

RECEIVED
NOV 08 2018
S.C. SUPREME COURT

Appellate Case No. 2018-000823

RESPONDENT.

PETITIONER *PRO SE*.

INDEX TO APPENDIX

Index	i
Record on Appeal from Appeal to the Richland County Court of Common Pleas	ii
Correspondence from Richland County Clerk of Court directing Petitioner to file a Return of Appeal; Received July 17, 2017	121
Correspondence from Petitioner transmitting Record on Appeal requested by Clerk of Court on July 17, 2017	123
Memorandum in Support of Appeal, filed December 20, 2017, inadvertently printed at	163
Order Denying Appeal from Decision of the Fee Disputes Board filed March 9, 2018	125
Correspondence from Richland Clerk of Court Transmitting Order Denying Appeal.....	127
Motion to Alter or Amend Pursuant to Rule 59(e) SCRPC filed March 20, 2018	128
Order Denying Motion to Alter or Amend filed April 4, 2018	135
Notice of Appeal from Order Denying Appeal from Decision of the Fee Disputes Board and the Order Denying Petitioner's Motion to Alter or Amend the Judgment filed on April 4, 2018.....	137
Petition for Order Staying Distribution of Fee Dispute Award	140
Order of the South Carolina Court of Appeals Dismissing the Petitioners Petition to Stay the Distribution of the Fee Dispute Award filed May 24, 2018.....	151
Petition for Rehearing and Request for Rehearing <i>en banc</i> filed June 7, 2018.....	152
Order of the South Carolina Court of Appeals denying Petition for Rehearing filed September 10, 2018.....	160
Order of Supreme Court of South Carolina granting Petitioner an extension until October 29, 2018 to file the Petition for Writ of Certiorari	161
Order of Supreme Court of South Carolina granting Petitioner until November 5, 2018 to file her Petition for Writ of Certiorari and Appendix	162
Memorandum in Support of Appeal, filed December 20, 2017, inadvertently printed at	163

TARA DAWN SHURLING V. JOHN DANIEL SPRINGER
2017-CP-40-00580

INDEX TO RECORDS SUBMITTED AS RETURN OF APPEAL
 PURSUANT TO INSTRUCTIONS OF THE
 OFFICE OF THE CLERK OF COURT FOR RICHLAND COUNTY

Index	1
Correspondence dated September 14, 2016 from the Fee Disputes Board concerning fee dispute filed by John Springer, #294365 with a copy of the Application filed by John Daniel Springer, SCDC #294365 and signed by him on August 22, 2016.....	2
Copy of Fee Contract.....	15
Email from Michelle Dennis, Fee Disputes Coordinator, regarding the fact that no written response was needed; dated September 15, 2016.....	18
Correspondence dated October 13, 2016 from Panel Chair giving Notice Of Hearing on November 17, 2016.....	19
Correspondence dated December 30, 2016, serving parties the Panel Report and Recommendations dated December 30, 2016, but not received by Respondent until January 4, 2017.....	20
Report and Recommendation dated and signed December 27, 2016.....	23
Series of Emails between Respondent and various parties regarding Respondent's desire to submit a Response to the Panel decision; dated between January 5, 2017 and January 23, 2017.....	35
Transmittal letter for Request for Reconsideration and/or Rehearing, Dated January 25, 2017.....	47
Request for Reconsideration and/or Rehearing	49
Copy of Notice of Appeal with Certificates of Service.....	99
Receipt from the South Carolina Bar for \$5,000.00 placed in trust pending appeal from panel decision.....	118
Certificate of Service on John Daniel Springer, #294365.....	119
Certificate of Service on Michelle Dennis, SC Bar.....	120



950 Taylor Street
PO Box 608
Columbia, SC 29202-0608
803-799-6653 Phone
803-799-4133 Fax
www.schar.org

September 14, 2016

ELECTRONIC OR POSTAL SERVICE MAIL
PERSONAL & CONFIDENTIAL

Tara Shurling
3614 Landmark Dr. Suite A
Columbia, South Carolina 29204

ADMINISTRATIVE
FEE
AN ATTORNEY'S FEE
OF THE LAW

Dear Ms. Shurling:

The South Carolina Bar has received an Application for the Resolution of Disputed Fee from John Springer #294365 claiming a disputed fee with you. A copy of the Application and any attachments are attached.

The Rules of the Resolution of Fee Disputes Board, as approved by the South Carolina Supreme Court effective March 30, 2016 can be viewed on our web site at www.schar.org. Please be aware that Rule 9(A) provides that once an application is properly filed by a client, the actions of the Fee Disputes Board are binding on the attorney. Please note that Rule 21 states that all matters are confidential except that where a party to a proceeding subsequently has to resort to legal proceedings in a court of record to appeal or to enforce the decision.

If you have any questions about the procedure or the status of this dispute, please contact me.

Sincerely,

Michelle Dennis

Michelle Dennis
Fee Disputes Coordinator
Public Services Division

Enclosures

Cc: Lisa Cotten
John Springer #294365



950 Taylor Street
 PO Box 608
 Columbia, SC 29202-0608
 803-799-6653 Phone
 803-799-4113 Fax
www.scbat.org

A GRASSROOTS GROUP
 PROFESSIONALISM
 AND EXCELLENCE
 IN THE LAW

September 14, 2016

By First Class U.S Mail

John Springer #294365
 4344 Broad River Road F2A120
 Columbia, South Carolina 29210

Dear Mr. Springer #294365:

The Application for Resolution of Disputed Fee concerning a matter with attorney Shurling of Richland county, and any supporting documents, has been referred by this office to the Chairman of the Fifth Circuit Panel of the Resolution of Fee Disputes Board. This will be processed in accordance with the Rules approved by the South Carolina Supreme Court, which were previously sent to you, and you will be contacted at the appropriate time. If you have not reviewed the Rules, please do so on the Bar website or let me know if you want a copy mailed. You should read them carefully so that you will fully understand the process.

The application and all matters concerning it will be treated as confidential.

Sincerely,

Michelle Dennis

Michelle Dennis
 Fee Disputes Coordinator
 Public Services Division



950 Taylor Street
 PO Box 608
 Columbia, SC 29202-0608
 803-799-6653 Phone
 803-799-4118 Fax
 www.scbat.org

September 14, 2016

ADVANCING JUSTICE,
 PROFESSIONALISM
 AND UNDERSTANDING
 OF THE LAW

BY FIRST CLASS MAIL AND ELECTRONIC MAIL
PERSONAL AND CONFIDENTIAL

Lisa Cotten Esq.
 P.O. Box 8113
 Columbia, South Carolina 29202

Dear Ms. Cotten:

Enclosed is an Application for Resolution of Disputed Fee submitted by John Springer #294365 claiming a fee dispute with Tara Shurling.

This is being referred to you as Chair of the Fifth Circuit Panel of the Resolution of Fee Disputes Board for such action as is appropriate under the Resolution of Fee Disputes program.

So that this matter may be followed and our files complete, we request that the South Carolina Bar be notified of the appointment of the "assigned member" and furnished copies of all correspondence, notices, actions and other documents pertaining to this matter.

Our function is to receive and forward applications and maintain complete files in connection therewith. By referring this matter to you, no decision has been made as to the appropriateness or the merits of the application and none should be inferred.

Please be aware that Rule 21 of the Resolution of Fee Disputes Board provides that "All proceedings of the Resolution of Fee Disputes Board are confidential except that where a party to a proceeding subsequently has to resort to legal proceedings in a court of record to appeal or to enforce the decision..."

PLEASE NOTE THAT THE NEW RULES ADOPTED BY THE SOUTH CAROLINA SUPREME COURT ON MARCH 30, 2016 APPLY TO THIS APPLICATION.

Please let us know if we may be of assistance in any way.

Sincerely,

Michelle Dennis

Michelle Dennis
 Fee Disputes Coordinator
 Public Services Division

Enclosures

Cc: Tara Shurling
 John Springer #294365

RECEIVED

016SEPT03

SEP 0 / 2016

South Carolina Bar

RESOLUTION OF FEE DISPUTES BOARD
OF THE SOUTH CAROLINA BAR

APPLICATION FOR RESOLUTION OF DISPUTED FEE

Please answer every question. If more space is needed, you may attach additional pages.

Submit copies of all documentation which may support your position, including canceled checks, receipts, letters, settlement statements, and statements for services rendered. Do not submit originals.

IF YOUR DOCUMENTATION CONSISTS OF 25 PAGES OR MORE, YOU MUST INCLUDE THREE (3) COPIES AS PART OF THE ORIGINAL APPLICATION AND DOCUMENTATION.

Please type or legibly print:

1. AMOUNT IN DISPUTE: \$ 15,600 (Fifteen thousand six hundred)
2. Your full name: John Daniel Springer #294365
 Your address: 4344 Broad River Rd. F2A120
 City/State/Zip: Columbia SC 29210
 Telephone Numbers: State, previous - no phone or e-mail * designee
 Work: *Home: 803-452-1040 Cell. _____
 E-mail address: *ginger-hurst@hotmail.com
☐ I consent to receive notification via email ☐ I do NOT consent to receive notification via email
 Are you active military? Yes ☐ No ☒
If yes:
 Are you currently deployed? Yes ☐ No ☐
 Are you scheduled for deployment? Yes ☐ No ☐
If yes:
 Date of Deployment: _____
3. Who is the Lawyer whose fee you are disputing?
 Lawyer's Name: Tara Dawn Shurling
 Lawyer's Address: 3614 Landmark Drive, Suite A, Columbia SC 29204
 Lawyer's Telephone Number: (803) 738-8627
 Lawyer's E-mail Address: tdslaw@shurlinglaw.com

4. Do you have a written fee contract with the Lawyer? Yes: ☐ No: ☒

If yes, attach a copy. If no, set out the terms of your oral fee agreement with the Lawyer.

NO, there is no written or oral contract between Shuching AND I.
She signed a contract for doing a third party for payment.
Did not "hire" her - sought for

5. When did you hire the Lawyer? (Date) (?) ^{consultation only} see above - first contacted JANUARY 2015
6. When did a dispute concerning the fee arise? (Date) May 18, 2015

7. Describe the legal services the Lawyer was hired to perform for you: (For example, will preparation, real estate transaction, insurance claim, divorce or domestic matter, criminal case, personal injury, or other): contacted to advise me in criminal appeal in
Federal court on state PER

8. List below the amounts and dates of all payments actually made to the Lawyer. (Attach copies of any documentation of payments and copies of billing statements you may have.)

DATE PAID	AMOUNT PAID
3/3/15	\$ 6000.00
3/3/15	\$ 1000.00
3/19/15	\$ 7500.00
4/14/15	\$ 2500.00
	\$

Has the Lawyer billed you for fees that you have not yet paid? Yes: ☐ No: ☒

If yes, what amount of additional fees does the Lawyer seek? \$

9. Why are you disputing the fees charged by the Lawyer? (Be very specific with your answer.)

SEE ATTACHMENT

10. Did you pay court costs or filing fees in advance? Yes: ☒ No: ☐
 If yes, what amount? \$ 5.00 (Five dollars)
 Do you have any receipts? If so, submit copies.
NO
11. List, as best you can recall, each time you met with the Lawyer and state how long each office visit lasted:
Have NEVER met Ms. Shurling - spoke by phone one time for @ 10 minutes prior to issue arising.
Call was recorded by prison phone system.
12. List, as best you can recall, each time you discussed your legal matter by telephone with the Lawyer and state how long each telephone call lasted: March 18, 2015 - 10 minutes;
April 8, 2015 - 15 minutes; May 18, 2015 - 15 minutes.
All calls recorded
13. List all legal papers, if any, the Lawyer prepared for you. Attach copies to this application:
Objections to Federal Magistrate's Report and Recommendation
although not authorized by me. @ Notice of Appeal
from Federal District Court - was authorized by me.
14. List all court appearances the Lawyer made on your behalf and state the amount of time each hearing or trial lasted.
NONE KNOWN
15. What is the status of your legal matter at this time? Federal House not yet denied;
Appeal to U.S. Fourth Circuit denied - with bundle pro se
16. List names, addresses, and telephone numbers of individuals who may have information about your fee dispute AND would be comfortable speaking to the board if we cannot locate you

NAME	ADDRESS	TELEPHONE #
* Katherine Hurst	5510 PAN PALM AVENUE CORCORAN, FL 32927	(803) 454-1040
* Larry Hurst	SAME	SAME

* Third party suggests that actual refund

17. Describe what you have done to try to resolve this dispute with the Lawyer (and/or partners or associates of the Lawyer) (for example, telephoned, wrote letters, sued, etc.) and the outcome of your attempts to resolve this dispute. Attach copies of any relevant documents:
- Letter sent to Shunkling explaining I would not be having her due to her unauthorized interference in district court. Refund of all deposits requested at that time. Shunkling did not respond.

18. Has the Lawyer acknowledged to you that your request for a refund is valid?

Yes ☐

No ☒

If yes, explain:

19. Describe any civil, criminal, or disciplinary proceedings you intend to bring or that you have already begun against the Lawyer based on the facts set forth in this application. Include the location and status of any such proceeding(s), as well as your involvement and any amounts awarded to you in such proceeding(s):

None at this time.

20. If you have been reimbursed by anyone for any portion of the fees you paid, state the amount received, the person/entity who made the payment, and the date of payment:

Four Hundred dollars (of \$16,000 paid) refunded to Katherine and/or Larry Hurst from "expense deposit" by Shunkling.

21. How did you learn of the Resolution of Fee Disputes Board?
Fellow PRISONER
23. Do you have an attorney representing you in this fee dispute? If so, please list: No
Current Attorney's Name: _____
Current Attorney's Address: _____
Current Attorney's Telephone Number: _____
24. If you wish to designate another person to act on your behalf regarding this dispute and to receive correspondence or notices for you, please identify that person
Name: Katherine & Larry Haast
Address: 5340 FAN Palm Avenue, Cocoa, FL 32927
Telephone Number: 888-459-1040

PLEASE CONTINUE TO THE NEXT PAGE.

IMPORTANT: LIMITATIONS AND AGREEMENTS

1. I hereby apply to the South Carolina Bar and to the Resolution of Fee Disputes Board to inquire into and resolve what I believe to be a dispute about the legal fee of a South Carolina attorney who represented me in an attorney-client relationship. I understand that by filing this application, I consent to the Board's hearing this matter, and I agree to abide by the Board's decision in the matter. I understand that I may withdraw this application at any time prior to a final disposition by the Board or any assigned member acting for the Board by giving written notice to the South Carolina Bar of my withdrawal of the application. Should I withdraw my application, I understand that I may not thereafter re file an application involving this same claim with the South Carolina Bar.
2. I hereby certify that the dispute has not previously been submitted to a court, commission, judge, or tribunal for disposition and that there is no action now pending before any court, commission, judge or tribunal to resolve this dispute.
3. I HEREBY ACKNOWLEDGE THAT I MUST KEEP THE CHAIR INFORMED, OF ANY CHANGE IN MY ADDRESS. I UNDERSTAND THAT MY CLAIM MAY BE DISMISSED IF THE CHAIR OR THE INVESTIGATING MEMBER CANNOT FIND ME TO DISCUSS MY CLAIM.
4. I HEREBY CERTIFY THAT I AM THE ACTUAL CLIENT IN THIS MATTER

Date: August 22, 2016 Signature of Applicant: John Daniel Springer

I, the undersigned say: I am the Applicant in the above matter, I have read the foregoing Application for Resolution of Disputed Fee and have read the Rules of Procedure, I know the contents thereof, and I certify that the same is true of my knowledge, except as to the matters and things which are therein stated upon my information or belief, and that as to those matters and things I believe them to be true

I certify (or Declare) under penalty of perjury that the foregoing is true and correct

Name of Applicant: JOHN DANIEL SPRINGER - 294365
 Street Address: 4344 Broad River Road, F2A120
 City: Columbia State: SC Zip: 29210
 Signature of Applicant: John Daniel Springer
 Date: August 22, 2016

Mail or deliver the completed application to
 Resolution of Fee Disputes Board
 South Carolina Bar
 Post Office Box 608
 Columbia, SC 29202-0608

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorney and Counselor at Law
3614 Landmark Drive
Suite A

E-Mail: tdslaw@shurlinglaw.com

Columbia, South Carolina 29204

(803) 738-8622
(Fax) (803) 738-1600

May 6, 2015

John Springer

Re: John Daniel Springer, #294365 v. Dennis Bush, Warden; 0:13-cv-03549-BHH

LEGAL FEES

Legal Fees – Federal Habeas		\$ 20,000.00
3/3/15 Payment Rec'd, Katherine Hurst, Wire In	6,000.00	
3/3/15 Transfer to Trust Account, Main PA Ck 3852 *See below	-1,000.00	
3/19/15 Payment Rec'd, Katherine Hurst, Cashier's Ck 0436214182	7,500.00	
4/14/15 Pmt. Rec'd, Katherine Hurst, Via Wire In	<u>2,500.00</u>	
Total Payments Received	15,000.00	-15,000.00
Legal Fee Balance		5,000.00
Legal Fee Discount Applied		<u>-5,000.00</u>
Legal Fee Balance		\$ 00.00

TRUST ACCOUNT

3/3/15 Deposit in Trust Account, Main PA Ck 3852	(\$ 1,000.00)
--	---------------

STATEMENT OF EXPENSES

March 3, 2015 through May 5, 2015

Expenses:

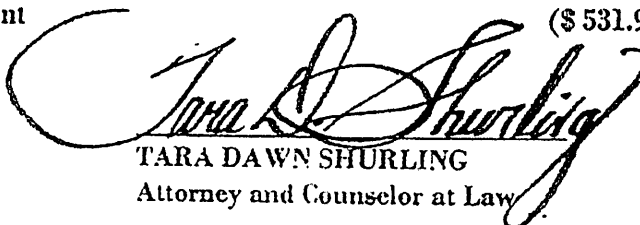
Paralegal (4.4 hrs. @ \$75.00/hour)	330.00
Bank Fees (Wire Fee Incoming 3/3/15)	15.00
Bank Fees (Wire Fee Incoming 4/14/15)	15.00
Collect Call 3/18/15	1.59
Copies (395 @ .25)	98.75
Postage	<u>7.69</u>
Total Current Expenses	\$468.03

Current Expenses Paid from Trust Acct. w/ Iolita Check No. 2374

468.03

Credit Balance Remaining in Trust Account

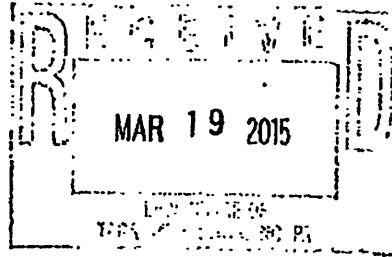
(\$ 531.97)


TARA DAWN SHURLING
Attorney and Counselor at Law

If your records show any previous payments not reflected on this bill, please provide me copies of cancelled checks and/or receipts and we will gladly adjust your bill.

Re John Daniel Springer

42635



Thank You
Tara D. Shurling

**NAVY
FEDERAL**
Credit Union

PO Box 3000
Merrifield, VA 22119-3000
navyfederal.org

68-7497
2560

Cashier's Check

Serial No.	Account No.	Date	Amount
0436214182	0000003004524710	03/19/15	\$*****7,500.00

Pay
to the
Order of

THE LAW OFFICE OF TARA DAWN SHURLING PA

REMITTER: KATHERINE D HURST

Jacqueline Hurst
Authorized Signature

2560749741

280912

1002

RECEIPT
Recipient Transfer
Reference Number 20150414-00012721

Branch	2150514	WALMART MONEY CENTER		
Payment Amount	2,500.00	USD	Rate	
Debit Amount	2,500.00	USD	Contract Number	
			Charge Party	None

Send Date	14APR2015	Value Date	14APR2015	Time:	15:27
------------------	-----------	-------------------	-----------	--------------	-------

Consumer X-Border Not D-F

Debit Party

D/1000088853063
 LAWRENCE M HURST OR
 KATHERINE D HURST
 5340 FAN PALM AVE
 COCOA FL 32927-2004

Recipient

Is Recipient a Bank? No
 /0037903
 LAW OFFICE OF TARA DAWN SHURLING
 3614 LANDMARK DR SUITE A
 COLUMBIA, SC 29205

Recipient's Bank

A/067011760
 CAPITAL BANK, NA
 MIAMI, FL

**Bank to Bank
 Information**

**Originator to Recipient
 Information**

JOHN D SPRINGER
 RETAINER FEE

RECEIPT
Recipient Transfer
Reference Number 20150303-00006678

Branch	2150514	WALMART MONEY CENTER		
Payment Amount	6,000.00	USD	Rate	
Debit Amount	6,000.00	USD	Contract Number	
			Charge Party	None

Send Date	03MAR2015	Value Date	03MAR2015	Time:	11:55
-----------	-----------	------------	-----------	-------	-------

Consumer X-Border Not D-F

Debit Party

D/1000088853063
LAWRENCE M HURST OR
KATHERINE D HURST
5340 FAN PALM AVE
COCOA FL 32927-2004

Recipient

Is Recipient a Bank? No
/0037903
LAW OFFICE OF TARA DAWN SHURLING
3614 LANDMARK DR SUITE A
COLUMBIA, SC 29205

Recipient's Bank

A/067011760
CAPITAL BANK, NA
MIAMI, FL

**Bank to Bank
Information**

**Originator to Recipient
Information**

JOHN D SPRINGER
RETAINER FEE

FEE AGREEMENT

THIS agreement is made and entered into by and between Tara Dawn Shurling, Attorney at Law, and Katherine Virginia Hurst, Mother of John Daniel Springer, hereinafter (Client), this 19th day of March, 2015. This agreement is entered with the full knowledge of Client herein.

Attorney Shurling agreed to represent Client regarding the following matter: Representation in Client's Petition for Writ of Habeas Corpus which has been filed in the United States District Court pursuant to 28 USC §2254. The Honorable Paige J. Gossett, United States Magistrate Judge, issued the Report and Recommendations on January 16, 2015. Client's request for a second extension of time to file Objections to the Report and Recommendations is currently pending. Attorney Shurling agrees to file a Notice of Appearance with the U. S. District Court and file the Objections to Report and Recommendation. Attorney Shurling further agrees to represent Client at any and all hearings which may be held in connection with such action.

Attorney Shurling agrees to provide the representation outlined above for a total fee of \$20,000.00. A general retainer of \$5,000.00 has been paid by Katherine Virginia Hurst on March 3, 2015. Katherine Virginia Hurst made a deposit into Counsel's Main PA account by way of \$6,000.00 wire transfer. Of this \$6,000.00 deposit, Counsel transferred \$1,000.00 to Counsel's Trust Account by way of Main PA Ch 3852, leaving a total paid on fees of \$5,000.00. On the date of this agreement Katherine Virginia Hurst has paid counsel an addition \$7,500.00 toward Attorney Shurling's legal fees in this matter. Said payment was made by way of Cashier's Check drawn on Navy Federal Credit Union.

The parties agree that the balance due on Attorney Shurling's fees, \$7,500.00, will be due and payable thirty (30) days from the date of this agreement, or on or before April 18, 2015.

The parties expressly agree that the general retainer, and all subsequent payments made are considered *earned when paid* and, as such, are non-refundable. Fee payments are not deposited in Counsel's trust account. Expense deposits are.

As noted above, Katherine Virginia Hurst has deposited \$1,000.00 in Counsel's trust account (See page 1, third paragraph). In addition to Counsel's fee, it is agreed that Katherine Virginia Hurst will be responsible for all costs accrued in performing the tasks agreed upon herein. Those costs include, *but are not limited to*, travel expenses computed at a rate of 65 cents per mile, meals¹, paralegals² (at \$75.00 per hour), legal assistant (at \$25.00 per hour), copies (25 cents each), research materials and online research services, printing costs and filing fees. Counsel agrees to keep detailed records of costs accrued. Expenses will be paid

Initial
Counsel

Initial
Katherine V. Hurst

Initial
Notary

Page 1 of 3

¹ All meals are billed at a flat rate of \$10.00 for breakfast, \$15.00 for lunch and \$25.00 for dinner.

² Counsel expressly reserves the right to use a Law Clerk to provide paralegal services provided that said services are billed at the paralegal fee rate of \$75.00 per hour.

out of funds deposited in Counsel's trust account by Katherine Virginia Hurst. In the unlikely event expenses run less than the amount deposited in the trust account, Counsel agrees to refund any balance at the end of the her involvement in this case. In the event costs were to exceed the amount deposited in trust, Counsel will bill Katherine Virginia Hurst for any balance due not covered by the deposit made in her firm's trust account. Katherine Virginia Hurst agrees to maintain a minimum trust account balance of \$500.00 until such time as this case is over and all activity on this file is completed

Under certain circumstances, Katherine Virginia Hurst and Client may be entitled to a refund of all, or a portion of, the fees paid in this matter *if Counsel failed to perform the duties contracted for herein*. Nothing herein affects Client's right to terminate his attorney-client relationship if at any time Client's chooses to do so.

In the event Katherine Virginia Hurst were to default on this agreement, and Counsel were required to take legal action on this debt, Katherine Virginia Hurst agrees that they will be responsible for any costs incurred by Tara Dawn Shurling in the collection of this debt including, but not limited to, legal fees.

Katherine Virginia Hurst acknowledges and agrees that the scope of legal representation provided for in this Agreement **EXTENDS ONLY TO THE REPRESENTATION OF THE CLIENT AS SET FORTH HEREINABOVE AND DOES NOT EXTEND TO THE REPRESENTATION OF CLIENT IN FURTHER ACTIONS WHICH MIGHT BE INITIATED.** *The fees agreed to herein specifically do not cover any subsequent appeal to the Fourth Circuit Court of Appeals from the denial of the habeas petition filed in this action. Should such an appeal become necessary, and Client desires to hire Counsel to perfect such an appeal, a separate fee would be required to retain Counsel to perfect the appeal.*

COUNSEL AGREES TO USE EVERY BEST EFFORT IN REPRESENTING THE CLIENT IN THIS MATTER; HOWEVER, CLIENT ACKNOWLEDGES THAT COUNSEL HAS GIVEN NO ASSURANCE REGARDING THE OUTCOME OF THIS MATTER OR THE PROBABILITY FOR SUCCESSFUL DISPOSITION. COUNSEL HAS EXPRESSLY ADVISED KATHERINE VIRGINIA HURST AND CLIENT THAT THE CHANCES OF PREVAILING IN ANY FEDERAL HABEAS ACTION ARE NOT HIGH.

Consistent with South Carolina Rules, after the completion of the legal services described herein, Counsel will maintain client's file in storage for a minimum of six (6) years. After the completion of the services described herein client's file will be assigned a closed file number and moved to an offsite storage facility. At the end of the six (6) year time period, Counsel will destroy the entire hardcopy of the file. Counsel may retain a digital copy of all, or portions of, this file in her discretion. At the conclusion of Counsel's

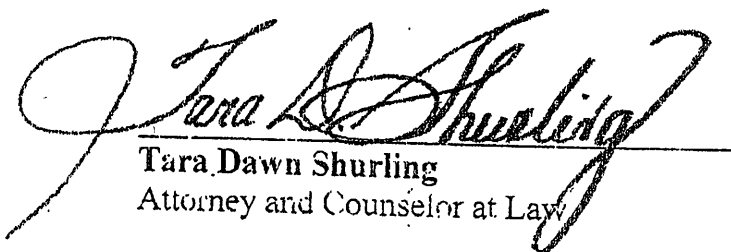
Initial
Counsel

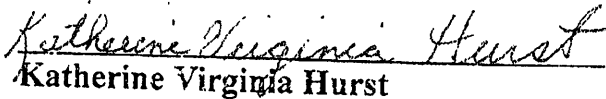
Initial *K.V.H.*
Katherine V. Hurst

Initial *T.D.S.*
Tara Dawn Shurling

representation, Client has the right to take possession of the case file upon written request. Any such request must be received within six (6) years of the last action taken on the file by Counsel. If Client takes possession of his file, Counsel is not required to maintain a copy of the file and will not likely keep copies of all the file contents. In the event Client has a subsequent Appeal in which he chooses not to be represented by Counsel, she will turn all documentation from her file necessary for the appeal over to counsel of record for the appeal. HOWEVER, she may or may not choose to maintain copies of those records in her hard copy file. Client must direct Attorney Shurling *in writing*, when and if, he chooses to have his file turned over to any third party, *including* another lawyer or Katherine Virginia Hurst.

Signatures below evidence the intent of the parties to contract for legal services under the terms outlined above.


Tara Dawn Shurling
Attorney and Counselor at Law


Katherine Virginia Hurst

Please Initial Pages 1 and 2 of Agreement

SUBSCRIBED AND SWORN TO
before me the signature of KATHERINE VIRGINIA HURST

This 1st day of March, 2015.

Sharon H. McCullister (L.S.)

Notary Public for South Carolina

My Commission Expires: Jan. 16, 2017

**TDSLAW**

From: Michelle Dennis [michelle.dennis@scbar.org]
Sent: Thursday, September 15, 2016 9:34 AM
To: 'tdslaw@shurlinglaw.com'
Subject: RE: Fee Dispute Received- SC Bar

Ms. Shurling:

I received your voice mail. You do not need to respond to anything at this time. The investigator will contact you once the Circuit Chair has assigned it. It's a good idea to review the rules and the process on our website. The link is below. Let me know if you have any other questions.

Kind Regards,

Michelle Dennis
SC Bar
Fee Disputes Coordinator
803-799-6653 X 163
mdennis@scbar.org
www.scbar.org

From: Michelle Dennis
Sent: Wednesday, September 14, 2016 12:13 PM
To: 'tdslaw@shurlinglaw.com'
Subject: Fee Dispute Received- SC Bar

Dear Ms. Shurling:

Please see the attached letters and documentation. This email is to serve as our notice to you that the application has been received and processed here at the South Carolina Bar.

You will be contacted by the investigating attorney at the appropriate time regarding this matter. Please visit our web site to review the rules and the Fee Dispute process.

<http://www.scbar.org/Public-Information/Fee-Disputes>

Michelle Dennis
SC Bar
Fee Disputes Coordinator
803-799-6653 X 163
mdennis@scbar.org
www.scbar.org

9/15/2016

THE LAW OFFICE OF NASHIBA BOYD

Mailing Address:

4611 Hard Scrabble Road, Box 362
Columbia, South Carolina 29229

Office Address:

1720 Main Street, Suite 303
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nashibaboyd@outlook.com

October 13, 2016

John Daniel Springer
Inmate # 294365
4344 Broad River Road, F2A120
Columbia, SC 29210

Ginger Hurst (Designee of Mr. Springer)
5340 San Palm Avenue
Coco, FL 32927

Tara Dawn Shurling, Esquire
3614 Landmark Drive, Suite A
Columbia, SC 29204

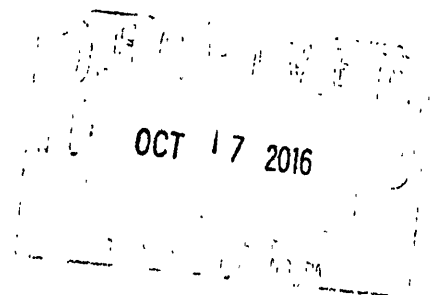
Re: Springer v. Shurling – Legal Fee Dispute

Dear Mr. Springer and Ms. Shurling,

I am the chair of the hearing panel assigned to investigate and resolve the dispute **John Springer v. Tara Shurling, Esquire** submitted on August 22, 2016. A panel hearing has been scheduled for **9:00 a.m. Thursday, November 17, 2016** at the offices of the Clingman Law Firm, LLC located at 1522 Richland Street, Columbia, South Carolina 29201.

The panel also consists of Sarah Clingman, Esquire, Clingman Law Firm LLC, 1522 Richland Street, Columbia, South Carolina, 29201; and Megan Gresham, Esquire, South Carolina Attorney General's Office, P.O. Box 11549, Columbia, South Carolina, 29211-1549.

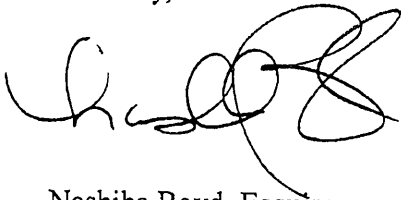
Please be advised that this hearing is *de novo*, meaning that no reports or other information from any other assigned member of the Resolution of Fee Disputes Board will be considered. Each party may have witnesses present and may present documentary evidence at the hearing. Parties should be prepared to present all evidence that they wish to be considered during the hearing. If a party or witness cannot, for any reason, be present at the hearing, a written statement shall be submitted which will be the complete statement of the party or witness. If a party or a witness fails to appear, then the hearing panel shall render its decision based on the available testimony and documentation. Special consideration shall be given to Mr. Springer, and all reasonable attempts shall be made to ensure that his is available via telephone conference.



Additionally, each party may proceed without counsel or be represented by counsel of the party's choosing and at the party's own expense. The Board is not required by law to appoint any attorney to represent a party; however, upon request of a party, a member of the Board may be appointed to represent the party before the hearing panel if, in the discretion of the circuit chair, good cause is shown.

Should you have any questions, please feel free to contact me at (803) 338-1685 or via email at nashibaboyd@outlook.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nashiba Boyd', with a large, stylized flourish at the end.

Nashiba Boyd, Esquire
Panel Chair

Cc:

Sarah Clingman, Esquire – Panel Member (via email sarah@clingmanlaw.com)

Megan Gresham, Esquire – Panel Member (via email mgresham@scag.gov)

Lisa L. Cotten, Esquire – 5th Judicial Circuit Co-Chair (via email lcotten@mklawgroup.com)

Michelle Dennis, S.C. Bar Fee Disputes Coordinator (via email michelle.dennis@scbar.org)

MIKE KELLY

LAW GROUP, LLC

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December 30, 2016

John Daniel Springer #294365
4344 Broad River Road, F2A120
Columbia, South Carolina 29210

Tara Dawn Shurling, Esquire
3614 Landmark Drive, Suite A
Columbia, South Carolina 29204

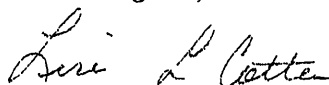
Re: Resolution of Fee Disputes Board
John Daniel Springer v. Tara Dawn Shurling, Esq.

Dear Mr. Springer and Ms. Shurling:

Enclosed please find a copy of the report and recommendation of the Resolution of Fee Disputes Board Panel assigned to investigate this matter. Pursuant to Rule 17 of the revised Rules and Regulations of the Fee Disputes Board, the decision of the panel shall constitute a final decision of the Board. No appeals may be made, except as provided in Rule 20 of the Rules and Regulations of the Fee Disputes Board.

It is my understanding that prior to signing the fee agreement, the Claimant's mother paid a total of \$13,500 of which \$1,000 was placed into the trust account. The Claimant's mother made a subsequent payment of \$2,500, and the Respondent waived the remaining \$5,000 balance; therefore, the Claimant's mother paid a total of \$15,000 towards the \$20,000 fee. The panel finds that the Respondent earned \$10,000 of the fee paid to her. The panel further finds that the Respondent is to refund the remaining amount in the trust account (if she has not already done so), as well as refund an additional \$5,000 to the claimant. The refund should be made within 30 days of receiving this letter.

Kindest Regards,



Lisa Long Cotten

Cc: Michelle Dennis, SC Bar Fee Disputes Coordinator

Cc: Katherine and Larry Hurst
5340 Fan Palm Avenue
Cocoa, Florida 32927

Enclosure(s) as stated

STATE OF SOUTH CAROLINA	)	IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	FEE DISPUTES BOARD
	)	
John Daniel Springer,	)	
	)	
Petitioner,	)	
	)	
vs.	)	REPORT AND RECOMMENDATION
	)	OF PANEL
Tara Dawn Shurling,	)	
	)	
Respondent.	)	
_____	)	

Pursuant to SCACR 416, Rule 11, the undersigned makes the following findings and recommendations as to the above-captioned fee dispute:

SCOPE OF INVESTIGATION

In making this report, the undersigned panel has read and reviewed the Petitioner's Application for Resolution of Disputed Fee as well as reviewed documents submitted by Respondent at the Panel Hearing. The Panel also considered all statements made by Petitioner, his mother, Virginia Hurst, and Respondent during the Panel Hearing.

