

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Court of Appeals Appellate Case No.: 2025-000905
Civil Action No.: 2021-CP-18-02008

Bundy McDonald, LLC, Appellant,

vs.

WECO River District, LLC, Respondent.

MOTION TO CERTIFY

WECO River District, LLC, (“WECO” or the “Client”) hereby moves to certify Appellant Case No. 2025-000905 pending before the Court of Appeals for review by the South Carolina Supreme Court pursuant to Rule 204(b), SCACR. The case at hand concerns the fundamental duties of a lawyer engaged in a contingent fee case and raises both an “issue of significant public interest” and a “legal principle of major importance.”

The Supreme Court is constitutionally and statutorily vested with the inherent power to regulate and govern the practice of law. S.C. Const. Art. V, §4; *see also* S.C. Code Ann. § 40-5-10. Further, the Supreme Court is empowered to promulgate rules and regulations that govern the practice of law, including prescribing a code of ethics to govern the professional conduct of attorneys and determining the procedure for disciplining attorneys. *See* S.C. Code Ann § 40-5-20.

Specifically, the Supreme Court has promulgated the South Carolina Rules of Professional Conduct which thoroughly describe the rights and obligations of lawyers in South Carolina and seek to preserve the lawyer-client relationship. Rule 1.5, SCCLE, contains specific requirements for contingent fees.

This case raises a novel issue concerning the attorney client relationship never specifically addressed in South Carolina. Specifically, when a lawyer who has undertaken representation of a client based upon a contingent fee withdraws from representation before concluding the scope of services, may the lawyer recover a full contingent fee (as Appellant contends) or a reasonable lodestar based hourly fee for the services provided (as Respondent contends)? This case has direct implications for the public at large, particularly for clients who may engage attorneys on a contingent fee basis and have disputes with counsel prior to the completion of a case.

BACKGROUND

Appellant sued his client to recover a reverse contingency fee. The Amended fee agreement (**Ex. 1**), written by Appellant, established a hybrid hourly fee agreement (up to \$100,000.00 based upon hourly rates) with an additional contingent fee (25% of a reduction in the claims made by the opposing party, 25% of any amount of settlement or relief obtained, and the same percentage of any funds collected, whether by settlement or judgment). (**Ex. 1, ¶ 2**).

Appellant billed his client for payment of the full contingency fee prior to a final settlement, recovery, or judgment based upon an interim and preliminary arbitration decision. Appellant and his client subsequently disagreed over the best means to complete the arbitration case and a companion Civil Action, and Appellant ultimately withdrew from representation in both matters before conclusion. The Client retained new counsel and subsequently resolved all matters raised in the arbitration and Civil Action by way of a settlement agreement and stipulated arbitration

award after Appellant withdrew from representation. Appellant's position is that he is entitled the full contingency fee based on an interim arbitration award, without having achieved a final result, settlement, recovery or outcome based on the written contingent fee agreement. Respondent contends that the maximum potential entitlement in these circumstances is a reasonable fee determined by the factors listed in model rule 1.5.

DISCUSSION

Rule 204(b), SCACR, contemplates certification when an issue of significant public interest or a legal principle of major importance is at issue. Cases that have been previously certified by the Supreme Court suggest that certification is appropriate for issues that affect a large number of people. *See, e.g. Davis v. Greenwood Sch. Dist. 50*, S.C. 629, 632, 620 S.E.2d 65, 66 (2005) (payment of public school teachers); *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008) (validity of annexation of property by town); *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 631, 743 S.E.2d 808, 812 (2013) (applicability of the Unfair Trade Practices Act to state agency in relation to regulatory scheme); *Cooper v. S.C. Dep't of Soc. Servs.*, 428 S.C. 402, 410, 835 S.E.2d 516, 520 (2019) (family court's failure to issue substantive rulings in relation to foster children). Similarly, this case concerns the legal profession's relationship with the public, particularly when a lawyer is engaged under a contingent fee agreement.

The proper interpretation of contingent fee agreements is a matter of great importance for both the public and the legal profession. Further, the Supreme Court's regulation of the ethical duties owed by lawyers to their clients is directly questioned by the appeal at issue. Thus, considering the lack of Supreme Court precedent and the interests of judicial economy, this appeal should be certified to ensure a prompt, just, and determinative rule.

First, the interpretation of the agreement at issue will affect one of the largest groups of clients represented by the legal profession. Contingent fee agreements are a cornerstone of access to justice, allowing widespread representation of clients who otherwise would be unable to afford counsel. Though ability to pay was not an issue in this case, contingent fee clients are often the most vulnerable and least able to afford legal services. The correct interpretation of contingency fee agreements is vital to determine the rights and obligations of attorneys and clients in the administration of justice. If the interpretation of contingent fees cannot be relied upon, the public's confidence in the bench and bar will be undermined. Thus, like prior cases to be certified, here the interpretation of the agreement at issue will directly impact a large number of people in South Carolina, hence it is "an issue of significant public interest," as contemplated by Rule 204(b), SCACR.

