STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	BEFORE THE RESOLUTION OF FEE DISPUTES BOARD FOR THE ELEVENTH JUDICIAL CIRCUIT
Teresa Jones, Applicant, vs. John Smith, Respondent.	)	REPORT OF ASSIGNED MEMBER

THIS MATTER was assigned to me as a member of the Resolution of Fee Disputes Board for the Eleventh Judicial Circuit by John J. McCauley, Chairman. After an investigation which included interviews with both parties and review of documents provided by each party, I was unable to resolve the matter by agreement of the parties.

FINDINGS OF FACT

Based on the foregoing investigation, I make the following findings of fact:

1. In February, 2015, Ms. Jones retained Mr. Smith to represent her family in reference to a pending prosecution of J.C. Gartman for the theft of numerous items of personal property from the home of Ms. Jones's parents.

2. At their initial meeting, Mr. Smith made Ms. Jones generally aware that the victim in a criminal case typically is not represented by counsel because the state, not the victim, is the prosecuting party. Ms. Jones responded that it was important to her family to have a lawyer looking out for their interests.

3. The parties agreed that Mr. Smith would advise and represent the family in matters relating to the prosecution at an hourly rate of $200.00 and that Ms. Jones would deposit an advance payment of $4,000.00 against fees incurred. The agreement did not stipulate whether the retainer was refundable.

4. Mr. Smith confirmed the fee agreement in an engagement letter, requesting that Ms. Jones sign and return a copy of the letter to confirm the agreement. Ms. Jones did not return a signed copy. However, the engagement letter correctly set out the terms of the parties' oral fee

agreement.

5. On February 16, 2015, Ms. Jones deposited a retainer of $2,000.00 with Mr. Smith.

6. Mr. Smith is not seeking to recover the remainder of the stipulated retainer.

7. Ms. Jones terminated the representation on or about July 29, 2015, for good cause not related to any misconduct on the part of Mr. Smith.

8. Mr. Smith has produced time records kept in the ordinary course of business which reflect 10.6 hours devoted to the representation. Of this total, approximately 2.5 hours were expended in consultations prior to receipt of the partial retainer and approximately 0.5 hours were expended after termination of the representation.

9. The policy of Mr. Smith's firm is to charge clients who eventually retain the firm for initial consultations and for services rendered before a fee agreement is reached. This policy was not communicated to Ms. Jones prior to payment of the partial retainer.

10. A substantial portion of the time Mr. Smith devoted to this matter was consumed in conferences with Ms. Jones which were relatively unproductive but were held at the request of Ms. Jones.

DISCUSSION

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.

Rule 1.5, Rules of Professional Conduct (Rule 407, SCACR).

Under the particular circumstances of this case, the results obtained through the

representation are of substantially less importance than usual because Ms. Jones was not a party of record, and thus Mr. Smith could have only indirect influence on the outcome of the underlying legal matter. Additionally, the purpose of the representation was to advise the client concerning the status of the criminal prosecution and advocate the client's position informally to the solicitor's office -- actions would primarily take place at later stages of the prosecution. Ms. Jones terminated the representation before such stages were reached.

In considering the Rule 1.5 factors in the context of the legal matter for which Ms. Jones retained Mr. Smith, I conclude $200.00 per hour is a reasonable to modest rate for the services of an attorney with the experience and standing of Mr. Smith.

Ms. Jones raises several issues concerning the time for which Mr. Smith billed. First, she believes she should have been charged for something less than the entire time spent in conferences with Mr. Smith. However, Ms. Jones was aware of the terms of the fee agreement and was aware that the fee was calculated on an hourly basis. Her inquiries dictated the length of these conferences. I conclude Ms. Jones should be charged for the time expended in such conferences.

Next, Ms. Jones contends she should not have been billed for the time spent in consultation with Mr. Smith before the parties reached their agreement for his employment or after she discharged him. Consulting an attorney creates an obligation, independent of express contract, to compensate the attorney for the reasonable value of his services. An attorney's time and knowledge are his stock in trade. At the same time, law firms vary widely in their practices regarding fees for initial consultations and other services prior to the establishment of a fee agreement. Because Ms. Jones may reasonably have been unaware the policy of Mr. Smith's firm, I conclude she should not be charged with the time expended prior to payment of the partial retainer. I also conclude she should not be charged for time expended after termination of the agreement.

For these reasons, I find that Mr. Smith is entitled to be compensated for 7.6 hours of services, for a total fee of $1,520.00.