FACTUAL BACKGROUND

This dispute arises out of Respondent's representation of Petitioner in federal habeas corpus action. Petitioner contends that he never hired respondent but instead sought her for consultation only. All payments made to Respondent were made by Petitioner's mother, as a third-party payor only. Petitioner stated that he never reviewed, agreed to or signed a Fee Agreement with Respondent. Respondent contends that her dealings were with Petitioner's mother because Respondent is incarcerated and the representation was on an expedited basis but she was clear that Petitioner was the client in this matter. Respondent stated that she clearly laid out the fees and scope of her representation prior to the fee agreement being signed by Petitioner's mother. Further, Respondent produced a properly executed copy of the Fee Agreement signed by Petitioner's mother, which expressly limited her representation of Petitioner to the "[r]epresentation in Client's petition for Writ of Habeas Corpus which has been

filed in the United States District Court pursuant to 28 USC §2254. The Honorable Paige J Gossett, United States Magistrate Judge, issued the Report and Recommendations on January 16, 2015. Client's request for a second extension of time to file Objections to the Report and Recommendations is currently pending. Attorney Shurling agrees to file a Notice of Appearance with the U.S. District Court and file the Objections to Report and Recommendation. Attorney Shurling further agrees to represent Client at any and all hearings which may be held in connection with such action."

The Fee Agreement was signed by Petitioner's Mother and Respondent on March 19, 2015 at the agreed upon flat rate of \$20,000.00. Prior to signing the agreement, Petitioner's Mother paid Respondent \$13,500.00 in the following amounts:

03/03/2015	-	6,000.00
03/19/2015	-	7,500.00

\$1000.00 was placed in Respondent's trust account to be used for expenses per the fee agreement, and the remaining \$7,500.00 would be paid in installments until the full amount had been paid to Respondent on or before April 18, 2015. On 04/15/2015, Petitioner's Mother made a final payment of \$2500.00 and Respondent decided to waive the remaining balance of \$5000.00.

At the time that Respondent was hired, Petitioner had already filed a pro se conviction relief petition (PCR) which had been denied and a habeas corpus petition, which was still pending. Petitioner asserted that he sought the assistance of Respondent to determine whether he should continue with the habeas corpus petition or attempt a second PCR petition. Petitioner stated that he was assured by his mother that Respondent would come to the jail to discuss these matters with him and that is why Petitioner's mother hired Respondent. All parties agreed that Respondent never visited Petitioner in jail. Both sides agree that Respondent did speak with Petitioner via telephone on at least two occasions, but they disagree about the content and duration of those conversations. Respondent claims that she made it clear to Petitioner that she would only be taking over the habeas corpus petition. Petitioner claims that he never authorized Respondent to submit anything related to the habeas petition and in fact, he stated that he had already drafted his own objections to the Magistrate's Report and did not need Respondent to

draft these responses. He reiterated that he merely wanted advice on how to proceed at this juncture of his appeal.

Respondent provided the panel with email correspondence from Petitioner's mother confirming that Respondent had been hired as Petitioner's attorney and would be handling the habeas petition. Respondent also stressed the express language of the Fee Agreement that Petitioner's mother signed upon paying the requested fees. Petitioner's mother advised the panel that she did not clearly understand the limitations of Respondent's representation and therefore could not explain those limitations to her son. Petitioner's mother stated that she thought that Respondent would communicate more with Petitioner and that she did not realize that she would be responsible for explaining everything to her son. Respondent countered that because of Petitioner's incarcerated status, it is common for her to communicate with relatives or other third parties and not directly with the client. Respondent stated that based upon her interactions with Petitioner's mother, Respondent believed that she could understand the scope of Respondent's representation of Petitioner.

FINDINGS

The Petitioner contends that because Respondent failed to obtain his written consent to the third-party fee agreement, Respondent was never truly hired as his attorney. He further asserts that even if there is a valid fee agreement, the fees charged by Respondent were not reasonable considering the services provided to him.

The Respondent contends that the fee agreement was proper under the South Carolina Rules of Professional Conduct. Respondent also contends that she properly represented Petitioner per the scope of the fee agreement.

After consideration of all the information and a review of all documents received from both parties, and consideration of the factors outlined in the South Carolina Rules of Professional Conduct Rule 1.5(a) determining the reasonableness of a fee, Rule 1.5(b) determining the scope of representation, Rule 1.5(f) regarding advance payment of fees, and Rule 1.8(f) regarding third party payors the undersigned panel finds the following:

Rule 1.5(a): Reasonableness of Fee

The factors to be considered in determining the reasonableness of a fee include the

following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

Factor 1 – Time and labor required, the novelty and difficulty of the questions involved, and the skills requisite to perform the legal service properly.

During the hearing, Respondent never indicated that this matter was anything other than routine in scope of difficulty. However, she did indicate that the timeline to complete Mr. Springer's Objections to the Report and Recommendation of the Magistrate Judge was limited. Respondent was retained by Petitioner's mother on March 19, 2015 and Petitioner's pleading were due March 26, 2015. In her communication with Petitioner's mother, Respondent indicated that she would ask the Court for additional time in which to file the Objections, but during her testimony at the hearing, she stated that since Petitioner had already been granted two extensions, it was unlikely that additional time would be given. And in fact, additional time was not initially granted, but Respondent did obtain an additional weekend to work on the objections and filed the pleadings on March 30, 2015.

In an email dated, March 17, 2015, Respondent informed Petitioner's mother that "[t]he problem is that there is a tremendous amount of work that needs to be done to draft the objections. It can be done but, it will be tough to get done in time. I have to make sure the court would be likely to give me a little more time to get the work done. Otherwise, the best I will be

able to do is outline what I think the main points are that need to be cleaned up and argued in the objections. Although that is better than him doing it without any guidance, obviously, it would be better if I can go through everything and do it." This shows that Respondent made it very clear, two days before the Fee Agreement was signed, that the work needed to be done was on an expedited timeline and she warned that she may not be able to submit thorough work product due to those time constraints. Petitioner's mother still moved forward with hiring Respondent to complete the work.

Based upon industry norms, the panel found that it should have taken no more than 10-15 hours to draft Objections to a Magistrate's Recommendations, not having been involved at any prior stage of the proceedings. This time estimate is in line with Respondent's testimony that she completed the pleadings over the weekend and the fact that she has undoubtedly drafted many of these before and should be able to use much of the same case law.

Factor 2 - The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.

Respondent did not indicate that her representation of Petitioner precluded her from taking on additional cases or resulted in missed opportunity. However, she did advise Petitioner's mother that "people usually hire me on the front end and I have months to do all the work that I would now have to do in weeks." She made it clear that the limited timeline would mean that she would have to spend quite a bit of time on Petitioner's matter to get it completed by the impending deadline. It is reasonable to believe that Respondent focused her attention on Petitioner's matter to ensure that it was timely filed, which means she could not focus on other matters during this period. During the hearing, Petitioner stated that although he had worked on his own draft of the pleading, he did not send his draft to Respondent. Based on this testimony, it appears that Respondent created the Objections from the record and evidence provided to her from Petitioner in a period that was far less than the time she is accustomed to having to complete such pleadings.

Factor 3- The fee customarily charged in the locality for similar legal services.

When the hearing panel asked Respondent about the customary fee charged for such matters, she was unable to give a clear answer. She stated that because she is normally retained earlier in the process, she could not give a price comparison for just this part of the process. She stated that her fee was based upon the urgent nature of getting the pleading filed timely. She stated that if she were compelled to give an hourly rate, she would charge about \$500 per hour for her services but she advised that she rarely charges an hourly rate, instead preferring a flat rate arrangement for her clients.

Respondent was also unable to tell the panel what other attorneys in the area normally charge for such matters, therefore, the panel had to inquire about this from other members of the bar who have similar practices. The panel received an estimate of approximately \$300 per hour for similar services and was unable to obtain flat fee pricing for such matters.

The panel finds that Respondent's proposed hourly rate is appropriate because she been in practice for over 25 years and she is certainly regarded as the best lawyer for this type of case. During Petitioner's testimony, he repeatedly stated that Respondent was "the best of the best" and that "he knew that if anyone could help him, it would be her." Her practice appears to be limited to appellate work in this area of law, so a higher hourly rate is most likely justified.

Factor 4 - The amount involved and the results obtained.

Respondent charged Petitioner's mother \$20,000.00 to "file a Notice of Appearance with U.S. District Court and file the Objections to Report and Recommendation." She also agreed to represent Petitioner at "any and all hearings which may be held in connection with such action." Upon initial impression, the fee does seem quite large for such a limited scope of work and representation. Since the fee is of a "flat fee" nature, it is difficult to quantify whether the fee is justified for the work completed on Petitioner's behalf.

Respondent filed the Objections with the court on March 30, 2015 and received the opinion and order of the court denying the habeas petition and granting the state's motion for summary judgment just one day later March 31, 2015 which was an unfavorable result for the client. However, based upon Petitioner's indecision about abandoning the habeas petition it appears that even Petitioner believed that he was unlikely to prevail on this matter. The panel has no doubt that Respondent's work was competent and believe that Petitioner would not be demanding a refund had he prevailed on the matter.

Factor 5 - The time limitations imposed by the client or by the circumstances.

Same analysis as factors 1 and 2.

Factor 6 - The nature and length of the professional relationship with the client.

Prior to this agreement, Petitioner had no prior professional relationship with Respondent. She did not handle his prior PCR action and she had not assisted with his initial filing of the habeas petition. Petitioner actively sought out the assistance of Respondent because he thought that someone with her experience could help him prevail in this matter. During the panel hearing, Petitioner indicated that he only wanted to meet with Respondent to discuss his case and he never agreed to hire her to file the Objections; therefore, she acted outside the scope and nature of the representation. However, before the Fee Agreement was even filed, Petitioner's mother was contacting Respondent's office regarding notifying the courts that he was now represented. That shows that Petitioner and his mother were eager to get Respondent started on his case because they believed that with her assistance Petitioner could prevail.

Respondent's representation was for a very short duration of time. However, the emails provided by Respondent show that she was very clear with Petitioner's mother that she was coming in at the "tail end" of the matter and that her representation would be of a shorter duration than her normal cases.

Factor 7 - The experiences, reputation, and ability of the lawyer or lawyers performing the services.

During the hearing and in correspondence from Petitioner to Respondent, Petitioner stated that he believed that Respondent was one of the best appellate lawyers in the state. In fact, Petitioner referred another inmate to Respondent. He believed that her experience, reputation and ability was worthy of a top fee. The panel agrees that Respondent is one of the most experienced attorneys who does appellate work, she has a great reputation for her work and is good at what she does.

Factor 8 - Whether the fee is fixed or contingent.

The fee in this matter was fixed and not contingent on the outcome of the matter. Respondent agreed to not only file the Objections, but she also agreed to represent Petitioner in any hearings that related to his habeas petition without additional charges or fees. Had the Objections not been denied and a hearing held on the matter, Respondent would have continued to represent Petitioner.

The Fee Agreement was a properly executed contract directly intended for the benefit of a third party and the panel agrees that the agreement holds up under contract law. Additionally, the nature of flat fee pricing is that sometimes the attorney does less work than anticipated and sometimes the attorney does more work than anticipated. Either way, the set pricing remains the same.

After the denial of the habeas petition (on April 14, 2015), Petitioner's mother contacted Respondent's office about the her going out to the jail to see Petitioner and inquiring about the cost of this visit. This gives the appearance that Petitioner's mother knew that Respondent had completed her obligations of the initial fee agreement and additional services would cost additional monies. Therefore, it appears that Petitioner's mother understood the scope of Respondent's representation under the flat fee agreement.

Rule 1.5(b): Scope of Representation

The Fee Agreement provided by Respondent specifically describes the scope of services covered, including Respondent's agreement "to file a Notice of Appearance . . . and file . . . objections . . . Attorney further agrees to represent Client at any and all hearings which may be held in connection with such action." She further clearly states in bolded and capitalized letters later in the Fee Agreement that the scope of services does not extend "to the representation of Client in further actions which might be initiated . . . including appeal to the Fourth Circuit . . ."

Rule 1.5(b) states that "the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible *shall* be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation . . . [A]ny changes in the basis or rate of the fee or expenses *shall* be communicated to the client, preferably in writing." Emphasis added. While Petitioner was aware of the services provided, or to be provided, by Respondent, there is no indication that he was provided with the Fee Agreement

signed by his mother or that he was aware of the limited nature of Respondent's representation. While he cooperated with Respondent by providing information necessary for her to complete the services provided, Petitioner and his mother both expressed confusion about the scope of services and the fees charged.

In the materials provided by Respondent, one e-mail communication from Petitioner's mother stated that she was running out of money and didn't want her son to know. While Respondent stated that she was very clear with Petitioner's mother that both she and Petitioner were her clients and that she could not withhold information from him, there was no clear indication that Petitioner was aware of the scope of services or legal fees charged until after the completion of the legal services.

Respondent's Fee Agreement named Petitioner's mother, as the client; however, there is no indication that she was legally authorized by Petitioner to act for him as an agent or other legal fiduciary, and therefore, we believe all legal services performed were for Petitioner and should have been with his consent and direction. Petitioner's mother's capacity under the Fee Agreement was as a third party who agreed to provide payment of the legal fees incurred and not as a client as discussed in the Third-Party Payors section below.

Respondent admits that she relied on Petitioner's mother to convey information and materials to Petitioner. Based upon the emails provided by Respondent, she frequently directed communications to Petitioner through his mother rather than personally meeting with or speaking with the client. The panel does not believe that it was appropriate for Respondent to rely on her communications with or through Petitioner's mother to establish the scope or nature of her representation of Petitioner. We find that Petitioner's claims that he did not hire Respondent and did not know that she was filing the Objections on his behalf to be false. Based upon the evidence provided, it appears that he was certainly aware of Respondent's role in drafting the Objections and later praises them. However, there is no evidence that Petitioner was aware of the EXTENT of the agreed upon legal services and find it credible that he was truly under the impression that not only would Respondent be filing the Objections, but that her representation would extend beyond that point. Therefore, the panel does not believe that the scope of Respondent's representation was communicated to Petitioner as required under these rules.

Rule 1.5(f): Advance Fees

According to the South Carolina Rules of Professional Conduct, “[a] lawyer may charge an advance fee, which may be paid in whole or in part in advance of the lawyer providing those services, and treat the fee as immediately earned if the lawyer and client agree in advance in a written fee agreement which notifies the client:

- (1) of the nature of the fee arrangement and the scope of the services to be provided;
- (2) of the total amount of the fee and the terms of payment;
- (3) that the fee will not be held in a trust account until earned;
- (4) that the client has the right to terminate the lawyer-client relationship and discharge the lawyer; and
- (5) that the client may be entitled to a refund of all or a portion of the fee if the agreed-upon legal services are not provided.

Comment [10] to Rule 1.5 says that “A lawyer may treat a fee paid in advance of providing services as the property of the lawyer and deposit the fee in the lawyer’s operating account, rather than hold the fee in trust, if the client agrees in a written fee agreement which complies with paragraph (f)(1) through (5), and the fee is reasonable under the factors listed in Rule 1.5(a). The language describing such arrangements varies, and includes terms such as flat fee, fixed fee, earned on receipt, or nonrefundable retainer, but all such fees are subject to refund if the lawyer fails to perform the agreed-upon legal services.” The questions before the panel are whether Petitioner agreed to being represented by Respondent and whether Respondent performed the agreed to legal services. The panel finds that while Respondent failed to obtain any written consent from Petitioner, the evidence suggests that he consented to Respondent being hired as his attorney. But, the evidence is not clear whether Respondent performed the agreed to legal services. All parties involved repeatedly stated that Respondent was supposed to go and speak with Petitioner in person. That never occurred. While the fee agreement did not address this meeting, there is no evidence that Petitioner was aware of the limited scope outlined in the Fee Agreement because he did not sign it and per his testimony, he never even saw it. Thus, since there were tasks not performed as agreed, the fee paid to Respondent is subject to being returned.

Rule 1.8(f) Third Party Payors

Respondent and Petitioner's mother entered a Fee Agreement on March 19, 2015. The written Fee Agreement in this matter, provided by Respondent states the agreement is between Respondent and "*Katherine Virginia Hurst, Mother of John Daniel Springer*" (Client). There is no indication that Petitioner's mother is acting in any legal fiduciary capacity for her son and throughout the agreement, Respondent uses "Client" as if Petitioner is the Client. Therefore, the panel concluded that Petitioner is the Client and his mother is the person paying for the legal services under the Fee Agreement.

Rule 1.8(f) states that "[a] lawyer **shall not** accept compensation for representing a client from one other than the client unless:

- (1) the client gives informed consent;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

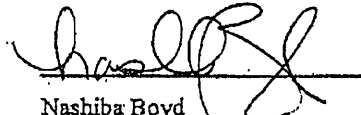
(3) information relating to representation of a client is protected as required by Rule 1.6. Rule 1.0(g), the term Informed Consent "denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated reasonably adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Comment [7] thereto states that "obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence." Because the acceptance of payment from a third party creates an inherent conflict of interest as described under Rule 1.7(a) which prevents a lawyer from representing a client "if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: . . . (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to . . . a third person." Rule 1.7(b) permits a lawyer to undertake representation in situations where a conflict of interest exists under 1.7(a) if "each affected client gives informed consent, confirmed in writing." Rule 1.7(b)(4). Under Rule 1.0(b), the term "confirmed in writing, when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent." We do not find that the inherent conflict of interest created by Petitioner's

mother agreement to pay Respondent's legal fees was effectively communicated to Petitioner and we could find no indication that Petitioner's informed consent was confirmed in writing.

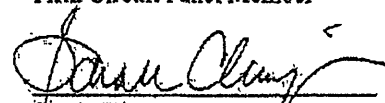
Conclusions

Based upon the foregoing, the panel finds that while Respondent's fee may have been reasonable under the circumstances, her failure to (1) communicate the scope of her representation to the client; (2) fully perform the agreed upon legal services, and (3) obtain client's written informed consent to the inherent conflict of interest created by the third-party payor agreement require that some of the fees paid by Petitioner's mother be returned. Based upon industry norms of 15 hours of work on the Objections and 5 additional hours to compensation Respondent for her meetings with Petitioner's mother, telephone calls with Petitioner, as well as the time it took to obtain information from the Attorney General's Office about Petitioner's case, the panel finds that Respondent should be compensated for 20 hours of work at her normal hourly rate of \$500. The panel finds that Respondent is entitled to \$10,000.00. Respondent is also entitled to all fees billed against the \$1000.00 held in trust as a retainer. Petitioner is entitled to the unearned fees remaining in the trust account that have already refunded by Respondent. Respondent should refund the amount of \$5,000.00 to Petitioner.

Respectfully Submitted,


Nashiba Boyd
Fifth Circuit Panel Chair


Megan Grisham
Fifth Circuit Panel Member


Sarah Clingman
Fifth Circuit Panel Member

Columbia, South Carolina
December 27, 2016

From: Lisa Long-Cotten [lcotten@mklawgroup.com]
Sent: Thursday, January 05, 2017 1:20 PM
To: tdslaw@shurlinglaw.com
Cc: Michelle Dennis (michelle.dennis@scbar.org)
Subject: Fee Dispute Appeal
Good Afternoon Tara,

I have confirmed that your only recourse is to file a Circuit Court appeal. There is no provision for a reconsideration of a panel decision per the Rules. I believe you will just need to articulate your exceptions to the recommendation and let the Circuit Court indicate whether it believes it creates grounds to vacate the decision. Please note that you will need to place the full amount of the refund on deposit with the Bar while the matter is being appealed.

Lisa

Lisa Long Cotten
Attorney

 Logo

500 Taylor Street, Ste 400, Columbia, SC 29201
P.O. Box 8113, Columbia, SC 29202
Office: 803.461.2160 Fax: 803.252.7145



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From: Michelle Dennis [michelle.dennis@scbar.org]
Sent: Monday, January 09, 2017 10:40 AM
To: 'TDSLAW'; lcotten@mklawgroup.com
Cc: nashibaboyd@msn.com; mgresham@scag.gov; sarah@clingmanlaw.com
Subject: RE: Fee Dispute Appeal in the John Daniel Springer matter
Ms. Shurling:

I just wanted to respond and let you know that I did receive your voice mail about this as well. The next step per the rules is the appeal to the Circuit Court. I understand your principal stand here, but that is next step per the rules. It's up to you to petition the panel, but that is the reason the panel – versus the individual assigned member- exists so that there are multiple folks that hear about the claim. This is not a court process and these attorneys do volunteer to help the board regarding these disputes. So please do keep that in mind.

Best,

Michelle

Michelle Dennis
SC Bar
Fee Disputes Coordinator
803-799-6653 X 163
mdennis@scbar.org
www.scbar.org

From: TDSLAW [mailto:tdslaw@shurlinglaw.com]
Sent: Thursday, January 05, 2017 5:29 PM
To: lcotten@mklawgroup.com
Cc: Michelle Dennis; nashibaboyd@msn.com; mgresham@scag.gov; sarah@clingmanlaw.com
Subject: Fee Dispute Appeal in the John Daniel Springer matter
Importance: High

Lisa:

Thank you for your response to my inquiry. Unfortunately, I think this issue represents a real problem with the system in place for fee disputes. Regrettably, bringing my concerns to the attention of the Bar, and if necessary, the Court will cost me far more in my time than the amount in dispute is worth. That, unfortunately, is often the case with a point of principal.

While the rules do not provide for a request for reconsideration, Rule 20 provides for an appeal only on very narrow grounds; all of which involve essentially accusing one or more panel members of improper conduct. That leaves a lawyer with no recourse if the decision of a panel, as reflected in their report, is based on either inaccurate factual findings or a misinterpretation of those facts. That is a problem that needs to

be addressed, and it looks as though I will be the unfortunate lawyer to raise the issue.

Although the rules do not provide for a request for reconsideration, I do not believe they preclude such a request either. Therefore, in order to preserve an appropriate record, I will be serving each of the panel members with a formal request for reconsideration no later than January 16, 2017. Since there are no formal guidelines for such a request, I will apply Rule 59(e) to this situation. That would make my request due ten (10) days from the receipt of your findings; January 4, 2017. Since that would put the due date on Saturday, January 14, 2017, that would move the due date to Monday, January 16, 2017. As a practical matter, I will likely get it out much sooner.

Your letter was dated December 30, 2016, however it was not mailed until Tuesday, January 3, 2017. I appreciate the fact that you indicated you would not question those extra days. I went back and checked Rule 20 and the due date is actually calculated from the date you *mailed* the report not the date on the letter as I initially recalled. Fortunately, my paralegal saved the envelope. Assuming the panel sticks to its position, and simply declines to review my submission, I will appreciate them doing so in writing. In the unlikely event I have not heard anything further from the panel before the due date for an appeal to the circuit court, I will go ahead and file an appeal with the circuit court. I would raise as an issue on appeal the refusal of the panel, and indeed the entire fee dispute committee, to allow the opportunity to be reheard on my objections to the Report. I will, of course, put the \$5,000.00 in trust with the Bar when the appeal is filed as required by Rule 20(d).

You have no idea how much I wish I didn't have to do this, but I feel rather strongly about the issue involved. I would have much preferred to simply lay out what I believe are the problems with the panels findings, and why I believe the report evidences a misunderstanding of the facts, while asking for reconsideration. It is most unfortunate that your rules do not allow for that.

Thank you again for your time and kind assistance.

Tara

Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive
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(803)738-8622 Phone
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TDSLAW

From: TDSLAW [tdslaw@shurlinglaw.com]
Sent: Tuesday, January 17, 2017 5:08 PM
To: 'lcotten@mklawgroup.com'
Cc: 'Michelle Dennis (michelle.dennis@scbar.org)'; 'nashibaboyd@msn.com'; 'mgresham@scag.gov'; 'sarah@clingmanlaw.com'
Subject: John Daniel Springer Fee Dispute
Importance: High

Tracking:	Recipient	Read
	'lcotten@mklawgroup.com'	Read: 1/17/2017 6:45 PM
	'Michelle Dennis (michelle.dennis@scbar.org)'	Read: 1/17/2017 5:18 PM
	'nashibaboyd@msn.com'	
	'mgresham@scag.gov'	Read: 1/17/2017 5:16 PM
	'sarah@clingmanlaw.com'	

Ms. Cotton:

I tried very hard to get my response to the Fee Dispute Board's Report done in the time allotted for a Rule 59(e) Motion, SCRCF; ten days from receipt of an Order. Regrettably, due to illness the last two weeks I have not been well enough to complete this matter. As I have noted before, the Rules provide no guidance for a request for reconsideration and/or for rehearing from a fee dispute. Fortunately, I will be able to get my request for Reconsideration, and/or Rehearing to the panel, and other parties, within the fifteen (15) days allowed for a Petition for Rehearing pursuant to Rule 221(a), SCACR. Again, neither rule directly applies, but I am trying to comply with time limits set for similar action in court proceedings. Your report was not received by me until January 4, 2017. Unlike an appellate decision, your report was not filed, therefore I would argue that I had no way to know it existed until it was received by me on January 4, 2017. Fifteen (15) days from that date would be January 19, 2017. Hopefully, I will get this out tomorrow, if not, you will have it by the 19th. I understand your position regarding reconsideration, however it is my hope you will in fact reconsider that position, as well as your ruling, once you read my submission.

Thank you for your time and attention in this matter.

7/31/2017

Tara Dawn Shurling

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TDSLAW

From: TDSLAW [tdslaw@shurlinglaw.com]
Sent: Monday, January 23, 2017 11:14 AM
To: 'Tara Shurling'
Subject: FW: John Daniel Springer v. Tara Dawn Shurling, Esq.

Suzanne

From: Michelle Dennis [mailto:michelle.dennis@scbar.org]
Sent: Monday, January 23, 2017 9:59 AM
To: 'Lisa Long-Cotten'; TDSLAW
Cc: nashibaboyd@msn.com; sarah@clingmanlaw.com; mgresham@scag.gov
Subject: RE: John Daniel Springer v. Tara Dawn Shurling, Esq.

Thanks Lisa.

From: Lisa Long-Cotten [mailto:lcotten@mklawgroup.com]
Sent: Saturday, January 21, 2017 9:34 AM
To: TDSLAW
Cc: nashibaboyd@msn.com; sarah@clingmanlaw.com; Michelle Dennis; mgresham@scag.gov
Subject: Re: John Daniel Springer v. Tara Dawn Shurling, Esq.

Good morning Tara,

I am sorry to hear that you are still under the weather. I hope you are beginning to feel better.

As you know, the Rules do not allow for a reconsideration of the panel decision. The only review is by the Circuit Court. I do understand your desire to clear the air, but I hate to see you expend your time and energy on the Board when you should be preparing your appeal.

Sent from my iPhone

On Jan 20, 2017, at 12:04 AM, TDSLAW <tdslaw@shurlinglaw.com> wrote:

Sorry ladies, I just realized the version I sent you did not have page numbers. I promise the final draft Monday will be much cleaner. I was simply trying to stick to my promised schedule. I am still on Levoquin, three more days, but so much better. I should have no problem getting a properly edited version to you all Monday. Thanks again. I appreciate everyone's hard work. Thanks, again.

Tara

From: TDSLAW [mailto:tdslaw@shurlinglaw.com]
Sent: Thursday, January 19, 2017 11:57 PM
To: 'lcotten@mklawgroup.com'
Cc: 'nashibaboyd@msn.com'; 'sarah@clingmanlaw.com'; 'Michelle Dennis (michelle.dennis@scbar.org)'; 'mgresham@scag.gov'
Subject: John Daniel Springer v. Tara Dawn Shurling, Esq.

7/31/2017

I APOLOGIZE FOR THE LATE HOUR GETTING THIS TO YOU ALL. I HAVE BEEN OUT SICK OFF AND ON FOR THREE WEEKS AND AM STILL ON ANTIBIOTICS. This is a rough draft. I will have to do a final edit over the weekend and provide everyone, including Petitioner, a copy fo the final drfat Monday. Thank you for your patience and understanding.

Tara Dawn Shurling

Tara Dawn Shurling

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<1.17.17 RESPONSE TO FEE DISPUTE BOARD.doc>

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Sent: Monday, January 23, 2017 9:59 AM
To: 'Lisa Long-Cotten'; TDSLAW
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Tara Dawn Shurling

Tara Dawn Shurling

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Sent: Monday, January 23, 2017 9:57 PM
To: lcotten@mklawgroup.com
Cc: nashibaboyd@msn.com; sarah@clingmanlaw.com 'Michelle Dennis'; mgresham@scag.gov; 'TDSLAW'
Subject: John Daniel Springer v Tara Dawn Shurling Esq.
Importance: High
Attachments: 1.23.17 COS on Panel.pdf; 1.23.17 COS on Katherine Hurst.pdf; 1.23.17 COS on John Daniel Springer.pdf

A rectangular stamp with the words "FILE COPY" in a bold, sans-serif font. To the left of the text is a small icon of a file folder with a document inside.

Ladies,

Needless to say, my faith in voice recognition software has now been shot. Sorry my initial draft was such a mess. I have still been sick over the weekend and did not get to finish editing my Request for Reconsideration until just now. Obviously, my paralegal is not here at this hour to make the extensive corrections necessary for me. I will be out of town at a prison tomorrow for much of the day, but my paralegal will make the necessary corrections to this submission tomorrow. I will double check everything when I get back tomorrow afternoon and send this to you late tomorrow afternoon if at all possible. If not, it will be headed your way Wednesday morning.

I understand your position that the rules do not provide for the submission of a request such as the one I am making. Hopefully, after reading my submission, you will better understand why I feel this panel's report raises serious issues which need to be addressed and which I believe I should have the right to ask the panel to act upon without an appeal to the circuit court. As a threshold matter, the rules do not expressly preclude such a request for reconsideration; they simply do not address such an option. In any event, I will get this to you all shortly. I will, of course, serve both Petitioner and his mother, with a copy of my submission whenever it is sent to each of you.

For now, please know that I do appreciate the valuable service you provide to the Bar and the hard work of the panel member in doing a thankless and even unpopular job.

Tara Dawn Shurling

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1/26/2017

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TARA DAWN SHURLING, PA

Attorney and Counselor at Law

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(Fax) (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

January 25, 2017

Lisa Long Cotton, Esquire
P. O. Box 8113
Columbia, SC 29202

Resolution of Fee Disputes Board
John Daniel Springer v. Tara Dawn Shurling, Esq.

Dear Ms. Cotton:

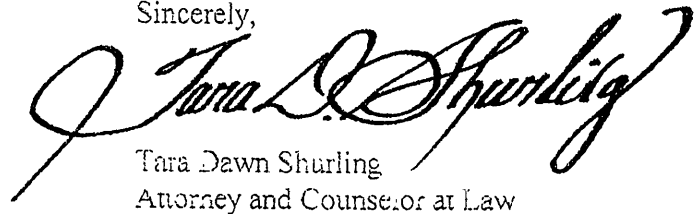
Enclosed you will find a copy of my Request for Reconsideration and/or Rehearing on the panel's Report concerning the fee dispute referenced above. This document initially addresses Respondent's position that the panel which heard this matter is not prohibited from entertaining the request in question. This submission addresses in great detail the multiple errors found in the panel's Report and the reasons why I feel, in light of these errors, this dispute is wrongfully decided, and the panel should reconsider its findings.

I apologize for the length of this document, however it was necessary to point out with specificity the various places where the Report's findings are based on erroneous factual findings and analysis. I am fully aware of the panel's position that a Respondent's only recourse is to file an appeal pursuant to Rule 20, however for the reasons set forth in detail in this document I believe that this position is not only inaccurate, but fundamentally unfair. It is my hope that you as co-chair, and each of the panel members, will take the time to thoroughly consider this document and change it's position both concerning my right to ask for reconsideration, and the merit of my arguments concerning why reconsideration and/or rehearing is appropriate on the facts of this case.

I believe the Fee Dispute Board still has jurisdiction over this matter until such time as I file my appeal to the Circuit Court on/or before February 2, 2017; 30 days after the Report was mailed to me. It is obviously my hope that the panel will reconsider its findings before that time, however if not, I will file an appeal in compliance with Rule 20, and will deposit the funds in dispute with the Bar. For now, thank you very much for your time and consideration of this request. I do appreciate the work of the Fee Dispute Board and would not have invested this much time in this matter unless I truly believed that the questions raised by this matter are far more significant than the amount of the money involved in this dispute. I will look forward to a response from you and this panel. I have of course served Mr. Springer with a copy of this document. I have also served

his mother, Katherine Hurst, who was the third party payer in this fee dispute, despite the fact that one of the problems with this fee dispute is that she is not a proper party to this matter having failed to properly file jointly with her son or to independently file her own fee dispute. Thank you again.

Sincerely,

A handwritten signature in black ink, reading "Tara Dawn Shurling". The signature is fluid and cursive, with a large initial "T" and "S".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg
Enclosure

cc: Nashiba Boyd, Esquire, Panel Chair (w/enclosure)
Sarah Clingman, Esquire, Panel Member (w/enclosure)
Megan Gresham, Esquire, Panel Member (w/enclosure)
Michelle Dennis, S. C. Bar Fee Dispute Coordinator (w/enclosure)
John Daniel Springer, # 294365 (w/enclosure)
Katherine Hurst (w/enclosure)

STATE OF SOUTH CAROLINA	)	
	)	IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	FEE DISPUTES BOARD
John Daniel Springer,	)	
Petitioner,	)	REQUEST FOR RECONSIDERATION
	)	AND/OR REHEARING
v.	)	
	)	
Tara Dawn Shurling,	)	
Respondent.	)	
_____	)	

I.

Why Reconsideration and/or Rehearing should be heard.

NOW COMES Respondent in the above captioned fee dispute matter responding to the Report and Recommendation of panel mailed to Respondent on Tuesday, January 4, 2017. Respondent respectfully submits that the Report of the panel in this matter reflects both erroneous findings of fact and misapplication of the facts to the issues in dispute. Respondent further respectfully submits that the panel has exceeded its authority in directing her to repay a third of her fee to Petitioner where he did not pay her legal fees in this matter. Further, Respondent asserts that the party who paid her fees, and contracted with her, Petitioner's mother, is not a party to the fee dispute currently before the panel. Accordingly, Respondent asks for the panel's reconsideration of its decision as reflected in said Report, and requests reconsideration of the panel's decision and/or rehearing on the points outlined below. In making this request, Respondent is mindful that the rules governing the fee dispute committee and Rule 416, SCACR, provide that *"upon consent of the client – applicant to be found by the final decision of the Board, exclusive jurisdiction over the fee dispute vests in the Board."* Rule 416(9), SCACR. Respondent has sought procedural guidance concerning the manner in which she might submit a

Petition for Reconsideration and/or for Rehearing. In response to this inquiry, Respondent has been advised by the Board that the rules governing this body do not allow for Petitions for Reconsideration and/or Petitions for Rehearing and that Respondent's only redress is to file an appeal to the Circuit Court pursuant to Rule 20.

While the rules governing the Fee Dispute Board do not provide for a Petition for Reconsideration and/or Rehearing, neither do the rules *expressly* prohibit such an action by an attorney aggrieved by the findings of the three-person panel which heard a dispute filed against Respondent. If, as Respondent has been advised, a lawyer may not be heard on any sort of request for Reconsideration and/or Request for Rehearing. Thus, the attorney called upon to defend his fees in a fee dispute would be left without any recourse in the event the panel decision reflects errors in their findings of fact and/or their analysis of the questions before the panel. For example, as will be discussed *infra* in more detail, the panel Report in this matter uses a retainer date of March 19, 2015 in determining the period of time Respondent was working on Petitioner's case when Respondent was in fact originally retained and began working on this case on March 3, 2015. Report, pg. 4, para. 2. This sixteen (16) day discrepancy is significant given the fact that the U. S. District Court ruled in this matter on March 31, 2015. Therefore, significant issues in this dispute were decided based upon the erroneous finding that Respondent represented Petitioner for twelve (12) versus twenty-eight (28) days. It is Respondent's position that would be fundamentally unfair for her to have to incur the costs both in time and money, that would be required for a circuit court appeal because the findings of the panel are based on erroneous findings of fact.

In addition, Respondent would note that although Rule 20 provides for an appeal to the Circuit Court, the opportunity for a meaningful appeal is very limited. Under Rule 20(f) a party

aggrieved by the final decision of the Board may appeal the decision to the Circuit Court in the county where the principal place of practice of the attorney is located, but the circumstances under which the Circuit Court may vacate the decision of the Board are very limited. Specifically, Rule 20(f) expressly states, “(f) the court shall affirm or vacate the final decision of the Board. The court may vacate only where: (1) the decision was procured by corruption, fraud, or other undue means; (2) there was evident partiality or corruption in an assigned member or hearing panel member, or misconduct prejudicing the rights of any party; (3) the assigned member or hearing panel members exceeded their powers; (4) the hearing panel members refused to postpone the hearing, if any, upon sufficient cause being shown therefore, or the assigned member or hearing panel members refused to hear evidence material to the controversy, or otherwise conducted the proceeding so as to substantially prejudice the rights of a party; or (5) the hearing panel chair did not provide notice of the hearing as required by Rule 15.” Therefore, under the existing rules governing the Resolution of Fee Disputes Board, the Circuit Court may only vacate the final decision of the Board if the attorney, as Appellant, demonstrates that the decision of the Board somehow involved improper conduct by one or more members of the three-person panel, as opposed to that decision of the panel simply reflected erroneous findings of fact and/or reached improper conclusions based on the information before the panel. In plain terms, if the Board’s position on the opportunity for rehearing were accurate, no matter how serious and obvious one or more errors in a panel report might be, the losing party would have *no recourse* unless they were willing to assert that one of the factors in Rule 20(f). Furthermore, even if the party had grounds for appeal to the circuit court, they would be forced to incur the cost of an appeal in order to be heard on mistakes made by a panel.

