

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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PERDUE, GOVERNOR OF GEORGIA, ET AL. *v.* KENNY
A., BY HIS NEXT FRIEND WINN, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

No. 08–970. Argued October 14, 2009—Decided April 21, 2010

Title 42 U. S. C. §1988 authorizes courts to award a “reasonable” attorney’s fee for prevailing parties in civil rights actions. Half of respondents’ \$14 million fee request was based on their calculation of the “lodestar,” *i.e.*, the number of hours the attorneys and their employees worked multiplied by the hourly rates prevailing in the community. The other half represented a fee enhancement 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. Awarding fees of about \$10.5 million, the District Court found that the proposed hourly rates were “fair and reasonable,” but that some of the entries on counsel’s billing records were vague and that the hours claimed for many categories were excessive. The court therefore cut the lodestar to approximately \$6 million, but enhanced that award by 75%, or an additional \$4.5 million. The Eleventh Circuit affirmed in reliance on its precedent.

Held:

1. The calculation of an attorney’s fee based on the lodestar may be increased due to superior performance, but only in extraordinary circumstances. Pp. 5–12.

(a) The lodestar approach has “achieved dominance in the federal courts.” *Gisbrecht v. Barnhart*, 535 U. S. 789, 801. Although imperfect, it has several important virtues: It produces an award that approximates the fee the prevailing attorney would have received for representing a paying client who was billed by the hour in a comparable case; and it is readily administrable, see, *e.g.*, *Burlington v. Dague*, 505 U. S. 557, 566, and “objective,” *Hensley v. Eckerhart*, 461 U. S. 424, 433, thereby cabining trial judges’ discretion, permitting

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meaningful judicial review, and producing reasonably predictable results. Pp. 5–7.

(b) This Court has established six important rules that lead to today’s decision. First, a “reasonable” fee is one that is sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case, see *Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air*, 478 U. S. 546, 565, but that does not provide “a form of economic relief to improve the financial lot of attorneys,” *ibid.* Second, there is a “strong” presumption that the lodestar method yields a sufficient fee. See, e.g., *id.*, at 564. Third, the Court has never sustained an enhancement of a lodestar amount for performance, but has repeatedly said that an enhancement may be awarded in “rare” and “exceptional” circumstances. *E.g., id.*, at 565. Fourth, “the lodestar includes most, if not all, of the relevant factors constituting a ‘reasonable’ attorney’s fee.” *Id.*, at 566. An enhancement may not be based on a factor that is subsumed in the lodestar calculation, such as the case’s novelty and complexity, see, e.g., *Blum v. Stenson*, 465 U. S. 886, 898, or the quality of an attorney’s performance, *Delaware Valley, supra*, at 566. Fifth, the burden of proving that an enhancement is necessary must be borne by the fee applicant. *E.g., Blum*, 465 U. S., at 901. Sixth, an applicant seeking an enhancement must produce “specific evidence” supporting the award, *id.*, at 899, 901, to assure that the calculation is objective and capable of being reviewed on appeal. Pp. 7–9.

(c) The Court rejects any contention that a fee determined by the lodestar method may not be enhanced in any situation. The “strong presumption” that the lodestar is reasonable may be overcome in those rare circumstances in which the lodestar does not adequately account for a factor that may properly be considered in determining a reasonable fee. P. 9.

(d) The Court treats the quality of an attorney’s performance and the results obtained as one factor, since superior results are relevant only to the extent it can be shown that they stem from superior attorney performance and not another factor, such as inferior performance by opposing counsel. The circumstances in which superior attorney performance is not adequately taken into account in the lodestar calculation are “rare” and “exceptional.” Enhancements should not be awarded without specific evidence that the lodestar fee would not have been “adequate to attract competent counsel.” *Blum, supra*, at 897. First, an enhancement may be appropriate where the method used to determine the hourly rate does not adequately measure the attorney’s true market value, as demonstrated in part during the litigation. This may occur if the hourly rate formula takes into account only a single factor (such as years since admission to the bar)

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or perhaps only a few similar factors. In such a case, the trial judge should adjust the hourly rate in accordance with specific proof linking the attorney's ability to a prevailing market rate. Second, an enhancement may be appropriate if the attorney's performance includes an extraordinary outlay of expenses and the litigation is exceptionally protracted. In such cases, the enhancement amount must be calculated using a method that is reasonable, objective, and capable of being reviewed on appeal, such as by applying a standard interest rate to the qualifying expense outlays. Third, an enhancement may be appropriate where an attorney's performance involves exceptional delay in the payment of fees. In such a case, the enhancement should be calculated by a method similar to that used for an exceptional delay in expense reimbursement. Enhancements are not appropriate on the ground that departures from hourly billing are becoming more common. Nor can they be based on a flawed analogy to the increasingly popular practice of paying attorneys a reduced hourly rate with a bonus for obtaining specified results. Pp. 9–12.

2. The District Court did not provide proper justification for the 75% fee enhancement it awarded in this case. It commented that the enhancement was necessary to compensate counsel at the appropriate hourly rate, but the effect was to raise the top rate from \$495 to more than \$866 per hour, while nothing in the record shows that this is an appropriate figure for the relevant market. The court also emphasized that counsel had to make extraordinary outlays for expenses and wait for reimbursement, but did not calculate the amount of the enhancement attributable to this factor. Similarly, the court noted that counsel did not receive fees on an ongoing basis during the case, but did not sufficiently link this to proof that the delay was outside the normal range expected by attorneys who rely on §1988 for fees. Nor did the court calculate the cost to counsel of any extraordinary and unwarranted delay. And its reliance on the contingency of the outcome contravenes *Dague, supra*, at 565. Finally, insofar as the court relied on a comparison of counsel's performance in this case with that of counsel in unnamed prior cases, it did not employ a methodology that permitted meaningful appellate review. While determining a "reasonable attorney's fee" is within the trial judge's sound discretion under §1988, that discretion is not unlimited. The judge must provide a reasonably specific explanation for all aspects of a fee determination, including any enhancement. Pp. 12–15.

532 F. 3d 1209, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, and THOMAS, JJ., joined. KENNEDY, J., and THOMAS, J., filed concurring opinions. BREYER, J., filed an opinion concurring in part and dissenting in part, in which STEVENS, GINSBURG, and SOTOMAYOR, JJ., joined.