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.

REPLY BRIEF OF APPELLANT

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I. THIS COURT HAS JURISDICTION. *WRIGHT v. DICKEY* CONSTRUED A PROCEEDING THAT NO LONGER EXISTS, ON A TRACK THIS DISPUTE DID NOT FOLLOW, IN A POSTURE THIS RECORD DOES NOT PRESENT.

Respondent asks this Court to dismiss the appeal without reaching the merits, resting that request entirely on *Wright v. Dickey*, 370 S.C. 517, 636 S.E.2d 1 (Ct. App. 2006). *Wright* concluded that "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."

A holding reaches the proceeding the court had before it. The proceeding *Wright* had before it differs from this one in three respects, each appearing in the text of Rule 416 rather than in argument.

A. The circuit court proceeding *Wright* described no longer exists.

Wright's reasoning turned on one premise: "We are not, however, presented with a typical action at law or equity, but a specialized proceeding before a branch of the South Carolina Bar, which in turn is an administrative arm of the South Carolina Supreme Court."

When *Wright* was decided, that premise was accurate. Under Rule 20 as it then stood, an appeal was taken by mailing a letter to the Bar: a party could appeal "to the circuit court . . . **with written notice to the South Carolina Bar Resolution of Fee Disputes Board, Post Office Box 608, Columbia, S.C. 29202**." Rule 20(A), Rule 416, SCACR (as amended by Order dated Nov. 5, 2003). Nothing was filed in any court. No filing fee was paid. No case was docketed. No judgment issued.

On December 6, 2011, this Court, acting under Article V, § 4 of the South Carolina Constitution, replaced that procedure. Rule 20(b) now provides that "**[t]o confer jurisdiction of**

an appeal on the circuit court, the appealing party must **commence** the appeal," and Rule 20(c) that to commence it the party must "**file with the clerk of the circuit court** a notice of appeal" and "**pay the required filing fee to the clerk of court**." The same Order added a mandatory disposition: "**The court shall affirm or vacate** the final decision of the Board." Rule 20(f).

Subsections (b) and (c) had no counterpart in the Rule *Wright* construed. They convert written notice to a Bar committee into an action commenced in the circuit court, on payment of a filing fee, on that court's own docket, ending in a disposition the court is directed to enter. The record reflects exactly that: Appellant's proceeding was docketed in the Court of Common Pleas for Greenville County as Case No. 2025-CP-23-07958 and disposed of on SCRCP Form 4CE, captioned "**JUDGMENT IN A CIVIL CASE**," on which the court marked "Disposition of Appeal to the Circuit Court: **Affirmed**" and that "This order **ends the case**." (Order p. 1.) A judgment entered on a Common Pleas docket, in a case commenced by filing and fee, on a form denominated a judgment in a civil case, is not "a specialized proceeding before a branch of the South Carolina Bar."

The version in force at filing controls: "Any amendment to these rules is effective as to any fee dispute **filed after the date of approval** by the Supreme Court." Rule 22. Appellant filed his Application on March 24, 2025; the appellant in *Wright* filed the circuit court appeal in October 2002.

B. *Wright* arose on a track that made a hearing panel unavailable. This dispute arose on the adjudicative track.

Under the Rule in force when *Wright* was decided, a hearing panel was available only in disputes exceeding $5,000. Rule 12(C)(1)(b), Rule 416, SCACR (Nov. 5, 2003); *accord* Rule 20(C).

Wright states where it fell: the matter "was referred to the circuit chair and assigned to an investigator," and "**[b]ecause the amount in dispute was less than $5,000, the circuit chair's concurrence represented the final decision of the Board. Rule 416, SCACR, Rule 13.**" There was no hearing panel, no evidentiary hearing, no witnesses, and no transcript, because on that track none was available.

This dispute followed the other track. The amount in controversy was $15,741.00. A three-member hearing panel was appointed under Rule 14 and conducted an evidentiary hearing on September 30, 2025, which Rule 15 requires to be *de novo* and at which "no reports or other information from the assigned member will be considered." The panel then issued a written decision "including a factual statement of the controversy and the reasons for the decision reached," as Rule 17 requires. Respondent's own description confirms the distinction: Appellant "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." (Resp't Br. p. 10.) That is an accurate account of this case. It is not an account of *Wright*, where none of it occurred.