Second, the interpretation of the duties owed by a lawyer before payment of a contingent fee is a novel issue before the Supreme Court. As the governing body of the legal profession, the Supreme Court both has the power to alter and amend regulations and should take a special interest in fee agreements impacting relations between the legal profession and the public. This case directly implicates the ethical obligations and extent of work required to be performed by lawyers before payment comes due. Although the Court of Appeals is perfectly apt to resolve this matter based on contract law principles, the Supreme Court's special "Nil Ultra" position as the ultimate regulator of professional conduct makes it the best tribunal to ensure prompt resolution. Thus, the Supreme Court should decide this case because this case concerns "a legal principle of major importance," as contemplated by Rule 204(b), SCACR.

For the preceding reasons, WECO respectfully requests that this honorable Court grant this request and certify this appeal for review pursuant to Rule 204(b), SCACR.

Respectfully submitted,

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s/ Henry P. Wall

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Attorney for the Respondent

September 15, 2025

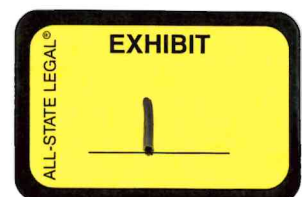
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER) AMENDED FEE AGREEMENT

Weco River District, LLC (hereinafter referred to as "Client") hereby employs and retains Bundy McDonald, LLC (hereinafter called "Attorney") to represent Client as legal counsel for purposes in connection with the project known as Brookland in West Columbia, South Carolina that is under construction by Carter & Carter Construction, LLC and subject to an arbitration. This Amended Fee Agreement supersedes the former "Hourly Fee Agreement" signed by Attorney on December 4, 2018. Client and Attorney agree as follows:

1. The Attorney will devote his full professional abilities to Client's claim and/or case, keep Client informed of the progress of the case, pursue Client's objectives as permitted by law and Attorneys rules of professional conduct and Client agrees to fully cooperate with Attorney. Client shall not make any agreement for settlement of Client's claims, either in whole or in part, without advising Attorney. Attorney shall not make any settlement agreement without prior agreement and consent of Client.

2. Client shall pay W. H. Bundy, Jr. \$400.00 per hour, M. Brent McDonald \$300.00 per hour, and their paralegals \$100.00 per hour ("Hourly Rates"). The Hourly Rates will be capped at one hundred thousand dollars (\$100,000.00). In addition to the Hourly Rates, Client agrees to pay a contingency fee of 25% of any reduction of the total amount of claim(s) made by the Contractor and 25% of the any amount of in kind settlement or relief obtained and the same percentage of any funds actually collected, whether by settlement or a judgment arising out of the Client's claims against



Contractor or other parties to any proceeding covered by this Fee Agreement ("Contingent Fee"). The Contingent Fee and Hourly Fee together will be capped at \$500,000.00. Client shall reimburse Attorney for all costs incurred, including, but not limited to, depositions, filing fees, travel and lodging (not to exceed \$250.00 per person per day for meals and lodging without prior agreement of Client), mileage at the prevailing rate per mile, copy costs (at \$.25 per page), and computerized legal research on a monthly basis. Client agrees to immediately advise Attorney of any questions or objections to any billing invoice. Payment of the invoice without notice of any question or objection by the Client is an acknowledgment of the reasonableness of the time charged at the agreed upon rate.

3. Client further agrees and understands that the Attorney may, from time to time, need to hire the services of expert witnesses and/or consultants to aid in the prosecution and/or defense of the claims involved herein and that the services of such expert witnesses and/or consultants shall be paid for by Client; provided, however, that Attorney shall consult with Client prior to retaining any such expert witnesses and/or consultants, shall advise Client as to the basis upon which such expert witnesses and/or consultants are to be compensated, and shall obtain the consent of Client to retain the services of any expert witnesses and/or consultants. Client shall promptly pay all statements submitted by such expert witnesses and/or consultants. Compensation (fees) to be paid to expert witnesses and/or consultants shall not exceed the usual and customary fees for such services. Further, services of experts and consultants shall be billed to Client at the Attorney's costs of such services.

4. Client hereby acknowledges that the Attorneys have made no representations, promises or guarantees regarding the outcome of Client's claim.

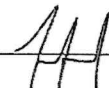
5. This agreement is and shall be binding upon Client, successors, executors, and assigns with regards to the terms and conditions as set forth herein.

6. After the completion of the professional services, Attorneys agree to keep Client's file for a period of one (1) year, after which time the file may be destroyed by the Attorneys.

7. Client has read this agreement and agrees to its terms and conditions. There are no other agreements, oral or otherwise, between Client and Attorneys. Any modification of this agreement shall be made in writing and signed by both Client and Attorneys.


WECO RIVER DISTRICT, LLC

Dated: 11/15/2019, 2019

By: 
Its: Authorized Agent

BUNDY MCDONALD, LLC

Dated: 11/15/2019, 2019


W. H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire