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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2026-000658

Andrei Savenkov,

Appellant,

v.

Michael Brooks Derrick,

Respondent.

INITIAL BRIEF OF RESPONDENT

August 24, 2026

s/ M. Brooks Derrick
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

STATEMENT OF ISSUES ON APPEAL

I. Jurisdiction. Rule 20 gives a party who loses before the Resolution of Fee Disputes Board exactly one appeal: to the circuit court. In *Wright v. Dickey*, this Court dismissed an attempt to appeal further, holding that no appeal lies beyond the circuit court. Savenkov filed his fee dispute with the Board, lost after a *de novo* hearing, appealed to the Circuit Court, and lost again. May he now take the second appeal that *Wright* says does not exist?

II. The Merits. A panel exceeds its powers only by intentionally or recklessly flouting the law, not by erring in interpretation. The parties' fee agreement provides that on withdrawal of representation, the firm earns a percentage of "any settlement offered as of that date." By the withdrawal date, Nationwide had offered $15,000, $40,000, and $45,000, and that same day offered $47,702. Savenkov accepted the $47,702. Did the Panel flout the law by applying the agreement to those offers?

STATEMENT OF THE CASE

On March 24, 2025, Savenkov filed an Application for Resolution of Disputed Fee with the South Carolina Bar's Resolution of Fee Disputes Board. In that Application, Savenkov identified the amount in dispute as $15,741.00. That figure is the portion of the settlement proceeds withheld pending resolution of the fee dispute. (Application p. 1.)

Savenkov requested a hearing panel after the initial investigation determined that the fee was appropriate and earned. A three-member Hearing Panel convened a *de novo* hearing on September 30, 2025. Both parties appeared, testified, and presented documentary evidence. In November 2025, the Panel issued its Written Decision awarding the firm $15,741.00. The Panel expressly found the fee earned under the parties' Fee Agreement and reasonable under Rule 1.5(a) of the South Carolina Rules of Professional Conduct. (Panel Decision p. 4.)

Savenkov petitioned the Circuit Court to vacate the award under Rule 20 of the Rules for Resolution of Fee Disputes, SCACR Rule 416. At the February 24, 2026 hearing, he stated on the record that he was proceeding solely under Rule 20(f)(3), which asks whether the Panel "exceeded its powers." (Order p. 2.) The Circuit Court reviewed the record, including the Fee Agreement and the termination letter. The Circuit Court affirmed, finding the Board's decision supported by the evidence and no Rule 20(f) ground established. This appeal followed.

STANDARD OF REVIEW

The threshold question is jurisdictional, and jurisdiction presents a question of law. This Court has already answered it: no appeal lies from a decision of the Resolution of Fee Disputes Board beyond the circuit court. *Wright v. Dickey*, 370 S.C. 517, 521, 636 S.E.2d 1, 3 (Ct. App. 2006).

If the Court reaches the merits, review is confined to the five grounds listed in Rule 20(f), SCACR Rule 416, and the party seeking reversal bears the burden of establishing one of the grounds. Savenkov proceeded in the Circuit Court solely under Rule 20(f)(3), which asks whether the Panel "exceeded its powers." (Order p. 2.)

The basis for disturbing an award on that ground is rare and narrow. A court may vacate only where the decisionmaker "knew of well-defined, explicit, and clearly applicable controlling law, yet still refused to apply it." *Waldo v. Cousins*, 442 S.C. 662, 666, 901 S.E.2d 276 (2024) (citing *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013), and *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009)). The standard "is met only when the award is the product of an intentional or reckless flouting of the law, not a mere error in interpreting it." *Id.* The award also does not have to be accompanied by any reasoning, "so long as the award can be reconciled with factual inferences and legal conclusions that are at least 'barely colorable.'" *Id.* (quoting *Trident Tech. Coll. v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 111, 333 S.E.2d 781, 789 (1985)).

Under that standard, the question is not whether a reviewing court would have read the Legal Services Agreement the same way. The question is whether the Panel's reading can be reconciled with factual inferences and legal conclusions that are at least colorable.