C. *Wright* reviewed an order of dismissal entered on default. This appeal is from a judgment on the merits.

The appellant in *Wright* filed his notice of appeal without stating any grounds, filed no brief or memorandum identifying a ground for relief, and did not appear at the hearing. The circuit court dismissed his appeal with prejudice, finding on reconsideration that he had received proper notice and had willfully failed to attend. That court never reviewed the Board's decision. There were no findings, no application of Rule 20's grounds, and no merits determination of any kind.

Here, both parties appeared and argued on February 24, 2026. The Circuit Court identified the ground pressed under Rule 20(f)(3), stated that it had reviewed the record "including the fee agreement and the termination letter from Derrick Law Office," found the Board's decision "supported by the evidence" and Appellant to have "failed to establish that the Board exceeded their powers," and affirmed. (Order p. 2.) Whether an order dismissing an abandoned appeal may be reviewed is a different question from whether a judgment adjudicating the grounds under Rule 20(f) may be reviewed. *Wright* answered the first.

D. Consent under Rule 9 does not waive review of the circuit court's judgment.

Wright observed that "[h]aving submitted the fee dispute to the Board, Wright bound herself and Dickey . . . to the decision of the Board," citing Rule 9, and Respondent presses the same point. (Resp't Br. p. 10.) But Rule 9 addresses only the Board's decision and the Board's jurisdiction, and says nothing about the judgment a circuit court later enters. Rule 9(a), (c). Appellant does not seek to relitigate the fee; he seeks review of a circuit court judgment for errors of law. Agreeing to be bound by a tribunal's determination is not an agreement to forgo review of a court's judgment.

E. Appellate jurisdiction is conferred by statute, and no statute withdraws it here.

Wright began from the correct premise. Rule 201(a), SCACR, permits appeals "as provided by law," and "[t]he right of appeal arises from and is controlled by statutory law." *N.C. Fed. Sav. & Loan Ass'n v. Twin States Dev. Corp.*, 289 S.C. 480, 481, 347 S.E.2d 97, 97 (1986). The criteria of appealability are supplied by S.C. Code Ann. § 18-9-10 and §§ 14-3-320 and -330, and § 14-3-330 confers appellate jurisdiction "for correction of errors of law in law cases."

Wright did not hold that § 14-3-330 fails to reach a circuit court judgment of this kind. It reasoned instead that the proceeding was not "a typical action at law or equity", a characterization that cannot be reconciled with authority *Wright* did not address. Nine years earlier, our Supreme Court held that "**an ordinary action to recover attorneys' fees pursuant to a fee agreement between the attorney and his client is an action in law with the right to a jury trial**," expressly overruling *Ex parte Stevens, Stevens & Thomas*, 277 S.C. 150, 283 S.E.2d 444 (1981), and tracing the rule through more than a century of practice. *Lester v. Dawson*, 327 S.C. 263, 269–71, 491 S.E.2d 240, 243–44 (1997). This Court applied *Lester* six years before *Wright*. *Weatherford v. Price*, 340 S.C. 572, 578, 532 S.E.2d 310, 313 (Ct. App. 2000). The controversy the Board resolved is the controversy *Lester* describes, and *Wright* neither cited *Lester* nor explained why a proceeding resolving a law claim ceases to be one when the parties consent to resolve it before the Board.

The terms in which *Wright* framed the question also bear notice. The opinion opens: "We are presented with **an appeal from a decision of the Resolution of Fee Disputes Board**," and its holding is phrased the same way. But the order before the Court was the circuit court's order dismissing an appeal with prejudice. On its own terms, *Wright* addresses the appealability of the Board's decision. Appellant does not seek review of the Board's decision. He seeks review of the Circuit Court's judgment, which §§ 18-9-10 and 14-3-330 make appealable.