Interestingly, our appellate courts have consistently found that an action to recover attorney fees under a fee agreement gives rise to the right to a jury trial. *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997), citing, *Elliott v. Green*, 274 S.C. 348, 263 S.E.2d 650(1980); *DePass v. Piedmont Interstate*, 217 S.C. 38, 59 S.E.2d 495 (1950). Such actions are resolved as actions in law rather than in equity. *Lester*, 327 at 260, 491 at 243. In *ex parte Stevens*, *Stevens & Thomas*, 277 SC 150, 283 SE2d 444 (1981), our Supreme Court departed briefly from that long-standing rule to find that "[w]hile a claim for professional services has been recorded as an action in contract entitling the parties to a jury trial, we now hold that an action for attorneys fees is one in equity. Id at 151, 283 S.E. 2d at 444–45. In *Eleazer v. Hardaway Concrete Co.*, 281 S.C. 344, 315 S.E. 2d 174 (Ct. App. 1984), the South Carolina Court of Appeals interpreted *Stevens* to apply the concept of equity to an action for attorneys fees where the attorney had obtained a judgment for his client and had a lien against that judgment for his attorney fees. In *Lester, supra*, the Supreme Court found the holding in *Eleazer, supra*, to be correct, however, reiterated the long-standing rule that "an ordinary action to recover attorney's fees pursuant to a fee agreement between the attorney and his client is an action in law with the right to a jury trial". To the extent the court's previous ruling in *Stevens* was inconsistent with that position, *Stevens* was overruled by *Lester*.

Under the present rules for the Fee Dispute Board, no express provision is found for an attorney to seek reconsideration and/or rehearing. Respondent most respectfully asserts that these rules infringe upon an attorney's rights at law to enforce a properly negotiated contract by requiring the Attorney to be bound by a decision of the Fee Dispute Board. Rule 416, Rule 9(a), requires that any *client-applicant* consent in writing "to be bound by a final decision of the Board". The attorney, under this same provision, is bound without any express consent by virtue

of being a member of the Bar. Thus, under these rules, an attorney loses his or her right to a jury trial in a fee dispute because the client chooses to have the matter decided by the Board. Respondent respectfully submits that the rules of the Fee Dispute Board, as applied by the panel assigned in this case, unconstitutionally infringe upon her rights and provide no recourse for her to seek reconsideration and/or rehearing even where the report and recommendations issued by the panel are factually and/or legally flawed. This inequity in the manner in which fee disputes are handled, is exacerbated by the fact that the only right of appeal provided for an attorney on the receiving end of a fee dispute heard by a three-person panel is to appeal the decision of the panel to the Circuit Court in the county in which the fee contract was entered. That right, in turn, is rendered virtually useless by limits Rule 20(f) which the authority of the Circuit Court to vacate an improper decision by the Fee Dispute Board to circumstances where the attorney can demonstrate that one or more members of the panel *acted improperly*. Where a party believes the panel have acted on an *erroneous* interpretation of the facts, but did not act willfully in doing so, the panel would have no opportunity to recognize its errors and self-correct. Rule 416 forces an attorney to be bound by the findings of a panel appointed by the Fee Dispute Board. Unlike a client/applicant, the attorney does not voluntarily give up his right to have a contractual fee dispute litigated in a court of law and yet, the review afforded by a panel review is a poor substitute for litigation before a court of law. The Court of Common Pleas, and both our appellate courts allow the opportunity to file for rehearing. Decisions in the Court of Common Pleas and the South Carolina Court of Appeals may be appealed to a higher court under rules that are not as restrictive as Rule 20(f).

The rules of the Fee Dispute Board provide for an appeal to the Board by an aggrieved party if the fee dispute is initially heard by a one-man panel. In such cases the aggrieved party

may appeal and receive a review by a three-person panel. Pursuant to Rule 10, however, the circuit chair may appoint a hearing panel without the previous assignment of the matter to an assigned single member for review. No provision for further review is found in the rules where the matter is initially assigned to a three-man panel for review.

Interestingly, Rule 11, governing investigation by a single member, provides for an attorney to be given 30 days after being contacted by the assigned member to respond to the issues raised in the application. The rules governing review by a three-person panel appointed by the circuit chair do not provide for a response to the allegations raised in the application filed. None of the correspondence received by Respondent in the current matter included any instructions for Respondent to submit a written response to her former client's application to the Fee Dispute Board. *See*, correspondence to Respondent from Michelle Dennis dated September 14, 2016, correspondence to Lisa Cotton, Chair of the Fifth Circuit Panel of the Resolution of the Disputes Board, from Michelle Dennis, dated September 14, 2016 and correspondence to Respondent from Nashiba Boyd, Panel Chair, dated October 13, 2016. Respondent respectfully submits that if the rules governing this board allow an attorney to respond in writing to the allegations raised when they are to be decided by a one-man panel, then the rule should provide an equal opportunity for a written response for those whose fee disputes are going directly to a three-person panel. Respondent in this case was not afforded that opportunity and respectfully submits that many of the factual inaccuracies present in the Report would likely have been avoided had Respondent been afforded the opportunity to provide the Board with a written Response to the allegations raised by Petitioner.

Respondent would further submit that the right to dispute the findings of a one-person panel, without provision for any method to contest the findings of a three- person panel, suggest

the view that the accuracy of the findings of a three-person panel would be infallible due to the fact that three board members were able to reach a collective decision on the dispute. One need look no further than our own South Carolina Court of Appeals, and its relationship to the Supreme Court of South Carolina, to know that such an assumption is improper. Our State Supreme Court routinely reverses decisions made by three judge panels from the South Carolina Court of Appeals. Under the appellate court rules, however, the losing party may not appeal the decision of the Court of Appeals to the Supreme Court until after the aggrieved party has filed a Petition for Rehearing outlining "with particularity the points supposed to have been overlooked or misapprehended by the court." *See*, Rule 221, SCACR and Rule, 242, SCACR.

Respondent asks this panel to take notice of the fact that our Supreme Court reverses the Court of Appeals numerous times a year on average and therefore, the fact that a three-judge panel from the Court of Appeals was able to reach a consensus by no means insulates that Court from a finding by the Supreme Court that an appeal was wrongfully decided. Furthermore, Rule 20 of the rules governing the Fee Dispute Board so severely restricts the circumstances under which the circuit court may reverse the findings of the panel assigned by the Fee Dispute Board as to render the right to such an appeal virtually meaningless. Clearly, if an attorney is forced to sue a client to collect a fee to which the lawyer is entitled under a fee contract, the right to a jury trial would vest. Under the rules governing this Board, if the client files a complaint against an Attorney, and prevails on review by a three-person panel, the attorney loses all rights to pursue the contract dispute in a court of law, and under the view of this panel, has no right to file for reconsideration of the panel's decision. Furthermore, the attorney has no hope of meaningful appeal unless he asserts that one or more of the members of the panel acted improperly as set forth in Rule 20(f). Respondent submits that this procedure is not only wrong and unfair, but

that it is unconstitutional as it unlawfully infringes upon the attorney's rights to due process of law.

It is no exaggeration to say that the policies and procedures set forth in the Fee Dispute Board's rules would be analogous to there being no provision for a Petition for Rehearing on a Court of Appeals decision and additionally, the right of appeal to the Supreme Court from such a decision being limited to cases where the aggrieved party could prove that one of the three appellate court judges, or the entire panel had acted improperly, as set forth in Rule 20(f). Respondent argues that the rules governing the Fee Dispute Board do not expressly prohibit the Respondent's request for Reconsideration and/or Rehearing. She urges this panel to recognize that its decision in this matter was reached in error and to grant Reconsideration and/or Rehearing. Set forth below are the points from the panel's decision which Respondent submits indicate erroneous factual findings and/or an improper application of the rules to the facts in this case. In order to make Reconsideration easier for the panel, Respondent will follow the same format used by the panel in its report.

II.

GROUND FOR RECONSIDERATION AND/OR REHEARING

FACTUAL BACKGROUND

Page 3 of 12 states, "Respondent countered that because of Petitioner's incarcerated status, it is common for her to communicate with relatives or other third parties and *not directly with the client.*" (Emphasis added) And further, that "based upon her interactions with Petitioner's mother, Respondent believed that she could understand the scope of Respondent's representation of Petitioner." Report, pg. 3 of 12. Respondent most respectfully asserts that this

portion of the Factual Background is inaccurate and taken out of context. This portion of the Report does not accurately convey the position conveyed to the panel by Respondent.

Respondent respectfully submits that she never stated that she relied *exclusively* upon communication with family members instead of directly communicating with the client. To the extent that the portion of the Report in question might be read to indicate that pattern, it is inaccurate. What Respondent did explain to the panel is that the vast majority of her clients are incarcerated within the South Carolina Department of Corrections or are in county detention centers. Due to this fact, Respondent does not have the ability to call her clients when a question arises which requires a prompt answer. As Respondent explained to the panel, although she writes her clients often, and invites them to call her office collect when they have questions, circumstances sometimes arise where she needs to discuss some matter with a client in a hurry. When that happens, Respondent will frequently use family members to communicate her need to speak with the client. As Respondent explained to the panel, most of her clients call their family members far more frequently than they call her office. When the need for quick communication arises, it is often expeditious to inform family members to tell the client to call Respondent as soon as possible when they speak with them. Respondent did not say, nor did she imply, that she ever relies on the family members to convey a point in issue which requires her to speak with the client. Respondent, on occasion, asks a family member, or other designated contact person, to convey her need to speak with the client, *not* the subject matter of the needed communication.

As Respondent explained to the panel, Petitioner's family waited so late to retain her to file Objections to the Report and Recommendations issued by the United States Magistrate Judge, that she knew that she would not have time to go and see Petitioner to and confirm his agreement to be represented by her in that matter before she executed a fee contract with his

mother, and the Objections were due. As all the documentation before the panel verifies, by the time Respondent was retained by Petitioner's mother to file the Objections to the magistrate's report, Petitioner's second extension request for that task was already pending before the court. As Respondent advised this panel, she needed every bit of the time she expected to be given by the District Court to file these Objections to complete her research, to conduct document review and to draft the Objections. Respondent did not agree to sign a fee contract with Petitioner's mother until she had confirmed with Respondent personally that he wanted her to represent him in his pending U.S. District Court habeas action, and specifically that he was in agreement with her being hired to prepare and file Objections to the magistrate judge's Report and Recommendations.

Based on her nearly forty years experience with South Carolina Department of Corrections, Respondent knew that she could not afford to wait for a letter to reach Petitioner at his prison. Once it became clear that these Objections were the next step Petitioner needed to pursue, Respondent did advise his mother that when she spoke with her son she needed to instruct him to call my office collect as soon as possible. Petitioner then called Respondent the day before the mother, Hurst, and her husband came to her law firm and signed the fee contract in place for this task. In that telephone conversation Respondent was able to ascertain that Petitioner had a working knowledge of the federal habeas corpus process. Respondent made certain that he was fully aware that she was being retained for the limited purpose of filing Objections to the U.S. Magistrate Judge's Report and Recommendations in his pending habeas corpus action. As Respondent advised this panel, she made certain that Petitioner understood she was only being hired to draft the Objections and to file them in the United States District Court, and that he desired that representation. Respondent advised this panel, as an officer of the court,

that there was no doubt in her mind that she made it perfectly clear to Petitioner that the fee being paid for her to undertake that limited task *did not* cover any further legal representation, and specifically did not cover an appeal to the Fourth Circuit Court of Appeals in the event Petitioner lost in the U. S. District Court. Contrary to the impression left by the wording of the Report, Respondent did not rely upon the mother to communicate with the client concerning the scope of her representation and the limited purpose for which she was being retained. Respondent's singular purpose in conveying a message to Petitioner through the mother was to ensure that he knew to call her to discuss her representation with him since time was not going to permit her to visit him in advance of entering into a contract with his mother or be filing the Objections. Frankly, if Respondent had not had a very clear understanding of the necessity to obtain a client's consent to representation by an attorney paid by a third-party, she would not have insisted that Petitioner's mother, hereafter Hurst, tell her son that he needed to call my office immediately. If, as the Report suggests, Respondent was comfortable with communicating with her clients through family members, instead of directly communicating with the client, the requested telephone conference with Petitioner would not have been necessary.

There are a few additional factors concerning the procedure employed in this case which Respondent feels the panel needs to take into account.

- As noted above, Respondent was never given written notice of any right to submit a written response to the allegations raised in this fee dispute. Had Respondent submitted a written response to the Application some of the factual misunderstandings articulated herein may have been avoided.
- The Application filed in this fee dispute is faulty under this Board's own rules. The fee dispute in this matter was filed by Petitioner, John Daniel Springer, on August 22, 2016. It was signed by him on page 6 of the Application. Respondent was, however, hired and paid by Hurst. Respondent was ordered to appear at a panel hearing and respond to the allegations raised by Petitioner in his Application to the Fee Dispute Board. Rule 10, governing the commencement of proceedings, clearly indicates that where the Petitioner

is a Client, but not the person who paid for the lawyer's services, the third-party payer, with written consent of the Client-Petitioner may jointly file a fee dispute with the Client-Petitioner *with both signatures affixed to the Application*. In the Application before this panel, the application was signed only by John Daniel Springer. While Mr. Springer was the client in this case, he was not the party with whom Respondent entered into a written fee contract; that third-party was his mother, Hurst. While Hurst was listed as a designated person entitled to "act on [A]pplicant's behalf regarding this dispute and to receive correspondence or notices for [A]pplicant", she was not listed as a party to this fee dispute, she did not sign the application and she, not client, was the party who entered into a written fee contract with Respondent. For this reason, Respondent respectfully submits that this panel is without authority to order Respondent to refund a portion of the fees paid by Hurst in compliance with said written fee contract. Hurst is not, under the rules governing fee disputes, a party to this action.

- The fee dispute application in question is clocked stamped as having been received by the South Carolina Board on September 7, 2016. Respondent was advised that an application for the resolution of a disputed fee had been received by the South Carolina Board on September 14, 2016.
- Petitioner's claim *was not* that he believed Respondent was retained to file his Objections in the U.S. District Court *and* to perfect an adverse decision in the U. S. District Court to the Fourth Circuit Court of Appeals. His claim has consistently been that he *did not* authorize Respondent to file the Objections in the U. S. District Court, but *did* authorize her to represent him on appeal to the Fourth Circuit Court of Appeals. *See*, Application filed September 7, 2016, Items 13 and 15.
- It appears from correspondence to Respondent from Michelle Dennis, Fee Disputes Coordinator for the Public Services Division of the Bar, dated September 14, 2016, that this application was referred to circuit chair Lisa Cotton on that date or earlier. On October 13, 2016 Respondent was notified of the date, time and place of a panel hearing on this application by Nashiba Boyd, Panel Chair. The panel hearing was held in this matter on November 17, 2016. It is impossible to determine from the documentation provided to Respondent what date Ms. Boyd was assigned to this matter. Given the date this matter was forwarded to the circuit chair, Lisa Cotton, it appears questionable that the three-person panel hearing was held within forty-five (45) days "of assignment by the circuit chair and at least 30 days after giving notice to the parties by first class mail..." as required by Rule 15. In any event, the panel's report does not provide adequate information from which it can be ascertained whether the panel hearing was held in compliance with Rule 15. What is clear is that the panel did not reach its decision, and issue a written decision, within 15 days of the hearing as required by Rule 17. As previously noted, the panel hearing in this matter was convened on November 17, 2016 and the Report containing the panel's decision was not mailed to Respondent until Tuesday January 3, 2017. Thus, the report was not issued in compliance with Rule 17.

RULE 1.5(a) REASONABLENESS OF FEE

FACTOR 1: Time and labor required, the novelty and difficulty of the questions involved and the skills requisite to perform the legal service properly.

The Report finds that Respondent was retained by Hurst on March 19, 2015. That assertion is factually inaccurate. As Respondent advised the panel during the hearing held in this matter, Respondent was initially retained by Petitioner's mother on March 3, 2015 at which time Hurst retained Respondent to conduct a file review in her son's case. In connection with that representation, Hurst paid Respondent a flat fee of \$5,000.00 for those services, and additionally deposited \$1,000.00 in Respondent's trust account for expenses related to the file review to be billed against. Unexpended funds in the amount of \$412.77 were subsequently refunded to Hurst. When Respondent was initially contacted by Hurst she indicated that she was not certain what her son's next step should be, and that he was considering filing a Second Post-Conviction Relief action. In connection with the file review Respondent agreed to perform the following tasks:

- To obtain all available documentation concerning her son's jury trial for two counts of first-degree Criminal Sexual Conduct with a Minor, two counts of lewd act on a minor and two counts of contributing to the delinquency of a minor.
- Respondent agreed to obtain copies of any material relevant to previous post-trial motions or petitions, the direct appeal in the Petitioner's case and any Post-Conviction Relief action and Post-Conviction Relief appeals that had already been pursued in his case.
- Respondent agreed to review the documentation referenced above including all trial transcripts, transcripts of any Post-Trial Motions and the transcript of any previous Post-Conviction Relief action. Respondent for the agreed to review all pleadings associated with any such actions and any rulings by any court relevant to such proceedings.
- Respondent agreed that she would act as quickly as possible to determine whether there were any impending deadlines which Petitioner might be about to miss with regard to any potential appellate avenues available to him.
- Respondent explained to Hurst that in certain rare and extraordinary circumstances there might be a possibility of pursuing a successive Application for Post-Conviction Relief or

a State Petition for Writ of Habeas Corpus. In addition, Respondent explained the right of any defendant to raise after discovered evidence in a post-trial Motion for New Trial pursuant to Rule 29(b), SCRCrimP. Hurst was advised what the term "after discovered evidence" meant in the context of a criminal case. Respondent advised Hurst of the basic requirements for any successful effort at pursuing a new trial based on after discovered evidence.

- Respondent advised Hurst that as part of her file review and the issuance of her final opinion concerning what if any appellate options existed that would stand a reasonable chance of benefiting Petitioner, she would visit him at his correctional institution and discuss his case with him personally. It was explained to Hurst that information that might provide a basis for some of the extraordinary remedies discussed above might not be apparent in any of the documentation I would be reviewing, and that I would visit her son to determine if he had any additional information which might be germane to such an effort and to discuss my opinions concerning what potential options were available to him.
- Respondent advised Hurst that if Trial Counsel's file was still available, and Respondent deemed it necessary to review the same, she would do so before rendering a final opinion on the file review.
- The records before this panel included a copy of Respondent's last action taken log from her confidential attorney work product portion of her file. This document confirms that between the date of initial retainer, March 3, 2015 and March 11, 2015, Respondent was actively engaged in obtaining all of the documentation referenced above.
- On March 5, 2015 Hurst emailed Respondent and advised that Petitioner was waiting to hear back from the federal court on a request for a second extension and wanted to let Respondent know in case she needed to file something with the court concerning where the case stood. That was the first notice Respondent had that Petitioner had a pending habeas action in the U.S. District Court.
- After receiving information concerning the existence of the federal habeas corpus action, Respondent spoke with Donald J Zelenka, Senior Deputy Attorney General, and confirmed that the Report and Recommendations on Petitioner's federal habeas corpus action had been filed on January 16, 2015, and that by the State's calculations, the habeas petition had been timely filed.
- On Sunday, March 8, 2015 Respondent received an email from Hurst conveying a message from Petitioner asking if he should notify the federal court, or would Respondent, about him having a lawyer."
- On March 11, 2015 Respondent received a large volume of documentation from Petitioner by mail. The documents received from Petitioner were inventoried and listed in the Last Action Log under that date. That same day, Respondent received digital copies of nearly 2,000 pages of records concerning Petitioner's case from Donald J. Zelenka,

Senior Deputy Attorney General. These documents were provided to Respondent by the State pursuant to Respondent's request dated March 9, 2015.

- Sometime after determining that Petitioner had a federal habeas corpus action pending, and that the Objections to the U.S. Magistrate Judge's Report and Recommendations were due very soon, Respondent contacted Petitioner's mother and had a lengthy conversation with her concerning the status of Petitioner's case. Apparently that conversation took place on Respondent's business cell phone as there is no record of it in the Last Action Log. Multiple lengthy entries to the log dated March 17, 2015 confirm that such a conversation had taken place, and that Hurst was anxious to speak with Respondent and make arrangements to come in and retain her to be Petitioner's attorney in that pending federal habeas corpus matter. In that email thread with Hurst, Respondent made it clear to Hurst that she would have to wait and see how much time the court was going to grant in response to Petitioner's second extension request before she could commit to being hired to prepare and file the Objections on the Petitioner's behalf. In the last email in that thread Respondent advises her first that she would call her around lunchtime the following day; March 18, 2015. It was during that conversation that Respondent made it clear to Hurst that she could not agree to be retained to represent Petitioner in the United States District Court, until she personally spoke with her son, verified that he wanted Respondent to be his attorney, that he understood the purpose for which she was being hired and the scope of Respondent's representation. Respondent explained to Hurst that, *unlike the original agreed upon representation*, she would not need to meet with Petitioner in order to file the Objections as Respondent would be limited to the materials already before the court and the grounds and arguments advanced by Petitioner in his *pro se* pleadings. Respondent was very careful to make sure that Hurst understood that she would not be able to add any additional grounds to those already put before the court in Petitioner's *pro se* filings. Respondent expressly told her that she would not be going to see her son before the Objections were due, and that she could not allow herself to be retained without confirming his desire to be represented by her. This same information was conveyed to Petitioner in Respondent's March 18, 2015 telephone conference with him.
- On March 18, 2015, Respondent received additional documentation concerning Petitioner's pending federal case. That material included a copy of the U.S. Magistrate Judge's Report and Recommendations, and other related documents, from State's attorney, Melody Brown, Senior Assistant Attorney General. At that time, Attorney Brown advised Respondent that she would not raise an objection to the already pending request for a 30 day extension of time in which to file Objections to the magistrate's report.
- Respondent received a collect call from Petitioner late in the afternoon of March 18, 2015 after Respondent's telephone conference with his mother; Hurst. At that time, Respondent expressly advised Petitioner that his next course of action would be to file Objections to the Report and Recommendations filed by the U. S. Magistrate Court Judge. Respondent briefly explained to Petitioner that he would have virtually no chance of winning his federal habeas corpus action in the U. S. District Court if proper

Objections were not filed. He was advised that in the absence of Objections specifically outlining the reasons why the Recommendations of the U. S. Magistrate Judge should not be followed, the U. S. District Court would in all probability adopt the Recommendations of the U. S. Magistrate Judge and grant the State of South Carolina summary judgment on his petition. Respondent further advised him that if he failed to file proper Objections to the Report and Recommendations he would effectively waive his right to appeal any ruling by the U. S. District Court to the Fourth Circuit Court of Appeals. Respondent expressly advised Petitioner that she was being retained by his mother for the sole purpose of drafting and filing the Objections to the Report and Recommendations. Respondent explained how the failure to file Objections would impact his rights with regard to an appeal to the Fourth Circuit, but she clearly advised Petitioner that she was *not being retained at that time to represent him on any appeal to the Fourth Circuit which might become necessary.*

- When Hurst met with Respondent on March 19, 2015, she carefully explained the procedure for a federal habeas corpus action pursuant to 28 U.S.C. Section 2254. Respondent gave Hurst, and her husband, the opportunity to carefully review the proposed fee contract in this case, and invited them to ask Respondent any questions they had concerning any portion thereof that Hurst did not understand or had questions about. By the time Respondent met with Hurst on March 19, 2015, she had taken part in multiple telephone conversations with Hurst, and had received multiple e-mails from her. Based on these previous communications, as well as Respondent's discussion with Hurst and her husband during the meeting in question, Respondent had absolutely no reason to question her ability to fully understand the subject matter of the meeting and the express terms of the very detailed fee contract she signed.
- At the conclusion of the March 19, 2015 meeting, Hurst was provided a copy of the signed and notarized fee contract. She was also advised to contact Respondent if she had any questions in the future. At no time thereafter, did Hurst ever question Respondent concerning the terms of the fee contract.

In light of the above, Respondent would respectfully submit that the Report of this panel failed to accurately assess the time and labor required in this action, and the time Respondent had to perform those services. The records before this panel clearly indicate that Respondent was retained on March 3, 2015 *not March 19, 2015* as the Report finds. Respondent's testimony before the panel was that she *finished up her work on drafting the Objections to the Magistrate's Report and Recommendations over a weekend.* At no time did Respondent indicate that all of the work done on behalf of Petitioner was performed over the course of that weekend.

Respondent had already been paid a retainer to review Petitioner's case. As part of that initial agreement, Respondent had committed to review all the records and Petitioner's case and between March 3, 2015 and March 18, 2015 had been engaged and both acquiring and reviewing those voluminous records. The records first provided to Respondent by the State alone totaled approximately 1,900 pages. The Appendix from the State Post-Conviction Relief appeal alone was 558 pages long. In addition to that Appendix, which contained many of the records in Petitioner's case up through the circuit court PCR action, Respondent reviewed the Certiorari Petition, and the State's Return, filed in the PCR appeal as well as the briefs that were subsequently filed at the request of the Supreme Court. Respondent then had to carefully review the pleadings that had already been filed *pro se* by Petitioner in the federal habeas corpus action. Those included the Habeas Corpus Petition itself, the State's Return and Motion for Summary Judgment and Memorandum in Support of Summary Judgment, the Petitioner's Reply to the Motion for Summary Judgment and the Report and Recommendations filed by the U. S. Magistrate Judge. Respondent's initial review of most of these materials was conducted between March 11 - March 18, 2015. Further work on the review of these records was done in the time period after the fee contract was signed, but before the weekend over which the Objections were drafted; March 20-March 27, 2015. Respondent was able to go forward with that much of the work necessary for the Objections before Hurst entered into a written fee contract for the Objections, and paid additional funds toward that contract, because the review of those materials was covered by Respondent's initial agreement with Hurst and the funds for that activity had been paid. Completing this much of the preparation toward the task of drafting and filing Objections did not require Respondent to put in a Notice of Appearance with the U. S. District Court, nor did it involve taking any affirmative action on behalf of Petitioner in the court system.

The entire nature of the representation changed once it became apparent that Petitioner had not only filed a *pro se* habeas action, but had a looming deadline for filing Objections to the previously filed Magistrate's Report and Recommendations. This development took place before Respondent reached the point in the file review process where she would have scheduled a prison visit with Petitioner. As clearly reflected in the fee contract signed by Respondent and Hurst on March 19, 2015, the \$5000 retainer paid on March 3, 2015 for the file review was applied in its entirety to the new contract for Respondent to prepare and file the Objections in U.S. District Court.

In light of the above, Respondent most respectfully asserts that the panel's conclusion that it should have taken Respondent no more than 10 to 15 hours to draft the Objections to the Magistrate's Report and Recommendations, "not having been involved at any prior stage of the proceedings" is simply not reasonable.

A cursory review of all of the documents in this case, at 30 seconds per page, would you take 15.83 hours. While only such a brief review was necessary on a significant percentage of these records, Respondent's review of the trial transcript, the Post-Conviction Relief hearing transcript and records from the State court, the records from the PCR appeal, all the pleadings in the habeas action, as well as the Magistrate's Report and Recommendations themselves, required a far closer inspection. Respondent's extensive notes from her review of the trial record were made available to the panel at the time of the hearing held in this matter.

Respondent estimates that she spent approximately 20 hours reviewing the transcripts and other documentation in this case, and taking necessary notes, *prior to beginning to draft the Objections in this matter*. As previously noted most that work was completed between March 11 and March 27, 2015. On the weekend before the Objections were due for filing, March 28-

March 30, 2015, Respondent worked on her initial outline for the objections all day Saturday for approximately seven (7) hours which included re-reading parts of the records in this matter again as they related to portions of the Magistrate's Report and Recommendations. She worked on her draft of the actual Objections most of the day on Sunday, and literally stayed up all night Sunday night in order complete these Objections. Respondent would estimate that she spent a minimum of fourteen (14) hours on drafting the actual Objections between approximately noon Sunday and Monday morning. Thus, all totaled, Respondent spent approximately forty-one (41) hours on the representation she was contracted to provide. Client clearly admitted that he wanted to hire Respondent because of her reputation as the best in her field. It is Respondent's attention to detail and her work ethic that have earned that reputation. Respondent most respectfully submits that anyone who would undertake to draft Objections to a U.S. Magistrate Judge's Report and Recommendations in such a serious case, *with no prior exposure to the case*, in 10 to 15 hours would not be exercising due diligence in advancing the client's cause. At Respondent's hourly rate of \$500.00 per hour, the 41 hours expended in this case would come to \$20,500.00. Respondent's contract with Hurst called for payment of a flat fee of \$20,000.00, plus expenses. Notwithstanding the amount of time Respondent expended in this matter, she voluntarily forgave \$5,000.00 of the fee contracted for in consideration of the short timetable the U.S. District Court had given her in this matter, and the fact that she had not filed the earlier pleadings in this case.

FACTOR 2: The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer

This portion of the Report is essentially correct, however it is inaccurate on some important points. Respondent *did not* at any point indicate that she spent any less time on the Objections in this case than she would normally spend on the same task. The difference lies in

the fact that Respondent would ordinarily be retained by a client on the front end of an action, and would have been working on various stages of the habeas action over a period of many months before being called upon to respond to a Magistrate Judge's findings. Respondent's testimony before this panel was that she had significantly less time in which to do the work in this case *not* that she spent any less time on the task itself.

The Report further states that *"it appears that Respondent created the Objections from the record and evidence provided to her from Petitioner in a period that was far less than the time she is accustomed to having to complete such pleadings."* This finding implies that the panel was under the impression that Respondent spent less time on her representation than she would ordinarily spend on the task she was hired to perform. Actually, the opposite is true. Had Respondent been retained at the beginning of this action she would have filed the Habeas Corpus Petition, prepared the Reply to the State's request for Summary Judgment and a Memorandum in Opposition to Summary Judgment. Having performed the earlier stages of this action, would have made it possible for her to complete the Objections in less time. Having not been involved in the earlier stages of this habeas action, Respondent was put in the position of doing the work that she would have normally done over a period of many months in a very short time frame. Given the time constraints in this case, and the degree to which this representation was going to cause Respondent to delay work on other client's cases, Respondent quoted Hurst a fee in line with her usual fee for a habeas action despite the fact she did not have to prepare the earlier pleadings filed in this case. Notwithstanding Hurst's agreement to pay the full fee Respondent quoted for this representation, without being asked to do so, Respondent subsequently voluntarily reduced her fee by \$5,000.00. The Report, as noted above, indicates that Respondent *"created the Objections from the record and evidence provided to her from Petitioner."* This

statement is not factually correct. As a policy matter, Respondent never bases any court submission on documents provided to her by a client. Given the state of computer technology today, Respondent is never willing to stake her reputation as an officer of the court on the content of documents provided to her by a client. As the records before this panel verify, Respondent obtained digital copies of all of the materials in question directly from the Office of the Attorney General. These documents came directly from the documents submitted to the U. S. District Court by the Office of the Attorney General as the Appendix in this habeas matter and pleadings previously filed in this case by both parties. At the hearing held in this matter, Petitioner advised the panel that he had not provided Respondent with a copy of his own draft of the Objections to the report. This portion of the report in fact recognizes that Petitioner stated that, although he had worked on his own draft of the pleading in question, he had not sent a copy of his draft to Respondent. Respondent's Last Action Log, provided to the panel by Respondent, clearly reflects that on the same date she received the necessary documentation in this case from the Office of the Attorney General, she also received a packet of materials from Petitioner. The entry in Respondent's last action log concerning the receipt of these materials *from Petitioner* contains an itemized list of the 33 items contained in that package. Item number 33 on that inventory list describes that document as "*hand written objections to report and recommendation (seven pages) SG does not believe this filed because it looks incomplete.*" Thus, Petitioner clearly did send his own effort at Objections to Respondent along with various other materials concerning his case. Respondent most assuredly did not, however, use the Petitioner's *pro se* attempt at Objections in compiling her own on behalf of Petitioner. Further, despite claiming he never understood or intended for Respondent to file his Objections, Court records confirm that

he did not file Objections with the Court himself, as he certainly would have done if he had not known they were being filed by Respondent.

FACTOR 3- The fee customarily charged in the locality for similar services.

This portion of the Report suggests that when pressed to give an hourly rate Respondent said "*she would charge about \$500 per hour for her services but she advised that she rarely charges an hourly rate, instead preferring a flat rate arrangement for her clients.*" The wording of this portion of the report is misleading. Respondent specifically advised this panel that she does the vast majority of the work in her practice on a flat fee basis, and very rarely takes on representation utilizing an hourly fee schedule. Respondent did, however, advise the panel that on the rare occasion when she did work for an hourly fee, her hourly rate is \$500.00 per hour and has been for several years. Thus, the \$500.00 an hour rate provided to the panel was not a rate randomly provided to the panel, but rather was the rate charged by Respondent in her practice on the rare occasion when she is not retained for a flat fee.

The Report also indicates that Respondent was unable to tell the panel what other attorneys in the area normally charge for such matters, and therefore the panel had to inquire about this question from other members of the Bar who have similar practices. With regard to the assertion that Respondent was unable to advise the panel what other attorneys in the area normally charge for such matters, the Report does not adequately reflect Respondent's statement to the panel in this issue. Respondent advised the panel that she would have difficulty providing the panel that information inasmuch there were not many attorneys in the area who did retained work on federal habeas corpus matters, and of those that she was familiar with who did such work, those lawyers had nowhere near the amount of experience she had. Respondent opined that any fee comparisons with those attorneys would not be meaningful given the disparity in

experience. Unfortunately the report reveals nothing about the "*other members of the Bar who have similar practices*" consulted concerning this issue so it is not clear how valid the price comparison provided in "*the estimate*" obtained by the panel would be. Respondent very much appreciates the panel's observation that Respondent's proposed hourly rate was appropriate in light of her experience and reputation in this type of case. She would note that the Report indicates that she has been in practice for "*over 25 years.*" While that statement is factually accurate, it does not fully reflect Respondent's wealth of experience in this area. As Respondent advised the panel, in May 2017, Respondent will have been practicing law for 38 years; the last 22 years of which she has been in private practice. Respondent's practice has been almost exclusively dedicated to criminal appellate matters since she began practice in May, 1979. Respondent has been a fellow in the American Academy of Lawyers since 2006; a distinction shared by only four other South Carolina Lawyers.

Respondent wishes to be clear that while the total fee of \$20,000.00, originally quoted by Respondent, and agreed upon in her written contract with Hurst, did reflect the urgent nature of the task she was being asked to agree to perform, *the hourly rate quoted to the panel*, was not unique to this case, and was based upon Respondent's established fees in other matters handled on an hourly basis.

Respondent is surprised by the assertion that the panel quote was unable to obtain "*flat fee pricing for such matters*" inasmuch as all of the attorneys Respondent is familiar with who do this type work normally practice on a flat fee basis. Respondent asks this panel to take note of the fact that the fee actually paid to her, \$15,000.00, divided by the 41 approximate hours spent on this case, results in an hourly rate of \$365.85 per hour not \$500.00 an hour, and therefore, reflects a significant reduction from Respondent's normal hourly rate.

FACTOR 4-The amount involved and the results obtained.

This portion of the panel's Report states that, "*Respondent charged Petitioner's mother \$20,000.00 to file a notice of appearance with the U. S. District Court and file the Objection is to Report and Recommendation.*" This statement overlooks the fact that Respondent, on her own volition, forgave 25% of the fee agreed to by Hurst in the written fee contract. Specifically, Respondent forgave \$5,000.00 of the fee agreed upon in fee contract. Therefore, Respondent did not charge Petitioner's mother \$20,000.00, but rather \$15,000.00 for the task agreed-upon by the contract.