STATEMENT OF FACTS

On March 2, 2023, Savenkov retained the Derrick Law Office under a written contingency fee agreement. (Legal Services Agreement p. 1.) The engagement covered personal injury claims arising from a February 17, 2023 motor vehicle collision. Section 3(a) of the Agreement sets the fee at 33.33% of the total recovery if settlement is reached before suit is filed. Section 7 addresses withdrawal:

> In the event of the withdrawal of representation, at your request, you agree that we are entitled to a fee on the same schedule as under section (3) of any settlement offered as of that date. But, in the event that no settlement has been offered, the contingency fee schedule will be converted to an hourly rate contract, and we will be entitled to a fee of $300.00 per hour, for the estimated amount of legal work performed to date, plus the costs and expenses incurred.

The firm developed and negotiated the claim over the next two years. An initial demand in July 2023 produced an offer of $15,000 in August 2023. Savenkov then incurred additional medical expenses, and the firm obtained a surgical estimate for his fractured foot. A second demand in April 2024 produced an offer of $40,000 in May 2024. Continued negotiation produced an offer of $45,000 in September 2024. Savenkov rejected each offer. (Panel Decision pp. 1-2.)

Beginning in mid-2024, Savenkov repeatedly challenged the fee he had agreed to pay. At an August 13, 2024 meeting to discuss the next steps in the case, he asked what would happen if he fired the firm. (Termination Letter p. 8.) He asserted the firm would not be entitled to a fee under the Agreement. He asserted that without detailed time records the firm could recover nothing. He suggested he "could have used ChatGPT to arrive at the same offer." (Termination Letter p. 8.)

In January 2025, Savenkov escalated. He threatened complaints to "professional oversight bodies" while demanding "a conversation about the fairness of the fee structure." (Termination Letter p. 11 and Savenkov January 9, 2025 Email.) On February 5, 2025, after continued email communication he issued another ultimatum. (Termination Letter p. 13 and Savenkov February 5, 2025 Email.) Following the receipt of the February 5 ultimatum, the firm then engaged outside ethics counsel, Christopher W. Lempesis, Jr.

On February 12, 2025, the at-fault carrier, Nationwide, verbally increased its offer to $47,702. The new figure represented the prior $45,000 offer plus a medical-bill differential and the lost-wages claim the firm had developed. That same day, Mr. Lempesis emailed Savenkov a letter terminating the representation. The transmitting email itself told Savenkov about the new offer: "Mr. Derrick notified me that Nationwide has countered with a new offer of $47,702." (Lempesis February 12, 2025 Email p. 1.) Six minutes later, at 2:41 p.m., Nationwide's adjuster confirmed the offer in writing, referencing the earlier call: "Scott, as discussed in our telephone conversation of today, we are willing to [add the bill difference and wage loss] to the agreed amount of $45,000 for a total of $47,702." (Nationwide February 12, 2025 Email p. 1.)

The termination letter documented the broken relationship, Savenkov's escalating demands, and his fee-avoidance efforts. It concluded that Savenkov had "effectively discharged Mr. Derrick and DLO without good cause or effected a 'withdrawal of representation, at your request.'" (Termination Letter p. 4.) The withdrawal was expressly grounded in Rule 1.16 of the Rules of Professional Conduct.

No lawsuit was ever filed. Savenkov dealt directly with Nationwide after the withdrawal and accepted the $47,702 offer his former counsel had obtained. Nationwide disbursed $31,736 to Savenkov. The balance of $15,967 went into a defense attorney's trust account pending resolution of the fee dispute. (Panel Decision p. 2 n.1.)

Savenkov filed his fee dispute Application on March 24, 2025, identifying the disputed amount as $15,741.00. After a *de novo* hearing at which both parties testified, the Panel found that the firm "communicated with and worked on behalf of" Savenkov throughout the representation "and ultimately secured a more than three-fold increase in the settlement offer initially made by Insurer." (Panel Decision p. 4.) The Panel found that the firm earned fees and costs of $16,250.57 under the Fee Agreement. Because the parties placed only $15,741.00 in controversy, the Panel awarded $15,741.00. It expressly found the fee reasonable under all the circumstances and supported by the Rule 1.5(a) factors. (Panel Decision p. 4.)