IT IS THEREFORE RECOMMENDED that the Respondent John Smith refund the sum of $480.00 to the Applicant Teresa Jones.

Lex A. Rogerson, Jr.
Assigned Member
Resolution of Fee Disputes Board
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Lexington, South Carolina

May1, 2016.

148 S.E. 878

BONHAM et al.
v.
FARMER et al.

(No. 12681.)

Supreme Court of South Carolina.

June 13, 1929.

Cothran, J., dissenting.

Appeal from Common Pleas Circuit Court of Greenville County; W. H. Grimball, Judge.

Action by P. A. Bonham and others against Mattie Goldsmith Farmer, executrix, and others. Judgment for plaintiffs, and defendants appeal. Affirmed.

On September 9, 1927, the master's report was' served, copy of which, omitting formal parts, is as follows:

"This is an action at law by the plaintiffs to recover attorney's fees amounting to $7,-800. The complaint was served on the defendants on March 25, 1927, and summons attached to said complaint required the defendants to answer the complaint in due time. The defendant, Willie Blakie Farmer, is a minor, and answered by her guardian, ad litem, Mattie Goldsmith Farmer. The answers were served April 11, 1927, and by consent of the parties the case was referred to me by order of his honor, Judge T. J. Mauldin, dated June 17, 1927.

"I have held numerous references, the first one being on August 4, 1927, and the testimony has been taken by a stenographer, which is certified to the court with this report.

"On April 22, 1925, B. D. Goldsmith, a wealthy colored man, who was popularly known as Blake Goldsmith, died in the city of Greenville, leaving a will in which he devised the greater portion of his estate, appraised at approximately $92,000, to the defendants, Mattie Goldsmith Farmer, his sister, and Willie Blakie Farmer, daughter of Mattie Farmer, and therefore a niece of the testator. He willed his wife Lydie Goldsmith, the sum of $500, and gave his only surviving brother the sum of $1,000. The balance of the estate was given to the defendants.

"Almost immediately after his death the wife, Lydie Goldsmith, launched a vigorous contest against the will, alleging that her husband was insane at the time of the execution of the will, and also upon the grounds of undue influence on the part of his sister, the defendant Mattie Goldsmith Farmer. The estate, of course, was a very valuable one, consisting of business property in the city of Greenville, appraised at $65,000, and other fine real estate and personal property.

"The defendant Mattie Goldsmith Farmer, executrix, employed the plaintiffs, Messrs. Bonham, Price & Poag, to defend the contest against the will. The will contest was a hard-fought legal battle, in which the contestant, Lydie Goldsmith was represented by Messrs. Dean, Cothran & Wyche and B. A. Morgan, Esq., attorneys of high standing and great ability at the Greenville bar. The final result of this litigation was a decree by the probate judge sustaining the will and upon appeal an order by the circuit judge sustaining the probate court.

"It clearly appears from the testimouy that the plaintiffs were originally employed solely to defend the contest against the will. Later during the course of the litigation the contract was reduced to writing, and the complaint is based upon this written contract.

"The contract calls for the plaintiffs to represent the defendants in all matters affecting the settlement of the estate of Blake Goldsmith and 'particularly in the matter of the contest of the will of Blake Goldsmith.'

"The fee provided in the contract is largely contingent. By the terms of the contract the attorneys were to receive one-fifth of the amount saved to the beneficiaries by reason of the will being sustained; 'that is to say, the net difference between the amount the party of the second part would receive under the statute of distributions, and the amount the beneficiaries received under the will.'

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"The attorney for the defendants offered many defenses, the principal ones being, first, that the action was premature; and, second, that the plaintiffs were not justified in abandoning the contract of employment.

"Upon several occasions the defendant's attorney, Mr. B. F. Martin, stated in open court that his clients were not contesting the reasonableness of the fee of 20 per cent.; that, *if the full services had been rendered,* the fee of 20 per cent, was not unreasonable under the circumstances.

"There were other defenses offered which will be considered in the report.

"As to the principal defense that the action was premature. From the testimony it appears that there are several minor matters with reference to the estate which have not been concluded, such as the foreclosure of one or two mortgages, which have been started by plaintiffs. Plaintiffs admit that these minor matters are yet pending, but claim that the defendant Mattie Farmer made it impossible for them to continue as her representatives on account of her misconduct, clearly calculated to humiliate and degrade them. They contend that they were perfectly willing to complete all legal services to the estate, and could have done so in the near future, but that Mattie Farmer made it impossible for them to continue as her attorneys by her misconduct.

