

## [Is a Court Allowed to Enhance a Fee Award Based on the Quality of Performance of Counsel?](#)

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The [United States Supreme Court](#) recently heard arguments in a significant fee case. In [Perdue v. Kenny A.](#), the court was asked to decide whether a reasonable attorneys' fee award under a federal fee shifting statute is subject to enhancement based on the quality of performance and results obtained by counsel. These factors are arguably already included in the lodestar calculation.

The *Perdue* matter arose out of a dispute in Georgia's foster care system. [Children's Rights, Inc.](#) and an Atlanta law firm, [Bondurant, Mixson & Elmore](#), won a fee award for their work on behalf of abused and neglected children in Georgia's foster care system. The firms alleged that deficiencies in Georgia's foster care system violated various federal and state laws, including [42 U.S.C. § 1983](#). The case was initially filed in state court and was removed by the state to a federal court. After hotly contested litigation and a series of many mediations, the parties agreed to a proposed Consent Decree that was intended to address many of the problems that existed in the foster care system. The district court described the changes as "sweeping reforms."

In addition to the Consent Decree, the parties also agreed that the children's lawyers should recover attorneys' fees pursuant to [42 U.S.C. § 1988](#). The parties, however, could not agree on the amount of the fee award and the district judge was asked to make the determination. The judge found a lodestar fee of \$6 million, and then adjusted it upward by an additional \$4.5 million, based on the performance of counsel. The [Eleventh Circuit Court of Appeals](#) upheld the fee award in 2008. The author of the Eleventh Circuit opinion said that he disagreed with the lower court's decision, but felt bound to follow circuit court precedent which allows the court to enhance a fee award under section 1988.

The state filed a petition for certiorari, and the Supreme Court granted review with regard to one narrow question: "Can a reasonable attorneys' fee award under a federal fee shifting statute ever be enhanced based solely on quality of performance and results obtained when these factors are arguably already included in the lodestar calculation?" We will continue to track this decision and will report further when the Supreme Court issues its decision.