ARGUMENT

I. This Court lacks jurisdiction because Rule 416 permits an appeal only to the circuit court, and Savenkov has already taken it.

This Court has already decided the threshold question this appeal presents. In *Wright v. Dickey*, 370 S.C. 517, 636 S.E.2d 1 (Ct. App. 2006), an attorney appealed a Fee Disputes Board decision to the circuit court under Rule 20 and then sought further review in this Court. The Court dismissed the appeal and held: "there is no appeal from a decision of the Resolution of Fee Disputes Board of the South Carolina Bar beyond the circuit court as set forth in Rule 416, SCACR, Rule 20." *Id.* at 521, 636 S.E.2d at 3.

The reasoning is straightforward. The right of appeal arises from and is controlled by statute. The Board is not a court of law or equity, and it is not an administrative agency. It is a branch of the South Carolina Bar, which is itself an administrative arm of the Supreme Court. *Wright*, 370 S.C. at 520-21, 636 S.E.2d at 2-3. Rule 20 grants a limited right of appeal to the circuit court on enumerated grounds, and "[n]o mention is made of further appeal." *Id.* Further appeal would defeat the Board's stated purpose of resolving fee disputes expeditiously. *Id.* (*citing* Rule 416, SCACR, Rule 2).

The *Wright* holding controls this appeal. Savenkov filed his Application with the Board and bound both parties to the Board's processes and its decision. *See* Rule 416, SCACR, Rule 9. He received the full process those rules provide: an investigation, a *de novo* hearing before a three-member panel, and a Rule 20 appeal to the Circuit Court. He lost at every step. Rule 20 gives him nothing more.

It does not matter that Savenkov styles the Board's decision as an "arbitration award" and his appeal as review of an order confirming one. The Board is not an arbitral body operating under the Uniform Arbitration Act. It is a creature of Rule 416, and Rule 416 supplies its own complete and exclusive path of review: the Board, then the circuit court, and nothing further.

II. If the Court reaches the merits, the award stands because Nationwide had made four offers as of the withdrawal date, and applying the Legal Services Agreement to those offers is interpretation, not an excess of powers.

Although Savenkov's brief presents three issues, they reduce to a single contention: the Panel misread Section 7 of the Legal Services Agreement. That contention cannot support a reversal. A panel exceeds its powers through an "intentional or reckless flouting of the law, not a mere error in interpreting it." *Waldo*, 442 S.C. 662, 901 S.E.2d 276 (citing *Gissel*, 382 S.C. at 241, 676 S.E.2d at 323). An award stands "so long as the award can be reconciled with factual inferences and legal conclusions that are at least 'barely colorable.'" *Id.* (quoting *Trident Tech*, 286 S.C. at 111, 333 S.E.2d at 789). The Panel's reading is far more than colorable. It is correct.

A. The Legal Services Agreement's percentage fee applies because settlement had been offered: three prior offers, and a fourth for $47,702 on the day of withdrawal.

Section 7 of the Legal Services Agreement entitles the firm to a percentage "of any settlement offered as of that date." It converts to hourly billing only "in the event that no settlement has been offered." The clause asks whether an offer has ever been made as of the withdrawal date, not whether one remains open at that instant. By February 12, 2025, Nationwide had offered $15,000, then $40,000, then $45,000. Settlement had been offered. The hourly clause never triggered.

A fourth offer was on the table the day the firm withdrew. Nationwide communicated its increased offer of $47,702 orally that day, before the termination letter went out. Mr. Lempesis's 2:35 p.m. transmission email told Savenkov so in the same breath: "Nationwide has countered with a new offer of $47,702." (Lempesis February 12, 2025 Email p. 1.) Six minutes later, Nationwide's adjuster confirmed the offer in writing, referencing "our telephone conversation of today." (Nationwide February 12, 2025 Email p. 1.) The Panel heard this evidence and found the offer "was 'on the table' at the time of withdrawal." (Panel Decision p. 2) Savenkov accepted that very offer, $47,702 to the dollar, weeks later.