The Report indicates that "even Petitioner believed that he was unlikely to prevail on this matter." Respondent can only reiterate what she advised the panel of at the hearing in this matter, which is that she specifically advised Petitioner that if he did not file proper, well reasoned, Objections to the Magistrate's Report and Recommendations he would most certainly lose because where a Petitioner does not file Objections to the Recommendation of a Magistrate Judge that Summary Judgment be granted to the State, the U.S. District Court Judge assigned to the case normally follows the recommendations of the magistrate judge. As noted above, Petitioner was further advised that if he did not file proper Objections to the Report and Recommendations he would effectively waive any appeal of an adverse decision to the Fourth Circuit Court of Appeals. Respondent specifically advised Petitioner's mother and Petitioner that habeas corpus cases are rarely won in the U.S. District Court. Petitioner was also informed that he could likely give up on the idea that any sort of "*extraordinary*" state court action would be effective at a later date if he waived his right to fully perfect his federal habeas case. As Respondent advised this panel, both Petitioner and Hurst were told up front that Petitions for Writ of Habeas Corpus are very rarely successful in the U.S. District Court.

Respondent appreciates this panel's finding that it *"has no doubt the Respondent's work was competent and believe[s] that Petitioner would not be demanding a refund had he prevailed on the matter."* Respondent would note that *a letter from Petitioner to Respondent*, in the materials before the panel, dated June 1, 2015, verifies the panel's instincts on this point. In said correspondence, Petitioner stated, *"I don't want to have to fight you on this but I will not stand by and allow anyone to take my mother's savings and then not do the job they were sought for. Make no mistake, my issue is not the amount you asked for; it's the fact that you never did the job if you were to get me out of here I would not care if you wanted another \$50,000 – or more – I would gladly pay"*. Thus, it is very clear that the amount of money that was paid for Respondent's services is not the issue with the Petitioner. This panel's report makes note of the fact that the U. S. District Court denied Petitioner's habeas petition and granted the State's Motion for Summary Judgment just one day after the Objections were filed; March 31, 2015. Respondent has no explanation for the District Court's hasty denial in this case. In all candor, it is highly unusual for the District Court to rule so quickly in such matters. Respondent would assume that Petitioner's assertion that they paid too much money *"for nothing"* may in some measure be in reaction to the haste with which the District Court acted in this matter. Respondent submits, however, that the speed with which the District Court granted summary judgment after the Objections were filed, is not a reflection upon the quality of work done by Respondent or the time it took to complete.

FACTOR 5-The time limitations imposed by the client or by the circumstances.

Respondent would refer her back to her comments in response to Factors 1 and 2.

FACTOR 6-The nature and length of the professional relationship with the client.

Respondent would once again note that her representation in this matter actually began on March 3, 2015. The brevity of Respondents involvement in this case, under the circumstances of this particular federal habeas action, is not reflective of the amount of work Respondent put into this case or the actual amount of time spent on her performance of the task she was hired to complete.

This panel's Report thankfully makes note of the fact that before the fee contract was even signed in this matter Hurst was calling Respondent's office *"regarding notifying the courts that he was now represented."* Respondent in fact received two emails from Hurst which document the fact that Petitioner knew full well that she had been retained and wanted her make her representation known to the U.S. District Court. In an email to Respondent's paralegal, Sharon, dated March 5, 2015, at 6:39 PM, Hurst advised Respondent's law firm that, *"John is waiting to hear back from the Federal Court on a request for my second extension and wanted to let you know so if you need to file something where he stands."* Three days later, on Sunday, March 8, 2015 Respondent received another email from Hurst stating *"John wants to know if he should notify the federal court or will you about him having a lawyer?"* Thus, not only was Petitioner's mother, Hurst, contacting Respondent regarding notifying the court, but her emails specifically indicate that she is passing on questions from Petitioner and therefore, they verify that Petitioner very much aware of what was going on. As for the disappointing results in Petitioner's case, both he and Hurst were advised that the odds of prevailing in the District Court were slim.

FACTOR 7-The experience, reputation, and ability on the lawyer or Lawyers performing the services.

Respondent appreciates the panel's finding on this factor and has no further comment on this issue.

FACTOR 8- Whether the fee is fixed or contingent.

Respondent submits that her very thorough fee contract with Hurst represented a valid contract for professional services upon which she has fully complied. As noted by the Report, Hurst called Respondent's office on April 14, 2015 *"about her going out to the jail to see Petitioner and inquiring about the cost of this visit."* Respondent would note, as discussed above, that her commitment to go to the prison to visit Petitioner was part of *the original agreement concerning a file review*. Once Respondent discovered that Petitioner had a pending habeas action, and that his Objections to the Magistrate's Report and Recommendations were due in the immediate future, Respondent clearly explained to Hurst that she would not be able to go see her son before filing Objections in his case. That was precisely why Respondent instructed Hurst to have her son call me as soon as possible. Respondent explained to her first, and subsequently to her son on the phone on March 18, 2015, that there would be no time for Respondent to come and see Petitioner before filing the Objections in his case and further, that unlike with a file review, it was not necessary to meet with the client in order to prepare and file Objections. *See, discussion supra.*

The very detailed fee agreement entered with Hurst does not include any commitment to go to Ridgeland Correctional Institution, which is located approximately two hours from Columbia, for a face-to-face meeting. Such a meeting was not necessary to the representation Respondent agreed to provide for the fee charged inasmuch as Respondent was strictly limited to

the matter already before the District Court in formulating Objections to file on behalf of Petitioner. After all of the work contracted for with Respondent was done, and the Court's ruling was entered, Respondent felt sorry for Hurst and decided to waive the last \$5,000.00 of her fee. In addition, after receiving a phone message from Hurst on April 14, 2015, in which Hearst advised Respondent they did not have anymore money, but did not want the Petitioner to know that yet, Respondent decided to take the time to compile a package of forms and instructions for Petitioner to file a *pro se* Notice of Appeal *at no additional fee*. This packet included not only a form Notice of Appeal, but also a transmittal letter to the Clerk of Court and a copy of the Federal Rules of Appellate Procedure relevant to Petitioner's situation, a certificate of service for him to execute on opposing counsel, and an application for him to proceed without paying fees or costs.

At some point in Respondent's communication with Hurst, after the decision of the District Court, Respondent told Hurst that the next time she was going to Ridgeland Correctional Institution *anyway*, she would ask to see Petitioner and talk with him about his case. Both Petitioner and Hurst have acknowledged their awareness that Respondent had at least one other client at Ridgeland at that time. Respondent made that offer out of kindness, however visiting with the client in person was not part of Respondent's contractual agreement in this case once the nature of Respondent's representation changed. Furthermore, prior to drafting the contract ultimately signed on March 19, 2015, Respondent expressly told Petitioner in her telephone conference with him on March 18, 2015, that she *would not be coming to see him* as part of her representation in filing the Objections and that at that juncture, all she was being retained for was to file the Objections and that the fee being paid did not cover any subsequent representation including any appeal that might be necessary in the future. Respondent's statement that she

would ask to see Petitioner the next time she was at Ridgeland *was not* an agreement to make a prison visit *as part of the services contracted for*, and would have taken place, if at all, after her agreed upon representation was finished. As Respondent advised this panel, once Petitioner claimed he never agreed for Respondent to file the Objections, Respondent decided such a *pro bono* post-representation visit was not called for or appropriate.

Rule 1.5(b): Scope of Representation

As noted by this Report Rule 1.5(b) does require that the scope of the representation and the basis or rate of the fee and expenses for *which the client will be responsible* shall be communicated to the client, *preferably in writing*, before or within a reasonable time after commencing the representation." (Emphasis added). Under Respondent's contract in this case, Petitioner had *no* responsibility for the payment of fees or expenses on his case. The Report, however, goes on to find that "*while Petitioner was aware of the services provided, or to be provided, by Respondent, there is no indication that he was provided with the fee agreement signed by his mother for that he was aware of the limited nature of Respondent's representation.*" Respondent most respectfully takes issue with this assertion by the panel. Respondent, an attorney in good standing with the Bar, specifically advised this panel that when she spoke with Petitioner before she ever signed the fee contract with his mother, she expressly advised him that she was only being retained to file the Objections in his already pending federal habeas action. Respondent further advised this panel that she expressly informed Petitioner that filing those Objections was the only thing she was being hired to do at that time and that if and when an appeal to the Fourth Circuit Court of Appeals became necessary, and he desired to have Respondent represent him in that appeal, a separate fee would be required. In the Last Action Log provided to this panel, there is a lengthy entry addressing a collect call from Petitioner on May 18, 2015. During that telephone conversation Respondent reminded the Petitioner of the

scope of her representation as agreed-upon in her fee agreement with his mother and stepfather. Respondent subsequently determined that, while she met with both Hurst and the stepfather, only the mother had participated in the contract. During that phone conversation, Respondent advised Petitioner that Respondent would be responding to his accusations in writing, and that she would provide him a copy of the fee agreement. Respondent's last action entry documenting that phone call indicated that Respondent intended to write Petitioner the following day. It appears, however, that Respondent went ahead and wrote him later on that same date. A copy of that letter was provided to the panel although regrettably someone on her staff inadvertently made copies of that correspondence before Respondent signed the letter and therefore, the file copy did not contain her signature.¹ That correspondence was also sent to Hurst. Sometime that same afternoon, at approximately 5:00 PM, Respondent called Hurst to discuss her son's phone call. Respondent was unable to reach Hurst and left her a message to call Respondent.

Hurst did not return Petitioner's phone call from May 18, 2015, but did send an email at 7:14 pm informing Respondent that she would not be returning Respondent's phone call at that time. Much of Hurst's email on May 18, 2015, concerned ongoing family health issues, however it was in that email that Hurst *first* claimed that she did not understand the scope of Respondent's representation of Petitioner. Respondent emailed her back at 10:25 PM that evening and advised her that due to the content of her email she thought it was best if we communicated in writing, and further that I believed the very detailed the agreement she signed would speak for itself. The content of that email is documented in Respondent's Last Action Log and the panel was provided copies of those email transmissions as well.

¹ It warrants observation that if Respondent were of a mind to be dishonest, it would have been simple enough to create a copy showing a signature.

Respondent's letter to Petitioner dated May 18, 2015, was not sent return receipt requested/restricted delivery. It is Respondent's experience with the SCDC mail system that some institutions will not accept mail sent in that manner, and even if they will, it can significantly delay delivery. It is relevant to note that Petitioner's mother was given a copy of the signed notarized fee contract on the date it was signed. Furthermore, correspondence to Respondent from Petitioner dated May 26, 2015, documents the fact that Petitioner was fully aware of exactly how much money his mother had paid Respondent for her services. In that correspondence he claimed that he had never agreed to be represented by Respondent and was not aware of the fact that Respondent would be filing the Objections to the Magistrate's Report and Recommendations. As recognized by this panel, all evidence supports Respondent's position that this claim is untrue. What is revealing is that Petitioner knew exactly how much Respondent had ultimately been paid for the services rendered; \$16,000. In actuality, he was somewhat confused because he did not recognize the fact that \$1,000.00 of that total had been transferred to Respondent's trust account for expenses to be billed against. Thus, it is clear that the Petitioner was aware Respondent's fees and had been kept abreast of all the fee arrangements inasmuch as he knew how much Hurst had actually paid at the time of Respondent's *original* retainer (\$6,000.00) and was aware that the total paid to Respondent in fees and expenses for the amended agreement to file these Objections *after* Respondent had forgave the payment of the final \$5,000.00 of her fees. Respondent's May 18, 2015, letter was never returned to Respondent's law firm as undelivered. Neither did Petitioner ever call Respondent's law firm back and advise that he had not received the fee contract and the letter both of which Respondent told him she was going to send him. If he didn't receive these materials, all he had to do was write, or call, Respondent and a second set would have been mailed out at once.

Respondent respectfully submits, that Rule 1.5 (b) expressly requires that the client be made aware, *preferably in writing* of the "scope of the representation and the basis for rate of the fee and expenses quote for which the client will be responsible." Respondent has expressly informed this panel that she told Petitioner the exact scope of the services for which she was being retained by Hurst, and obtained agreement by Petitioner for her to proceed with that representation, before she ever entered into the written contract with Hurst. Further, the last line of the first paragraph of that written contract clearly states that the parties agree that *the contract is being entered with the full knowledge of the client*. Thus, by her signature on that document, Hurst not only agreed to the terms of the contract, but acknowledged that her son, Petitioner, was fully aware of the agreement she was entering with Respondent.

This panel's report notes that both Petitioner and his mother expressed confusion about the scope of the services and fees charged. Respondent asks this panel to recognize that neither Petitioner, nor his mother had any difficulty whatsoever in conveying their position to the panel during the hearing held in this matter. Perhaps more telling, neither Petitioner, nor his mother had any difficulty sending written communications in this case. The detail with which Hurst conveyed information about her stepdaughter's medical conditions alone certainly evidences the fact that this individual is far from illiterate. The fee contract executed in this case could not have been any plainer in its meaning. The fact that the contract was for the specific service outlined, preparation and filing of the Objections, and that the fee paid *did not cover any other legal representation* was expressly stated in the terms of the fee contract. Furthermore, in an abundance of caution, Respondent included in the fee contract an express provision that stated in no uncertain terms that the fee paid for the services outlined in the contract *did not cover representation in any subsequent appeal to the Fourth Circuit Court of Appeals*. Petitioner

respectfully asserts that Hurst's claim that she did not understand the scope of the representation contracted for is not credible. This panel's Report concludes that Hurst did know the scope of representation Respondent was hired for, and yet emphasizes her claim that she was confused about that very point.

In another portion of this section of the panel's Report, it is stated that Respondent was very clear with Petitioner's mother *that both she and Petitioner were her clients*. Most respectfully, Respondent would submit that is an inaccurate restatement of Respondent's testimony before this panel. It is also inconsistent with the express language of the fee contract *and* with another portion of the panel's Report wherein the opposite is stated. Report, pg. 11, para. 1. Respondent advised this panel that she had, as she always does with third-party payment cases, very carefully explained to Hurst that while she was the person entering into a contract with Respondent, *her son was the client*, and that Respondent could not withhold any information from him or share any information with her that he had not expressly authorized me to share. Respondent made certain that she understood that regardless of who paid the attorney fees in this case, the attorney-client privilege between her son and Respondent would remain intact and that Respondent would only be able to reveal her communications with him to her to the extent her son had authorized Respondent to do so. This same information was as Respondent advised this panel, orally conveyed to Respondent during the March 18, 2015 telephone conference.

In the same paragraph in which the Report inaccurately quotes Respondent as saying both the mother and the Petitioner were clients, the Report states that, "[T]here was no clear indication that Petitioner was aware of the scope of the services or legal fees charged until after the completion of the legal services." This is the second time in this Report that it states that

there was no indication that the Petitioner was aware of the scope or the services or legal fees charged. With all due respect, this panel is apparently willing to take the word of Petitioner, over that of Respondent as regards this point. The Report's repeated statement that there is "*no indication*" that Petitioner was aware of the scope of the services to be provided by Respondent totally ignores the fact that Respondent has advised this panel that she specifically advised Petitioner on the limited scope of the services she was to be retained to perform the day before Respondent entered into a contract with Hurst. This reliance on Petitioner's statements as regard this point comes despite the panel's finding, as supported by the documentation before the panel, that Petitioner was not truthful with the panel about not knowing Petitioner was going to be filing Objections on his behalf in the U. S. District Court.

The Report also erroneously states that Respondent's fee contract names Petitioner's mother as the client. A close reading of the opening paragraph of this contract states that the contract is being entered between Respondent and Hurst, mother of John Daniel Springer (hereafter Client). Thus, the parenthetical reference to "Client" clearly referenced the name immediately before that reference, John Daniel Springer; the Petitioner. Any doubt concerning that intended reading should be readily resolved by a reading of the contract itself. In each and every location where the contract refers to the services to be provided the document references to "Client" In every single portion of the contract dealing with the financial obligations for the payment of Respondent's fees, Hurst is referenced by her full name; Katherine Virginia Hurst. On page 2, paragraph 2 of this contract, reference is specifically made to Catherine Virginia Hearst *and* Client potentially being entitled to a refund of all or a portion of the fee paid in this matter if Respondent failed to perform the duties contracted for here in. Later in paragraph 5 on page 2 of this contract it specifically states "*counsel has expressly advised Catherine Virginia*

Hurst and Client that the chances of prevailing in any federal habeas corpus action are not high." Thus, it should be impossible to read this contract as naming Katherine Virginia Hurst a Client in this matter. As previously noted, another portion of this panel's own Report is in direct conflict with that assertion. Report, pg. 11, para. 1.

This Report states that Respondent admitted that she relied upon Petitioner's mother to convey information and materials to Petitioner. The panel notes that based upon emails provided by Respondent, *"she frequently directed communications to Petitioner through his mother rather than personally meeting with or speaking with the client."* Again, with all due respect, this statement clearly indicates a lack of familiarity with representing clients in the custody of a state correctional facility. Petitioner was housed at Ridgeland Correctional facility, just outside Beaufort, South Carolina, at the time Respondent was retained and worked on this case. Petitioner and his mother waited until virtually the last minute to get Respondent involved at the tail end of a complicated federal case. Counsel had very little time to fit in all of the work that was necessary to competently perform the services contracted for into a schedule that was already packed with previous obligations. *As Respondent specifically advised this panel*, she was able to rearrange some other obligations, and get extensions in other matters, in order to make time to do the work for Petitioner. Respondent told Petitioner and Hurst that she would not have time to go see Petitioner before she completed and filed the Objections in this case, and explained why, unlike with a file review, such a visit was not necessary for the services agreed to for the filing of these obligations. Ridgeland Correctional Institution is approximately a 2.0 hour drive from Respondent's Columbia office. Respondent certainly did not have time to make a six (6) hour trip, counting two hours to process in and out of the correctional facility and to visit with Petitioner anytime she needed information from Petitioner. Lawyers have no means to

simply call their clients at a correctional facility. In extraordinary circumstances, such as the death of a family member, some institutions will allow a lawyer to place a call to the correctional facility and ask them to try and get a note to your client instructing him to call his lawyer. Even with the institutions that allow such calls, your ability to get a note to the client is hit and miss at best. Respondent attempted to explain this reality to this panel during the hearing. As Respondent told this panel, it was apparent from Respondent's communications with Hurst that her son called her on an extremely regular basis. It was therefore both more expedient and reliable to call Hurst and ask her to have Petitioner call Respondent than it would have been to try and arrange a phone call through SCDC. That being said, Respondent *did not* tell this panel that she relied on Hurst to convey crucial information to him about the scope the representation contemplated or to verify Petitioner's desire to be represented by Respondent for that limited purpose. Respondent did not rely on Hurst to explain to him that Respondent was being hired for the limited purpose of preparing and filing these Objections, or that if Petitioner wanted Respondent to represent him in a future appeal a separate fee agreement and fee would be necessary to retain Respondent for that purpose. Respondent conveyed that information to Petitioner personally. Respondent respectfully urges this panel to reconsider its finding that Petitioner's claim that he was unaware of the limited nature of Respondent's representation was credible. This finding is patently unreasonable in the face of the evidence in this dispute. This panel has recognized that Petitioner's claim that he did not agree for Respondent to be hired to file the Objections on his behalf was false. Report, pg.9, para.4. The Report issued by this panel overlooks another crucial factor concerning Petitioner's lack of credibility on this issue. The panel expressly did not find Petitioner's claim that he had not agreed for Respondent to prepare and file the Objections to be truthful. The Report states, "[W]e find that Petitioner's claims that

he did not hire Respondent and did not know that she was filing the objections on his behalf to be false." (Emphasis added). Report, pg.9, para.4. What the panel overlooks is Petitioner's claim that he believed Respondent was *only* hired to pursue a Fourth Circuit appeal. He *did not* claim he understood Respondent would do *both* the Objections and an appeal to the Fourth Circuit. Thus, this panel's finding that his claim about the Objections was untrue, and should have lead to the conclusion that he was not truthful in asserting that he thought Respondent was retained for Fourth Circuit appeal.

It is also crucial that this panel recognize the fact that Petitioner never made the claim that he believed Respondent had obligated herself to represent him in an appeal to the Fourth Circuit Court of Appeals until May 18, 2015. Hurst, never made the outlandish claim that she did not understand the fee contract, which she signed after ample opportunity to review its content, until after she became aware that her son was making the claim that he believed Respondent had been hired to represent him in a Fourth Circuit appeal. Respondent asks this panel to consider the following chronology documented in the Last Action Log provided to the panel at the time of the hearing. On April 14, 2015 Hurst left a phone message with Respondent's paralegal in which she acknowledged that Respondent had told her that if she would pay \$2,500.00 of the remaining \$7,500.00 balance due on Respondent's fees, Respondent would "*call it even.*" At that time she indicated that she had no more money, but did not want Petitioner to know yet. Respondent spoke with Hurst thereafter and told her that she could not keep information from her client; Petitioner. On April 16, 2015 Respondent sent a lengthy letter to Petitioner with copies of the Objections filed on his behalf and a copy of the Order of the District Court issued the day after the Objections were filed. In that correspondence, Respondent advised Petitioner that appeals to the Fourth Circuit Court of Appeals in habeas matters are

rarely successful. Respondent enclosed along with the letter and the district court documents, the packet discussed *supra* for Petitioner to use in the event he decided to pursue a Fourth Circuit appeal *pro se*. On April 24, 2015, Respondent sent an email to Hurst telling her that Respondent expected to be in her office all day the following Monday and advising her that Petitioner could call her office on Monday and find out some good times to try and reach Respondent during that day. Respondent did request that Hurst pass this information along to Petitioner if she got a chance to speak with him. Once again, while it may not have been the optimal means of communication to pass on a message concerning when Respondent would be available for a phone call should Petitioner need help understanding the *pro se* filing packet he had been sent by Respondent, it was a realistic course of action since April 24 was a Friday and the following Monday was only one postal delivery day away. Respondent knew from experience that a letter mailed to Ridgeland Correctional Institution in the afternoon mail on April 24, 2015, would not likely reach the Petitioner before Monday, April 26th. Knowing that Petitioner would no doubt communicate with his mother over the weekend, extending Respondent's offer to be available to accept a phone call from Petitioner should he have any questions concerning filing his notice of appeal was the only practical option. There is no record of Petitioner calling Respondent the following Monday, or any day thereafter, until May 18, 2015.

It strains credulity to suggest that Petitioner genuinely believed the Respondent was going to be responsible for representing him on appeal to the Fourth Circuit Court of Appeals, where he did not contact Respondent with his claim that he did not understand the scope of Respondent's representation *until a month after* receiving Respondent's April 16th letter and the *pro se* filing package. Likewise, his claim that he never knew Respondent had been retained to prepare his Objections to the Magistrate's report is belied by the fact that he did not file

Objections *pro se*. Despite all of the communication between Respondent and Hurst concerning her son's case after the March 31, 2015, Order was entered, *not once* did she indicate that there had been any confusion about the fact that Respondent had not been retained for that appeal until May 18, 2015; the same date her son first claimed he had thought she was hired for the Fourth Circuit appeal. In addition, in her responsive email dated May 18, 2015 Hurst states "*when you said you would send everything to my son for him to do the first step in the federal appeal I thought what a wonderful act of kindness for you to do.*" If, as Hurst claims, she "*understood that you were going to handle the whole federal appeal*" why would she consider it an act of kindness for Respondent to volunteer to, free of additional legal fees, prepare a *pro se* filing package for her son, and send it to him to enable him to file his appeal *pro se*. Respondent asserts that it is clear that neither Petitioner, nor his mother, decided to assert that they thought Respondent was going to handle a subsequent appeal until after the U.S. District Court case was lost and the mother was forced to tell her son that she had no more money for any additional legal fees.

Rule 1.5(f): Advance Fees

As Respondent has explained in detail *supra*, by the time it was discovered that the next step that needed to be pursued on Petitioner's behalf was the filing of Objections in response to the Magistrate's Report and Recommendations in Petitioner's pending federal habeas corpus action, and there was very little time left to formalize a fee contract and do the work required. The panel's Report indicates that "*the evidence is not clear whether Respondent performed the agreed to legal services.*" The Report goes on to find that "*all parties involved repeatedly stated that Respondent was supposed to go and speak with Petitioner in person. That never occurred.*" In as previously noted, the panel's finding concerning this aspect of Respondent's representation

is apparently due to a fundamental misunderstanding of the timing of and the purpose for which Respondent was originally retained *versus* the amended scope of representation that developed after Respondent had the opportunity to research the procedural history in this case. As previously discussed at length, visiting Petitioner at his correctional institution *was part of the original agreement for a final review*. Once it was ascertained that the Petitioner needed Respondent to file Objections to the Magistrates Report and Recommendations in a pending habeas case, and needed those services to be provided in a ridiculously short period of time, *Petitioner and his mother*, Hurst, were expressly advised that Respondent *would not* be going to see Petitioner prior to fulfilling her obligations under the proposed fee agreement to prepare and file Objections in the U.S. District Court on Petitioner's behalf. After the U.S. District Court judge ruled in Petitioner's case in lightning speed, and Hurst advised Respondent that she simply had no more money to pursue this matter further, Respondent felt sorry for her, and for Petitioner. Respondent decided to prepare a *pro se* filing packet for Petitioner, for no additional fee, in order to aid him in pursuing his appeal process so if he so desired. As the Report acknowledges, traveling to Ridgeland Correctional Institution for a face-to-face meeting with Petitioner was not a part of the specifically articulated representation covered by the written fee contract in this case. Once again, when Respondent spoke with Petitioner the day before she entered into the contract with Hurst, she specifically told Petitioner that, unlike *with the originally agreed upon final review*, she did not need to come visit him as part of her agreement to prepare and file the Objections on his behalf, nor would she have had time to do so before the services were to be provided. At no time did Respondent lead Petitioner to believe that she would still be coming to see him as part of the representation she was being contracted to provide. As this panel is aware, Respondent drafted, and executed with Hurst, an extremely

thorough and detailed fee contract. Respondent respectfully asserts that the panel has exceeded its authority in finding that Respondent breached the terms of her contractual agreement by failing to perform a task that is not included in the description of the services to be rendered in that contract, and which she expressly told Petitioner and Hurst she would not be performing as part of her amended agreement in this case.

Respondent believes that the findings reflected in this Report with regard to Respondent's agreement to visit Petitioner at his correctional institution, simply reflect an inadvertent failure of the panel to consider that the original terms of engagement were amended, and a formal written contract entered, after the scope of services needed by Petitioner was clarified by Respondent's research into the procedural history of Petitioner's case and the status of a pending federal habeas corpus action. As Respondent advised this panel, no written contract was ever entered for the file review initially agreed to because within two (2) days of being hired by telephone by Hurst, Respondent became aware that the terms of her original retainer would have to be amended because Petitioner had a pending habeas action in which Objections were due. *See*, Email from Hurst dated March 5, 2015 and Last Action Log.

After all Respondent's responsibilities under the terms of her agreement in this case were over, Respondent told Hurst that the next time she was scheduled to go to Ridgeland Correctional Institution she would ask to see Petitioner. She told Hurst that she would try to visit Petitioner if she visited Ridgeland *to see another client* and would see if he had any questions she could answer for him about proceeding with a *pro se* Appeal to the Fourth Circuit. The fact that Respondent made the offer to do that, *for no consideration whatsoever*, did not extend the terms of her contractual agreement in this case. Respondent respectfully submits that neither does her subsequent decision not to go see Petitioner provide grounds for a finding a breach of

contract. As a practical matter, Respondent would note that she would, in all likelihood, have made arrangements to see Petitioner the next time she was at Ridgeland Correctional Institution had Petitioner not decided to claim that he never knew Respondent had been retained to prepare and file the Objections in the U.S. District Court, and that he believed she was hired for an Appeal to the Fourth Circuit, *not* to file the Objections in the District Court.

For all the reasons set forth above, Respondent respectfully submits that the findings of the panel concerning rule 1.5(f) are flawed inasmuch as they are based on a fundamental misunderstanding of the scope of the representation agreed upon when Respondent was initially retained *versus* the scope of representation agreed upon once it was determined that Respondent was to prepare and file the Objections in question. For this reason, Respondent respectfully submits that the panel has exceeded its authority in finding that Respondent breached her obligations under the fee contract in this case.

Rule 1.8(f): Third Party Payers

The requirements of Rule 1.8(f) are clear. Respondent respectfully submits, however, that the panel erred in concluding that Respondent has not complied with its terms. Respondent has advised this panel that in a telephone conference with Petitioner on the day before the fee contract was executed with Hurst, she discussed with Petitioner the fact that the Objections to the Magistrates Report and Recommendations were due in very short order. Respondent advised Petitioner that his mother had agreed to hire Respondent for the purpose of preparing and filing those Objections but that Respondent would not enter into a contract with his mother for said services on his behalf unless he affirmatively told me that he wanted Respondent to represent him and wanted Respondent to perform the agreed-upon task; preparation and filing of the Objections in the U.S. District Court. Respondent expressly advised Petitioner that the fees to be

paid by his mother would not cover any subsequent appeal to the Fourth Circuit Court of Appeals which might become necessary. Respondent specifically told Petitioner that even though his mother would be the party paying Respondent's fees, he *not* Hurst would be the client, and that Respondent would honor the attorney-client privilege, and would only disclose so much of her communications with him to Hurst as he expressly authorized me to share with her. Petitioner readily agreed to consent Respondent's retainer by his mother and indicated that he was very happy that I was being hired to file the Objections on his behalf. Interestingly, as noted in the panel's report, Comment Seven to Rule 1.0 (G), which defines the term "*informed consent*", states that obtaining informed consent will *usually* require an affirmative response by the client or another person. In this case, Respondent obtained informed consent *directly from the client*. Rule 1.7 (a) allows a lawyer to undertake representation in situations where an actual conflict of interest exists where the client's informed consent is confirmed in writing. This panel has apparently construed language found in Rule 1.7 (a) to require written confirmation of informed consent in any case where a third party pays the client's legal fees. In fact Rule 1.7 (a) recognizes an inherent conflict of interest arising in such a situation and states that the rule prevents a lawyer from representing a client "*if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exist if... (2) there is a significant risk that the representation of one or more clients will be materially limited the lawyer's responsibilities to... a third person.*" Even in the face of such a conflict of interest, a lawyer is permitted under Rule 1.7(b) to undertake representation of a client where a concurrent conflict of interest exists if "*each affected client gives informed consent, confirmed in writing.*" While third-party payment of attorneys fees gives rise to an inherent possibility of a conflict of interest, it is the presence of an actual concurrent conflict of interest, or facts which reasonably suggest such a conflict might

exist, which gives rise to the requirement that informed consent be confirmed in writing. On the facts of this case, the third-party who hired Respondent was Petitioner's mother. There were no co-defendants in this case involving serious charges of criminal sexual conduct with two separate victims. Petitioner has acknowledged that he wanted his mother to hire Respondent because of his long held belief that Respondent was the very best appellate lawyer available in South Carolina to handle his case. Thus, Petitioner has confirmed he wanted Hurst to hire Respondent to represent him. Given the close familial relationship between Petitioner and the third-party paying his legal fees, his own mother, and the fact that the mother was *admittedly honoring Petitioner's express desire to be represented by Respondent*, there was absolutely no evidence of any conflict of interest which might arise from Respondent being retained by the mother. There was no evidence presented to this panel which would support any reasonable interference that Respondent's independent professional judgment, or her client-lawyer relationship with Petitioner, would be materially limited by Respondent's responsibilities to the mother; Hurst. Because of the inherent potential for a conflict of interest arising from third-party payment of fees, Respondent acted appropriately in obtaining the Petitioner's informed consent to be represented by Respondent and to the scope of services Respondent was being hired to perform. In the absence of any evidence whatsoever of any potential for a concurrent conflict of interest, there was no evidence of whatsoever that there existed "a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to... a third person." Simply put, neither prior to Respondent entering into a fee contract with Hurst, or afterword, has there ever been any evidence whatsoever that Respondent's representation of Petitioner would be materially limited by Respondent's responsibilities to Petitioner's mother. Petitioner and Hurst have admitted that Petitioner wanted to be represented by Respondent.

Respondent asserts that written confirmation of informed consent was not required where there was, and remains, no evidence of an actual conflict of interest in this matter.

III.

CONCLUSION

For all the foregoing reasons, Respondent respectfully requests that this panel, and the fee dispute committee, grant reconsideration of the findings contained in the Report and Recommendations entered by the panel on Petitioner's fee dispute application. Respondent submits that although the rules governing this panel do not specifically provide for submission of a request for reconsideration and/or rehearing, neither do they expressly preclude such a request. Respondent respectfully submits that the need for panel reconsideration of its findings, and if necessary for rehearing, is exacerbated where the rules governing the fee dispute committee allow for an extremely limited right of appeal of any findings issued by a three-person panel. Likewise, Respondent submits that she was afforded an inadequate opportunity to be fully heard in this matter where the rules governing the fee disputes do not provide for an attorney against whom a fee dispute has been filed to submit a written response to the issues raised in a fee dispute application. As noted above, the rules specifically require an attorney facing such allegations to file a response where the matter has been referred to a single-member panel. No such provision is contained in the rules for a matter referred directly to a three-person panel due to an amount in dispute being in excess of \$7,500.00. When notified of the upcoming hearing date on this fee dispute by the Nashiba Boyd, Panel Chair, by correspondence dated October 13, 2016, Respondent was advised that she could present witnesses and any documentary evidence she desire to present at the hearing. Respondent respectfully submits that the system provided

for under these rules ironically gives an individual appearing before a single person panel in a fee dispute, an advantage over parties to a fee dispute assigned directly to a three-member panel. In a case with a procedural history as complicated as the one present in the case before this panel, the opportunity to have articulated concise written responses to Petitioner's allegations would have acted to ensure that the panel had a more accurate understanding of the case and was better prepared to make accurate factual findings concerning Respondent's representation and the fees involved. Respondent respectfully submitted this panel has exceeded its authority in ordering Respondent to refund the \$5,000.00 of the fees paid to her in this case while simultaneously acknowledging that "Respondent's fee may have been reasonable under the circumstances." Report, pg. 12, para. 2. Respondent respectfully asserts that the panel exceeded its authority in ordering a refund of a third of Respondent's fees based on an unreasonable estimate of the time expended by Respondent in this matter to perform the contractually agreed upon representation. In addition, Respondent respectfully submits that the panel has exceeded its authority by finding that the amount of time Respondent reasonably may have expended in this case should have been no more than 20 hours based upon "industry norms" apparently derived from interviewing an unknown number of members of the Bar and obtaining an estimate from one lawyer. Furthermore, Respondent respectfully submits that this panel's estimation of the amount of time Respondent should have spent in this case was partially based on its erroneous factual finding that all of Respondent's work on this case took place over a single weekend, where the records before the panel confirm the Respondent was retained a full 16 days earlier than the panel recognized and that Respondent had done extensive work on this file before the weekend over which she actually drafted these Objections. This panel has exceeded its authority in ordering Respondent to refund the \$5,000.00 of her fee to *Petitioner* where he was not the party who paid

Respondent's fees, and where the third-party who contracted for Respondent's services and paid her legal fees, his mother, is not a proper party to this fee dispute.² As noted above, the rules governing this panel and the fee dispute committee in general, specifically provide that a third-party payer may jointly file a dispute with the client with the client's express consent, but that the fee dispute application *must be signed by both the client and the third-party Payer*. Petitioner's mother did not sign the dispute application filed in this matter and is not listed as a claimant in the fee dispute. Respondent respectfully submits it is beyond the authority of this panel, and the Fee Dispute Board, to order Respondent to refund fees paid to Hurst to Petitioner where Petitioner has no legal right to reimbursement of legal fees not paid by him. Neither does this panel have the authority to order Respondent to reimburse a portion of the fee paid by Hurst where she is not a party to Petitioner's fee dispute application nor has she filed such an application independently. Respondent would respectfully submit that the Fee Dispute Board's rule regarding appeals to the Circuit Court, unconstitutionally infringes upon an attorney's right to due process of law where it provides for possible relief on appeal to the circuit court under only certain very narrowly prescribed conditions, as set forth in subsection f, all of which essentially require the attorney to establish that one or more panel members acted improperly in the administration of their duties *versus* establishing simply that the findings of the panel are factually erroneous or unsupported by the evidence before the panel. South Carolina law, outside of Rule 416, SCACR, clearly provides for the right to trial by jury in a dispute involving attorney's fees not involving a lien against a judgment. It is, therefore, unreasonable to conclude that an attorney may be deprived of due process in such a dispute simply because the client agrees to contest attorney fees paid through the Fee Dispute Board. If an attorney involved in fee dispute had the right to appeal the decision of the fee dispute committee to the circuit court for *de*

² Petitioner acknowledged this fact at Item 16 of his application.

novo hearing, then the attorney's right to due process would be preserved. If the rules permitted an attorney to receive relief in the circuit court based on a finding that the panel wrongfully decided the dispute, versus requiring a showing of improper conduct, the attorney's right to some degree of due process would be preserved. Lastly, Respondent respectfully asserts that the errors in the panel's Report addressed herein, verify that the findings of the panel as reflected in its Report were based upon multiple erroneous findings of fact and therefore, should be reconsidered.