The remaining authorities *Wright* invoked do not fill the gap. *Kores Nordic (USA) Corp. v. Sinkler, Gibbs & Simons*, 284 S.C. 513, 327 S.E.2d 365 (Ct. App. 1985), held only that the Board is not an "agency" within the Administrative Procedures Act. And *Byrd v. Irmo High School*, 321 S.C. 426, 433–34, 468 S.E.2d 861, 865 (1996), addresses cases "where a **statute** specifically sets forth an appeals procedure." Rule 416 is not a statute but a rule adopted under Article V, § 4; the statutes here confer jurisdiction rather than withhold it, and the silence of a court rule does not withdraw what a statute grants. When this Court rewrote Rule 20 in 2011 it addressed commencement, filing, fees, the record, disposition, rehearing, and notice, and did not state that the circuit court's judgment is unreviewable.

F. The contrary reading would raise a constitutional question this Court need not reach.

Lester grounded the right to try such a claim to a jury in S.C. Const. art. I, § 14. *Lester*, 327 S.C. at 269, 491 S.E.2d at 243. Appellant does not contend his consent under Rule 9(a) was ineffective; a jury right may be waived. But Respondent's reading asks this Court to hold that the same consent silently forfeits something the Rule never mentions - all appellate review of the circuit court's judgment. *Wright* itself noted that § 14-3-320 "has been declared unconstitutional to the extent it purports to **limit the scope of appellate review**" in domestic cases. *Rutherford v. Rutherford*, 307 S.C. 199, 204, 414 S.E.2d 157, 160 (1992). Where one construction of a silent rule raises a constitutional question, the construction avoiding it is preferred. This Court need not reach the question, because §§ 18-9-10 and 14-3-330 resolve it; Appellant raises it to preserve it, together with the position that a rule of court may not withdraw the appellate jurisdiction § 14-3-330 confers over final judgments of the circuit court.

II. THE PANEL APPLIED PARAGRAPH 7 WITH ITS OPERATIVE CONDITION REMOVED.

Respondent argues that the Panel chose between two colorable readings of Paragraph 7, and that a tribunal choosing between colorable readings is interpreting rather than rewriting. (Resp't Br. p. 12.) That characterization requires the Panel to have construed the operative term. Its written decision does not construe it, quote it, or mention it.

A. Paragraph 7 provides a percentage fee in one circumstance, and the firm's own withdrawal is not that circumstance.

Paragraph 7 of the Legal Services Agreement, which Respondent drafted, is two sentences long and addresses two different events. The first reserves a right to the firm: "**we may withdraw from representation if we discover that recovery is unlikely or the amount likely to be recovered is too small**", and attaches no fee to it. The second addresses the other direction: "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 . . . ." (Attorney Ex. 1, ¶ 7.) Both branches of that sentence depend on one premise: withdrawal at the client's request.

The representation here ended by neither route, and the record does not require inference. Respondent's outside ethics counsel stated the basis twice in the same document: "it is abundantly clear that **DLO is justified in permissive withdrawal from its representation of you pursuant to Rule 1.16, RPC, Rule 407, SCACR**," reasoning under Rule 1.16(b)(1) that because Appellant's claims remained viable, "**withdrawal at this time does not have a material adverse effect on your interests**." (Termination Letter pp. 1–2; *accord id.* p. 14.) Respondent's brief says the same: "**The withdrawal was expressly grounded in Rule 1.16 of the Rules of Professional Conduct.**" (Resp't Br. p. 8.)

Permissive withdrawal by the firm under Rule 1.16(b)(1) is not withdrawal "at your request," and it is not withdrawal because recovery had become unlikely or too small. It is a third event, and Paragraph 7 does not address it. The letter also described what the firm believed it was owed, and the description was not a percentage: the firm was "asserting its right to be compensated attorney's fees and costs **for time and expenses expended** in furtherance of your claims." (Termination Letter p. 2.)

Having stated that basis across four pages, the letter then asserts the opposite: that Appellant "**effectively discharged** Mr. Derrick and DLO without good cause **or effected a 'withdrawal of representation, at your request'**." (Termination Letter p. 5; *accord id.* p. 14.) A single document cannot be both the firm's justified permissive withdrawal and the client's requested withdrawal. Under Paragraph 7 those are different events, and only one carries a percentage fee.

The record further establishes that the decision was Respondent's own, made before the settlement posture changed. His counsel wrote: "**After the attached letter was rendered as a PDF document**, Mr. Derrick notified me that Nationwide has countered with a new offer of $47,702." (Attorney Ex. 2 (emphasis added).) The letter was drafted, reviewed, and reduced to final form before anyone at the firm learned of the increased offer. That sequence answers Respondent's contention that Appellant "engineer[ed] a rupture" and thereby brought himself within the "at your request" branch. (Resp't Br. p. 12.) The instrument that ended the representation was prepared by counsel Respondent retained, on Respondent's timetable. Appellant did not draft it, did not ask for it, and did not know it was coming.

