US Supreme Court

Case: *Blanchard v. Bergeron et al.*, 489 U.S. 87 (1989)
Date: Feb. 21, 1989 **Votes:** Unanimous (Rehnquist Court)
Opinion: Justice White **Concurrences:** Scalia

Tags: Attorneys' fees, contingent fee, Civil Rights case, legislative history, dicta, holdings

Question(s) Presented: Is the attorney's fee recoverable under 42 U.S.C. § 1988 limited to the amount provided by a contingent-fee contract between attorney and plaintiff?
Holdings: No, the recoverable attorney's fee is not limited by any contingency arrangement. 5th Circuit's decision reversed. Abrogates this portion of *Johnson v. Georgia Highway Exp., Inc.*, 488 F. 2d 714, 718 (5th Cir. 1974)

Rationale: Congress didn't mean for contingency agreements to limit the award of "reasonable" attorney's fees; in fact, sometimes nonprofit groups take these cases on pro bono, and then the agreement would be for nothing at all. The attorney's fee award statute is meant to incentivize, not *dis*incentivize, private enforcement of Civil Rights law.

Facts: Plaintiff sued under 42 U.S.C. § 1983 because he was beaten by police officer. Awarded $10K total in compensatory and punitive damages. Sought attorney's fees under 42 U.S.C. § 1988 for >$40K. District Court awarded $7,500 in attorney's fees and $886.92 for costs and expenses. (89)

Legal History, Prior Appeals & Trial Court Input:

- **District Court:** found in favor of plaintiff in beating case, but only awarded $7,500 in attorney's fees.
- **5th Circuit:** "reduced the award because petitioner had entered into a contingent-fee arrangement with his lawyer, under which the attorney was to receive 40% of any damages awarded should petitioner prevail in his suit." (90) – Bound by their own *Johnson v. Georgia* because there was a contingency agreement.
- **Other Circuits:** Nope, fees are not limited in this way.

Appeals to Statute & Precedent:

- **42 U.S.C. § 1983:** Civil Rights Act of 1871 that allows someone to sue anyone acting "under color of" gov't for violation of Constitutional or statutory rights.
- **42 U.S.C. § 1988:** Civil Rights Attorney's Fees Award Act 1976—court may award a "reasonable" attorney's fee (no guidance for "reasonable"). (91)
- ***Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 718 (1974):** one of the twelve rules said that fee award should not exceed whatever contingency arrangement had been made with lawyer if there was one. (Note that this was decided BEFORE the enactment of the Civil Rights Attorney Fee Act of 1976.)

- ***Hensley v. Eckerhart*, 461 U.S. 424 (1983):** "reasonable" = apply prevailing billing rates to hours reasonably expended.
- ***Blum v. Stenson*, 465 U.S. 886, 888 (1984):** "reasonable" = reasonable hours times reasonable rate. (Lodestar calculation—may be adjusted by other factors by court.)

Dicta/Discussion:

- Legislative history of § 1988 indicates that attorneys should be paid "for all time reasonably expended on the matter" (91). The contingency fee is not determinative of the amount**.**
- *Johnson*: "In no event, however, should the litigant be awarded a fee greater than he is contractually bound to pay, if indeed the attorneys have contracted as to amount." (488 F. 2d at 718)
- "*Johnson*'s 'list of 12' thus provides a useful catalog of the many factors to be considered in assessing the reasonableness of an award of attorney's fees; but the one factor at issue here, the attorney's private fee arrangement, standing alone, is not dispositive." (93)
- "As we understand § 1988's provision for allowing a 'reasonable attorney's fee,' it contemplates reasonable compensation, in light of all of the circumstances, for the time and effort expended by the attorney for the prevailing plaintiff, no more and no less." (93) (So if contingency agreement is "unreasonably" low or high, it won't match the "reasonable" award.)
- "Plaintiffs who can afford to hire their own lawyers, as well as impecunious litigants, may take advantage of this provision." (94)
- "The *Johnson* factors may be relevant in adjusting the lodestar amount, but no one factor is a substitute for multiplying reasonable billing rates by a reasonable estimation of the number of hours expended on the litigation." (94)
- "That a nonprofit legal services organization may contractually have agreed not to charge *any* fee of a civil rights plaintiff does not preclude the award of a reasonable fee to a prevailing party in a § 1983 action, calculated in the usual way." (95)
- "Affirming the decision below would create an artificial dis-incentive for an attorney who enters into a contingent-fee agreement, unsure of whether his client's claim sounded in state tort law or in federal civil rights, from fully exploring all possible avenues of relief." (95)
- No fear of windfall—we're talking about "reasonable" awards: "It is central to the awarding of attorney's fees under § 1988 that the district court judge, in his or her good judgment, make the assessment of what is a reasonable fee under the circumstances of the case." (96)
- "We reserve for another day the question whether legal assistants' fees should be included in the award." (97)

Concurrence (in part): Scalia

- Thinks analysis of court cases mixed up holdings and dicta, and that it didn't do much good to look at the legislative history as authoritative, since what legislators have time to read the case law, let alone the report?