

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Opinion No. 5618 (S.C. Ct. App. Withdrawn, Substituted and Refiled April 24, 2019)

Jean P. Derrick,

v. Respondent,

Lisa C. Moore,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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Attorneys for Respondent

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MAY 23 2019

S.C. SUPREME COURT

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SC Court of Appeals

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on April 24, 2019.

QUESTION PRESENTED

1. Did the Court of Appeals err in holding that a client could consent to jurisdiction of the Fee Dispute Resolution Board by signing a fee agreement before any actual dispute over attorney's fees arose?

STATEMENT OF THE CASE

Respondent is an attorney who sued her client for additional attorney's fees after a family court hearing. The client and Appellant to this Action timely answered, asserted counterclaims and disputed the fee. The lower courts held that because client signed a fee agreement consenting to the jurisdiction of the Resolution of Fee Disputes Board of the South Carolina Bar (hereinafter "Fee Disputes Board") before any fee dispute arose, she was bound by the terms and conditions of the fee agreement even though Rule 416 of the Rules of Appellate Procedure only confers jurisdiction to the Fee Disputes Board after a dispute arises.

ARGUMENT

Rule 416, Rules of Appellate Procedure, creates the Fee Disputes Board. Rule 9 of Rule 416 is clear that the Fee Disputes Board only has jurisdiction "UPON CONSENT." Emphasis in original. Consent can only be conferred after a dispute arises in one of two ways: 1. A client initiates an action directly with the Fee Disputes Board or 2. An attorney initiates an action directly by filing an application "accompanied by the client's written consent." Rule 9(b). In this case, neither of these things happened and by rule the Fee Disputes Board may not hear any

portion of this case. The lower courts erred in effectively rewriting the Rules of Appellate Procedure, specifically Rule 9 of Rule 416.

In its opinion, the Court of Appeals wrote: “We find Client consented to the jurisdiction of the Board as required under Rule 9 of Rule 416, SCACR, by signing the fee agreement.” However, signing a fee agreement does not satisfy Rule 9 of Rule 416, SCACR. Rule 9(b) states:

No **application** will be accepted from an attorney unless accompanied by the client’s written consent to jurisdiction and consent to be bound by the final decision of the Board. Thereafter, both parties are bound. (Emphasis added).

Rule 9 requires an “application” not a “fee agreement.” A fee agreement is not an application as required by Rule 9, even if signed by the client.

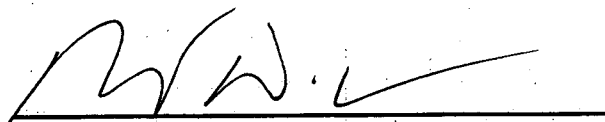
Rule 9 is also clear in another respect – it requires an “**application**...accompanied by the client’s written consent.” Emphasis added. The facts in this case are equally clear and are not disputed: Respondent never submitted an “**application**...accompanied by client’s written consent.” Emphasis added. Instead, Respondent sought to have the lower courts rewrite Rule 416 in at least two important respects. First, by effectively changing the wording of Rule 9 from “application” to “fee agreement.” Second, by effectively adding and changing the language of Rule 9 so that the rule now vests the courts with the legal authority to compel resolution through the Fee Disputes Board based on a court order instead of an “application...accompanied by client’s written consent.”

CONCLUSION

The Court should grant a writ of certiorari, review the decision of the Court of Appeals, and ultimately determine that the Court of Appeals erred in affirming the lower court’s Order referring part of this matter to the Fee Disputes Board.

Respectfully submitted,

May 23, 2019



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APPEAL FROM KERSHAW COUNTY
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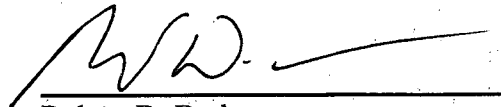
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PROOF OF SERVICE

I certify that I have served the Petition for Rehearing by depositing a copy of it in the United States Mail, postage prepaid, on May 23, 2019 addressed to her attorneys of record, William S. Tetterton, Tetterton Law Firm, LLC, P.O. Box 530, Camden, South Carolina 29021 and Katherine Carruth Goode, 229 South Congress Street, Winnsboro, South Carolina 29180.

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