For all the above reasons Respondent respectfully urges this panel to grant reconsideration and/or re-hearing in this matter. Respondent most respectfully submits that she has more than adequately outlined for the panel's consideration various areas where this panel either misapprehended the facts, or wrongfully decided the issues, to warrant the panel either setting aside its findings and dismissing this application or rehearing this dispute. Furthermore, Respondent has demonstrated that the Report and Recommendations issued by this panel wrongfully orders Respondent to refund fees to a party who did not pay those fees. Likewise Respondent submits that this panel's report can not be construed as a directive to refund a third of her legal fees to Hurst, where she is not a party with a properly filed fee dispute before the Fee Dispute Board.

Respondent submits that contrary to the claims of Petitioner, she did communicate the scope of her representation to Petitioner. This panel's finding that Petitioner's claim that he did not know Respondent was hired to file the Objection on his behalf "*was false*", should in fact have controlled this question where Petitioner's entire position *was not* that he believed that Respondent was hired to *both* prepare and submit the Objections in the U.S. District Court *and* to represent him in an appeal to the Fourth Circuit Court of Appeals. It was his position that he

only authorized Respondent to represent him on appeal to the Fourth Circuit Court of Appeals and that he did not know she was going to file the Objections on his behalf. This panel has expressly found his claim that he did not know Respondent was to file the Objections on his behalf to be false. It logically follows that his claim that the only thing he authorized her to represent him on was an appeal to the Fourth Circuit is likewise untrue.

The panels finding that Respondent failed to fully perform under the terms of her fee agreement is erroneous. As explained in detail above, this misapprehension of the facts in this case is apparently due to the failure of the panel to recognize that Respondent was first hired on March 3, 2014, not March 19, 2014 as the Report finds and that the terms of Respondent's representation changed substantially after she discovered that Petitioner had a pro se habeas action pending and that Objections were due in very short order. The agreement to contact an in person interview with Petitioner was part of the original agreement. For the reasons detailed above, and explained to Petitioner and Hurst before the fee contract was signed, that term of Respondent's representation changed when the fee agreement was amended and was therefore not included in the formal fee contract. The panel erred in concluding that Respondent failed to perform under a term of her fee contract in this case.

A written informed consent agreement was not necessary on the facts of this case where there existed no evidence whatsoever, at the time Respondent was retained, or at any time thereafter, of a concurrent conflict of interest. For these reasons, the panel's conclusion that Respondent should be required to refund a portion, a third, of her total fees is improperly reached and should be reversed on reconsideration based on all the factors addressed herein.

Respondent is fully aware that any appeal to the circuit court must be filed pursuant to Rule 20 and that the funds in dispute must be placed in trust with the Bar pending such an

appeal. She urges this panel to set aside its finding prior to the due date for the filing of the appeal. Respondent respectfully submitted that she should not be required to resort to a costly appeal to the Circuit Court where the findings of the panel were based upon the erroneous findings of fact clearly demonstrated herein. If this panel has not addressed this request prior to the time, Respondent shall comply with Rule 20.

Respectfully submitted

Tara Dawn Shurling
Respondent
Attorney and Counselor at Law

This the ____ day of January, 2017.

SOUTH CAROLINA

COUNTY OF RICHLAND

TARA DAWN SHURLING,

Appellant,

vs.

JOHN DANIEL SPRINGER,

Respondent

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017CP400

Submitted By: Tara Dawn Shurling
 Address: 3614 Landmark Drive
 Suite A
 Columbia, SC 29204

SC Bar #: 5099
 Telephone #: 803-738-8622
 Fax #: 803-738-1600
 Other:
 E-mail: tdslaw@shurlinglaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements 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)

- | | | | |
|--|---|---|---|
| ☐ Contracts | ☐ Torts - Professional Malpractice | ☐ Torts - Personal Injury | ☐ Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Conversion (310) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Motor Vehicle Accident (320) | ☐ Condemnation (410) |
| ☐ General (130) | ☐ Medical Malpractice (220) | ☐ Premises Liability (330) | ☐ Foreclosure (420) |
| ☐ Breach of Contract (140) | Previous Notice of Intent Case # | ☐ Products Liability (340) | ☐ Mechanic's Lien (430) |
| ☐ Fraud/Bad Faith (150) | 20__-NI-__-__ | ☐ Personal Injury (350) | ☐ Partition (440) |
| ☐ Failure to Deliver/
Warranty (160) | ☐ Notice/ File Med Mal (230) | ☐ Wrongful Death (360) | ☐ Possession (450) |
| ☐ Employment Discrim (170) | ☐ Other (299) | ☐ Assault/Battery (370) | ☐ Building Code Violation (460) |
| ☐ Employment (180) | | ☐ Slander/Libel (380) | ☐ Other (499) |
| ☐ Other (199) | | ☐ Other (399) | |
| ☐ Inmate Petitions | ☐ Administrative Law/Relief | ☐ Judgments/Settlements | ☐ Appeals |
| ☐ PCR (500) | ☐ Reinstate Drv. License (800) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Judicial Review (810) | ☐ Foreign Judgment (710) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (820) | ☐ Magistrate's Judgment (720) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Permanent Injunction (830) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (840) | ☐ Transcript Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture-Consent Order (850) | ☐ Lis Pendens (750) | ☐ SCDOT (950) |
| | ☐ Other (899) | ☐ Transfer of Structured
Settlement Payment Rights
Application (760) | ☐ Worker's Comp (960) |
| ☐ Special/Complex /Other: | ☐ Pharmaceuticals (630) | ☐ Confession of Judgment (770) | ☐ Zoning Board (970) |
| ☐ Environmental (600) | ☐ Unfair Trade Practices (640) | ☐ Petition for Workers
Compensation Settlement
Approval (780) | ☐ Public Service Comm. (990) |
| ☐ Automobile Arb (610) | ☐ Out-of State Depositions (650) | ☐ Other (799) | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Motion to Quash Subpoena in
an Out-of-County Action (660) | | ☒ Other (999) |
| ☐ Other (699) | ☐ Pre-Suit Discovery (670) | | |
| ☐ Sexual Predator (510) | | | |

Free Dispute Appeal

Submitting Party Signature:

Date: February 2, 2017

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.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS

TARA DAWN SHURLING,
Appellant/Respondent,

v.

John Daniel Springer,
Respondent/Applicant.

NOTICE OF APPEAL OF THE
DECISION OF THE RESOLUTION
OF FEE DISPUTES BOARD.

FILED-2
MAR 2 2017
CLERK OF COURT

Now comes, Appellant/Respondent, the Respondent in the above captioned fee dispute, giving notice of her appeal from the Report and Recommendation entered by the assigned three-person panel in this matter pursuant to Rule 416, SCACR, Rule 20. The Report and Recommendation is dated December 27, 2016, however, it was not mailed to Appellant/Respondent until January 3, 2017. *See*, copy attached. Appellant/Respondent subsequently served each member of the Panel, as well as Respondent/Applicant, with her Request for Reconsideration and/or Rehearing. Inasmuch as the Panel assigned to this fee dispute has declined to consider that Request for Reconsideration and/or Rehearing, the Panel's Report dated December 27, 2016, is a final decision of the Resolution of Fee Disputes Board within the meaning of Rule 20(C)(1).

Respondent/Applicant, John Daniel Springer, filed the fee dispute involved in this appeal. His current address is Kirkland Correctional Institution, 4344 Broad River Road, Columbia, South Carolina, 29210. Appellant/Respondent's current mailing address is listed below.

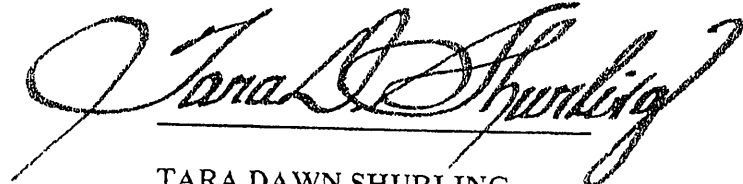
Appellant/Respondent submits that this appeal is properly before the Richland County Court of Common Pleas and asserts the following specific grounds for this appeal as required Rule 20(c)(1):

1. The Panel erred in refusing to hear Appellant's request for Reconsideration and/or Rehearing on the ground that the rules governing the Resolution of Fee Disputes Board do not expressly provide for such requests to be entertained, where the rules do not prohibit the hearing of such requests and where the absence of such a review deprives a party before the Board on review of a fee dispute any opportunity to bring errors in the findings of the Panel to their attention without filing an appeal to the circuit court under the narrow framework of Rule 20.
2. The Panel exceeded its authority in ordering Appellant to refund \$5,000.00 of her fee *to Petitioner* where the Report and Recommendation issued by the Panel is predicated upon multiple erroneous factual findings in conflict with the evidence and testimony before the Panel and reasonable inferences drawn from the evidence and testimony before the Panel.
3. The Panel exceeded its authority in ordering Appellant to refund \$5,000.00 of her fee *to Respondent* where he was not the party who paid Appellant's fees and would not legally be entitled to such an award.
4. The Panel would not have had the authority to order Appellant to refund \$5,000.00 of her fee *to the third party payer*, Respondent's mother, where she was not a proper party to this fee dispute inasmuch as she was not listed as an Applicant on the fee dispute and the fee dispute application was *not signed by both the client and the third-party payer* as required by the Board's own rules.



5. Appellant would respectfully submit that the Fee Dispute Board's rule regarding appeals to the Circuit Court, would unconstitutionally infringe upon an attorney's right to due process of law unless the factors justifying vacation of a Board decision under Rule 20(f) are interpreted to include cases where the hearing Panel exceeds its authority by granting relief to an Applicant based upon findings of the Panel which are factually erroneous and/or unsupported by the evidence before the panel.

Appellant/Respondent seeks a reversal of the findings of the Panel appointed by the Resolution of Fee Disputes Board in this fee dispute, or, in the alternative, this Court's Order granting a *de novo* review of this fee dispute by a new panel appointed by the Board.



TARA DAWN SHURLING
Attorney and Counselor at Law
S.C. Bar No. 5099

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APPELLANT/RESPONDENT
Acting *pro se*

February 2, 2017

STATE OF SOUTH CAROLINA	)	IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	FEE DISPUTES BOARD
John Daniel Springer,	)	
	)	
Petitioner,	)	
	)	
vs.	)	REPORT AND RECOMMENDATION
	)	OF PANEL
Tara Dawn Shurling,	)	
	)	
Respondent.	)	

Pursuant to SCACR 416, Rule 11, the undersigned makes the following findings and recommendations as to the above-captioned fee dispute:

SCOPE OF INVESTIGATION

In making this report, the undersigned panel has read and reviewed the Petitioner's Application for Resolution of Disputed Fee as well as reviewed documents submitted by Respondent at the Panel Hearing. The Panel also considered all statements made by Petitioner, his mother, Virginia Hurst, and Respondent during the Panel Hearing.

FACTUAL BACKGROUND

This dispute arises out of Respondent's representation of Petitioner in federal habeas corpus action. Petitioner contends that he never hired respondent but instead sought her for consultation only. All payments made to Respondent were made by Petitioner's mother, as a third-party payor only. Petitioner stated that he never reviewed, agreed to or signed a Fee Agreement with Respondent. Respondent contends that her dealings were with Petitioner's mother because Respondent is incarcerated and the representation was on an expedited basis but she was clear that Petitioner was the client in this matter. Respondent stated that she clearly laid out the fees and scope of her representation prior to the fee agreement being signed by Petitioner's mother. Further, Respondent produced a properly executed copy of the Fee Agreement signed by Petitioner's mother, which expressly limited her representation of Petitioner to the "[r]epresentation in Client's petition for Writ of Habeas Corpus which has been

filed in the United States District Court pursuant to 28 USC §2254. The Honorable Paige J Gossett, United States Magistrate Judge, issued the Report and Recommendations on January 16, 2015. Client's request for a second extension of time to file Objections to the Report and Recommendations is currently pending. Attorney Shurling agrees to file a Notice of Appearance with the U.S. District Court and file the Objections to Report and Recommendation. Attorney Shurling further agrees to represent Client at any and all hearings which may be held in connection with such action."

The Fee Agreement was signed by Petitioner's Mother and Respondent on March 19, 2015 at the agreed upon flat rate of \$20,000.00. Prior to signing the agreement, Petitioner's Mother paid Respondent \$13,500.00 in the following amounts:

03/03/2015	-	6,000.00
03/19/2015	-	7,500 00

\$1000.00 was placed in Respondent's trust account to be used for expenses per the fee agreement, and the remaining \$7,500.00 would be paid in installments until the full amount had been paid to Respondent on or before April 18, 2015. On 04/15/2015, Petitioner's Mother made a final payment of \$2500.00 and Respondent decided to waive the remaining balance of \$5000.00.

At the time that Respondent was hired, Petitioner had already filed a pro se conviction relief petition (PCR) which had been denied and a habeas corpus petition, which was still pending. Petitioner asserted that he sought the assistance of Respondent to determine whether he should continue with the habeas corpus petition or attempt a second PCR petition. Petitioner stated that he was assured by his mother that Respondent would come to the jail to discuss these matters with him and that is why Petitioner's mother hired Respondent. All parties agreed that Respondent never visited Petitioner in jail. Both sides agree that Respondent did speak with Petitioner via telephone on at least two occasions, but they disagree about the content and duration of those conversations. Respondent claims that she made it clear to Petitioner that she would only be taking over the habeas corpus petition. Petitioner claims that he never authorized Respondent to submit anything related to the habeas petition and in fact, he stated that he had already drafted his own objections to the Magistrate's Report and did not need Respondent to

draft these responses. He reiterated that he merely wanted advice on how to proceed at this juncture of his appeal.

Respondent provided the panel with email correspondence from Petitioner's mother confirming that Respondent had been hired as Petitioner's attorney and would be handling the habeas petition. Respondent also stressed the express language of the Fee Agreement that Petitioner's mother signed upon paying the requested fees. Petitioner's mother advised the panel that she did not clearly understand the limitations of Respondent's representation and therefore could not explain those limitations to her son. Petitioner's mother stated that she thought that Respondent would communicate more with Petitioner and that she did not realize that she would be responsible for explaining everything to her son. Respondent countered that because of Petitioner's incarcerated status, it is common for her to communicate with relatives or other third parties and not directly with the client. Respondent stated that based upon her interactions with Petitioner's mother, Respondent believed that she could understand the scope of Respondent's representation of Petitioner.

FINDINGS

The Petitioner contends that because Respondent failed to obtain his written consent to the third-party fee agreement, Respondent was never truly hired as his attorney. He further asserts that even if there is a valid fee agreement, the fees charged by Respondent were not reasonable considering the services provided to him.

The Respondent contends that the fee agreement was proper under the South Carolina Rules of Professional Conduct. Respondent also contends that she properly represented Petitioner per the scope of the fee agreement.

After consideration of all the information and a review of all documents received from both parties, and consideration of the factors outlined in the South Carolina Rules of Professional Conduct Rule 1.5(a) determining the reasonableness of a fee, Rule 1.5(b) determining the scope of representation, Rule 1.5(f) regarding advance payment of fees, and Rule 1.8(f) regarding third party payors the undersigned panel finds the following:

Rule 1.5(a): Reasonableness of Fee

The factors to be considered in determining the reasonableness of a fee include the

following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

Factor 1 – Time and labor required, the novelty and difficulty of the questions involved, and the skills requisite to perform the legal service properly.

During the hearing, Respondent never indicated that this matter was anything other than routine in scope of difficulty. However, she did indicate that the timeline to complete Mr. Springer's Objections to the Report and Recommendation of the Magistrate Judge was limited. Respondent was retained by Petitioner's mother on March 19, 2015 and Petitioner's pleading were due March 26, 2015. In her communication with Petitioner's mother, Respondent indicated that she would ask the Court for additional time in which to file the Objections, but during her testimony at the hearing, she stated that since Petitioner had already been granted two extensions, it was unlikely that additional time would be given. And in fact, additional time was not initially granted, but Respondent did obtain an additional weekend to work on the objections and filed the pleadings on March 30, 2015.

In an email dated, March 17, 2015, Respondent informed Petitioner's mother that "[t]he problem is that there is a tremendous amount of work that needs to be done to draft the objections. It can be done but, it will be tough to get done in time. I have to make sure the court would be likely to give me a little more time to get the work done. Otherwise, the best I will be

able to do is outline what I think the main points are that need to be cleaned up and argued in the objections. Although that is better than him doing it without any guidance, obviously, it would be better if I can go through everything and do it." This shows that Respondent made it very clear, two days before the Fee Agreement was signed, that the work needed to be done was on an expedited timeline and she warned that she may not be able to submit thorough work product due to those time constraints. Petitioner's mother still moved forward with hiring Respondent to complete the work.

Based upon industry norms, the panel found that it should have taken no more than 10-15 hours to draft Objections to a Magistrate's Recommendations, not having been involved at any prior stage of the proceedings. This time estimate is in line with Respondent's testimony that she completed the pleadings over the weekend and the fact that she has undoubtedly drafted many of these before and should be able to use much of the same case law.

Factor 2 - The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.

Respondent did not indicate that her representation of Petitioner precluded her from taking on additional cases or resulted in missed opportunity. However, she did advise Petitioner's mother that "people usually hire me on the front end and I have months to do all the work that I would now have to do in weeks." She made it clear that the limited timeline would mean that she would have to spend quite a bit of time on Petitioner's matter to get it completed by the impending deadline. It is reasonable to believe that Respondent focused her attention on Petitioner's matter to ensure that it was timely filed, which means she could not focus on other matters during this period. During the hearing, Petitioner stated that although he had worked on his own draft of the pleading, he did not send his draft to Respondent. Based on this testimony, it appears that Respondent created the Objections from the record and evidence provided to her from Petitioner in a period that was far less than the time she is accustomed to having to complete such pleadings.

Factor 3- The fee customarily charged in the locality for similar legal services.

When the hearing panel asked Respondent about the customary fee charged for such matters, she was unable to give a clear answer. She stated that because she is normally retained earlier in the process, she could not give a price comparison for just this part of the process. She stated that her fee was based upon the urgent nature of getting the pleading filed timely. She stated that if she were compelled to give an hourly rate, she would charge about \$500 per hour for her services but she advised that she rarely charges an hourly rate, instead preferring a flat rate arrangement for her clients.

Respondent was also unable to tell the panel what other attorneys in the area normally charge for such matters, therefore, the panel had to inquire about this from other members of the bar who have similar practices. The panel received an estimate of approximately \$300 per hour for similar services and was unable to obtain flat fee pricing for such matters.

The panel finds that Respondent's proposed hourly rate is appropriate because she been in practice for over 25 years and she is certainly regarded as the best lawyer for this type of case. During Petitioner's testimony, he repeatedly stated that Respondent was "the best of the best" and that "he knew that if anyone could help him, it would be her." Her practice appears to be limited to appellate work in this area of law, so a higher hourly rate is most likely justified.

Factor 4 - The amount involved and the results obtained.

Respondent charged Petitioner's mother \$20,000.00 to "file a Notice of Appearance with U.S. District Court and file the Objections to Report and Recommendation." She also agreed to represent Petitioner at "any and all hearings which may be held in connection with such action." Upon initial impression, the fee does seem quite large for such a limited scope of work and representation. Since the fee is of a "flat fee" nature, it is difficult to quantify whether the fee is justified for the work completed on Petitioner's behalf.

Respondent filed the Objections with the court on March 30, 2015 and received the opinion and order of the court denying the habeas petition and granting the state's motion for summary judgment just one day later March 31, 2015 which was an unfavorable result for the client. However, based upon Petitioner's indecision about abandoning the habeas petition it appears that even Petitioner believed that he was unlikely to prevail on this matter. The panel has no doubt that Respondent's work was competent and believe that Petitioner would not be demanding a refund had he prevailed on the matter.

Factor 5 - The time limitations imposed by the client or by the circumstances.

Same analysis as factors 1 and 2.

Factor 6 - The nature and length of the professional relationship with the client.

Prior to this agreement, Petitioner had no prior professional relationship with Respondent. She did not handle his prior PCR action and she had not assisted with his initial filing of the habeas petition. Petitioner actively sought out the assistance of Respondent because he thought that someone with her experience could help him prevail in this matter. During the panel hearing, Petitioner indicated that he only wanted to meet with Respondent to discuss his case and he never agreed to hire her to file the Objections; therefore, she acted outside the scope and nature of the representation. However, before the Fee Agreement was even filed, Petitioner's mother was contacting Respondent's office regarding notifying the courts that he was now represented. That shows that Petitioner and his mother were eager to get Respondent started on his case because they believed that with her assistance Petitioner could prevail.

Respondent's representation was for a very short duration of time. However, the emails provided by Respondent show that she was very clear with Petitioner's mother that she was coming in at the "tail end" of the matter and that her representation would be of a shorter duration than her normal cases.

Factor 7 - The experiences, reputation, and ability of the lawyer or lawyers performing the services.

During the hearing and in correspondence from Petitioner to Respondent, Petitioner stated that he believed that Respondent was one of the best appellate lawyers in the state. In fact, Petitioner referred another inmate to Respondent. He believed that her experience, reputation and ability was worthy of a top fee. The panel agrees that Respondent is one of the most experienced attorneys who does appellate work, she has a great reputation for her work and is good at what she does.

Factor 8 - Whether the fee is fixed or contingent.

The fee in this matter was fixed and not contingent on the outcome of the matter. Respondent agreed to not only file the Objections, but she also agreed to represent Petitioner in any hearings that related to his habeas petition without additional charges or fees. Had the Objections not been denied and a hearing held on the matter, Respondent would have continued to represent Petitioner.

The Fee Agreement was a properly executed contract directly intended for the benefit of a third party and the panel agrees that the agreement holds up under contract law. Additionally, the nature of flat fee pricing is that sometimes the attorney does less work than anticipated and sometimes the attorney does more work than anticipated. Either way, the set pricing remains the same.

After the denial of the habeas petition (on April 14, 2015), Petitioner's mother contacted Respondent's office about the her going out to the jail to see Petitioner and inquiring about the cost of this visit. This gives the appearance that Petitioner's mother knew that Respondent had completed her obligations of the initial fee agreement and additional services would cost additional monies. Therefore, it appears that Petitioner's mother understood the scope of Respondent's representation under the flat fee agreement.

Rule 1.5(b): Scope of Representation

The Fee Agreement provided by Respondent specifically describes the scope of services covered, including Respondent's agreement "to file a Notice of Appearance . . . and file . . . objections . . . Attorney further agrees to represent Client at any and all hearings which may be held in connection with such action." She further clearly states in bolded and capitalized letters later in the Fee Agreement that the scope of services does not extend "to the representation of Client in further actions which might be initiated . . . including appeal to the Fourth Circuit . . ."

Rule 1.5(b) states that "the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible *shall* be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation . . . [A]ny changes in the basis or rate of the fee or expenses *shall* be communicated to the client, preferably in writing." Emphasis added. While Petitioner was aware of the services provided, or to be provided, by Respondent, there is no indication that he was provided with the Fee Agreement

signed by his mother or that he was aware of the limited nature of Respondent's representation. While he cooperated with Respondent by providing information necessary for her to complete the services provided, Petitioner and his mother both expressed confusion about the scope of services and the fees charged.

In the materials provided by Respondent, one e-mail communication from Petitioner's mother stated that she was running out of money and didn't want her son to know. While Respondent stated that she was very clear with Petitioner's mother that both she and Petitioner were her clients and that she could not withhold information from him, there was no clear indication that Petitioner was aware of the scope of services or legal fees charged until after the completion of the legal services.

Respondent's Fee Agreement named Petitioner's mother, as the client; however, there is no indication that she was legally authorized by Petitioner to act for him as an agent or other legal fiduciary, and therefore, we believe all legal services performed were for Petitioner and should have been with his consent and direction. Petitioner's mother's capacity under the Fee Agreement was as a third party who agreed to provide payment of the legal fees incurred and not as a client as discussed in the Third-Party Payors section below.

Respondent admits that she relied on Petitioner's mother to convey information and materials to Petitioner. Based upon the emails provided by Respondent, she frequently directed communications to Petitioner through his mother rather than personally meeting with or speaking with the client. The panel does not believe that it was appropriate for Respondent to rely on her communications with or through Petitioner's mother to establish the scope or nature of her representation of Petitioner. We find that Petitioner's claims that he did not hire Respondent and did not know that she was filing the Objections on his behalf to be false. Based upon the evidence provided, it appears that he was certainly aware of Respondent's role in drafting the Objections and later praises them. However, there is no evidence that Petitioner was aware of the EXTENT of the agreed upon legal services and find it credible that he was truly under the impression that not only would Respondent be filing the Objections, but that her representation would extend beyond that point. Therefore, the panel does not believe that the scope of Respondent's representation was communicated to Petitioner as required under these rules.

Rule 1.5(f): Advance Fees

According to the South Carolina Rules of Professional Conduct, "[a] lawyer may charge an advance fee, which may be paid in whole or in part in advance of the lawyer providing those services, and treat the fee as immediately earned if the lawyer and client agree in advance in a written fee agreement which notifies the client:

- (1) of the nature of the fee arrangement and the scope of the services to be provided;
- (2) of the total amount of the fee and the terms of payment;
- (3) that the fee will not be held in a trust account until earned;
- (4) that the client has the right to terminate the lawyer-client relationship and discharge the lawyer; and
- (5) that the client may be entitled to a refund of all or a portion of the fee if the agreed-upon legal services are not provided.

Comment [10] to Rule 1.5 says that "A lawyer may treat a fee paid in advance of providing services as the property of the lawyer and deposit the fee in the lawyer's operating account, rather than hold the fee in trust, if the client agrees in a written fee agreement which complies with paragraph (f)(1) through (5), and the fee is reasonable under the factors listed in Rule 1.5(a). The language describing such arrangements varies, and includes terms such as flat fee, fixed fee, earned on receipt, or nonrefundable retainer, but all such fees are subject to refund if the lawyer fails to perform the agreed-upon legal services." The questions before the panel are whether Petitioner agreed to being represented by Respondent and whether Respondent performed the agreed to legal services. The panel finds that while Respondent failed to obtain any written consent from Petitioner, the evidence suggests that he consented to Respondent being hired as his attorney. But, the evidence is not clear whether Respondent performed the agreed to legal services. All parties involved repeatedly stated that Respondent was supposed to go and speak with Petitioner in person. That never occurred. While the fee agreement did not address this meeting, there is no evidence that Petitioner was aware of the limited scope outlined in the Fee Agreement because he did not sign it and per his testimony, he never even saw it. Thus, since there were tasks not performed as agreed, the fee paid to Respondent is subject to being returned.

Rule 1.8(f) Third Party Payors

Respondent and Petitioner's mother entered a Fee Agreement on March 19, 2015. The written Fee Agreement in this matter, provided by Respondent states the agreement is between Respondent and "*Katherine Virginia Hurst, Mother of John Daniel Springer*" (Client). There is no indication that Petitioner's mother is acting in any legal fiduciary capacity for her son and throughout the agreement, Respondent uses "Client" as if Petitioner is the Client. Therefore, the panel concluded that Petitioner is the Client and his mother is the person paying for the legal services under the Fee Agreement.

Rule 1.8(f) states that "[a] lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client gives informed consent;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

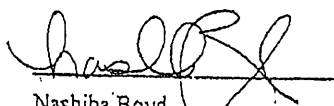
(3) information relating to representation of a client is protected as required by Rule 1.6. Rule 1.0(g), the term Informed Consent "denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated reasonably adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Comment [7] thereto states that "obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence." Because the acceptance of payment from a third party creates an inherent conflict of interest as described under Rule 1.7(a) which prevents a lawyer from representing a client "if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: . . . (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to . . . a third person." Rule 1.7(b) permits a lawyer to undertake representation in situations where a conflict of interest exists under 1.7(a) if "each affected client gives informed consent, confirmed in writing." Rule 1.7(b)(4). Under Rule 1.0(b), the term "confirmed in writing, when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent." We do not find that the inherent conflict of interest created by Petitioner's

mother agreement to pay Respondent's legal fees was effectively communicated to Petitioner and we could find no indication that Petitioner's informed consent was confirmed in writing.

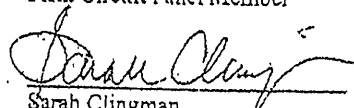
Conclusions

Based upon the foregoing, the panel finds that while Respondent's fee may have been reasonable under the circumstances, her failure to (1) communicate the scope of her representation to the client, (2) fully perform the agreed upon legal services, and (3) obtain client's written informed consent to the inherent conflict of interest created by the third-party payor agreement require that some of the fees paid by Petitioner's mother be returned. Based upon industry norms of 15 hours of work on the Objections and 5 additional hours to compensation Respondent for her meetings with Petitioner's mother, telephone calls with Petitioner, as well as the time it took to obtain information from the Attorney General's Office about Petitioner's case, the panel finds that Respondent should be compensated for 20 hours of work at her normal hourly rate of \$500. The panel finds that Respondent is entitled to \$10,000.00. Respondent is also entitled to all fees billed against the \$1000.00 held in trust as a retainer. Petitioner is entitled to the unearned fees remaining in the trust account that have already refunded by Respondent. Respondent should refund the amount of \$5,000.00 to Petitioner.

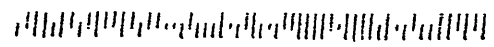
Respectfully Submitted,


Nashiba Royd
Fifth Circuit Panel Chair


Megan Gresham
Fifth Circuit Panel Member


Sarah Clingman
Fifth Circuit Panel Member

Columbia, South Carolina
December 27, 2016



MIKE KELLY
LAW GROUP, LLC

PO Box 8113
Columbia, SC 29202

Personal and Confidential
Tara Dawn Shurling, Esquire
3614 Landmark Drive, Suite A
Columbia, South Carolina 29204

STATE OF SOUTH CAROLINA)
)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

Tara Dawn Shurling,)
)
 Appellant/Respondent,)
)
 v.)
)
 John Daniel Springer,)
 Respondent/Applicant.)
 _____)

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that one copy of the Notice of Appeal of the Decision of the Resolution of Fee Disputes Board in the above-entitled cause has been served upon individual listed below by U. S. Mail on this the 2nd day of February, 2017 to:

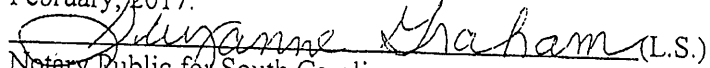
John Daniel Springer, #294365
 Kirkland Correctional Institution
 4344 Broad River Road
 Columbia, SC 29210


 TARA DAWN SHURLING
 Attorney and Counselor at Law
 S.C. Bar No. 5099

3614 Landmark Drive, Suite A
 Columbia, South Carolina 29204
 (803)738-8622
 (803)738-1600 FAX

APPELLANT/RESPONDENT
 Acting *pro se*

SWORN TO BEFORE ME this 2nd day of
 February, 2017.

 (L.S.)
 Notary Public for South Carolina

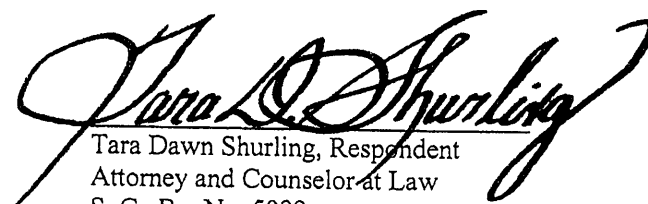
My Commission Expires: 2/28/24

RECEIPT		DATE <u>2-02-17</u> NO. <u>090028</u>												
RECEIVED FROM <u>Tara Shurling, P. A.</u>														
ADDRESS _____														
FOR <u>Fee Disputes</u>		\$ <u>5,000⁰⁰/₁₀₀</u>												
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="3" style="text-align: left; padding: 2px;">ACCOUNT</th> </tr> <tr> <td style="width: 33%; text-align: center; padding: 2px;">AMT. OF ACCOUNT</td> <td style="width: 33%;"></td> <td style="width: 33%;"></td> </tr> <tr> <td style="text-align: center; padding: 2px;">AMT. PAID</td> <td style="text-align: center; padding: 2px;"><u>5,000⁰⁰/₁₀₀</u></td> <td style="text-align: center; padding: 2px;"></td> </tr> <tr> <td style="text-align: center; padding: 2px;">BALANCE DUE</td> <td></td> <td></td> </tr> </table>	ACCOUNT			AMT. OF ACCOUNT			AMT. PAID	<u>5,000⁰⁰/₁₀₀</u>		BALANCE DUE			☐ CASH ☒ CHECK <u>Check # 4092</u> ☐ MONEY ORDER	
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©2007 REDIFORM® 81829														

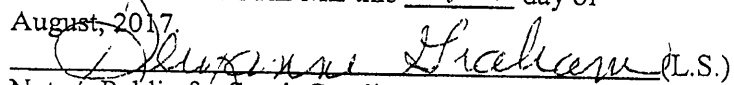
STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
	)	COURT OF COMMON PLEAS
TARA DAWN SHURLING,	)	2017-CP-40-00580
Appellant,	)	
	)	CERTIFICATE OF SERVICE
v.	)	
John Daniel Springer #294365,	)	
Respondent.	)	
_____	)	

The undersigned attorney hereby certifies that one copy of the Record on Appeal in the above-entitled cause has been served upon individual listed below by U. S. Mail on this the 2nd day of August, 2017 to:

John Daniel Springer, #294365
 Perry Correctional Institution
 Q1A-0107-B
 430 Oaklawn Road
 Pelzer, S.C. 29669


 Tara Dawn Shurling, Respondent
 Attorney and Counselor at Law
 S. C. Bar No. 5099

3614 Landmark Dr., Ste. A
 Columbia, SC 29204
 (803) 738-8622
 (803) 738-1600 (Fax)
 Email: tdslaw@shurlinglaw.com

SWORN TO BEFORE ME this 2nd day of
 August, 2017.
 (L.S.)
 Notary Public for South Carolina
 My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE FIFTH JUDICIAL CIRCUIT
COURT OF COMMON PLEAS

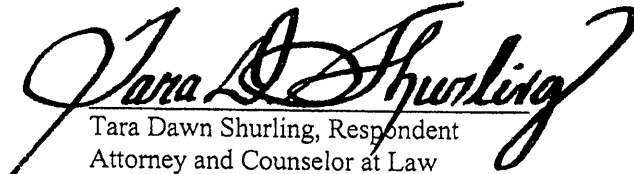
TARA DAWN SHURLING,)
Appellant,)
v.)
John Daniel Springer #294365,)
Respondent.)

2017-CP-40-00580

CERTIFICATE OF SERVICE

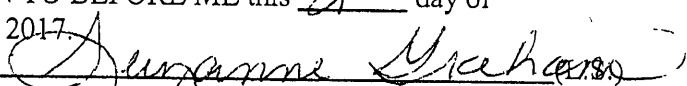
The undersigned attorney hereby certifies that one copy of the Record on Appeal in the above-entitled cause has been served upon individual listed below by U. S. Mail on this the 2nd day of August, 2017 to:

Michelle Dennis
S. C. Bar
950 Taylor Street
Columbia, S. C. 29202


Tara Dawn Shurling, Respondent
Attorney and Counselor at Law
S. C. Bar No. 5099

3614 Landmark Dr., Ste. A
Columbia, SC 29204
(803) 738-8622
(803) 738-1600 (Fax)
Email: tdslaw@shurlinglaw.com

SWORN TO BEFORE ME this 2nd day of
August, 2017.


Notary Public for South Carolina

My Commission Expires: 2/28/24

Richland County Court of Common Pleas
Richland County Judicial Center
1701 Main Street
Columbia, SC 29201

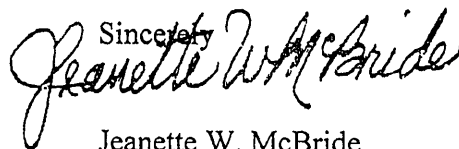
Tara Dawn Shurling
3614 Landmark Drive
Suite A
Columbia, SC 29204

RE: 2017CP4000580, Tara Dawn Shurling vs. John Daniel Springner

We would like to inform you that a review of the file in the above captioned case indicates that there is no filed Return of Appeal. The Chief Administrative Judge has requested that we advise you that a Return of Appeal must be filed within ten (30) days or this case will be dismissed.

Please do not respond to this letter via telephone. Please respond in writing, via facsimile at (803) 576-1926 or email at henleya@rcgov.us regarding this case.