An agreement drafted by Respondent provides a fee for one kind of separation. This was the other kind, and that gap is construed against him. Restatement (Second) of Contracts § 206. The rule is stricter still between attorney and client: such agreements are "**examined with utmost care by the courts in order to avoid any improper advantage to the attorney**" and require "**severe and rigorous fairness which can leave nothing of doubt or uncertainty behind**," with the burden of establishing that fairness on the attorney. *Royal Crown Bottling Co. v. Chandler*, 226 S.C. 94, 105–06, 83 S.E.2d 745, 750–51 (1954) (quoting *Wise v. Hardin*, 5 S.C. 325, 328–29 (1874)); *accord Weatherford*, 340 S.C. at 582, 532 S.E.2d at 315. The Panel inverted that rule twice: presented with a fee provision the attorney drafted and expressly conditioned, it resolved the provision in his favor by omitting the condition; and it framed the inquiry as whether "Client's complaints are not supported by the evidence" (Panel Decision p. 3), placing on the client the burden of unseating a fee rather than on the attorney the burden of establishing one.

B. The decision removes the condition from the text it purports to apply.

The two texts are set side by side:

As written (Attorney Ex. 1, ¶ 7): "**[W]e may withdraw from representation if we discover that recovery is unlikely or the amount likely to be recovered is too small.** 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** . . ."

As quoted by the Panel (Panel Decision p. 4): "33.33% of the 'total recovery' before anything is deducted . . . of any settlement offered as of that date."

The Panel's quotation is a composite: its first half comes from Paragraph 3(a), its second from the middle of Paragraph 7, and the ellipsis stands in place of the language that makes the second half operative. As quoted, the paragraph states an unconditional entitlement. As written, it states an entitlement conditioned on withdrawal at the client's request. The condition did not survive the quotation.

The phrase "at your request" appears nowhere in the Panel's five-page decision. The Panel did not find the condition satisfied, unsatisfied, or ambiguous. It wrote instead that "under these circumstances" the fee applied, without identifying what in the circumstances engaged the contract. The same is true of the hourly conversion clause.

The record supplies the comparison twice. Respondent's own ethics counsel set Paragraph 7 out for Appellant nine months earlier, condition included. (Termination Letter p. 5.) Respondent's Statement of Facts in this Court block-quotes the same paragraph in full, condition and hourly clause included. (Resp't Br. pp. 6–7.) His Argument then describes it without the operative condition, as a provision that "entitles the firm to a percentage 'of any settlement offered as of that date.'" (Resp't Br. p. 11.) The Panel, quoting the paragraph in order to award the fee, reproduced neither.

The asymmetry within the decision is its own evidence. On the temporal question the Panel wrote a full paragraph: it fixed the time the termination email was sent, traced the carrier's verbal communication, noted the interval before written memorialization, quoted the transmitting email, and concluded the offer was "on the table" at the time of withdrawal. (Panel Decision p. 2.) That close reading appears in the same decision that never mentions the three words on which the same sentence of the contract depends.

C. The decision alters a second quotation in the same direction.

The Panel's finding that an increased offer was on the table rests on a single document, the carrier's email of February 12, 2025:

What the carrier wrote (Attorney Ex. 3 p. 1): "we are willing to **consider** the bill difference of $1937.00 and the $765.00 wage loss **added** to the agreed amount of $45,000 for a total of $47,702."

What the Panel quoted (Panel Decision p. 2): "we are willing to **[add the bill difference and wage loss]** to the agreed amount of $45,000 for a total of $47,702."

The bracketed material is the Panel's own. A statement that the carrier would consider adding two sums became a statement that it would add them, and the Panel then described the same document as having "officially memorialized" an increased offer. The alteration has since been repeated as though it were the carrier's: Respondent's brief reproduces the Panel's bracket verbatim and attributes it not to the decision but to the source, "(Nationwide February 12, 2025 Email p. 1.)" (Resp't Br. p. 8.) The words within the bracket appear nowhere in that email.