"Without reviewing the voluminous evidence upon this point, I find that the plaintiffs were entirely justified in terminating the relation of attorney and client. It clearly appears to my satisfaction that during the early stages of the relation, before the will was sustained, the defendant was highly pleased with the work of her attorneys. As Mr. Bonham expressed it: 'During the earlier part of our services rendered to Mattie she was as appreciative a client as I have seen, courteous, respectful and seemed to value highly the services which we rendered.' Later she changed without any cause or excuse. She became insolent to her attorneys, and would contradict them in the 'flattest way.'

"In making a settlement of Lydie Goldsmith's dower claim, it became necessary to borrow $15,000, which loan was approved by the court. Plaintiffs arranged to borrow this money through Messrs. Hodges & Leather-wood. The defendant, Mattie Goldsmith Farmer, had appeared before me in the court proceeding necessary to effect this loan, and testified that in her opinion the loan was to the best interest of the estate, herself, and her young daughter. Before the loan was completed, she changed her mind for some unknown reason, and was reluctant to sign the note and mortgage. After some discussion, she finally signed these papers in Mr. Leather-wood's office. The note provided for the payment of interest semiannually. When the time for the first payment of interest came around, Mattie refused to pay, claiming to paper and that interest was to be paid annually. Finally Hodges & Leatherwood entered foreclosure proceedings against her. In a conversation with Mr. Leatherwood, she made the grossest charges against her attorneys, claiming that they had forged the paper on her and had 'lied to her about the matter.'

"Any honorable attorney would be justified in terminating the relation of attorney and client under such circumstances.

The charges were utterly false and without the slightest foundation, and, when later fully communicated to Messrs. Bonham, Price & Poag, I find that they were entirely justified in discontinuing any personal services to this woman. The main thing for which they had been employed had long since been brought to a highly successful termination.:

"The only testimony before me is that the services yet to be performed to wind up the estate could easily be procured from any attorney at a fee not in excess of $300. While I do not think the plaintiffs could be required as a matter of law to lose this under the circumstances of this case, yet they voluntarily agree in court to allow a reduction of the fee by this amount, and to be on the safe side I will allow $500.

"I therefore find as a matter of fact that the action is not premature.

"The general rule in such matters is thus stated in 6 C. J. p. 674:

" *'Withdrawal for Cause.* Any attorney may, for lawful cause and on reasonable notice withdraw from a suit at any stage of the proceedings. What is a sufficient cause to justify an attorney in abandoning a case in which he has been retained has not been laid down by any general rule, and in the nature of things cannot be; it must depend upon the peculiar facts of each case. Any conduct on the part of the client, during the progress of the litigation, *which tends to degrade or humiliate the attorney,* lower the standard of professional ethics, or destroy the reciprocal confidence required between attorney and client furnishes sufficient cause for abandonment of the employment'

"With reference to compensation upon withdrawal under such circumstances, the rule is laid down in the same volume at page 724:

" 'Where the complete performance of an attorney's services has been rendered impossible, or otherwise prevented by the act of his client the attorney may, as a general rule, recover on a quantum meruit for the services actually rendered, or he may have an action for damages, and in some states he may recover, in an action upon the contract, the entire stipulated compensation, where he remains in readiness to render complete performance.'

"In this case only a small portion of the services remain to be performed, and the client has prevented this final completion of the work by her misconduct

[148 S.E. 880]

"The case of Genrow v. Flynn, 166 Mich. 564, 131 N W. 1115, 35 L. R. A. (N. S.) page 960, Ann. Cas. 1912D, 638, is one of the leading cases in the country upon this question:

" 'An attorney who has received a sum of money to prosecute a suit to judgment may withdraw from the case without returning the money, if the client falsely charges him in a telegram with deceiving, lying, and neglecting him.' '

"The court said:

" 'Certainly no reputable attorney could continue in a case after the receipt of such a telegram from a client. We think that the plaintiff by his own act practically made it impossible for defendants to perform their contract.'

"In the case at bar, I find that no self-respecting attorney could have continued as the attorney for the defendant Mattie Parmer under the circumstances.