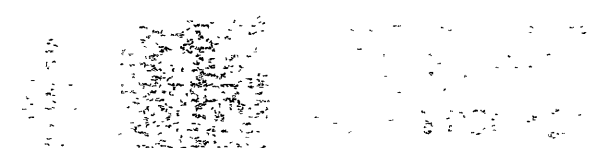
(14-5)

Sincerely,


Jeanette W. McBride
Richland County Clerk of Court

JUL 1 / 2017

Jeanette W. McBride
CLERK OF COURT
RICHLAND COUNTY
P.O. Box 2766
Columbia, SC 29202-2766



982350494 30 EMDVNM8 29204



LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorney and Counselor at Law

3614 Landmark Drive

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E-Mail: tdslaw@shurlinglaw.com

(803) 738-8622

(Fax) (803) 738-1600

August 2, 2017

Honorable L. Casey Manning
 Chief Administrative Judge for the
 Court of Common Pleas, Fifth Circuit
 P. O. Box 192
 Columbia, S. C. 29202

RE: Tara Dawn Shurling v. John Daniel Springer; 2017-CP-40-580.

Dear Judge Manning:

Enclosed Your Honor will find a set of the documents filed with the Clerk of Court concerning the above captioned appeal on today's date. I am providing these records in response to undated correspondence from the Clerk's Office directing me to do so within thirty (30) days. This correspondence actually said both 10 and 30 days. My paralegal, Janet Johnson, has spoken with Anne Henley, in the Clerk's Office concerning this matter, and she has kindly indicated that I will not be held to the ten day requirement because of this error. I received the letter from the Clerk of Court's Office on July 17, 2017, so this filing is well within the thirty (30) day time period. Ms. Henley referred to these documents as a Return of Appeal, I feel certain however that Your Honor meant Record on Appeal so I have captioned this volume as the Record on Appeal. A copy of that letter is attached. I have served the party who filed this fee dispute with a copy of these materials, as well as Michelle Dennis, the Fee Disputes Coordinator for the South Carolina Bar. The panel members have been served with a copy of this correspondence, as has the Board Chair, Lisa Long Cotton, Esquire, however I did not send them the entire enclosure inasmuch as they have all had access to these documents. I am providing each of them a copy of the Index so they will be aware of what was provided to the Court.

I have included everything I can think of in this volume of documents related to this fee dispute. If there is anything further Your Honor thinks the Court needs to review, please advise me, and I will have it provided to the Court as quickly as possible. I believe my Request for Reconsideration and/or Rehearing thoroughly addresses the reasons why; I think I should prevail on appeal. I assume the panel will speak for itself, however, the Report and Recommendations certainly details their positions as well. The rules for these appeals are somewhat confusing, but I will be happy to submit any bench brief the Court may wish to entertain in this matter. For now, I remain,

Respectfully yours,

Tara Dawn Shurling
 Attorney and Counselor at Law

TDS/sg
 Enclosure

cc: Anne Henley, Civil Non Jury Roster Scheduler (w/enclosure) ✓
 John Daniel Springer, # 294365 (w/enclosure)
 (cc's continued on page 2)

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Honorable L. Casey Manning
August 2, 2017
Page 2 of 2

Michelle Dennis, S. C. Bar Fee Dispute Coordinator (w/enclosure)
Lisa Long Cotton, Esquire, Chair of Fee Disputes Board (w/o enclosure but Index provided)
Nashiba Boyd, Esquire, Panel Chair (w/o enclosure but Index provided)
Sarah Clingman, Esquire, Panel Member (w/o enclosure but Index provided)
Megan Gresham, Esquire, Panel Member (w/o enclosure but Index provided)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

C/A No. 2017-CP-40-00580

Tara Dawn Shurling,)

Appellant,)

**ORDER DENYING APPEAL
FROM THE FEE DISPUTES
BOARD**

v.)

John Daniel Springer #294365,)

Respondent.)

This matter came before the Court by way of an appeal filed by Appellant Tara Dawn Shurling against Respondent John Daniel Springer appealing a ruling from the Fee Disputes Board. The hearing occurred on October 27, 2017 in the Richland County Courthouse. Both Appellant and Respondent were present. After careful review of the record and arguments made at the hearing, this Court hereby DENIES this Appeal.

Pursuant to Rule 416, SCACR, Resolution of Fee Dispute Board, Rule 20(f):

“(f) The court shall affirm or vacate the final decision of the Board. The court may vacate only where:

- (1) the decision was procured by corruption, fraud, or other undue means;
- (2) there was evident partiality or corruption in an assigned member or hearing panel member, or misconduct prejudicing the rights of any party;
- (3) the assigned member or hearing panel members exceeded their powers;
- (4) the hearing panel members refused to postpone the hearing, if any, upon sufficient cause being shown therefore, or the assigned member or hearing panel members refused to hear evidence material to the controversy, or otherwise conducted the proceeding so as to substantially prejudice

SCANNED

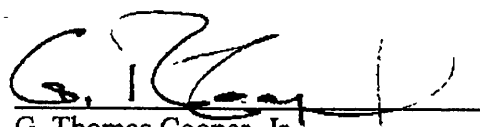
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the rights of a party; or

(5) the hearing panel chair did not provide notice of the hearing as required under Rule 15.”

This Court finds no grounds within the record to overturn the Board’s decision in accordance with Rule 20(f). Accordingly, this Appeal is DENIED.

AND IT IS SO ORDERED.


G. Thomas Cooper, Jr.
Presiding Judge, Fifth Judicial Circuit

March 2, 2018



State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

G. Thomas Cooper, Jr.
Active/Retired Judge

Post Office Box 1557
1121 Broad Street, Room 313
Camden, SC 29021
Phone: (803) 425-7182
gcooperj@sccourts.org

March 2, 2018

The Honorable Jeanette McBride
Richland County Clerk of Court
1701 Main St, Room 205
Columbia, SC 29202

RE: Tara Dawn Shurling v. John Daniel Springer #294365
C/A No.: 2017-CP-40-00580

Ms. McBride:

Enclosed please find the Order Denying Appeal in regards to the aforementioned case. Please file this Order with the court. If you have any questions or concerns, please feel free to contact me.

Thank you,

A handwritten signature in black ink, appearing to read "JRutkoski".

Jamie Rutkoski
Law Clerk to the Honorable G. Thomas Cooper, Jr.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	2017-CP-40-00580
	)	
TARA DAWN SHURLING	)	
Appellant,	)	MOTION TO ALTER OR AMEND
	)	PURSUANT TO RULE 59(e), SCRCP.
	)	
v.	)	
JOHN DANIEL SPRINGER, #294365	)	
Respondent.	)	
_____	)	

NOW COMES, Appellant in the above captioned matter asking that this Honorable Court Alter or Amend its Order Denying Appeal from the Fee Disputes Board dated March 2, 2018, and filed March 9, 2018, and served upon Appellant by email dated March 10, 2018. Appellant respectfully notes that the Order fails to set forth findings of fact and rulings of law addressing the specific issues advanced by Appellant on appeal, as set below,

1. The Panel erred in refusing to hear Appellant's request for Reconsideration and/or Rehearing on the ground that the rules governing the Resolution of Fee Disputes Board do not expressly provide for such requests to be entertained, where the rules do not prohibit the hearing of such requests and where the absence of such a review deprives a party before the Board on review of a fee dispute any opportunity to bring errors in the findings of the Panel to their attention without filing an appeal to the circuit court under the narrow framework of Rule 20.
2. The Panel exceeded its authority in ordering Appellant to refund \$5,000.00 of her fee *to Petitioner* where the Report and Recommendation issued by the Panel is predicated upon multiple erroneous factual findings in conflict with the evidence and testimony before the Panel and reasonable inferences drawn from the evidence and testimony before the Panel.
3. The Panel exceeded its authority in ordering Appellant to refund \$5,000.00 of her fee *to Respondent* where he was not the party who paid Appellant's fees and would not legally be entitled to such an award.

4. The Panel would not have had the authority to order Appellant to refund \$5,000.00 of her fee *to the third party payer*, Respondent's mother, where she was not a proper party to this fee dispute inasmuch as she was not listed as an Applicant on the fee dispute and the fee dispute application *was not signed by both the client and the third-party payer* as required by the Board's own rules.

5. Appellant would respectfully submit that the Fee Dispute Board's rule regarding appeals to the Circuit Court, would unconstitutionally infringe upon an attorney's right to due process of law unless the factors justifying vacation of a Board decision under Rule 20(f) are interpreted to include cases where the hearing Panel exceeds its authority by granting relief to an Applicant based upon findings of the Panel which are factually erroneous and/or unsupported by the evidence before the panel.

Appellant specifically notes that the Order fails to address Appellant's argument that the Board, and the panel assigned to hear this fee dispute, does not have the authority to direct Appellant to refund money to Respondent that was paid to her by a third party, his mother, Ms. Katherine Hurst, pursuant to a written fee contract. As Appellant asserted in her Notice of Appeal, argued at the hearing held in this matter, and in her subsequent Memorandum filed on December 20, 2017, the rules governing fee disputes contain an express provision detailing the procedure a third party is required to follow in order to join in a fee dispute. See. Rule 10, Rule 416, Resolution of Fee Disputes Board, which provides, in relevant part, as follows,

...

If the applicant is a client, but is not the person who paid for the lawyer's services, the third party payer, with the written consent of the client-applicant, may jointly file with the client-applicant, *with both signatures affixed to the application*. (Emphasis added).

...

Ms. Hurst did not comply with these requirements, and is therefore, not a party to the fee dispute before the Court on appeal. The fee contract executed between Appellant and Ms. Hurst, clearly documents that Appellant's flat fee for the services described therein was paid by Ms. Hurst, not Respondent. The Rules governing the Fee Dispute Board in no way give the Board, or the assigned hearing panel, the authority to require Appellant to give Respondent money that was not paid to her by Respondent. Therefore, Appellant submits that the hearing panel clearly "exceeded their powers", and that vacation of their final decision, as approved by the Board, is

necessary and appropriate pursuant to Rule 416, SCACR, Resolution of Fee Dispute Board, Rule 20(f)(3), which states,

(f) the Court shall affirm or vacate the final decision of the Board. The Court may vacate only where:

...

(3) the assigned member or hearing panel members exceeded their powers;

Simply put, the Board, and the assigned hearing panel, had no power to order Appellant to give Respondent someone else's money. Likewise, the Board, and the assigned hearing panel, would have had no authority to require Appellant to refund a portion of her fee to Ms. Hurst either inasmuch as she was not a party to this fee dispute. In any event, Appellant respectfully submits that Rule 20 (f), Rule 416, SCACR, does not provide for any modification of the final decision of the Board as a remedy on appeal to the circuit court. The rule very clearly states that the Court on appeal, "*shall affirm or vacate* the final decision of the Board." Rule 20(f), Rule 416, SCACR. (Emphasis added). Accordingly, Appellant seeks this Court's Amended Order *vacating* the final decision of the Board.

Appellant stands on the arguments previously presented by her for the proposition that the Board, and the assigned hearing panel, additionally exceeded their powers by issuing findings based upon demonstrably erroneous findings of fact. The final decision of the Board is predicated upon erroneous factual findings and therefore, exceeds its authority and should be vacated pursuant to Rule 20(f), 416, SCACR, Resolution of Fee Disputes Board.

CONCLUSION

Wherefore, Appellant requests this Court's Amended Order withdrawing its previous ruling, vacating the final decision of the fee dispute Board, and remanding this matter to the fee dispute Board for a *de novo* hearing as provided for by Rule 20(g), Rule 416, SCACR, Resolution of Fee Disputes Board.

Respectfully submitted,

S/ TARA DAWN SHURLING
TARA DAWN SHURLING

Attorney and Counselor at Law
S.C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

APPELLANT
Acting *pro se*

March 20, 2018.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE FIFTH JUDICIAL CIRCUIT
 COURT OF COMMON PLEAS

TARA DAWN SHURLING,)
)
 Appellant,)
)
 v.)
)
 John Daniel Springer #294365,)
)
 Respondent.)
)

2017-CP-40-00580

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that one copy of the Motion to Alter or Amend Pursuant to Rule 59(e) in the above-entitled cause has been served upon the Honorable G. Thomas Cooper, Jr., Circuit Court Judge for the Fifth Judicial Circuit on this the 20th day of March, 2018 to:

The Honorable G. Thomas Cooper, Jr.
 Circuit Court Judge for the
 Fifth Judicial Circuit
 Post Office Box 1557
 Camden, SC 29021

The original has been e-filed with the Richland County Clerk of Court.

S/ TARA DAWN SHURLING

Tara Dawn Shurling

Pro se Appellant

Attorney and Counselor at Law

3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax

SWORN TO BEFORE ME this 20^h day of
 March, 2018.

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	IN THE FIFTH JUDICIAL CIRCUIT
		COURT OF COMMON PLEAS
TARA DAWN SHURLING,	)	2017-CP-40-00580
Appellant,	)	
	)	CERTIFICATE OF SERVICE
v.	)	
John Daniel Springer #294365,	)	
Respondent.	)	
_____	)	

The undersigned attorney hereby certifies that one copy of the Motion to Alter or Amend Pursuant to Rule 59(e) in the above-entitled cause has been served upon Michelle Dennis, S.C. Bar Fee Dispute Coordinator on this the 20th day of March, 2018 to:

Michelle Dennis
S. C. Bar Fee Dispute Coordinator
950 Taylor Street
Columbia, South Carolina 29202

The original has been e-filed with the Richland County Clerk of Court.

S/ TARA DAWN SHURLING
Tara Dawn Shurling
Pro se Appellant
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 Fax

SWORN TO BEFORE ME this 20th day of
March, 2018.

STATE OF SOUTH CAROLINA	)	
	)	IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	COURT OF COMMON PLEAS
TARA DAWN SHURLING,	)	2017-CP-40-00580
Appellant,	)	
	)	CERTIFICATE OF SERVICE
v.	)	
John Daniel Springer #294365,	)	
Respondent.	)	
_____	)	

The undersigned attorney hereby certifies that one copy of the Motion to Alter or Amend Pursuant to Rule 59(e) in the above-entitled cause has been served upon individual listed below by certified U. S. Mail on this the 20th day of March, 2018 to:

John Daniel Springer, #294365
 MacDougall Correctional Institution
 B2C-0002-B
 1516 Old Gilliard Road
 Ridgeville, SC 29472

The original has been e-filed with the Richland County Clerk of Court.

S/ TARA DAWN SHURLING
 Tara Dawn Shurling
Pro se Appellant
 Attorney and Counselor at Law

3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax

SWORN TO BEFORE ME this 20^h day of
 March, 2018.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A No. 2017-CP-40-00580
	)	
Tara Dawn Shurling	)	
	)	
	)	
Appellant,	)	ORDER DENYING APPELLANT'S
	)	MOTION TO ALTER OR AMEND
v.	)	THE JUDGMENT
	)	
John Daniel Springer #294365	)	
	)	
Respondent.	)	
_____	)	

After careful consideration of the Appellant's Motion and the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby DENIES Appellant's Motion pursuant to Rule 59(e) SCRCP to Alter or Amend Judgment of this Court's Order entered on or about March 9, 2018, and the ruling of the Fee Dispute Board is AFFIRMED. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.

G. Thomas Cooper, Jr.
Presiding Judge, Fifth Judicial Circuit



Richland Common Pleas

Case Caption: Tara Dawn Shurling VS John Daniel Springner #294365

Case Number: 2017CP4000580

Type: Order/Other

So Ordered

s/ Honorable G. Thomas Cooper, Jr. Circuit
Judge 2126

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Presiding Judge

2017-CP-40-00580

RECEIVED
APR 10 2018
SC COURT OF APPEALS

TARA DAWN SHURLING,

Appellant,

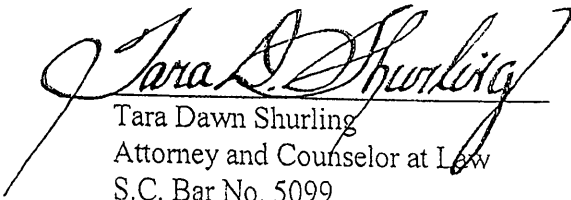
v.

JOHN DANIEL SPRINGER, #294365

Respondent

NOTICE OF APPEAL

NOW COMES the Appellant in the above-captioned Fee Dispute Matter giving notice of her appeal from the Order Denying Appeal From the Fee Disputes Board filed on March 9, 2018 and the Order Denying Appellant's Motion to Alter or Amend the Judgment filed on April 4, 2018.


Tara Dawn Shurling
Attorney and Counselor at Law
S.C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

This 30th day of April, 2018.

Appellant *Pro Se*

Other Counsel of Record:

Respondent is not, to Appellant's knowledge,
represented by counsel.
Appellant has additionally served the Fee
Disputes Board of the S. C. Bar

RICHLAND COUNTY
CLERK OF COURT
2018 MAY -7 PM 2:36
JEANETTE W. HOSCHKE
CLERK OF COURT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Presiding Judge

2017-CP-40-00580

TARA DAWN SHURLING,

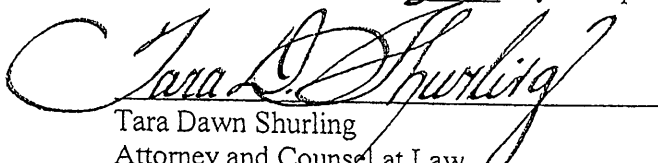
v.

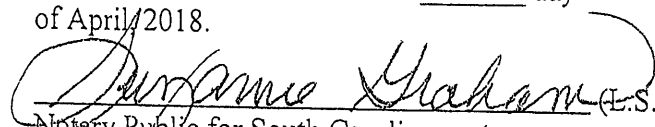
JOHN DANIEL SPRINGER, #294365

Appellant,
Respondent,
JEANETTE W. HESKODE
C.C.P. & G.S.
2018 MAY -7 PM 2:34
RICHLAND COUNTY
CLERK OF COURT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled cause has been served upon John Daniel Springer, #294265 by mailing certified mail in an envelope properly addressed with postage prepaid on this 30th day of April, 2018.


Tara Dawn Shurling
Attorney and Counsel at Law
Appellant Pro Se

SWORN TO BEFORE me this 30th day
of April, 2018.

Notary Public for South Carolina (L.S.)
My Commission Expires: 2/28/24

RECEIVED
MAY 08 2018
ST. COURT OF APPEALS

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Presiding Judge

2017-CP-40-00580

TARA DAWN SHURLING,

v.

JOHN DANIEL SPRINGER, #294365

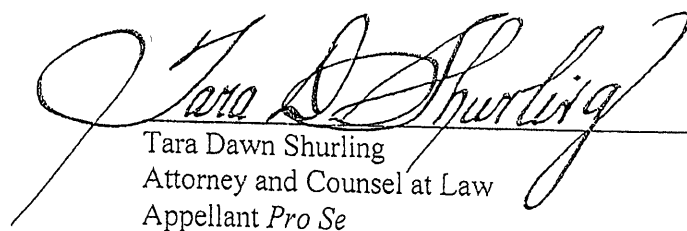
Appellant

Respondent.

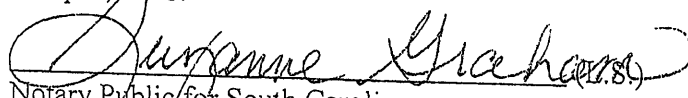
RICHLAND COUNTY
FILED
2018 MAY -7 PM 2:34
JEANETTE W. HOSKINS
C.C.P. & GS.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Notice of Appeal in the above-entitled cause has been served upon, Michelle Dennis, S. C. Bar Fee Dispute Coordinator by mailing U. S. mail in an envelope properly addressed with postage prepaid on this 30th day of April, 2018.


Tara Dawn Shurling
Attorney and Counsel at Law
Appellant Pro Se

SWORN TO BEFORE me this 30th day
of April, 2018.


Notary Public for South Carolina
My Commission Expires: 2/28/24

RECEIVED

APR 30 2018
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Presiding Judge

Appellate Case No. 2018-000823
Lower Case No. 2017-CP-40-00580

RECEIVED

MAY 24 2018

SC Court of Appeals

TARA DAWN SHURLING,

Appellant,

v.

JOHN DANIEL SPRINGER. #294365

Respondent.

PETITION FOR ORDER STAYING DISTRIBUTION
OF FEE DISPUTE AWARD

Appellant is the attorney against whom Respondent filed a Fee Dispute Application through the South Carolina Bar. Following a hearing by a three person panel, Appellant was directed to refund \$5,000.00 of her fee to the Respondent. John Daniel Springer. Prior to the hearing, Appellant was denied the opportunity to submit a written response to Respondent's claims. The report issued by the panel clearly reflected that its findings were based upon several readily demonstrable factual errors. Appellant served the panel with a detailed Motion to Reconsider which she was informed, by the panel and the committee chair, would not be considered because the rules governing fee disputes did not provide for a request for rehearing or reconsideration to be heard. The Request for Reconsideration served by Appellant clearly demonstrated the errors upon which the panel's conclusions were founded.

Appellant filed an appeal from the panel findings in the Richland County Court of Common Pleas where it was heard by the Honorable G. Thomas Cooper, presiding circuit judge. The Order dismissing Appellant's appeal simply referenced Rule 416, SCACR, Resolution of Fee Dispute Board, Rule 20(f), and did not make findings of fact and conclusions of law regarding Appellant's arguments. Appellant filed a detailed Motion to Alter or Amend pursuant to Rule 59(e), SCRCP, which was denied without further comment on the issues. Appellant has, as is required by the rules, deposited funds to cover the amount awarded the Respondent in trust with the South Carolina Bar.

On appeal Appellant plans to argue against precedent¹ and encourage this Honorable Court to revisit its previous ruling with an eye toward creating some avenue for review where a party can demonstrate that the finding(s) of the Fee Dispute Board were predicated on demonstrable error. As a threshold matter, however, Appellant will demonstrate that the panel assigned to this case exceeded its authority in directing Appellant to refund money to Respondent which was paid to Appellant by a third party payer², with whom she had a written contract, but *was not* a party to this fee dispute. As noted by Appellant in her circuit court appeal, the Fee Dispute Board has no authority to direct the *refund* of funds to Respondent which were not paid by him. Furthermore, under the rules governing the Fee Dispute Board the third party payer could have joined in Respondent's fee dispute application, with his express written consent, by being listed as a party to the application *and signing it*. As she did not comply with the rules, Katherine Hurst is not a party to this fee dispute. Rule 416, Resolution of Fee Disputes Board, SCACR, Rule 2, addresses the jurisdiction of the Fee Disputes Board. Under that provision, the Board has jurisdiction over a fee dispute between a client and an attorney who is a member of the South Carolina Bar. Rule 10, Rule 416, SCACR, states,

¹ *Hiesha Wright v. James H. Dickey*, 370 S.C. 517, 636 S.E.2d (2006)

² The third party payer in this case was Respondent's mother, Katherine Virginia Hurst.

If the applicant is a client, but is not the person who paid for the lawyer's services, the third party payer, with the written consent of the client-applicant, may jointly file with the client-applicant, *with both signatures affixed to the application*. (Emphasis added).

Katherine Hurst *did not* comply with this rule and therefore, is not a party to this fee dispute. Therefore, the Fee Dispute Board does not have jurisdiction over her contract with Appellant. Respondent's Fee Dispute Application acknowledges that he had no contract with Appellant, either oral or written, and that Appellant had contracted with a third party for payment. ROA, p. 6, item 4.³ Said contract was entered between Appellant and Katherine Virginia Hurst on March 19, 2015. ROA, pgs. 15-17. Lawrence Hurst, husband to Katherine Hurst, was likewise not a party to the fee contract. In his Fee Dispute Contract, Respondent listed Katherine and Larry Hurst as persons designated "to act on [his] behalf regarding this dispute and to receive correspondence or notices for [him]." ROA, p. 9, Item 24. The Fee Dispute Application was signed by Respondent, John Daniel Springer only. ROA, p. 10, Item 4. Therefore, the panel did not have the authority to direct counsel to refund fees to Respondent, nor would they have had the jurisdiction to direct a refund to the third party payer, his mother, where she was not a party to the Application.

Under the rules, the only remedy on appeal from a panel finding is a remand for a *de novo* hearing. Where, as here, the panel ordered a refund it did not have the authority to direct, the sole remedy is the remand of the fee dispute for a *de novo* hearing. Rule 20(g), Rule 416, SCACR.

While Appellant sincerely hopes this case will prompt a review of holding in *Wright v. Dickey, supra*, and a change in the current interpretation of Rule 20, Rule 416, SCACR, which affords a party virtually no redress no matter how faulty the findings of the Fee Dispute Board, are the reality exists that the direction issued by the Fee Dispute Board in this case is jurisdictionally defective. Rule 416, SCACR, gives the Board authority over Fee Dispute Applicants and the

³ Citations to the ROA herein reference the ROA filed by Appellant, by order of the circuit court, in the circuit court appeal.

members of the Bar against whom they are brought. It, as previously noted, contains strict rules for how and when a third party may join in such a fee dispute. Those rules were not complied with by the third party payer in the case, Katherine Hurst. Therefore, the Fee Dispute Board was without jurisdiction to order Appellant to issue the refund directed by the panel.

Under the rules governing fee disputes, the funds placed in trust are to be disbursed once the ruling in this case becomes final. Rule 20 (d), Rule 416, SCACR. Appellant, subsequent to the circuit court ruling and the filing of her Notice of Appeal, wrote the Fee Dispute Board and gave notice of her objection to the disbursement of these funds to Respondent, John Daniel Springer. Appellant advised the Board that in her professional opinion the Bar did not have the jurisdiction to order her to refund money to Respondent that was not paid to her law firm by him. Appellant advised the Bar, that in her professional opinion, the Bar could have liability issues should they do so. If this Honorable Court finds the panel acted outside its jurisdiction pursuant to Rule 20, Rule 416, SCACR, and did not have authority to direct the refund, a problem could arise getting the funds back from a Respondent who is an inmate in the custody of the South Carolina Department of Corrections. Additionally, Katherine Hurst, would have a claim against the Bar for refunding money originating with her to Respondent.

On May 16, 2018, Appellant received correspondent from Lex A. Rogerson, Jr., Esquire, State Chair of the Resolution of Fee Disputes Board of the South Carolina Bar, advising Appellant that unless she obtains a Court Order directing that disbursement be stayed in this matter by June 1, 2018, it was the intent of the Board to disburse the funds in question to Katherine Hurst and Lawrence Hurst. *See, Attachment A* Appellant strenuously objects to the disbursement proposed in this correspondent for several reasons. They are as follows.

1. The panel decision directs a refund to Daniel Springer *not* his mother or her husband.

2. The panel report was reviewed and approved by the Board and the Board made no effort to correct this error, or any of the other errors, in the panel report.
3. The Board does not have the authority to modify or amend the panel findings *after* the Report was approved and adopted by the Board.
4. The Board does not have the authority to amend the directives contained in the report *after* the circuit court appeal is completely, thereby depriving Appellant the opportunity to appeal their authority to make such a modification *after* the Board adopted and approved the Report as issued by the panel.
5. The panel did not have had the authority at any point to direct a refund to Katherine Hurst as a third party payer, even if they had attempted to do so, where Katherine Hurst did not comply with the express requirements of the rules for becoming a party to this dispute.
6. The Board now proposes to improperly modify the panel's directive as found in its Report by changing the party to receive the refund, and proposes to issue the refund to Katherine Hurst and her husband, Lawrence Hurst. As previously noted, Appellant's Fee Contract was between her law firm and with Katherine Hurst. ROA, pgs. 15-17. There were three payments made on Appellant's flat fee as provided by the contract entered with Katherine Hurst. Two wire payments were made to Appellant's corporate account. Those payments were made in the amounts of \$2,500.00 and \$6,000.00. The paperwork lists the Debit Party for those transfers, as Lawrence Hurst or Katherine Hurst. ROA, pg. 13-14. The third payment was for \$7,500.00 and was paid by certified check from Katherine Hurst. ROA, p. 12. Lawrence Hurst was not a party to Appellant's fee contract and he, like Katherine Hurst, did not comply with the rules to become a party to this fee dispute. Rule 10, Rule 416, SCACR.

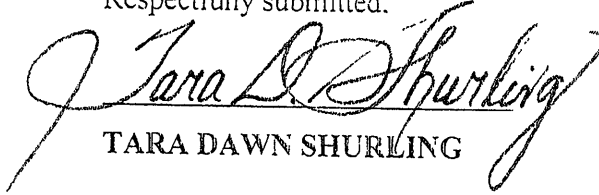
CONCLUSION

For all the above reasons, Appellant most respectfully submits that the fee dispute panel did not have jurisdiction to direct Appellant to issue a refund to Respondent. Likewise, the panel would not have had jurisdiction to order a refund to a third party payer, who was not a party to the Fee Dispute Application inasmuch as they had not complied with the requirements of Rule 10, Rule 416, SCACR, for joining in the Fee Dispute filed by Respondent.

The Fee Dispute Board clearly does not have jurisdiction to disburse the funds in trust with the South Carolina Bar to individuals who were not lawful parties to this Fee Dispute. The fact that

Respondent designated his mother, Katherine Hurst and Lawrence Hurst as parties to act on his behalf regarding this dispute. and to receive correspondence or notices for him. did not make them parties to the fee dispute in this case. Likewise, Respondent listing Katherine Hurst and Larry Hurst as third party payers due actual refund does not comply with the requirements of the rules governing the Fee Dispute Board for these individuals to "jointly file with the client-applicant" and therefore, did not confer jurisdiction over the Fee Dispute Board to disburse the funds held in trust with the South Carolina Bar to a non-party to the Fee Dispute Application. The Fee Dispute Board did not have jurisdiction to add parties to this fee dispute at any point in the review of Respondent's Application, and they certainly do not have jurisdiction to do so after the panel report was approved by the Board and an appeal has been finally decided by the Court of Common Pleas. For these reasons, Appellant seeks this Honorable Court's Order directing that all action involving this fee dispute, including the disbursement of the funds held in trust. be stayed pending finality in Appellant's pending appeal to this Honorable Court and any subsequent appeal to the Supreme Court of South Carolina which might be perfected in the future.

Respectfully submitted.



TARA DAWN SHURLING

Attorney and Counselor at Law
S.C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

APPELLANT
Acting pro se

May 24, 2018

ATTACHMENT A

LEX A. ROGERSON, JR.

Attorney at Law

POST OFFICE BOX 365

LEXINGTON, SOUTH CAROLINA 29071

(803) 359-5520

LEXINGTON LAW RANGE
111 EAST MAIN ST. SUITE CCERTIFIED SPECIALIST IN BANKRUPTCY
AND DEBTOR-CREDITOR LAWFACSIMILE (803) 359-5555
lexlaw@windstream.net

May 16, 2018

PERSONAL AND CONFIDENTIALVia e-mail and First Class MailTara Dawn Shurling, Esquire
3614 Landmark Drive, Suite A
Columbia, SC 29204

RECEIVED

MAY 24 2018

SC Court of Appeals

Re: John Daniel Springer v. Tara Dawn Shurling
Resolution of Fee Disputes Board

Dear Tara:

I am writing as state chair of the Resolution of Fee Disputes Board of the South Carolina Bar. The Bar staff has made the executive council aware of your appeal from the decision of the circuit court in this matter. Pursuant to Rule 20(d) of the board's rules (Rule 416, SCACR), the Bar is holding your payment of the refund ordered by the board's appellate panel pending final disposition of this matter.

Rule 20(d) states:

The Bar shall remit the disputed sum to the prevailing party within ten (10) days of the final disposition of the dispute.

As you have acknowledged, under existing case law, this dispute became final on March 2 when Judge Cooper sustained the appellate panel decision. The executive council believes the Bar is now obligated to remit the funds it holds to the prevailing party. Because the applicant has officially stated in his application that Katherine Hurst and Larry Hurst are the "third party payees due [the] actual refund," the executive council has requested the Bar to remit the funds to Mr. and Mrs. Hurst unless otherwise ordered by a court of competent jurisdiction.

At the same time, we are aware you contend that the Court of Appeals should reconsider the precedent of *Wright v. Dickey* and permit fee dispute appeals beyond the circuit court. If that contention succeeds, it might ultimately be determined that this matter was not final at this point. For this reason, we have requested the Bar to delay disbursement for 15 days from the date of this letter to afford you an opportunity to apply to the appropriate court for an order staying disbursement.

[continued next page]

Absent notice of any such order, the Bar will disburse to Mr. and Mrs. Hurst on or shortly after June 1, 2018.

Sincerely,

Lex

Lex A. Rogerson, Jr.
Attorney at Law

LARjr/lar

cc: Michelle Dennis
John Daniel Springer
Katherine and Larry Hurst

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Presiding Judge

2017-CP-40-00580

RECEIVED

MAY 24 2018

SC Court of Appeals

TARA DAWN SHURLING.

Appellant.

v.

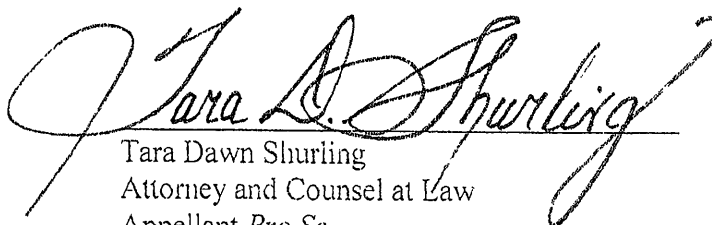
JOHN DANIEL SPRINGER, #294365

Respondent.

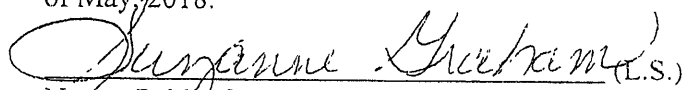
CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Petition for Order Staying Distribution of Fee Dispute Award in the above-entitled cause has been served upon Respondent, John Daniel Springer, #294365, by mailing certified mail in an envelope properly addressed with postage prepaid on this 24th day of May, 2018.

John Daniel Springer, #294365
McDougall Correctional Institution
B2C-0002-B
1516 Old Gilliard Road
Ridgeville, SC 29472


Tara Dawn Shurling
Attorney and Counsel at Law
Appellant *Pro Se*

SWORN TO BEFORE me this 24th day
of May, 2018.


Notary Public for South Carolina
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Presiding Judge

2017-CP-40-00580

RECEIVED

MAY 24 2018

SC Court of Appeals

TARA DAWN SHURLING,

Appellant.

v.

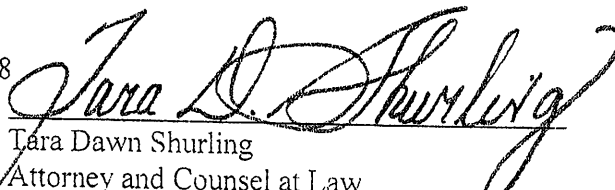
JOHN DANIEL SPRINGER. #294365

Respondent.

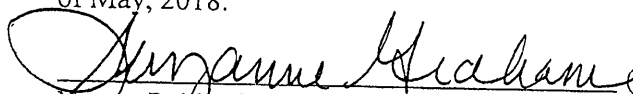
CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Petition for Order Staying Distribution of Fee Dispute Award in the above-entitled cause has been served upon Cynthia A. Coker, Esquire by mailing in an envelope properly addressed with postage prepaid on this 24th day of May, 2018.

Cynthia A. Coker, Esquire
Public Services Director
for the South Carolina Bar
Post Office Box 608
Columbia, South Carolina 29202-0608


Tara Dawn Shurling
Attorney and Counsel at Law
Appellant *Pro Se*

SWORN TO BEFORE me this 24th day
of May, 2018.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Presiding Judge

2017-CP-40-00580

RECEIVED

MAY 24 2018

SC Court of Appeals

TARA DAWN SHURLING,

Appellant.

v.

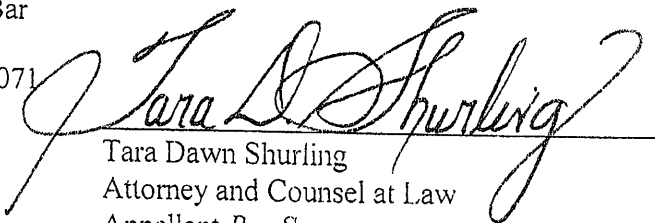
JOHN DANIEL SPRINGER, #294365

Respondent.

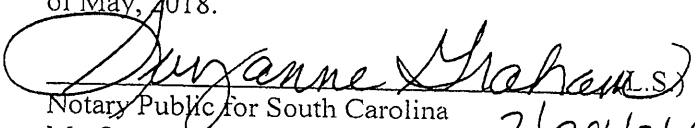
CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Petition for Order Staying Distribution of Fee Dispute Award in the above-entitled cause has been served upon Lex A. Rogerson, Jr., Esquire by mailing in an envelope properly addressed with postage prepaid on this 24th day of May, 2018.