The alteration occupies the place where the record is thinnest. The Panel found that the carrier "verbally increased its offer earlier that day" (Panel Decision p. 2), but no evidence of that conversation is in the record; asked in the Circuit Court how the increased offer had been communicated, Respondent answered, "I'm completely speculating here." (Feb. 24, 2026 Tr. p. 15.)

Appellant does not contend the carrier made no offer. The point concerns how this decision handles the texts it relies on. In a five-page decision the Panel twice altered a quotation at the precise point where the unaltered language would have complicated the result: once by eliding the condition on which Paragraph 7 depends, once by replacing a qualifying verb in the only writing from the offeror. Both alterations run in the same direction. A single imprecision would be unremarkable. Two, placed where they are, are not a mere error in interpreting the record.

D. This is not an interpretive disagreement, and it is not harmless.

Rule 20(f)(3) permits vacatur where the hearing panel members "exceeded their powers." A tribunal exceeds its powers where it "knew of well-defined, explicit, and clearly applicable controlling law, yet still refused to apply it," a standard "met only when the award is the product of an intentional or reckless flouting of the law, not a mere error in interpreting it," *Waldo v.*

Cousins, 442 S.C. 662, 666, 901 S.E.2d 276, 278 (2024), and where it rewrites clear contractual terms to dispense its own brand of industrial justice, *United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960)*. Respondent treats that standard as unreachable on this record. Supreme Court has said otherwise: "manifest disregard is an exacting standard, **but it is not insurmountable**." *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 58, 742 S.E.2d 359, 361 (2013), *quoted in Waldo*. *Waldo* itself vacated.

Respondent also disputes a label that Appellant "styles the Board's decision as an 'arbitration award,'" and that "[t]he Board is not an arbitral body operating under the Uniform Arbitration Act." (Resp't Br. p. 10.) The label is not the question. Rule 20(f)(3) uses the phrase "exceeded their powers," and the phrase carries the meaning our decisions give it; the tribunal in *Waldo* was itself a professional association's internal hearing panel, reviewed under the same standard.

The omission was necessary, not incidental. With the condition in place, the percentage branch reaches only a withdrawal at the client's request, and Respondent's own counsel wrote the letter that ended the representation. With the hourly branch in place, the alternative would require proof of "the estimated amount of legal work performed to date" at $300 per hour - proof Respondent has stated does not exist. (Appellant's Ex. 4.) A tribunal that quotes a contract term with its condition elided, and never returns to the condition, has not selected among readings. It has applied a provision the parties did not write.

E. Respondent defends the award on a rationale the Panel did not adopt.

Respondent argues that Paragraph 7 "asks whether an offer has ever been made as of the withdrawal date, not whether one remains open at that instant," and that the three earlier offers therefore satisfied it. (Resp't Br. p. 11.) The Panel did not so hold. Had it read the clause that way, the earlier offers would have ended the inquiry. Instead it devoted a paragraph to establishing that the $47,702 offer was communicated before or with the termination, concluding it "was 'on the table' at the time of withdrawal." (Panel Decision p. 2.) That analysis was necessary only under a reading requiring an offer open when the representation ended, and Rule 20(f) directs the circuit court to affirm or vacate the Board's decision, not Respondent's alternative construction of it.

Nor is it the construction Respondent gave the clause when he explained it to his client. Of the August 13, 2024 meeting at which Appellant asked what would happen if he discharged the firm, Respondent's counsel recorded that "Mr. Derrick reviewed the Agreement you signed showing DLO's entitlement to a fee **based on the last settlement offer made before any termination**." (Termination Letter p. 8.) Respondent now asks this Court to read the same words as reaching every offer ever made.

F. The award cannot rest on quantum meruit, because the Panel awarded a contractual fee and said so.

Respondent argues in the alternative that "quantum meruit would sustain the same award." (Resp't Br. p. 12.) The Panel made no such award. It found the Rule 1.5(a) factors "support Attorney's fee **under the Fee Agreement**," and computed the award from the contract: "Pursuant to the contract, Attorney earned the Attorney's fee and costs of $16,250.57." (Panel Decision p. 4.)