"In his argument before me Mr. Martin admitted frankly that such charges as the defendant made to Mr. Leatherwood, if made

were sufficient to justify counsel to withdraw from the case. But he contended that Mr. Price knew of these charges and condoned them, thereby waiving his right to later abandon the case. This was based upon an absurd statement by the defendant that a day or two after she settled with Mr. Leatherwood she went to Mr. Price's office, and he admitted that he had made her sign a blank mortgage and note, and that he was ready to go forwTard with her work. Mr. Price said that she came to his office and stated that she realized she had acted foolishly in refusing to pay the interest and having thrown away several hundred dollars in fees, and asked him to go forward with her work; that later he learned that she had made these public charges against his firm, and knew then that they could not continue to represent her.

"In the first place, I know Mr. Price could not have admitted that he had her to sign a blank mortgage, for the reason that I know something of the careful methods of Messrs. Hodges & Leatherwood, and I know that they would never have permitted a $15,000 loan to have been handled in that way. Knowing counsel as I do, I know he would never have proceeded with Mattie Farmer's business had he known that she had publicly charged his firm with having 'lied and filled in a blank mortgage.'

"I therefore find that there is absolutely no evidence of waiver or condonation.

"Another position taken by Mr. Martin is that, even if there was just cause to abandon the contract as to Mattie Farmer, there was no such cause as to the case of the minor, Willie Blakie Farmer. This position is utterly untenable. It appears that the minor is a girl now sixteen years of age. Her case is absolutely tied up with that of her mother, who dominates the entire matter. The entire business was being handled by Mattie Farm er, and it would have been impossible to proceed with the minor's interests under the circumstances.

"Finally, defendants contend that it is impossible to get at the amount of the fee until all matters have been settled. Under the testimony, I find that all parties fully understood that the fee was to be settled according to the appraisal value of the estate. The appraisal had been made by three real estate experts of high standing, and all parties at the time the contract was made fully agreed and understood that the fee was to be calculated by the appraised value of the property left by Blake Goldsmith.

"From the testimony before me, I find that the plaintiffs are entitled to a fee upon the following calculation:

Appraised value of personalty	$16,659 90
Appraised value of realty	75.2So 00-
Total appraised value.....	$91.939 90-
Amount Mattie Farmer would have received if the will had been set aside, one-fourth of $91,939.90	22, 986 63
Amount paid by executrix to Lydie Goldsmith for dower	15, 000 00
Appraised value of Lydie Goldsmith mortgage allowed in dower	750 00

|settlement |
|
|---|
|Bequest paid to Homer Goldsmith |1.000 00 |
|---|
|Paid state inheritance tax |1, 700 00|
|---|
|Federal inheritance tax |262 |
| |00-559 00|
|---|
|Judgment against Blake Goldsmith |$42,257 |
| |63 |
|---|
|Total deductions |$91,939 |
| |90- |
|---|
|Appraised value of estate |42, 257 |
| |63 |
|---|
|Total deductions |S49,6S2 |
| |27 |
|---|
|Net amount received by beneficiaries |S 9, 936 |
| |42 |
|---|
|One-flfth of $49,682.27 |S 7, 436 |
| |45 |
|---|
|Less $500 allowed by plaintiffs in dower |$ 6, 936 |
| |45 |
|---|
|Less $500 agreed by plaintiffs to be deducted to complete all |S 6, 436 |
|necessary litigation |45 |

"I do not think the parties had in mind at the time of the contract any other possible deductions. Defendants contend that Mattie Farmer should be allowed $15,000 for nursing the deceased in his last illness. This claim had never been mentioned until this case was instituted. It would be absurd to believe that the deceased wanted Mattie Farmer to charge for services when he was giving her and her daughter his entire estate. She also claims a deduction of $5,000 for fees as executrix. If the wall had been set aside, the wife would have been appointed administratrix under the law, and she could not have collected anything. If she could charge this fee, it would be an amount saved to her by sustaining the will.

"I therefore recommend that the plaintiffs have judgment against the defendants in the sum of $0,430.45, and for the costs of this action. I certify all testimony, pleadings, and exhibits in the case."

The cause was argued before Judge Wm. H. Grimball, at Greenville, S. C, at the January, 1928, term of court, and on February 28, 1928, the court filed an order in the case, which, omitting formal parts, is as follows:

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"This is an action by plaintiffs, practicing attorneys of Greenville, to recover for professional services rendered the defendants

in connection with the estate of one B. D. Goldsmith. By his will Goldsmith, a wealthy negro, gave practically the whole of his estate to his sister and her daughter, the defendants. His wife, who was cut off with $500, contested the will on the ground of insanity and undue influence. The defendant Mattie G. Farmer, who was the executrix, retained the services of the plaintiffs in behalf of herself and her daughter, and a contract was entered into whereby it was provided that the plaintiffs would defend the will and perform all the other legal services necessary in connection with the administration and settlement of the estate, receiving as compensation one-fifth of the amount saved to the beneficiaries by reason of the will being sustained, that is to say, one-fifth of the net difference between the amount Mattie G. Farmer and her daughter would receive under the statute of distribution and the amount they received under the will. In case the attorneys did not succeed in sustaining the will, they were to receive $2,000.