Lex A. Rogerson, Jr., Esquire
State Chair of the Resolution of Fee Disputes
Board of the South Carolina Bar
Post Office Box 365
Lexington, South Carolina 29071


Tara Dawn Shurling
Attorney and Counsel at Law
Appellant *Pro Se*

SWORN TO BEFORE me this 24th day
of May, 2018.


Notary Public for South Carolina

My Commission Expires: 2/28/24

The South Carolina Court of Appeals

Tara Dawn Shurling, Appellant,

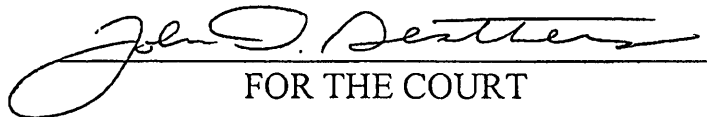
v.

John Daniel Springer, #294365, Respondent.

Appellate Case No. 2018-000823

ORDER

Appellant has served and filed a notice of appeal from a circuit court order denying her appeal from the Fee Disputes Board of the South Carolina Bar. Appellant has also filed a petition for an order staying the distribution of the fee dispute award. After careful consideration, this appeal is dismissed because this court lacks jurisdiction to review this appeal. *See Wright v. Dickey*, 370 S.C. 517, 521, 636 S.E.2d 1, 3 (Ct. App. 2006) (dismissing appeal for lack of jurisdiction and holding "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."). Because this appeal is dismissed, Appellant's petition for an order of stay is denied. The remittitur will be sent as required by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc:

Tara Dawn Shurling, Esq

John Daniel Springer, 00294365

FILED

May 24, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Presiding Judge

2017-CP-40-00580

RECEIVED

JUN 07 2018

SC Court of Appeals

TARA DAWN SHURLING,

Appellant,

v.

JOHN DANIEL SPRINGER, #294365

Respondent.

PETITION FOR REHEARING
AND
REQUEST FOR REHEARING *EN BANC*

Tara Dawn Shurling
Attorney and Counselor at Law
S.C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

Appellant *Pro Se*

NOW COMES the Appellant in the above captioned appeal, seeking rehearing *en banc* pursuant to Rule 219 and Rule 221, SCACR. This appeal was dismissed by Order of the Court filed May 24, 2018. *See*, Attachment A. Appellant now prays that this Court might grant Appellant the privilege of rehearing, and requests that the matter be reheard *en banc* due to the exceptional importance of the issues involved in this appeal to all persons licensed practice law in South Carolina.

The decision of this Honorable Court in *Wright v. Dickey*, 370 S.C. 517, 636 S.E. 2d 1 (Ct. App. 2006) was not subsequently reviewed by the Supreme Court of South Carolina. Appellant most respectfully submits that she is entitled to appeal from the Order of the Honorable G. Thomas Cooper, Jr., presiding circuit court judge, pursuant to Rule 201(a), SCACR. She submits that she is entitled to request that this Honorable Court revisit the issue addressed in *Wright v. Dickey, supra*, by arguing against that precedent in her briefs and by requesting leave to argue against precedent in oral arguments pursuant to Rule 217, SCACR. The Court's Order of Dismissal deprives her of these rights without briefing or hearing. Rule 416, SCACR, Resolution of Fee Dispute Board, Rule 20 (a)(b), address an appeal to the circuit court from the Board's final decision. Rule 20 *does not* prohibit further appeal beyond the circuit court. Therefore, she argues this order is appealable pursuant to Rule 201, SCACR. Appellant most respectfully contends that she should be able to argue against the precedent set in *Wright v. Dickey, supra*, and to ultimately seek review of any unfavorable decision by the Supreme Court of South Carolina which has ultimate authority over the South Carolina Appellate Court Rules governing fee disputes. Rule 416, SCACR, Rule 22.

Appellant, unlike the lawyer in *Wright v. Dickey*, has fully cooperated in the fee dispute process and has submitted lengthy documentation which shows that the panel decision was based upon erroneous factual finds, and in part on, a finding which is totally inconsistent with not only the

Respondent's own Fee Dispute Application, but with other findings within its own report. For this reason, Appellant felt her appeal to the circuit court was necessary and appropriate. Unfortunately, the Order issued in the circuit court denying the appeal fails to make any findings of fact and rules of law on any of Appellant's claims on appeal. The Order rather simply states, without further explanation, the content of Rule 416, SCACR, 20(f) and holds that it has found, "no grounds within the record to overturn the Board's decision in accordance with Rule 20(f)". See, Attachment B.

Appellant respectfully asserts that the Order of Dismissal additionally neglects to address Appellant's argument concerning the lack of jurisdiction for the Board to order the relief directed by the panel decision. Appellant was retained in this matter by Respondent's mother, Katherine Hurst. Appellant and Mrs. Hurst entered into a very detailed written contract for Appellant's representation of Respondent. Mrs. Hurst, as a third party payer, had the opportunity to jointly file a fee dispute with her son, Respondent herein. Rule 416, SCACR, Rule 10, para. 2. She did not comply with this Rule and is therefore, not a proper party to this fee dispute. Appellant wishes to be heard on the merits of her positions concerning why the Panel's decision is fatally flawed inasmuch as it is grounded on erroneous factual findings. She submits, however, that as a matter of jurisdiction, the Fee Dispute Board did not have *jurisdiction* to order Appellant to refund \$5,000.00 of her fee *to Appellant* where he did not pay Appellant's fees. Simply put, it was not his money, and the Board did not have jurisdiction to direct that money paid to Appellant be refunded to him.

The jurisdiction of the Board is clearly established by Rule 416, SCACR, Rule 2. Under this rule, the Board has jurisdiction over the Client and the lawyer in a fee dispute. Rule 416, SCACR, Rule 10, sets forth the requirements for a third party payer to become a party to a fee dispute. As previously noted these requirements were not met by the third party payer in this case,

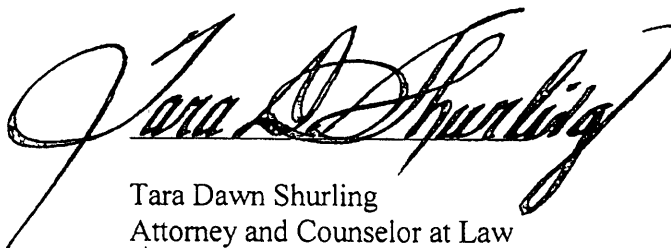
and therefore, she was not a party to the fee dispute. Appellant respectfully notes that jurisdictional issues may be raised at any time, including for the first time on appeal.

Appellant also seeks rehearing on the denial of her Petition to Stay which is entered within the Order of Dismissal. As set forth in said petition, *after* the Board adopted the findings of the review panel, and *after* the circuit court's ruling on Appellant's appeal to that court, Appellant requested that the Board delay disbursement of the funds in trust with the Bar until her appeals to this Court, and the Supreme Court, were finalized. In response, the Board notified Appellant of their intent to disburse these funds to Mrs. Hurst and her husband, Lawrence Hurst, on June 1, 2018 unless Appellant obtained a Stay from the Court. As covered in detail in Appellant's Petition for Stay, the Board simply had no jurisdiction to give these funds to Mr. and Mrs. Hurst where neither of them were proper parties to the fee dispute. Appellate incorporates by reference the arguments and evidence submitted to this Honorable Court in her Petition for Stay, filed on May 24, 2018.

CONCLUSION

Appellant respectfully requests that this Court grant rehearing in this matter, vacate the Order entered in this matter on May 24, 2018, and grant full briefing and review on the merits of her arguments for appeal. Alternatively, she asks for this Honorable Court's Order vacating the findings of the panel on the grounds that they lacked jurisdiction to order Appellant to refund fees paid by a third party payer to Appellant, and further, lacked jurisdiction to disburse the funds in question to third party payers who were not parties to this fee dispute inasmuch as they did not comply with the requirements of Rule 416, SCACR, Rule 10, for jointly filing this fee dispute with Respondent. While Appellant desires to argue the many reasons why the panel's decision was erroneous, she recognizes this Court's authority to simply rule that, on the facts of this case, the Board lacked jurisdiction to award this refund to either Respondent or the third party payers.

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law
S.C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

Appellant *Pro Se*

This the 7th day of June, 2018.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Presiding Judge

RECEIVED

JUN 07 2018

SC Court of Appeals

2017-CP-40-00580

TARA DAWN SHURLING,

Appellant,

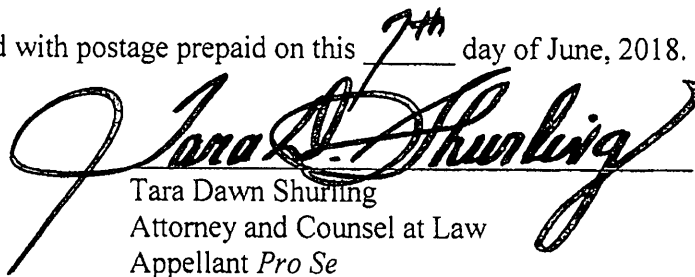
v.

JOHN DANIEL SPRINGER, #294365

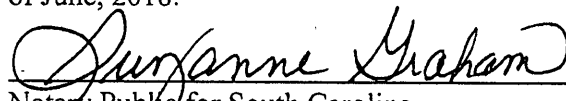
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Petition for Rehearing and Request for Hearing *En Banc* in the above-entitled case has been served upon, Lex A. Rogerson, Jr, Esquire, State Chair of the Resolution of Fee Disputes for the SC Bar, by mailing U. S. Mail in an envelope properly addressed with postage prepaid on this 7th day of June, 2018.


Tara Dawn Shurling
Attorney and Counsel at Law
Appellant *Pro Se*

SWORN TO BEFORE me this 7th day
of June, 2018.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Presiding Judge

RECEIVED

JUN 07 2018

SC Court of Appeals

2017-CP-40-00580

TARA DAWN SHURLING,

Appellant,

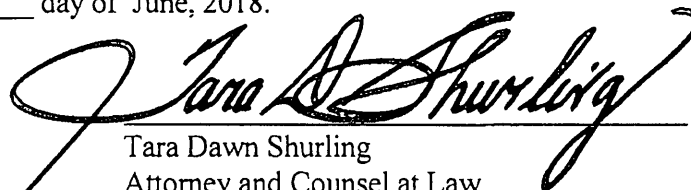
v.

JOHN DANIEL SPRINGER, #294365

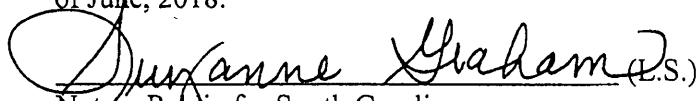
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Petition for Rehearing and Request for Hearing *En Banc* in the above-entitled case has been served upon, Michelle Dennis, S. C. Bar Fee Dispute Coordinator by mailing U. S. Mail in an envelope properly addressed with postage prepaid on this 7th day of June, 2018.


Tara Dawn Shurling
Attorney and Counsel at Law
Appellant *Pro Se*

SWORN TO BEFORE me this 7th day
of June, 2018.


Dyanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Presiding Judge

2017-CP-40-00580

RECEIVED

JUN 07 2018

SC Court of Appeals

TARA DAWN SHURLING,

Appellant,

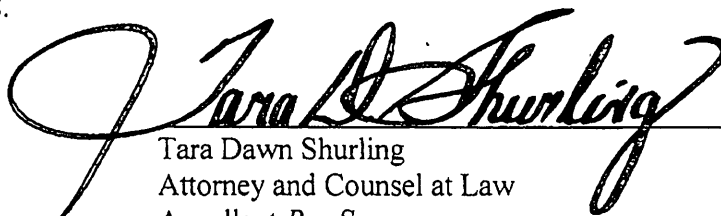
v.

JOHN DANIEL SPRINGER, #294365

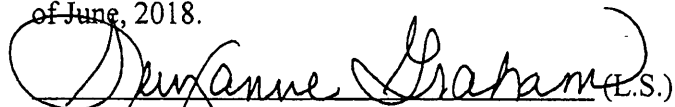
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appellant's Petition for Rehearing and Request for Hearing *En Banc* in the above-entitled case has been served upon John Daniel Springer, #294265 by mailing certified mail in an envelope properly addressed with postage prepaid on this 7th day of June, 2018.


Tara Dawn Shurling
Attorney and Counsel at Law
Appellant *Pro Se*

SWORN TO BEFORE me this 17th day
of June, 2018.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24

The South Carolina Court of Appeals

Tara Dawn Shurling, Appellant,

v.

John Daniel Springer, #294365, Respondent.

Appellate Case No. 2018-000823

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr. J.

Paul W. Thomas J.

D. Hanlin J.

Columbia, South Carolina

cc:
Tara Dawn Shurling, Esq
John Daniel Springer, 00294365

FILED

September 10, 2018

The Supreme Court of South Carolina

Tara Dawn Shurling, Petitioner,

v.

John Daniel Springer, Respondent.

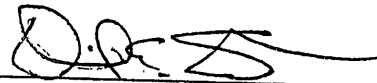
Appellate Case No. 2018-001814

ORDER

The request for an extension to serve and file the Petition for Writ of Certiorari and Appendix is granted and extended until October 29, 2018. Please refer to the order of the Supreme Court of South Carolina dated July 16, 2014 (<http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=963>), regarding any further extension requests in this matter.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

October 12, 2018

cc:

Tara Dawn Shurling, Esquire

Mr. John Daniel Springer

The Honorable Jenny Abbott Kitchings

The Supreme Court of South Carolina

Tara Dawn Shurling, Petitioner,

v.

John Daniel Springer, Respondent.

Appellate Case No. 2018-001814

ORDER

The time for serving and filing the Petition for a Writ of Certiorari and Appendix is hereby extended until November 5, 2018.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

November 2, 2018

cc:

Tara Dawn Shurling, Esquire

Mr. John Daniel Springer

The Honorable Jenny Abbott Kitchings

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

TARA DAWN SHURLING,

Appellant,

vs.

JOHN DANIEL SPRINGER,

Respondent

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP-40-00580

2017 DEC 20 PM 4:36
 FILED
 RICHLAND COUNTY
 CLERK OF COURT
 C.C.P. & C.D.
 JENNIFER W. KIRK

Submitted By: Tara Dawn Shurling
 Address: 3614 Landmark Drive
 Suite A
 Columbia, SC 29204

SC Bar #: 5099
 Telephone #: 803-738-8622
 Fax #: 803-738-1600
 Other:
 E-mail: tdslaw@shurlinglaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements 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)

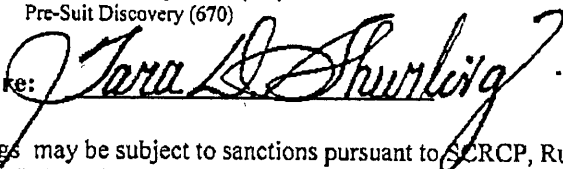
*If Action is Judgment/Settlement do not complete

- ☐ 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)

- | | | | |
|--|---|---|---|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Conversion (310) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Motor Vehicle Accident (320) | ☐ Condemnation (410) |
| ☐ General (130) | ☐ Medical Malpractice (220) | ☐ Premises Liability (330) | ☐ Foreclosure (420) |
| ☐ Breach of Contract (140) | ☐ Previous Notice of Intent Case # | ☐ Products Liability (340) | ☐ Mechanic's Lien (430) |
| ☐ Fraud/Bad Faith (150) | 20____-NT-____ | ☐ Personal Injury (350) | ☐ Partition (440) |
| ☐ Failure to Deliver/
Warranty (160) | ☐ Notice/ File Med Mal (230) | ☐ Wrongful Death (360) | ☐ Possession (450) |
| ☐ Employment Discrim (170) | ☐ Other (299) | ☐ Assault/Battery (370) | ☐ Building Code Violation (460) |
| ☐ Employment (180) | | ☐ Slander/Libel (380) | ☐ Other (499) |
| ☐ Other (199) | | ☐ Other (399) | |
| Inmate Petitions | Administrative Law/Relief | Judgments/Settlements | Appeals |
| ☐ PCR (500) | ☐ Reinstate Drv. License (800) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Judicial Review (810) | ☐ Foreign Judgment (710) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (820) | ☐ Magistrate's Judgment (720) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Permanent Injunction (830) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (840) | ☐ Transcript Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture-Consent Order (850) | ☐ Lis Pendens (750) | ☐ SCDOT (950) |
| | ☐ Other (899) | ☐ Transfer of Structured
Settlement Payment Rights
Application (760) | ☐ Worker's Comp (960) |
| Special/Complex /Other | ☐ Pharmaceuticals (630) | ☐ Confession of Judgment (770) | ☐ Zoning Board (970) |
| ☐ Environmental (600) | ☐ Unfair Trade Practices (640) | ☐ Petition for Workers
Compensation Settlement
Approval (780) | ☐ Public Service Comm. (990) |
| ☐ Automobile Arb. (610) | ☐ Out-of State Depositions (650) | ☐ Other (799) | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Motion to Quash Subpoena in
an Out-of-County Action (660) | | ☒ Other (999) |
| ☐ Other (699) | ☐ Pre-Suit Discovery (670) | | |
| ☐ Sexual Predator (510) | | | |

Submitting Party Signature:



Date: December 20, 2017

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2017-CP-40-00580

TARA DAWN SHURLING)
Appellant,)
v.)
JOHN DANIEL SPRINGER, #294365)
Respondent.)

MEMORANDUM IN SUPPORT
OF APPEAL

RICHLAND COUNTY
FILED
2017 DEC 20 PM 4:36
JEANETTE W. MCBRIDE
C.C.P. & G.S.

This matter came before this Court by way of an appeal filed by Appellant/ Respondent, Tara Dawn Shurling (hereafter Appellant), from the Report and Recommendations of the three person panel assigned to the fee dispute application filed by the Respondent/Petitioner, John Daniel Springer (hereafter Respondent). The Report and Recommendations of that Panel were issued on December 27, 2016 following a Panel hearing held on November 17, 2017. That Panel Report is found in the Record on Appeal at pages 21-34. That Panel Report was not received by Appellant until January 4, 2017. Appellant made an effort to bring errors in the findings of fact, and conclusions of the Panel by submitting a Request for Reconsideration on January 19, 2017 which the Panel declined to entertain. A copy of that document is found in the ROA in this mater at pages 49-98. Correspondence and emails addressing this submission are found at ROA p. 35-60. Appellant filed a timely Notice of Appeal from the Panel Report on February 2, 2017. See, ROA pp. 101-118. As required by the rules governing these matters, Appellant deposited a check for the funds in dispute, \$5,000.00, in the Trust Account of the South Carolina Bar Association on that same date. ROA, p. 118. While the rules governing fee disputes call for the

responding agency to submit the Record on Appeal, no such record was filed by the Fee Dispute Board as required by Rule 20(e) of Rule 416, SCACR.¹ Appellant was subsequently advised that Chief Administrative Judge L. Casey Manning, Richland County Court of Common Pleas, had directed Appellant to file the Record on Appeal. In compliance with that directive, Appellant prepared filed and served the Record on Appeal on all parties on August 2, 2017. See, ROA pp. 119-120. An email referenced by the Panel Report was inadvertently excluded from the Record on Appeal, but is attached hereto as an attachment.

A hearing on this appeal was convened in the Court of Common Pleas before the Honorable G. Thomas Cooper, presiding circuit court judge, on October 27, 2017. At this hearing, Appellant requested and was granted leave to incorporate the matter included in her Request for Reconsideration and/or Rehearing found in the Record on Appeal at pages 49-98. In addition to the matter found in that document, which was duly served on Respondent, by mail on August 2, 2017, as part of the Record on Appeal, Appellant now submits this memorandum in support of her appeal. This memorandum represents an effort at a somewhat abbreviated summary of the primary reasons the findings reflected in the Panel Report should be reversed, however appellant respectfully relies on the arguments addressed *in both documents*, and submits that a reading of the Request for Reconsideration and/or Rehearing is crucial to understanding the factual background for this fee dispute.

The following grounds for this appeal were submitted in the Notice of Appeal as required by Rule 20(c) (1) of SCACR 416.

1. The Panel erred in refusing to hear Appellant's request for Reconsideration and/or Rehearing on the ground that the rules governing

¹ After the hearing held in this appeal, Appellant mentioned to a member of the S.C. Bar staff that no Record on Appeal had been filed by their staff. On November 30, 2017, Appellant was advised that documents relating to this appeal and a copy of Rule 416, SCACR, had been sent to the court nine (9) months after they were served with the Notice of Appeal. ROA p. 117.

the Resolution of Fee Disputes Board do not expressly provide for such requests to be entertained, where the rules do not prohibit the hearing of such requests and where the absence of such a review deprives a party before the Board on review of a fee dispute any opportunity to bring errors in the findings of the Panel to their attention without filing an appeal to the circuit court under the narrow framework of Rule 20.

2. The Panel exceeded its authority in ordering Appellant to refund \$5,000.00 of her fee to *Petitioner* where the Report and Recommendation issued by the Panel is predicated upon multiple erroneous factual findings in conflict with the evidence and testimony before the Panel and reasonable inferences drawn from the evidence and testimony before the Panel.

3. The Panel exceeded its authority in ordering Appellant to refund \$5,000.00 of her fee to *Respondent* where he was not the party who paid Appellant's fees and would not legally be entitled to such an award.

4. The Panel would not have had the authority to order Appellant to refund \$5,000.00 of her fee to *the third party payer*, Respondent's mother, where she was not a proper party to this fee dispute inasmuch as she was not listed as an Applicant on the fee dispute and the fee dispute application was not signed by both the client and the third-party payer as required by the Board's own rules.

5. Appellant would respectfully submit that the Fee Dispute Board's rule regarding appeals to the Circuit Court, would unconstitutionally infringe upon an attorney's right to due process of law unless the factors justifying vacation of a Board decision under Rule 20(f) are interpreted to include cases where the hearing Panel exceeds its authority by granting relief to an Applicant based upon findings of the Panel which are factually erroneous and/or unsupported by the evidence before the panel.

ROA pp. 99-103.

The following points address the many reasons the Panel decision in this matter should be reversed.

Ground 1.

Appellant denied opportunity for Rehearing

The Panel incorrectly ruled that they could not review Appellant's Request for Reconsideration because their rules do not expressly provide for it, where nothing in their rules

precluded such a request either. The Panel's findings are predicated upon multiple erroneous factual findings. Appellant asserts that this Panel clearly exceeded its authority in granting relief based upon erroneous factual findings which Appellant was denied the opportunity to point out to the Panel for correction.

The way the Panel Rules are constructed, a dispute involving *less* money provides the Attorney with the opportunity to submit a written response to the written fee dispute and the chance to, in effect, appeal the findings made in a one member review, to a three person panel. Ironically, a lawyer confronted with a fee dispute involving *more money* is afforded no opportunity to submit a written response and according the Resolution of Fee Disputes Board no opportunity to request reconsideration of the a Panel Report. Under this view, there is literally no avenue for a party to point out even egregious errors in the Panel's findings.

Ground 2 and Ground 5

Respondent never claimed that he believed Appellant was retained to file his Objections in the U.S. District Court *and* to appeal any adverse District Court decision to the Fourth Circuit Court of Appeals. To the contrary, his claim has consistently been, as it found written by him in his Fee Dispute Application, is that he did not authorize Appellant to file Objections in the U.S. District Court, but did authorize her to represent him on appeal to the Fourth Circuit Court of Appeals. *See, Fee Dispute Application, Item 13, Record on Appeal, pg. 7.*

Furthermore, it appears the Panel hearing was not convened within 45 days as is required by Rule 17. The Application was received by the South Carolina Bar on September 7, 2016, but the Panel hearing was not held until November 17, 2017. What is certain is the fact that the Panel did not reach a decision and issue a written decision within 15 days as also required by Rule 17 of SCACR 416. The Report and Recommendations was dated December 27, 2016 (40 days after the Panel hearing) and was not received by Appellant until January 4, 2017.

Reasonableness of Fee

Appellant was initially hired by Petitioner's Mother on March 3, 2015, to conduct a file review of her son's case. The tasks agreed upon for the file review, and the steps taken toward

that representation, are outlined in Appellant's Request for Reconsideration, and are found at ROA, p. 61-64. *See also*, copy of the Fee Contract, ROA, p. 15-17. The Panel report ignores the fact, as explained by Appellant at the panel hearing, that there were essentially two agreements entered in this matter: the original agreement dating to March 5, 2015, and the subsequent agreement reduced to a written contract on March 19, 2015.

On March 5, 2015, before Appellant had a chance to go see Respondent, she discovered that he actually already had a Petition for Writ of Habeas Corpus pending in the U.S. District Court, and further, that the Report and Recommendations of the U.S. Magistrate Judge had already been issued. Respondent had already been granted one extension for that stage of this action, and had requested a second which had not yet been ruled upon. Mrs. Hurst was advised that I would not have time to go see her son (Respondent) in person, before preparing and filing the Objections in his case. Mrs. Hurst was told that if she was able to speak to him to have him call Appellant *immediately* so she could confirm that he wanted her to file his Objections as his lawyer. Appellant made it clear to Mrs. Hurst that she could not represent Respondent in the filing of his Objections unless she spoke with her son quickly to confirm his desire to be represented by Appellant, *before* she signed a written contract with Mrs. Hurst. Respondent subsequently called Appellant on March 18, 2015, and had a conversation with Appellant during which she told him his Mother was trying to hire her to take over his federal habeas case in the U.S. District Court, and to file the Objections to the U. S. Magistrate Judge's Report and Recommendations, but that she could not put in appearance in the U.S. District Court until he confirmed that he wanted her to be his lawyer, and wanted her to file these Objections. Appellant made it very clear that she was only being hired to finish up the District Court Habeas action by drafting the Objections which were due very soon. Appellant explained the purpose of the Objections due at this stage of Respondent's Habeas action, and the reasons why filing them was important to his District Court action and to preserving his right to an appeal to the Fourth Circuit Court of Appeals. Respondent then confirmed that he wanted Appellant to represent him in District Court and to file the Objections.

As previously noted, Appellant did not learn that Respondent had a federal habeas action pending until she received an email from Mrs. Hurst on March 5, 2015 advising her that Petitioner was waiting to hear back from the federal court on a second extension request. *See*, Attachment A. Appellant next confirmed that Respondent did indeed have a timely habeas

action pending, and that the Magistrate Judge's Report and Recommendations had been filed on January 16, 2015.

On March 8, 2015, Appellant received an email from Mrs. Hurst conveying a message from her son, asking whether he should notify the federal court, or would Appellant, concerning him having a lawyer. *See, Attachment B.* On March 11, 2015, Appellant received nearly 2000 pages of documents in this case from Donald J. Zelenka, Senior Deputy Attorney General, and as well a large package of materials *from* Respondent. She received a second large batch of documents in this matter on March 18, 2015; the same date Appellant received the previously referenced call from Respondent.

March 19, 2015, Mrs. Hurst, and her husband came to Appellant's office, and had a lengthy meeting during which Mrs. Hurst signed the fee contract for her to represent Respondent in the federal habeas action. Up until that date, Appellant had been operating under her original oral agreement with Mrs. Hurst, entered on March 3, 2015, and the oral confirmation of Respondent's desire to have Appellant take the federal habeas case over issued March 18, 2017.

The Panel Reports findings concerning the "*reasonableness of my fees*" are erroneous for a number of reasons. They are addressed below under the hearings used by the Panel in the sections where the errors are found. Statements herein pertaining to Appellant and Respondent's respective positions reflect their statements to the Panel at the hearing, information contained in the Fee Dispute Application and other documents before the Panel at the time of that hearing.

The findings of fact in this section of the Panel's Report are just plain erroneous on multiple points. Only those factors where errors are found are addressed herein.

Factor 1.

- i. The Report concludes that Appellant was *first retained on March 19, 2015* and filed the Objections on March 30, 2015. This is simply untrue. The Panel was told that Appellant was initially retained by Mrs. Hurst on March 3, 2015, to conduct a complete file review. Appellant began researching the history of Respondent's case immediately after being retained starting with his State court proceedings. As previously noted, an email from Mrs. Hurst, dated March 5, 2015, alerted Appellant for the first time to the fact that Respondent had some sort of action pending in federal court. After confirming that Petitioner did in fact have a Petition for Writ of Habeas Corpus pending in the U. S. District Court,

Appellant confirmed that the U.S. Magistrate Judge's Report and Recommendations had been filed on January 16, 2015. On March 11, 2015, Appellant received nearly 2000 pages of materials relevant to Petitioner's case from the Attorney General's Office. In addition she received a large volume of materials from the Respondent by mail on that same date. Knowing that Respondent had very little time to prepare Objections, she began reviewing these documents as they were received. The day after her March 18, 2015, telephone conference with Respondent, his mother, Mrs. Hurst and her husband, came to Appellant's office. After a lengthy meeting, a fee contract for Appellant to take over Respondent's federal habeas action in U. S. District Court for a flat fee of \$20,000.00, plus expenses, was executed and notarized. That fee contract documents that Appellant applied the entire \$5,000.00 fee originally *paid on March 3, 2015*, pursuant to her oral agreement to conduct a file review in Respondent's case, to the fees from taking over the federal habeas action. *See*, ROA p. 15, para. 3, wherein the payment made on March 3, 2015 is listed as the general retainer in this matter. Therefore, the report erroneously concludes Appellant only worked on the Objections in this case over the course of 11 days from March 19-30, 2015, when she actually was initially retained on March 3, 2015, and worked on Respondent's case from that date, until the Objections were filed on March 30, 2015; a total of 27 days not 11 days. Even that calculation does not take into account time expended by Appellant receiving and reviewing the U.S. District Court decision, her time notifying Respondent and Mrs. Hurst of that decision explaining Respondent's options and her time drafting a *pro se* Notice of Appeal package for Respondent.

- ii. The Panel, *with out foundation*, concluded that it should have taken "*no more than 10-15 hours to draft Objections to a Magistrate's Recommendations, not having been involved at any prior state of proceedings.*" The Report then goes on to conclude that "*this time estimate is in line with Respondent's testimony that she completed the pleadings over the weekend...*" ROA p. 27, para. 2 (Emphasis added). This conclusion totally ignored the balance of Appellant's testimony concerning this case. As explained above, from March 3, 2015, forward until the

weekend before the Objections were due, Appellant stated that she had been reading and outlining approximately 2,000 pages of documents and transcripts in this case. As the Panel's Report notes, but apparently did not understand, Appellant stated that she spent the weekend before these Objections were due "completing" them. She did not tell the Panel that she performed all the work she did in this case over a weekend. Had Appellant been hired to represent Petitioner from the beginning, she would have already read all the transcripts and other documents in Respondent's case before the Magistrate's Report and Recommendations were filed. In that situation, it would have been feasible for her to have reviewed and analyzed the Magistrate's Report and Recommendations, and to have drafted these Objections over a weekend. Where she had zero prior exposure to this case, it would have been impossible for her to have competently drafted these Objections over a weekend, had she not spent a lot of time reviewing all the documentation and transcripts involved in this case *in advance*.

In addition, the Panel Report fails to give fair consideration to the fact that Appellant already voluntarily forgave \$5,000.00 of the fee she contracted for with Mrs. Hurst, based upon the short extension allowed by the U.S. District Court for filing the Objections. A fact that evidences Appellant's effort to be fair with Mrs. Hurst concerning her total fees.

Factor 2. Appellant never claimed to have missed other employment opportunities in order to accept this case, she did have to significantly rearrange her schedule to accommodate the time constraints in this case, and was forced to literally work the entire weekend before the Objections were due in order to meet the deadline set by the District Court following Respondent's *second pro se* extension request, made before Appellant was hired.

Factor 3. The factual conclusions in this section are also inaccurate. Appellant did not tell the Panel she was not familiar with what other attorneys in the area charge in habeas matters. She stated that she had no idea what other attorneys would charge in the highly

unusual situation where they were called upon to step in and prepare Objections at the last stage of the habeas process, on extremely short notice, in a case in which they had no prior involvement. She actually advised that she didn't know anyone she thought would have agreed to accept the case at that late stage, and with so little time to complete the task, much less someone with her level of experience. Speaking of which, while the Panel's Report graciously recognizes Appellant's reputation in her field, and notes that she has over *25 years experience*, at the time she was retained in this matter, she had actually been practicing law for just under *36 years*, almost exclusively in the area of criminal appellate matters, at the time she was retained in this matter. She is a Fellow in the American Academy of Appellate Lawyers; a distinction held by only four other South Carolina lawyers.

Factor 6. In this section the Panel recognized that Respondent claimed he never authorized Appellant to file the Objections in the U.S. District Court, but acknowledged that before the fee agreement was even signed Respondent and his mother were eager for Appellant to get started on his case and Mrs. Hurst contacted Appellant concerning the court being notified that "he was now represented." ROA p. 29, para. 2. As previously noted, this was an obvious reference to the U.S. District Court action which was originally filed *pro se*. It would make no sense for Respondent and his mother to be concerned about notifying any court about Appellant's being retained other than in the U.S. District Court where he had an action pending. Given the status of Respondent's case, there would have been no reason to contact the Fourth Circuit Court of Appeals since no appeal had been filed in that court at that time.

Factor 8. Nature of fee. Notwithstanding the Panel's unsupported opinion concerning the amount of time they thought it should have taken to complete and file these Objections, the Panel recognized that the fee agreement in this case "*was a properly executed contract directly intended for the benefit of a third party, and the Panel agrees the agreement holds up under contract law.*" Panel Report, p. 8, para. 2. Significantly, in this section the Panel acknowledged that *after* the denial of the habeas petition, Respondent's mother contacted Appellant and inquired about the cost for her to go see

Respondent in "jail". The Panel acknowledged that this communication indicated that the mother understood the scope of the services, and expected to have to pay additional fees for additional services. *Panel Report, p. 8, para. 3.*

Scope of Representation

As the Panel's Report acknowledges, Rule 1.5(b) states that "*the scope of the representation and the basis or rate of the fee and preferably in writing, before or within a reasonable time after commencing the representation ...*" In this portion of their Report, the Panel expressly recognized that "*Petitioner was aware of the services provided, or to be provided by Respondent...*" *Panel Report p. 8, para. 5. (Emphasis added)*

Noting that there was no evidence Respondent received a copy of the fee agreement, the Panel concluded that there was "*no clear indication that Petitioner was aware of the scope of the services or legal fees charged until after the completion of the legal services.*" ROA p. 30, para 2. This statement is inaccurate. The Panel fails to note that Appellant told them that she had fully explained the scope of her representation to Respondent in her conversation with him during their telephone conference on March 18, 2015. Most significantly, the Respondent made it very clear in his Fee Dispute Application that his claim was that he *did not* authorize Appellate to represent him in the U.S. District Court for the purpose of drafting Respondent's Objections and *only* authorized her to represent him in the Fourth Circuit Court of Appeals. In other words, Respondent asserted in his Fee Dispute Application *and his hearing testimony before the Panel*, that Appellant *was only hired to represent him in one stage of his federal case*. He claimed that *one stage* was an appeal to the Fourth Circuit Court of Appeals. The Panel for some inexplicable reason concluded that Respondent may have believed Appellant was hired to *both* finish Respondent's habeas action in the U.S. District Court, and to subsequently represent him on appeal to the Fourth Circuit Court of Appeals. There is no foundation for this conclusion, where the Respondent himself firmly asserted Appellant was only hired for one stage; an appeal to the Fourth Circuit Court of Appeals to follow a loss in the U. S. District Court. As outlined above, the Panel expressly found that Respondent knew Appellant had been hired to represent him in the U. S. District Court, that being said, there was no factual basis for the Panel to have concluded he might have legitimately believed his mother had hired her to handle both. The Panel expressly found, "*Petitioner's claims that he did not hire Respondent and did not know*

that she was filing the Objections on his behalf to be false". ROA p. 31, last para. In other words, this Panel found Respondent lied when he claimed he did not agree for Appellant to be hired to represent him in the District Court, then assigns no credibility to her word as a 36 year veteran with the Bar concerning the fact that she expressly told him she had been hired for the District Court action only, and that the fee paid *did not* cover any other representation and expressly did not cover an appeal to the Fourth Circuit Court of Appeals. Furthermore, the Panel ignored Respondent's own statement that he never authorized Appellant to represent him in both courts; statements which clearly refute the Panel's finding that he may have believed Appellant had been hired to do both.

