

The Burger Court Opinion Writing Database

Blum v. Stenson

465 U.S. 886 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 1, 1984

Re: 81-1374 - Blum v. Stenson

Dear Lewis:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'W. Powell', written in a cursive style.

Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

RECORDED
SUPREME COURT
JUSTICE W. J. BRENNAN, JR. January 23, 1984

'84 JAN 23 A11:12

No. 81-1374

Blum v. Stenson

Dear Thurgood and John,

We three are in dissent in part in
the above on the bonus issue. I will
undertake the dissent.

Sincerely,



Justice Marshall

Justice Stevens

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 24, 1984

No. 81-1374

Blum v. Stenson

Dear Lewis,

I did not agree in Conference with the disposition in your circulation, but if you intend to stick to that circulation as written then I am happy to join you. I may, however, write a short concurrence.

Sincerely,



Justice Powell

Copies to the Conference

To: The Chief Justice
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: FEB 28 1984

Recirculated: _____

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SUPREME COURT OF THE UNITED STATES
JUSTICE

'84 FEB 29 A9:55

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1374

BARBARA BLUM, INDIVIDUALLY AND IN HER CAPACITY
AS COMMISSIONER OF NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES,
PETITIONER *v.* ELLEN
STENSON ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[February —, 1984]

JUSTICE BRENNAN, concurring.

I join the Court's opinion. I write separately only to reaffirm my view that Congress has clearly indicated that the risk of not prevailing, and therefore the risk of not recovering any attorney's fees, is a proper basis on which a district court may award an upward adjustment to an otherwise compensatory fee. See *Hensley v. Eckerhart*, — U. S. —, — - — (1983) (BRENNAN, J., concurring in part and dissenting in part).

Although the Court leaves the question unresolved, see *ante*, n. 17, the legislative history that always has controlled our interpretation of § 1988, and that proves determinative on the other issues addressed by today's decision, also determines whether an upward adjustment to compensate for the risk of nonpayment may be justified. In particular, Congress referred to *Johnson v. Georgia Highway Express*, 488 F. 2d 714 (CA5 1974), for the appropriate standards to be applied by courts awarding attorney's fees under § 1988. See *ante*, at 5-8. "Whether the fee is fixed or contingent," 488 F. 2d, at 718, was consequently recognized by Congress as a relevant consideration in setting a reasonable fee. Moreover, Congress explicitly cited *Stanford Daily v. Zurcher*, 64

P. 1

Justice White
~~Justice Marshall~~
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1374

BARBARA BLUM, INDIVIDUALLY AND IN HER CAPACITY
AS COMMISSIONER OF NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES,
PETITIONER *v.* ELLEN
STENSON ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[February —, 1984]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,
concurring.

I join the Court's opinion. I write separately only to reaf-
firm my view that Congress has clearly indicated that the
risk of not prevailing, and therefore the risk of not recovering
any attorney's fees, is a proper basis on which a district court
may award an upward adjustment to an otherwise compensa-
tory fee. See *Hensley v. Eckerhart*, 461 U. S. —, —
— (1983) (BRENNAN, J., concurring in part and dis-
senting in part).

Although the Court leaves the question unresolved, see
ante, n. 17, the legislative history that always has controlled
our interpretation of § 1988, and that proves determinative
on the other issues addressed by today's decision, also deter-
mines whether an upward adjustment to compensate for the
risk of nonpayment may be justified. In particular, Con-
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plied by courts awarding attorney's fees under § 1988. See
ante, at 5-8. "Whether the fee is fixed or contingent," 488
F. 2d, at 718, was consequently recognized by Congress as a
relevant consideration in setting a reasonable fee. More-

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 24, 1984

Re: 81-1374 - Blum v. Stenson

Dear Lewis,

I join.

Sincerely,



Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 12, 1984

Re: No. 81-1374-Blum v. Stenson

Dear Bill:

Please join me in your concurrence.

Sincerely,

T.M.
T.M.

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 27, 1984

Re: No. 81-1374 - Blum v. Stenson

Dear Lewis:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice Powell

cc: The Conference

02/18

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1374

BARBARA BLUM, INDIVIDUALLY AND IN HER CAPACITY
AS COMMISSIONER OF NEW YORK STATE DEPART-
MENT OF SOCIAL SERVICES, PETITIONER
v. ELLEN STENSON ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[February —, 1984]

JUSTICE POWELL announced the opinion for the court.

Title 42 U. S. C. § 1988 provides that in federal civil rights actions “the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs.” The initial estimate of a reasonable attorney’s fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. *Hensley v. Eckerhart*, 103 S. Ct. 1933, 1939 (1983). Adjustments to that fee then may be made as necessary in the particular case. The two issues in this case are whether Congress intended fee awards to non-profit legal service organizations to be calculated according to cost or to prevailing market rates, and whether, and under what circumstances, an upward adjustment of an award based on prevailing market rates is appropriate under § 1988.

I

A

This suit was brought in 1978 by respondents on behalf of a statewide class of Medicaid¹ recipients pursuant to 42

¹ Medicaid is a program providing medical assistance to the needy. It is jointly funded by the state and federal governments. 42 U. S. C. §§ 1396-1396k; N. Y. Social Services Law §§ 363-369 (McKinney’s 1976).

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 28, 1984

Re: No. 81-1374 Blum v. Stenson

Dear Lewis:

Please join me.

Sincerely,

WR

Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

RECEIVED
SUPREME COURT U.S.
JUSTICE MARSHALL

'84 FEB 22 AM 11:27
February 22, 1984

Re: 81-1374 - Blum v. Stenson

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 23, 1984

No. 81-1374 Blum v. Stenson

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

Copies to the Conference