"The will contest resulted in the will being sustained, and plaintiffs' suit is on the contract for the agreed compensation, $10,800, less a credit of $3,000. The defendants denied that this amount was due, and in fact that any amount was due at this time, because plaintiffs had not completed the work and settled the estate, and because an accounting was necessary to determine the net value of the estate.

"By consent the case was referred to the master under a general order of reference. He found that plaintiffs were entitled to judgment for $6,436.45, and the case is before me on exceptions to the report. My conclusions of the facts and the law applicable thereto lead me to the same result as was reached by the master, and his report is confirmed.

"While the plaintiffs did the great bulk of the work they contracted to do, they did not complete the winding up of the estate. They would have completed the work but for the fact that the defendant Mattie G. Farmer, by her abuse and misconduct, made it impossible for them, as self-respecting attorneys, to continue to represent her and her daughter any further. Under these circumstances, the plaintiffs were entitled to recover the full amount of compensation provided in the contract. However, they have only asked for, and the master has allowed them, the contract price, less an amount reasonably sufficient to compensate another attorney for doing the uncompleted, work. The defendants have no just ground of complaint at a recovery on that basis. Searson v. Sams, 142 S. C. 558, 141 S. E. 107; Warren v. Shealy, 83 S. C. 113, 65 S. E. 1; Genrow v. Flynn, 166 Mich. 564, 131 N. W. 1115, 35 L. R. A. (N. S.) 960, Ann. Cas. 1912D, 638; 6 C. J. 674 and 724.

"It is contended that, after the misconduct of Mattie G. Farmer occurred, the plaintiffs went ahead and did certain work, and that this operated as a waiver of the right to abandon the employment. But such subsequent services were performed before the plaintiffs knew of their client's misconduct, so that there was no waiver.

"Defendants urge that the action is prematurely brought, because the compensation of the attorneys is based upon the net value of the estate, which cannot be determined until creditors are called in and the estate finally settled. This objection would come with better grace if defendants had made some attempt to settle the estate since the commencement of this suit in March, 1927. They have taken no steps whatever toward that end, and their failure to do so lends color to the plaintiffs' charge that such inaction is with design to delay indefinitely plaintiffs' recovery. But the contract did not contemplate the deduction of each and every debt in fixing the net value of the estate. At the time it was executed, plaintiffs made a calculation for defendants, which is in evidence, and which shows that the net value

of the estate for the purpose of fixing the amount of the fee was to be determined on the basis of the appraisal and certain specified deductions, all of which have been allowed.

"It is also contended that the complaint fails to state a cause of action. The evidence abundantly shows a cause of action for the amount found by the master, and, while the complaint appears to be sufficient, even if it is not, the defendants cannot profit thereby, as the complaint will be considered as amended, in the interest of justice, to conform to the proof.

"It is therefore ordered that the exceptions to the master's report be and they are overruled, and that the plaintiffs have judgment against the defendants for the sum of $6,436.-45 and costs."

B. F. Martin, of Greenville, for appellants.

Bonham, Price & Poag and Nettles & Oxner, all of Greenville, for respondents.

BLEASE, J. This is an action at law, and, under the well-established rule, we are bound by the findings of fact of the circuit judge, when there is any competent evidence to sustain such findings. The evidence is entirely sufficient to support the conclusions reached by Judge Grimball. The result of his decree is entirely satisfactory to this court. It will be reported.

The report of the master, E. Inman, Esq., which was approved by the circuit judge, goes very thoroughly into the facts of the case, and it will also be reported.

The judgment of this court is that all the exceptions be overruled, and that the judg-

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merit of the court of common pleas of Greenville county be, and the same is hereby, affirmed.

WATTS, O. J., concurs.

STABLER and CARTER, JJ., concur in result.

