawyers “assumed the role of a ‘private attorney general’ by filing an enforcement void in the State’s own legal system...”

Second, the lawsuit “was lengthy and arduous” and the “State moved for dismissal, basing the motion on complex legal doctrines such as *Younger* abstention and the *Rooker-Feldman* doctrine, which the District Court found inapplicable.” Third, the plaintiffs’ lawyers obtained results that “appear to have been exceptional,” particularly the “47-page consent decree... set[ting] forth 31 specific steps that the State will take in order to address the specific deficiencies...”

Fourth the trial judge, who observed all of these proceedings, all of the state’s “procedural and substantive motions,” and how the mediation effort that led to the consent decree was handled, concluded that the mediation effort went beyond anything the court had ever seen before in a previous case, and that plaintiffs’ “counsel brought a higher degree of skill, commitment, dedication, and professionalism to this litigation than the Court has seen displayed by the attorneys in any other case during its 27 years on the bench.” Thus, it was not unreasonable or an abuse of discretion for the trial court to award enhanced fees in this case.