

TO THE SOUTH CAROLINA BAR RESOLUTION OF FEE DISPUTES BOARD:

RE The Law Office of Thomas F. McDow vs. Joann Wright

Proceeding

This fee dispute was heard *de novo* by Connie H. Payne, F. Lee O'Steen and Barrett W. Martin starting at 11:00 am July 6, 2016, at the law offices of Spencer and Spencer, Rock Hill, York County, South Carolina, with Connie H. Payne as chairperson. Thomas F. McDow and Erin K. Urquhart, were present and represented by Brian McCoy. Joann Wright was not present but represented herself by phone. Each party was aware of their right to have additional witnesses present but neither exercised that right. The parties were advised of their right to record the proceedings pursuant to the rules. Each party waived recording. Neither party was aware of any conflict that would prohibit a member of the panel from participating in the hearing. Both parties were informed by Ms. Payne that Ms. Wright had scheduled an appointment with Ms. Payne. Although Ms. Wright completed an intake form required by Ms. Payne's office, she did not meet with Ms. Payne. Both parties waived any conflict. Neither party objected to the notice of this proceeding. The parties gave the following addresses for the mailing of this report:

Brian Scott McCoy
Attorney for Thomas F. McDow and Erin K. Urquhart
McCoy Law Firm, LLC
378 E. Main Street
Rock Hill, SC 29730

Joann Wright
239 147th St. NE
Bradenton, FL 34212

Both parties acknowledged receipt of Paul W. Dillingham's letter addressed to Connie H. Payne dated May 25, 2016.

Statement of the Case

Thomas F. McDow filed an Application for Resolution of Disputed Fee on January 6, 2015. Mr. McDow is seeking \$18,532.50 in fees and costs plus interest as provided in the Retainer Fee Agreement.

Facts

Lawyer and Client signed a written Retainer Fee Agreement. Client agreed to pay \$240 per hour for Thomas F. Dow's time, \$180 per hour for Erin K. Urquhart's time, \$50 per hour for legal assistant's time, and reimbursement of all court costs and expenses with a non-refundable minimum retainer fee of \$1,500 which would be applied toward the Lawyer's hourly rate and costs. Lawyer also charged \$200 at the outset of the case for opening and closing the file. The contract does include that if Thomas F. McDow and Erin K. Urquhart were working together on the case at the same time, they may elect to charge a combo time of \$300 per hour, a savings of \$90 per hour. The scope of the representation included representing Client to resolve Client's marital or domestic issues with William Enos. The contract further provides Client specifically seeks child custody, modification of visitation and child support, an order allowing Plaintiff to provide medical and dental insurance, an order requiring Defendant to pay the balance due from him to Plaintiff for his portion of the medical, dental and healthcare expenses incurred by Plaintiff, an order requiring Defendant to pay Plaintiff the balance due from Defendant's purchase of a tax exemption and rescinding Defendant's right to purchase future tax exemption, appointment of a mediator, discovery, and attorney's fees. The contract excluded from Lawyer's representation any ancillary action such as any appeal. However, Lawyer and Client could enter into an additional agreements to include such representation. The Retainer Fee Agreement provides Lawyer will send billing on the last

business day of each month and that all fees and costs are due by the 10th day of the following month, unless Client makes specific other arrangements in writing. The Agreement provides it is Client's responsibility to review each billing statement and notify Lawyer, in writing, within thirty (30) days if there are any problems with the billing statement. Client acknowledged to panel that she signed the Retainer Fee Agreement. She acknowledged she received monthly itemized statements, except for a few months that were subsequently provided to her upon her request. Lawyer acknowledged Client may not have received monthly statements at the beginning of representation because no balance was due from Client and that Client may not have received monthly statements immediately following trial because Lawyer was reviewing statement to ensure expert fees and other costs were paid. Lawyer did provide Client with a complete itemized statement.

A final hearing was held in Family Court on May 1, 2 and 3. A final order was signed by the trial judge on May 31, 2012. Prior to this hearing, Client did not inform Lawyer of any problems with the billing. Client and Lawyer agree Client did not receive favorable results. Client and Lawyer agree Lawyer advised Client to settle prior to the Court's decision. Lawyer advised Client in his opinion the settlement proposal would be more favorable than the court's decision. Client chose to proceed with the hearing and allow the court to decide the issues. Following trial, Lawyer filed a motion to reconsider and an appeal. Lawyer continued to charge Client consistent with rates set forth in the Retainer Fee Agreement.

Lawyer agreed to accept payments of \$500 per month until the balance owed was paid in full. Client was mailing payments to Lawyer until April 8, 2013. Client's last payment was received by Lawyer on April 16, 2013. Client's balance owed was \$18,532.50. On June 28, 2013, Lawyer informed Client the entire balance was due.