The two theories are alternatives, not cumulative. "[A] party cannot disavow a binding contract and pursue quantum meruit, no matter how green the grass of equity may seem." *Gibson v. Epting, 426 S.C. 346, 827 S.E.2d 178 (Ct. App. 2019)*. Rule 20(f) confines the circuit court to affirming or vacating the Board's decision; it is not a proceeding to fix a fee in the first instance.

The alternative would not sustain this award in any event. A quantum meruit award "must take into account the actual value of the services to the client," and **"the time reasonably devoted to the representation and a reasonable hourly rate are factors to be considered."** *Weatherford*, 340 S.C. at 583, 532 S.E.2d at 316 (quoting *Searcy, Denney, Scarola, Barnhart & Shipley, P.A. v. Poletz*, 652 So. 2d 366, 369 (Fla. 1995)). *Weatherford* rejected the precise measure Respondent proposes, a fee calculated as a fraction of the value of what the work recovered, holding that **"[t]here is no basis for enhancing the fee merely because the outcome was successful,"** and reversed. *Id.* at 584, 532 S.E.2d at 316. The measure it requires rests on evidence Respondent's own counsel confirms does not exist: "Mr. Derrick explained that **there are no hourly records for work performed at present**." (Termination Letter p. 7.)

G. No colorable contractual basis exists, and Rule 416 required the Panel to state the basis it relied on.

Appellant does not contend that a contingent fee is impermissible here, and does not rely on *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991), for a rule drawn from domestic practice. But Respondent's conclusion, that because "Rule 1.5(a) also contains every *Glasscock* factor," the Panel's Rule 1.5(a) finding ends the inquiry (Resp't Br. p. 13), does not follow. The *Glasscock* (or Blumberg) factors were framed "to determine the fee to be awarded **against an adverse party**," and "[n]ot all . . . factors are relevant in determining a reasonable fee to be paid by a client." *Weatherford*, 340 S.C. at 581–82, 532 S.E.2d at 315. In the attorney-client setting they are "a starting point," not a terminus. *Id.* at 583, 532 S.E.2d at 316.

Respondent also invokes the rule that an award "need not 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.'" *Waldo, 442 S.C. at 665–66, 901 S.E.2d at 278 (citing Trident Tech., 286 S.C. at 111, 333 S.E.2d at 789). (Resp't Br. p. 11.)* Two answers follow.

First, that rule asks what the record will support, not what the tribunal wrote, the inquiry *Waldo* performed in identifying the sole theory capable of sustaining the award and holding that its "extinction . . . removed any 'arguably colorable' basis." The inquiry here is short. A percentage fee could rest on only one provision: the sentence entitling the firm to "a fee on the same schedule as under section (3) of any settlement offered as of that date", a sentence that applies to "the withdrawal of representation, at your request." Paragraph 3 alone does not reach this case; it fixes the fee where "a settlement is reached," and the representation ended before any settlement was reached. The hourly branch requires records Respondent says do not exist. And the Panel did not award quantum meruit; it awarded "[p]ursuant to the contract." (Panel Decision p. 4.) Remove the condition and nothing in the instrument supports the award. That is not a disagreement about interpretation; it is the absence of a colorable basis.

Second, the rule Respondent invokes comes from arbitration, where reasons are not required. Rule 416 requires them: Rule 17 directs that a hearing panel "issue a written decision, **including a factual statement of the controversy and the reasons for the decision reached**." A tribunal operating under a rule commanding it to state its reasons is not in the position of an arbitrator who need state none.

On the reasonableness of the fee the Panel wrote: "Rule 1.5(a) additionally provides the 'factors to be considered in determining the reasonableness of a fee.' **Though not recited here**, we find the Rule 1.5(a) factors support Attorney's fee under the Fee Agreement . . . ." (Panel Decision p. 4.) It gave reasons on other questions, it explained why it rejected Appellant's complaints about the quality of the representation, and recited supporting evidence. (Panel

Decision pp. 3–4.) On the two questions determining the amount, it stated that its reasons were not set out.