In this section, the Panel also noted that Respondent's mother and Respondent expressed "confusion" about the scope of the representation and the fees involved. The Panel previously recognized that the Fee Agreement entered in this case was a valid legal contract. Furthermore, in an earlier section of the Panel Report, the Panel expressly stated, [T]herefore, it appears that [Respondent's] mother understood the scope of [Appellant's] services under the flat fee. ROA p. 30, para. 3. That contract, found at ROA, p. 15-17, could not have been clearer in its terms. Appellant discussed this contract with Mrs. Hurst at length in my office in the presence of her husband. Mrs. Hurst and her husband were given the opportunity to review this contract at length, and to ask any questions they wished before Mrs. Hurst signed this contract. Mrs. Hurst was given a copy of the executed Fee Contract to take with her. She never contacted Appellant after the contract was signed to ask any additional questions.

The Panel Report indicates that there is no indication Respondent ever got a copy of the fee agreement. This finding ignores the fact that Appellant advised the Panel that at one point Respondent requested a copy of the fee agreement, and that her file indicated it had been mailed to him. Appellant acknowledged that the copy of the transmittal letter in her file was unsigned. She noted that the letter sent to Respondent with the fee contract *was not* returned to her firm by the Postal Service, nor did Respondent ever call or write Appellant and advise her that he never received the copy he had requested. Thereafter, Respondent referenced the amount of the fees paid under this contract in several subsequent conversations. The Panel Report notes that the Fee Contract signed by Mrs. Hurst with her law firm referenced Respondent's mother *as the client*. While Appellant sees where their confusion came from, she believes a fair reading of the entire

contract is not consistent with that finding. In the opening paragraph of the Fee Contract it states:

This agreement is made and entered into by and between Tara Dawn Shurling, Attorney at Law, and Katherine Virginia Hurst, Mother of John Daniel Springer, hereafter (Client), this 19th day of March, 2015. *This agreement is entered with the full knowledge of Client herein.*

ROA p. 15, para. 1. (Emphasis added).

Ordinarily, after Mrs. Hurst's full name there would have been a parenthetical statement noting, "(hereafter Hurst)" and after Appellant's name there would have been the notation, "(hereafter Attorney Shurling or Counsel)". Appellant apologizes that she did not catch the omission of these parenthetical references when she proofed this agreement, however, she submits that it is still obvious from the totality of the document that *Hurst* is John Daniel Springer's mother, and he was the Client. The document clearly references Client as the individual whose Petition for Writ of Habeas Corpus was on file in the U.S. District Court, and consistently references Katherine Virginia Hurst as the party agreeing to be responsible for paying both legal fees and costs for that action. *See*, ROA, pp. 15-17.

Contrary to what the Report suggests, Mrs. Hurst was at all times treated as a third party payer as evidence by the fact that Appellant refused to be formally retained in this matter until after she had orally confirmed Respondent's desire to be represented by her, had explained to him the limited purpose for which his mother was retaining her, had advised him that the flat fee his mother had agreed to pay *did not* cover an appeal to the Fourth Circuit Court of Appeals, and had advised him of the reasons why it was important to file Objections to the U.S. Magistrate Judge's Report and Recommendations. As Appellant advised the Panel, not once during that telephone conference did Respondent disagree in any fashion with what she explained to him. Not once did he dispute her clear statement that if he agreed to be represented by Appellant, his mother was currently hiring Appellant for the limited purpose of preparing and filing the Objections in the U.S. District Court. As the Panel was informed, Respondent never said he did not want Appellant to prepare and file his Objections. Respondent never challenged Appellant's clear statement that the fee his mother had been quoted *did not* cover any subsequent appeal to the Fourth Circuit Court of Appeals. In the twelve (12) days between that telephone conference and when the Objections were filed, Respondent never called Appellant again to ask further

questions about the scope of Appellant's representation. Perhaps the most valuable piece of evidence supporting this appeal is the fact that Respondent, who had acted *pro se* in his habeas action until Appellant was hired by his mother, DID NOT FILE *PRO SE* OBJECTIONS to the Magistrate's Report. If, as Respondent claimed in his fee dispute he *did not* authorize Appellant to file these Objections, but *did* authorize her to represent him in an appeal to the Fourth Circuit Court of Appeals, why didn't he file his own *pro se* Objections particularly after Appellant having explained to him that, under the federal rules, the filing the Objections was a requirement to preserve his right to raise issues on appeal. As the Panel was told during the hearing, in a conversation after the District Court ruled against him, Respondent said something to the effect that, *for what she had charged his mother, Appellant ought to be willing to handle his appeal too*. Only when she responded that she could not agree to that, did he begin, for the first time, to claim she had filed Objections without authorization from him, and that he thought she had been hired for the appeal to the Fourth Circuit Court of Appeals. Thankfully, the Panel recognized that claim was false. Again, the Report expressly states, "*We find that Petitioner's claims that he did not hire Respondent and did not know that she was filing the objections on his behalf to be false.*" Panel Report p. 9, last para. Regrettably, the Report goes on to conclude that,

Based upon the evidence provided, it appears that he was certainly aware of [Appellant's] role in drafting the Objections and later praises them. However, there is no evidence that [Respondent] was aware of the EXTENT of the agreed upon legal services and find it credible that he was truly under the impression that not only would [Appellant] be filing the Objections, but that her representation would extend beyond that point. Therefore, the panel does not believe that the scope of [Appellant's] representation was communicated to [Respondent] as required under these rules.

ROA p. 31.

This Panel has granted Respondent a \$5,000.00 refund, *of money he never paid* Appellant, based upon a ground *he never raised*. Respondent never once claimed he thought Appellant was going to represent him by filing these Objections in the U.S. District Court *and* that she was going to represent him in the Fourth Circuit Court of Appeals. As covered extensively above, Respondent has consistently claimed he did not agree for Appellant to be

hired to file his Objections and *only* authorized her to represent him on appeal to the Fourth Circuit Court of Appeals. He told the U.S. District Court that in pleadings he filed after the Court granted the State Summary Judgment. *See, Attachment C.* In this filing, which he captioned, "Motion to Set Aside Judgment in Civil Matter" filed in the U.S. District Court on May 29, 2015, Respondent unequivocally stated,

ATTORNEY TARA DAWN SHURLING

First and foremost it must be understood that Tara Dawn Shurling, while surly a capable and competent attorney, has never been hired to represent Petitioner in this or any other action, State or Federal. She was merely paid a deposit in anticipation of an appeal in this case. There has been a complete and total misunderstanding on Ms. Shurling's part simply because she never took the time to speak to this Petitioner before jumping the gun and making filings with this Court. Petitioner has no contract or agreement with Ms. Shurling, oral or written.

As such, the filing of objections to the Magistrate's Report & Recommendation was premature. In fact it was done without Petitioner's knowledge or consent and he only learned of it after this Court's decision to grant summary judgment. Petitioner spoke with Ms. Shurling only one time before she took this action. This was by phone; the conversation was less than ten minutes; and, Ms. Shurling dominated the entire conversation. The only matter discussed at that time was that she was busy preparing for a deadline in another case and did not have time to talk to Petitioner. Even after the decision of this court Ms. Shurling did not inform Petitioner of what she had filed or what the decision of the Court had been. He only learned of it from his mother. Ms. Shurling did not send copies of anything to Petitioner until over two weeks later and then only after he called.

Again, the conversation was completely dominated by Ms. Shurling. Petitioner, thoroughly confused at this point, could hardly get a word in to ask any questions. At that time he was told she would send copies of the filing, the decision, and the necessary paperwork for his appeal.

When Petitioner was notified that an initial brief was to be submitted he called Ms. Shurling. It was only at that point that he began to understand what she had done; Ms. Shurling had taken it upon herself to decide that she was going to take the deposit of sixteen-thousand dollars and apply it to "finish up in District Court." Petitioner was shocked by this to say the least. He explained to her at that time that she was never hired to do any such thing and that he would never have agreed to anything so absurd. Petitioner had already made all filings in the

District Court on his own up to that point; he did not need an attorney to "finish up" for him.

Besides, it is well known that the District Court always adopts the Magistrate's Report & Recommendation. In this case that recommendation was to grant summary judgment; it was a foregone conclusion. No attorney in the state could have changed the outcome.

That motion was denied by text Order of the U.S. District Court entered on June 19, 2015.² That precise claim appears in his own handwriting in his Fee Dispute Application, at Item 13, wherein the following is found,

List all legal papers, if any, the Lawyer prepared for you. Attach copies to this application: 1. Objections to Federal Magistrates Report and Recommendation although not authorized by me. 2. Notice of Appeal from Federal District Court was authorized by me.

Interestingly, when Respondent filed his *pro se* Notice of Appeal from the Order of the District Court Order, he signed and submitted a transmittal letter which expressly stated, "[M]y mother paid a lawyer to file my objections for me. That is all that lawyer, Tara Dawn Shurling, was paid to do." *See, Attachment D.*³

Rule 1.5(f) Advance Fees

In this portion of the report the Panel stated the following:

The questions before the panel are whether [Respondent] agreed to being represented by [Appellant] and whether [Appellant] performed the agreed to legal services. The panel finds that while [Appellant] failed to obtain any written consent from [Respondent], the evidence suggests that he consented to [Appellant] being hired as his attorney. But, the evidence is not clear whether [Appellant] performed the agreed to legal services. All parties involved repeatedly stated that [Appellant] was supposed to go and speak with

² This Order verified by Appellant on Federal Document Index. No hard copy available.

³ As previously noted, Appellant provided Respondent a package of materials he could elect to use to file his appeal. He was certainly not obligated to use these forms, but by signing and filing them he adopted them as his own.

[Respondent] in person. That never occurred. While the fee agreement did not address this meeting, there is no evidence that [Respondent] was aware of the limited scope outlined in the Fee Agreement because he did not sign it and per his testimony, he never even saw it. Thus, since there were tasks not performed as agreed, the fee paid to [Appellant] is subject to being returned.

ROA p. 32, para 2.

This very complex issue is treated at length in Appellant's Request for Reconsideration which has been incorporated by Appellant as part of her showing supporting this appeal. See, ROA pp 49-103, specifically pp. 90-93. Appellant relies on the arguments articulated on this issue at ROA pp. 90-93. Simply put, third party payment creates an inherent risk of a conflict of interest, however, Rule 1.7 (a), the Rule states that rule prohibits a lawyer from representing a client, "*if the representation involves a concurrent conflict of interest. (2) Such a concurrent conflict exists if "there is a significant risk that the representation of one or more clients will materially limit the lawyer's responsibilities to ... a third person."* As noted in the Panel's own Report, Comment Seven to Rule 1.0 (G), which defines "informed consent", states that obtaining informed consent will "*usually*" require an affirmative response by the client or another person. In this case, Appellant obtained Respondent's informed consent *directly* from him in a telephone conference the day before the Fee Contract was signed by Mrs. Hurst. In addition, Mrs. Hurst acknowledged that in this contract which states that, "[T]his agreement is entered with the full knowledge of Client herein." ROA p. 15, para. 1. Furthermore, pursuant to Rule 1.7 (b), even where a concurrent conflict of interest exists, a lawyer may still represent a client if "*each affected client gives informed consent, confirmed in writing.*" Thus, under the very rules relied upon by the Panel, it is the presence of *an actual conflict of interest* that triggers the need for "*informed consent, confirmed in writing.*" (Emphasis added). In this case, there was no evidence submitted tending to even hint of that Appellant having a conflict of interest in representing Respondent. Indeed, Respondent has complimented Appellant's reputation for excellence in the quality of her work, and affirmatively acknowledged that he wanted to have Respondent hired to represent him, however, he simply denied knowing she was being hired to represent him in the filing of the Objections in the U.S. District Court. A claim the Panel expressly found to be false. Furthermore, Respondent claimed he *only* authorized Appellant to represent him on appeal. That

claim, although false, essentially confirms that he wanted his mother to hire Appellant to represent him.

Ground 3

This fee dispute was filed by John Daniel Springer on August 22, 2016. It was signed by him on page 6. Appellant was hired by his mother, Katherine Hurst. Mrs. Hurst, not her son, paid Appellant and entered into a written fee contract with her law firm. Rule 10 of SCACR 416, which governs fee disputes, expressly provides that where the Petitioner is the client, but not the party who paid for the Attorney's services, the third party payer, *with written consent of the Client-Petitioner, may jointly file a fee dispute with the Client-Petitioner with both signatures affixed to the Application*. In the fee dispute application before this Court, Mrs. Hurst is listed as a person who is entitled, "to act on Applicant's behalf regarding this dispute and to receive correspondence or notices for Applicant." Hurst is not listed as a party to the fee dispute, and she did not sign the Application. *See*, RPA pp. 5-10. Mrs. Hurst is therefore not a proper party to this fee dispute under the requirements of Rule 10 of SCACR 416. She is the person who contracted, for Appellant's services and paid her fees. In light of these factors, the Panel *did not* have the authority to order Appellant to refund a portion of her fees to either Springer or his mother, Mrs. Hurst. Clearly, Respondent is not the party who paid Appellant, and therefore she could not be compelled to refund someone else's money to him. Mrs. Hurst is not a party to this fee dispute, so the Panel did not have had the authority to order Appellant to refund a portion of her fee to her either.

Other Factors

This Panel's Report erroneously places the date Appellant's representation of Respondent began at March 19, 2015 rather than March 3, 2015 when Appellant was originally retained under an oral agreement for her to conduct a "file review" of her son's case. *In the context of that agreement*, Appellant agreed to go visit Respondent in person. Such a commitment was entirely consistent with the task she originally agreed to perform. For a file review to explore what potential avenues for obtaining relief might still exist, it would have been necessary for Appellant to review all available public records concerning actions previously taken in Respondent's case and to discuss the case with Respondent to determine what if any information he might be able to provide which might constitute a basis for some sort of extraordinary petition or motion. However, once Appellant discovered that Respondent had a pending Petition for Writ

of Habeas Corpus in the U.S. District Court, the necessity for a face-to-face meeting evaporated. In preparing Objections to the U.S. Magistrate Judge's Report and Recommendations, Appellant was limited to the documentation already before the District Court and she could not have utilized any new information Respondent might have provided in a face-to-face meeting *or any other means of communication*. Appellant explained this fact to Mrs. Hurst and Respondent *before* the Fee Contract was signed. Furthermore, Appellant explained to both Mrs. Hurst and Respondent that due to the time constraints placed on her because they waited until after Respondent's second extension request for the Objections had been filed to hire her, and as a result she was going to have very limited time to prepare and file the Objections, she would not have time to go see Respondent before filing the Objections. Appellant also briefly explained that such a personal interview was not necessary for her to complete the new task she was being hired for, but that she did need to speak with him by telephone to confirm Respondent was in agreement with Applicant being hired for that purpose.

When Respondent called Appellant *the day before the Fee Contract was signed*, she expressly advised Respondent, 1) that his mother had agreed to retain her to represent him in the U.S. District Court for the limited purpose of filing Objections to the U.S. Magistrate Judge's Report and Recommendations, 2) that the fee she was to be paid did not cover representation in any subsequent appeal to the Fourth Circuit, 3) that in drafting the Objections, she would be limited to the documents and pleadings already before the District Court, 4) that she could not add any grounds to his habeas action and 5) that she would not be coming to see him in person before filing these Objections. With his oral informed consent, the next day she entered into a very detailed written fee agreement with his mother, Mrs. Hurst. That contract *did not* contain any term which committed Appellant to visit Respondent in person. Therefore, there was absolutely no basis for the Panel's ruling that Appellant's failure to visit Respondent provided a basis for them to order a refund of \$5,000.00 of Appellant's fees under what they concede was otherwise a valid legal contract for legal services to be performed for a flat fee.

CONCLUSION

The Panel Report indicates their erroneous belief that they had the authority to order Appellant to refund \$5,000.00 of her fees to Respondent due to Appellant's failure to " (1) communicate the scope of her representation to the client, (2) fully perform the agreed upon legal

services, and (3) obtain clients written informed consent to the inherent conflict of interest created by the third-party payor agreement require that some of the fees paid by Petitioner's mother be returned." ROA p. 34. With regard to Reason Number 1, Appellant notes that the Panel expressly found that Respondent's claim that he did not consent to being represented by Appellant in the U.S. District Court was false. Respondent's Fee Dispute *does not* allege that he consented to Appellant being hired to *both* file Objections in U. S. District Court *and* to represent him on appeal to the Fourth Circuit Court of Appeals. Thus, there was no foundation for the Panel's conclusion that Respondent "was truly under the impression that not only would [Appellant] be filing the Objections, but that her representation would extend beyond that point." ROA p. 31, last paragraph. This Panel actually found it *credible* that Respondent believed Appellant would *not only prepare and file* the Objections, but would represent him *beyond that point in the same paragraph* as they expressly recognized that Respondent's claim was that he did not hire Appellant to represent him in the U.S. District Court, and did not know she was filing the Objections on his behalf, "*to be false.*" ROA p. 31.

This Panel exceeded its authority in finding Petitioner is entitled to relief on a ground he never asserted. There was no basis for the Panel's conclusion that, "there is no evidence that Petitioner was aware of the EXTENT of the agreed upon legal services and find it credible that he was truly under the impression that *not only would* [Appellant] be filing the Objections, but that her representation would extend beyond this point." ROA p. 31. The Panel's Report therefore, contradicts itself, grants relief on a ground never raised by Respondent, and finds "credible" an impression Respondent never claimed he operated under. *See*, Fee Dispute Application, ROA pp. 5-9; see specifically Items 4, 7, 13, and 15. In Item 15, Respondent expressly claims that he did not authorize Appellant to prepare Objections on his behalf, but did *authorize her to prepare the Notice of Appeal filed in this case*. Appellant, in fact, voluntarily prepared a *pro se* filing package for Respondent to use to file an appeal from the Order issued on his Habeas Petition in the event he was not able to hire Appellant or some other lawyer to

represent him on appeal. Respondent did not "authorize Appellant" to prepare that *pro se* Notice of Appeal, it was prepared by Appellant on her own initiative to insure Respondent would have a form to use to file an appeal *pro se*. See, Transmittal letter dated April 16, 2015, Attachment D. The Notice of Appeal was *not* filed by Appellant.

With regard to the Panel's finding that Appellant did not fully perform the agreed upon legal services, the Panel Report fails to take into account that Appellant's representation began March 3, 2015 *not* March 19, 2015 as the Panel Report states. The report totally ignores the fact that the Appellant's original agreement with Mrs. Hurst was for a file review and included a plan for a face-to-face meeting with her son, the Respondent. The original terms of that agreement were changed once Appellant discovered Respondent had a Petition of Writ of Habeas Corpus pending with Objections due within an extremely short time period. The terms of the modified agreement were reduced to writing in a very detailed Fee Contract signed by Mrs. Hurst. *That contract did not include a commitment to personally visit Respondent.* Appellant in fact told Mrs. Hurst and Respondent that the reason for requesting the telephone conference with Respondent was that she *would not* be coming to visit Respondent as part of her agreement to prepare and file the Objections. Appellant testified to this fact during the Panel Hearing. The fact that Appellant expressly told Mrs. Hurst and Respondent that the original commitment for a face-to-face meeting with Respondent *was not* a part of the final contract for services is supported by the fact that, as the Panel Report acknowledges, *after the denial of the Habeas Petition*, Mrs. Hurst contacted Appellant's office to ask how much it would cost for her to go visit Respondent. *ROA p. 30, para 3.* The Panel's Report goes on to state that, "[T]herefore, it appears that Petitioner's mother understood the scope of the Respondent's services under the flat fee agreement." *ROA p 30, para 3.* (Emphasis added.) What the report ignores is the fact that

Appellant never had any communication with Respondent about the scope of the original oral March 3, 2015 agreement. The nature of the agreement began to change *only two days later* on March 5, 2015 when Mrs. Hurst disclosed for the first time that Petitioner had an action pending in federal court. Thus, *Appellant never told Respondent she would visit him in person*. During the March 18, 2015 telephone conference Appellant told Respondent she *would not* be coming to see him before performing the agreed upon services *and* explained briefly why such a meeting was not necessary. That information had already been conveyed to Mrs. Hurst at the time she was asked by Appellant to have Respondent call her law firm.⁴ In light of the above, there is absolutely no evidence to support the Panel's finding that Appellant's failure to visit Respondent in person constituted a breach of contract giving the Panel the authority to authorize a partial refund. Furthermore, even assuming *arguendo* that Appellant was supposed to visit Respondent (which Appellant vehemently denies), that would not give the Panel the authority to order a refund of *a third* of the flat fee charged based on that omission.

As concerns ground 3 for relief, the Panel erroneously concludes that Rule 1.0(b), Rule 1.6, Rule 10 (g), Rule 1.7(a) and Rule 1.7 (b) requires *written* informed consent in the absence of any showing whatsoever of an actual conflict of interest resulting from Appellant being hired by his mother. Respondent admitted at the hearing that he very much wanted his mother to hire Appellant. Absent an actual conflict-of-interest, the failure of Appellant to obtain a written informed consent, in addition to the oral one she received during her March 18, 2015 telephone conference with Respondent, does not constitute a violation of the rules. In addition, the

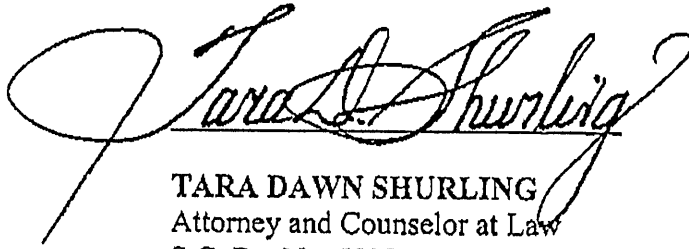
⁴ The Report erroneously suggests that Appellant informed them she routinely communicates with her clients through family members. That is a gross mischaracterization of what Appellant said. What Appellant did say was that at times the most expedient way to get a message *to an incarcerated client* is to ask a family member to convey the information, or to ask the client to call her office, since she obviously can't call an inmate and SCDC policy does not encourage staff to convey messages to prisoners. Most inmates call the family often and they are likely to get a message from a family member faster than they would receive a letter from their lawyer.

significance the Panel places on the fact that Respondent claims he did not get a copy of the fee contract is misplaced. There is ample evidence Respondent knew Appellant was hired to prepare and file the Objections. The remaining purpose for seeing the fee contract itself would be to review the fees and expenses called for under the terms of that contract. Rule 1.5(b) states, "the scope of the representation and *the basis or rate of the fee and expenses for which the client will be responsible* shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation...[A]ny changes in the basis or rate of the fee or expenses shall be communicated to the client, preferably in writing." (Emphasis added). Under the contract in question, Respondent *was not* responsible for any of Appellant's fees or expenses; Mrs. Hurst was fully responsible for everything.

Appellant submits this Panel did not have the authority to find that "industry norms" only supported fifteen (15) hours work to prepare and file the Objections in this matter. The Report references a estimate from an unidentified member of the Bar for an hourly rate of \$300.00. *See, ROA p. 28, para 2*. Although the Panel stated it "had to inquire about [what other attorneys in the area] change "for such matters," the Panel Report does not reveal the experience level of the members they spoke with, nor do they clearly reveal whether the individuals questioned were asked about the amount of time they would expect to spend on drafting Objections *or* whether they were more specifically asked how long they would expect to expend drafting Objections in a case they had *no previous* involvement with. This is a crucial distinction since Respondent freely admitted that she would typically have spent significantly less time drafting Objections in this case had she been involved in this habeas action since it was filed.

For all the above reason, the findings of this Panel should be reversed.

Respectfully submitted,



TARA DAWN SHURLING
Attorney and Counselor at Law
S.C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

APPELLANT
Acting *pro se*

December 20th, 2017

From: Ginger Hurst [ginger_hurst@hotmail.com]

Sent: Thursday, March 05, 2015 6:39 PM

To: Sharon Collister

Subject: John Daniel Springer and Federal Court

John is waiting to hear back from the Federal Court on a request for my 2nd extension and wanted to let you know so if you need to file something where he stands.

From: ginger_hurst@hotmail.com

To: smccollister@shurlinglaw.com

Subject: John Daniel Springer SS#

Date: Wed, 4 Mar 2015 16:20:51 -0500

231-37-5967

From: smccollister@shurlinglaw.com

To: ginger_hurst@hotmail.com

Subject: John Daniel Springer

Date: Wed, 4 Mar 2015 16:05:49 -0500

Ms. Hurst,

Please remember to provide us with your son's SSN when you get a chance.
You now have my email if you want to contact me.

Also, Attorney Shurling's direct email is tdslaw@shurlinglaw.com.

Thank you,

Sharon McCollister

Paralegal

Law Office of Tara Dawn Shurling, PA

3614 Landmark Drive, Suite A

Columbia, SC 29204

(803) 738-8622

(803) 738-1600 Fax

smccollister@shurlinglaw.com

From: Ginger Hurst [ginger_hurst@hotmail.com]

Sent: Sunday, March 08, 2015 4:10 PM

To: Sharon Collister

Subject: John Springer has a question

John wants to know if he should notify th Federal court or will you about him having a lawyor?

ATTACHMENT C

RECEIVED
 CLERK, COLUMBIA, SC
 2015 MAY 29 PM 12:18

IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF SOUTH CAROLINA

JOHN DANIEL SPRINGER,	)	C/A No. 0:13-3549-BHH
Petitioner,	)	
vs.	)	
DENNIS BUSH, WARDEN,	)	MOTION TO SET ASIDE JUDGEMENT
Respondent.	)	IN A CIVIL CASE
	)	(HABEAS ACTION)

Petitioner, John Daniel Springer, respectfully moves that this Court set aside its decision to grant summary judgment in the above captioned case. While it is clear that this is a highly unusual request it is due to highly unusual circumstance. It is Petitioner's sincere belief this is the only remedy to the circumstances outlined below:

ATTORNEY TARA DAWN SHURLING

First and foremost it must be understood that Tara Dawn Shurling, while surly a capable and competent attorney, has never been hired to represent Petitioner in this or any other action, State or Federal. She was merely paid a deposit in anticipation of an appeal in this case. There has been a complete and total misunderstanding on Ms. Shurling's part simply because she never took the time to speak to this Petitioner before jumping the gun and making filings with this Court. Petitioner has no contract or agreement with Ms. Shurling, oral or written.

As such, the filing of objections to the Magistrate's Report & Recommendation was premature. In fact it was done without Petitioner's knowledge or consent and he only learned of it after this Court's decision to grant summary judgment.

Petitioner spoke with Ms. Shurling only one time before she took this action. This was by phone; the conversation was less than ten minutes; and, Ms. Shurling dominated the entire conversation. The only matter discussed at that time was that she was busy preparing for a deadline in another case and did not have time to talk to Petitioner.

Even after the decision of this Court Ms. Shurling did not inform Petitioner of what she had filed or what the decision of the Court had been. He only learned of it from his mother. Ms. Shurling did not send copies of anything to Petitioner until over two weeks later and then only after he called.

Again, the conversation was completely dominated by Ms. Shurling. Petitioner, thoroughly confused at this point, could hardly get a word in to ask any questions. At that time he was told she would send copies of the filing, the decision, and the necessary paperwork for his appeal.

When Petitioner was notified that an initial brief was to be submitted he called Ms. Shurling. It was only at that point that he began to understand what she had done; Ms. Shurling had taken it upon herself to decide that she was going to take the deposit of sixteen-thousand dollars and apply it to "finish up in District Court." Petitioner was shocked by this to say the least. He explained to her at that time that she was never

hired to do any such thing and that he would never have agreed to anything so absurd. Petitioner had already made all filings in the District Court on his own up to that point; he did not need an attorney to "finish up" for him.

Besides, it is well known that the District Court always adopts the Magistrate's Report & Recommendation. In this case that recommendation was to grant summary judgment; it was a foregone conclusion. No attorney in the state could have changed the outcome.

OBJECTIONS FILED BY MS. SHURLING

Petitioner received the objections filed by Ms. Shurling on 20 April 2015, nearly three weeks after this Court's decision. This was the first and only mailing he ever received from Ms. Shurling. Included were the necessary forms for the notice of appeal. He was instructed to sign and mail out the notice of appeal, which he trustingly did.

The objections filed by Ms. Shurling were well written but only defended Grounds Number Two, Six, Seven, and Nine. Grounds One, Three, Four, Five, Eight, Ten, and Eleven were merely mentioned but not argued at all. Ground Twelve, which addresses the systemic failure of the South Carolina legal system was completely abandoned.

Objections for Ground Two have glaring errors, e.g., no blood test was ever administered during the trial of this case. The trial judge had a probation agent come in and do a urinalysis. The question of the legality of testing the accused for illegal

substances during his trial has not been addressed even though it was raised by Petitioner.

Also in Ground Two, Petitioner's family did not inform his trial counsel of his attempted overdose because they were not there. Petitioner explicitly told his mother and father not to come to the trial. This was because he did not intend to be alive when it was due to start. This is not a "tacit admission of guilt", it shows just how far the corrupt South Carolina legal system can drive a man to try to protect his family, i.e., his children were being held by D.S.S. as pawns against him; his wife was facing false charges to keep her from testifying for him. It was Petitioner that the prosecution wanted so he intended to free his family by taking his own life. Only Petitioner's brother could understand this so he was the only family present. He is now deceased.

Notwithstanding the above, Ms. Shurling's most glaring error was that she never made any mention of the United States Supreme Court decision in PATE v ROBINSON, 383 U.S. 375, 86 S.Ct. 836, and DROPE v. MISSOURI, 420 U.S. 162, 95 S.Ct. 896. These cases explain that when an accused's competence come under question then a competency hearing is required; the competence hearing cannot be waived, even by counsel; and, that evidence of a defendant's irrational behavior and demeanor at trial is enough to trigger the requirement of a competency hearing.

In South Carolina, by statute, a competency hearing can only be held after the accused has been evaluated by two qualified psychiatrists and a report on his competence has been submitted

to the court. These requirements are not discretionary. If no motion is made by counsel then the court is to act on its own motion to protect the defendant's right to due process.

At Petitioner's trial the above requirements were not followed. Then during the direct appeal the issue was ignored. Finally, Petitioner was able to raise the issue in his PCR application. While he thought the issue was argued at the PCR hearing it turns out that his state appointed PCR counsel argued "continuance" rather than "competence." The issue was raised again here and again the requirements laid out by the Supreme Court and state statute were ignored not only by the Magistrate's R&R but by Ms. Shurling in her objections.

Ms. Shurling could have covered all of this but she didn't. She was in a rush to "get the money first" as the old saying goes about lawyers. In her haste she failed to assess the needs or wants of her potential client. She failed to obtain informed consent to represent Petitioner when a third party was paying her - a third party that has little to no understanding of the courts or legal process. She failed to even prepare a simple contract to outline what services she was offering.

And finally, when pinned against the wall by the court to rush the job, she failed to inform the Court that she and petitioner had no agreement for her representation. At that point she could have, and should have, simply declined the case.

CONCLUSION

Petitioner did not hire Ms. Shurling to represent him in this Court. This Court did not appoint her. Anything she did here was of her own volition. It is her haste that has caused the problems outlined here and Petitioner should not be held liable for Ms. Shurling's mistakes. Had she taken the time to speak with Petitioner in person as she was paid in advance to do, we would not be in this mess now. This is not a matter that she should have known better - with over three decades of experience she does know better.

The only way Petitioner can see to cure this problem is to set the clock back to the point that he can file his own objections to the Magistrate's R&R as he intended to do all along.

Petitioner is under no illusion that by filing his own objections that the decision of this Court would change. He is in fact confident that summary judgment would still be granted ... that's just how this stuff works. He is only requesting this "reset" to have the opportunity to preserve his issues for appeal.

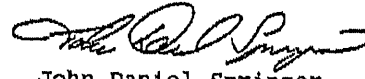
If this Court were to grant this motion it would prejudice the State in no way. As stated above, the ruling of this Court would almost certainly remain the same. The only difference would be that Petitioner's right to meaningful review would be protected.

As a final note: Ms. Shurling is still in possession of Petitioner's legal file. This was sent to her to review for appeal. While Petitioner will request in writing that this file

be returned as soon as possible, any help from this Court would be appreciated.

For the reasons set forth above, Petitioner respectfully asks that this Court grant this motion to set aside the summary judgment in this case and allow him to submit pro se objections to the Magistrate's Report and Recommendation.

Respectfully submitted,



John Daniel Springer

Ridgeland Correctional
Institution
PO BOX 2039
Ridgeland, SC 29936

Acting Pro se

This 26th day of May, 2015

ATTACHMENT D

The Honorable Robin L. Blume
Clerk of Court, United States District Court
901 Richland Street
Columbia, SC 29201

196
RECEIVED
USDC CLERK, COLUMBIA, SC
2015 MAY -4 PM 12:31

RE: John Daniel Springer, #294365 v. Dennis Bush, Warden; 0:13-cv-03549-BHH.

Dear Mr. Blume:

Please find enclosed my Notice of Appeal *Pro Se* in the above captioned matter to the Fourth Circuit Court of Appeals. My Petition for Writ of Habeas Corpus was filed *pro se*, and I was allowed to proceed *in forma pauperis*. I think I am allowed to proceed with my appeal *in forma pauperis* as well under Rule 24(a)(3), F.R.A.P. My mother paid a lawyer to file my objections for me. That is all that lawyer, Tara Dawn Shurling, was paid to do. Just in case I needed to, I am enclosing a form 240. Please file one copy of each of these documents and return one clocked copy to me in the enclosed self-addressed envelope.


John Daniel Springer, #294365
Petitioner *Pro Se*

Ridgeland Correctional Institution
P. O. Box 2039
Ridgeland, South Carolina 29938

28 April, 2015.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE FIFTH JUDICIAL CIRCUIT
COURT OF COMMON PLEAS

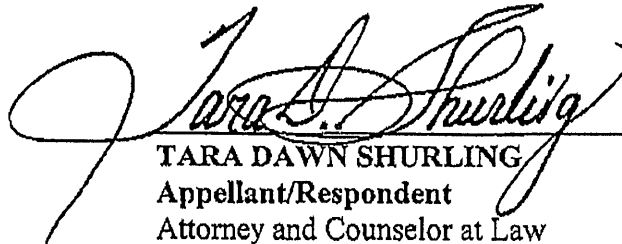
TARA DAWN SHURLING)
Appellant,)
v.)
JOHN DANIEL SPRINGER, #294365)
Respondent.)

CERTIFICATE OF SERVICE

2017-CP-40-00580

The undersigned attorney hereby certifies that one copy of the Memorandum in Support of Appeal in the above-entitled cause has been served upon the individual listed below by U. S. Mail on this 20th day of December, 2017 to:

Michelle Dennis
S. C. Bar Fee Disputes
950 Taylor Street
Columbia, SC 29202



TARA DAWN SHURLING
Appellant/Respondent
Attorney and Counselor at Law
3614 Landmark Drive, Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 Fax
Email: tdslaw@shurlinglaw.com

SWORN TO BEFORE ME this 20th day of
December 2017.
Jeanette W. McBride (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24

RICHLAND COUNTY
FILED
2017 DEC 20 PM 4:36
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE FIFTH JUDICIAL CIRCUIT
COURT OF COMMON PLEAS

TARA DAWN SHURLING)
) Appellant,)
v.)
JOHN DANIEL SPRINGER, #294365)
) Respondent.)

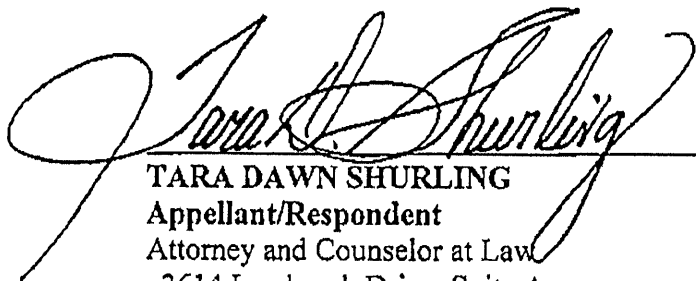
CERTIFICATE OF SERVICE

2017-CP-40-00580

The undersigned attorney hereby certifies that one copy of the Memorandum in Support of Appeal in the above-entitled cause has been served upon the individual listed below by U. S.

Mail on this 20th day of December, 2017 to:

John Daniel Springer, #294365
MacDougall Correctional Institution
B2C-0002-B
1516 Old Gilliard Road
Ridgeville, SC 29472



TARA DAWN SHURLING
Appellant/Respondent
Attorney and Counselor at Law
3614 Landmark Drive, Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 Fax
Email: tdslaw@shurlinglaw.com

SWORN TO BEFORE ME this 20th day of

December 2017.

Duane Graham (L.S.)

Notary Public for South Carolina

My Commission Expires: 2/28/24

RICHLAND COUNTY
FILED
2017 DEC 20 PM 4:37
JEANETTE W. MCBRIDE
C.C.P. & G.S.