Client argues she owes no additional fees. Her reasoning being she was charged approximately \$40,000 attorney's fees and 25% of the fees were overcharges. She believes she should only owe Lawyer approximately \$30,000 and that the \$30,000 should be reduced by a \$4,000 discount Lawyer agreed to give her following trial. She has paid Lawyer \$26,441. Therefore, according to Client, she owes no additional fees. Client argues she was overcharged for collection calls from Lawyer's staff, double billed for work, billed for repeated e-mails from Lawyer requesting information already provided, billed for interoffice e-mails and billed for Lawyer's time to set up an account with the Clerk of Court for payment of attorney's fees owed by her to Defendant. Client improperly relies upon testimony given at the final hearing by Defendant's expert witness on the issue of attorney's fees and by comparing Lawyer's fees to the attorney's fees charged by Defendant's lawyer. The written contract between Client and Lawyer is controlling.

Lawyer denied Client was billed for collection and charges Client referred to included work in addition to collection. Lawyer explained he charged for preparation of a rule to show cause hearing that was continued by the trial judge and combined with the final hearing. Lawyer had no control over the court's continuance of the hearing. Lawyer explained he billed for an appeal and for setting up an account with the Clerk of Court so that Client could pay money ordered by the court to the Clerk to avoid interest on the judgment pending appeal.

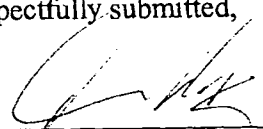
Lawyer alleges Client's fees were increased by Client's frequent contact with his office. Lawyer informed Client about the excessive contact and the increased fees that were being caused by her actions. Lawyer argued Client was not cooperative. She failed to provide complete discovery. The final order found Client was not cooperative in discovery. The court found that although there was some question as to all the time Plaintiff's counsel billed, there was no question

that the time was necessary to address the case driven by Plaintiff's conduct and goals. Unlike the trial judge, this panel had the opportunity to hear from Lawyer and Client regarding all communications between Lawyer and Client.

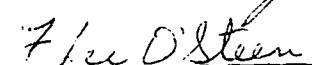
Conclusion

Client and Lawyer entered into a written Retainer Fee Agreement on January 6, 2015. Client received monthly itemized statements. When she did not receive a statement, she requested Lawyer provide the statement and Lawyer provided all statements. Client did not notify Lawyer of any problems with the billing. The charges of Lawyer are consistent with the written contract. Client and Lawyer orally agreed for Lawyer to represent Client in other ancillary actions. Client was charged for these actions according to the terms and rates of the written Retainer Fee Agreement. It is the finding of this panel that Client Joann Wright owes Lawyer The Law Office of Thomas F. McDow \$18,532.50, plus interest as provided by the Retainer Fee Agreement.

Respectfully submitted,



Connie H. Payne



F. Lee O'Steen



Barrett W. Martin

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Thomas F. McDow d/b/a Law Office)
Of Thomas F. McDow)

Plaintiff(s))

vs.)

Joann Wright)

Defendant(s))

IN THE COURT OF COMMON PLEAS

APPEAL FROM THE SOUTH CAROLINA
RESOLUTION OF FEE DISPUTE BOARD

RECEIVED

SEP 21 2016

SC Court of Appeals

Submitted By: Joann Wright
Address: 239 147th Street NE
Bradenton, FL 34212

SC Bar #: N/A
Telephone #: 704-293-0988
Fax #: N/A
Other:
E-mail: joannwright@live.com

NOTE: The coversheet and information contained herein neither replaces the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Fraud/Bad Faith (150) <input type="checkbox"/> Failure to Deliver/Warranty (160) <input type="checkbox"/> Employment Discrim (170) <input type="checkbox"/> Employment (180) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20__-NI-____-_____ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Assault/Battery (370) <input type="checkbox"/> Slander/Label (380) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture—Consent Order (850) <input type="checkbox"/> Other (899) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Other (799) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Sexual Predator (510) | <ul style="list-style-type: none"> <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Pre-Suit Discovery (670) | | <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Other (999) <p><u>South Carolina Fee Dispute Board</u></p> |

Submitting Party Signature: Joann Wright

Date: 09/19/2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

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PAUL W. DILLINGHAM
W. MARK WHITE*
W. CHAPLIN SPENCER, JR.*
R. ALEXANDER SULLIVAN*
R. BRENT THOMPkins*
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† Of Counsel

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RECEIVED

SEP 21 2016

SC Court of Appeals

August 15, 2016

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Joann Wright
239 147th Street, NE
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RE: Fee Dispute - McDow vs. Wright

Dear Ms. Wright:

Enclosed is the panel's report from the fee dispute hearing held on July 6, 2016.

Sincerely,

SPENCER & SPENCER, P.A.



Paul W. Dillingham

PWD:sgd
Enclosure

cc: Thomas F. McDow