The omission goes to substance, not merely expression. Beyond the enumerated factors, **"all of the circumstances surrounding the attorney-client relationship must be considered when determining a reasonable fee to be paid by a client**," and "**[t]he failure to consider these circumstances is error**." *Weatherford*, 340 S.C. at 582, 532 S.E.2d at 315. Chief among the circumstances here is how the representation ended: the firm withdrew, through counsel it retained for the purpose, in a letter finalized on its own initiative. The decision does not mention it, and does not consider where the burden lay. *See id.* at 576 n.2, 532 S.E.2d at 312 n.2 ("The burden is upon the attorney to make sure the client understands the fee arrangement."); *cf. Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993) (court awarding a fee against an adverse party "should make specific findings of fact on the record for each factor"); *Griffith v. Griffith*, 332 S.C. 630, 646, 506 S.E.2d 526, 534 (Ct. App. 1998).

III. THE CIRCUIT COURT ASKED WHETHER THE BOARD'S DECISION WAS "SUPPORTED BY THE EVIDENCE." RULE 20(f) ASKS A DIFFERENT QUESTION.

Respondent defends the Circuit Court's order on the ground that "Rule 20(f) authorized the court to decide one thing: whether Savenkov proved a ground to vacate the Panel's decision," and that the court did exactly that. (Resp't Br. p. 14.) Respondent is right about the question the Rule poses. The order does not answer it.

The operative finding reads: "Upon review of the record, including the fee agreement and the termination letter from Derrick Law Office, the Court finds that **the final decision of the Fee Disputes Board was supported by the evidence** and that the applicant has failed to establish that the Board exceeded their powers or any other factors set out in Rule 20(f)." (Order p. 2.)

Respondent reads it the same way, summarizing the order as a holding that "the Board's decision [was] supported by the evidence and no Rule 20(f) ground established." (Resp't Br. p. 5.)

"Supported by the evidence" is not a ground, a standard, or a defense under Rule 20(f). The Rule directs that "[t]he court shall affirm or vacate the final decision of the Board," and that "[t]he court may vacate only where" one of five enumerated circumstances exists. Appellant pressed the third: that the hearing panel members "exceeded their powers." Those are different inquiries. A panel may reach a conclusion the evidence supports and still exceed its powers, because the excess lies in what it did with the governing instrument, not in whether a fact was proved. *Waldo*; *Trident Tech.*

The order's second clause, that Appellant "failed to establish that the Board exceeded their powers", states the conclusion without engaging the question. Nothing in the order addresses the condition on which Paragraph 7 depends, the Panel's treatment of that condition, or the standard by which an excess of powers is measured. Appellant does not argue that the order contains insufficient findings of fact; he argues that the Court applied the wrong legal standard - a ruling the Court made rather than one it omitted, reviewable as a question of law on which an appellate court owes no deference.

Respondent invokes Rule 220(c), SCACR, under which this Court may affirm on any ground appearing in the record. (Resp't Br. p. 14.) The rule permits affirmance on any *correct* ground; it does not convert an unexamined question into a decided one. The ground Respondent offers is that the Panel engaged in permissible contract interpretation. For the reasons set out in Argument II, the record does not support that characterization.

CONCLUSION

Wright dismissed an appeal from an order dismissing an abandoned appeal, taken by written notice to a Bar committee, in a dispute below $5,000 decided without a hearing, a record, or a merits determination. This appeal is from a judgment in a civil case, docketed in the Court of Common Pleas, entered after argument, reviewing a hearing panel's decision rendered after a *de novo* evidentiary hearing. This Court has jurisdiction.

On the merits, Paragraph 7, drafted by Respondent, provides a percentage fee upon "the withdrawal of representation, at your request," and no fee at all for the firm's own withdrawal. The representation was ended by Respondent's outside ethics counsel, on a basis that letter twice identified as permissive withdrawal by the firm, and finalized before the firm learned the carrier's offer had changed. The Panel resolved that question by quoting the paragraph with the condition removed, and never mentioned it again. Where the asserted basis for a fee fails, the award is reversed and the fee determined on a proper footing. *See Royal Crown*, 226 S.C. at 107, 83 S.E.2d at 751; *Weatherford*, 340 S.C. at 584, 532 S.E.2d at 316.

Appellant respectfully requests that this Court reverse the judgment of the Circuit Court, vacate the decision of the Resolution of Fee Disputes Board under Rule 20(f)(3), and remand for rehearing before a new hearing panel pursuant to Rule 20(g).

Respectfully submitted,

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