Savenkov's own conduct satisfied the "at your request" condition. Although he argues the withdrawal was not at his request because the firm's counsel sent the termination letter, the record tells a more complete story: he asked in August 2024 what would happen if he fired the firm, asserted the firm could recover nothing without time records, threatened bar complaints in January 2025, and issued an ultimatum on February 5, 2025. (Termination Letter; Savenkov February 5, 2025 Email.) The termination letter concluded he had "effectively discharged" the firm "or effected a 'withdrawal of representation, at your request.'" (Termination Letter p. 13 and Savenkov February 5, 2025 Email.) A client cannot engineer a rupture, announce in advance his theory for why it will cost him nothing, and then claim the benefit of his own strategy. And if Section 7 somehow did not fix the fee, quantum meruit would sustain the same award: the Panel expressly found the Rule 1.5(a) factors "support Attorney's fee under the Fee Agreement and that Attorney's fee is reasonable under all circumstances." (Panel Decision p. 4.) Savenkov's reading would change the label on the award, not the result.

B. On this record, each of Savenkov's three issues fails: the Panel interpreted the contract, the award has evidentiary support, and the Circuit Court's order did its limited job.

First, the Panel did not exceed its powers. Deciding what "any settlement offered as of that date" means, and whether February 12, 2025 satisfied it, is contract interpretation. That is the Panel's core function. At most, Savenkov offers a competing construction, and a panel choosing between two colorable constructions is interpreting the contract, not rewriting it. Calling the result "reformation" does not transform a merits quarrel into an excess of powers.

Second, the award does not lack evidentiary support, and *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991) cannot bear the weight Savenkov puts on it. *Glasscock* was a divorce case, and in domestic matters Rule 1.5(d) forbids any fee contingent on the amount recovered. The Court "expressly disapprove[d] any percentage fee agreement in a domestic case" and for that reason required the fee award in that case to be built on a reasonable hourly fee, with findings to match. *Glasscock*, 304 S.C. at 161, 403 S.E.2d at 315. This is not a domestic case. Rule 1.5(c) expressly permits a contingent fee here, and Savenkov signed one.

Rule 1.5(a) also contains every *Glasscock* factor: the difficulty of the case, the time devoted to it, counsel's standing, the contingency of the fee, the results obtained, and the customary charge for similar work. The Panel expressly applied Rule 1.5(a). A fee that satisfies the eight modern factors necessarily satisfies the six older ones.

The Panel found those factors "support Attorney's fee under the Fee Agreement" and recited its basis: a two-year representation, repeated demands and negotiation, and "a more than three-fold increase in the settlement offer initially made by Insurer." (Panel Decision p. 4.) The absence of time records proves nothing. A lawyer handling a contingency matter has no duty to keep them, and dividing the award by $300 to conjure "52.47 hours" that no one claimed simply repackages the contract argument.

Third, the Circuit Court's order stands. Rule 20(f) authorized the court to decide one thing: whether Savenkov proved a ground to vacate the Panel's decision. The order noted the single ground he pressed, reviewed the record "including the fee agreement and the termination letter," found the decision "supported by the evidence," and found no Rule 20(f) factor established. (Order p. 2.)

This Court may also affirm on any ground appearing in the record. Rule 220(c), SCACR.

CONCLUSION

First, this Court does not have jurisdiction. *Wright v. Dickey* holds that no appeal lies from a Fee Disputes Board decision beyond the circuit court, and Savenkov has already had his circuit court appeal. That answer alone ends the case.

However, even if the Court could reach the merits, the result would not change. The contract says what it says. Nationwide had made three offers and communicated a fourth, for $47,702, the day the firm withdrew. Savenkov accepted it. The Panel applied the contract and confirmed the fee's reasonableness under Rule 1.5(a). The Circuit Court performed the limited review Rule 20(f) allows. Nothing in that sequence approaches an intentional or reckless flouting of the law. It is a contract, applied.

Savenkov agreed to pay a one-third fee. His lawyers spent two years on his claim and more than tripled the carrier's opening offer, from $15,000 to $47,702. He now asks this Court to declare the work that produced those dollars is worth nothing. Two tribunals have said no. Respondent respectfully requests that this Court make it three: dismiss the appeal for lack of appellate jurisdiction or, in the alternative, affirm the judgment of the Circuit Court.

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