COTHRAN, J. (dissenting). The plaintiffs, a law firm under the name and style of Bonham, Price & Poag, practicing law in the city of Greenville, brought this action against the defendant Mattie G. Farmer, as executrix of the will of B. D. Goldsmith, deceased, and Mattie G. Farmer and her daughter Willie Blake Farmer, individually, upon a written contract entered into between them and the executrix, dated November 16, 1925, by which the law firm was engaged to represent the executrix, "in all matters affecting the settlement of the estate of Blake Goldsmith, deceased, including any litigation now pending, or which may hereafter arise, and particularly in the matter of the contest of the will of Blake Goldsmith; to advise said party of the second part and to render all assistance necessary to a final determination of the estate matters."

Their compensation was fixed thus:

"In consideration for said services, the party of the second part agrees to pay to the parties of the first part *one-fifth of the amount saved to the beneficiaries under the will by reason of the will being sustained; that is to say, the net difference between the amount the party of the second part would receive under the statute of distribution; and the amount the beneficiaries received under the will.* Such amounts as the party of the second part has paid to the parties of the first part shall be credited on the fee above stated. In the event the will is not sustained, the party of the second part agrees to pay to the parties of the first part Two Thousand ($2,000.00) Dollars in full for all services, credit being given for the amount already paid."

The testator, who died April 22, 1925, was a colored man, living in the city of

Greenville, who had amassed a very considerable estate; his heirs at law were his widow, Lida Goldsmith, his sister, Mattie G. Farmer, and a brother, Homer Goldsmith; he left no children.

The estate was appraised in June, 1925, real estate and personal property, at $91,939.-90. (There is an error of $10 in the addition; the correct amount is $91,929.90.)

The real estate is appraised at	$75,280
	00
And the personal property, consisting of cash on hand and in bank, an	16, 649
automobile, real estate mortgages amounting to $9,334.32 and stock,	90
at	
Total	$91,929
	90

The testator by his will bequeathed to his wife, Lida Goldsmith, $500, and to his brother, Homer, $1,000; the remainder of his estate he bequeathed and devised to his sister Mat-tie G. Farmer and her daughter, Willie.

Almost immediately after probate of the will in common form, the widow launched a vigorous contest against the will, alleging that the testator was insane at the time of the execution of the will, and also upon the ground of undue influence on the part of the sister, Mattie. The plaintiffs were then employed to represent the executrix.

Proceedings in the court of probate to have the will proved in solemn form were instituted by the dissatisfied widow; they resulted in a decree sustaining the will. The contestant appealed to the circuit court. Pending the appeal, in November, 1925, the contending parties arrived at a settlement by which the widow was paid $15,500 in settlement of her dower claim. The complaint alleges: "That orders were taken dismissing the appeal, sustaining the will and ordering payment of $15,-500, *as dower*, to Lidie Goldsmith"; this appears established by the evidence.

In order to effect that settlement, which was in cash, the defendant Mattie Farmer was forced to raise the money by a mortgage upon the real estate devised to her and her daughter, and to consummate this arrangement a proceeding was instituted in the court of common pleas to obtain an order authorizing her to do so. It was obtained; the money raised; and the settlement concluded with the widow.

In all of these foregoing proceedings the plaintiffs represented the executrix, both officially and personally. There is no question but that they rendered efficient and valuable service.

It appears that the formal written contract between the plaintiffs and the executrix was entered into about the time that the settlement was effected; the complaint alleges that it was after the trial upon the proof of the will in solemn form in the court of probate, although the plaintiffs had represented the executrix before and since the probate in common form.

Friction was generated between the plaintiffs and the executrix in reference to the mortgage for $15,000, which had been negotiated by the plaintiffs for her relief, through Messrs. Hodges and Leatherwood. She claimed a misunderstanding as to when interest was payable, stating that her

understanding was it should be paid annually, and it was made payable semiannually, falling due when she had no money with which to pay it. Unpleasantness arose in connection with this paper, between the defendant and her attorneys, and they complained that, for some time after settlement of the will matter, her attitude was insolent and unpleasant, and that it was very difficult to do business with her. The plaintiffs, however, continued to work for and advise her, until in March, 1927, her conduct became so unbearable that they terminated

the relationship between them and instituted the present action. In the transcript it is stated that the plaintiffs "withdrew from the case in April, 1927." The master and the circuit judge have both found that the plaintiffs were thoroughly justified in withdrawing from the relationship of attorneys and client, in which finding I thoroughly agree.

It will be observed that the plaintiffs do not allege in their complaint that they have complied with their engagement "to render all assistance necessary to a final determination of the estate matters, " which was the basis of their compensation. Mr. Price, one of the plaintiffs, testified that "there were numerous matters that had not been finished." The evidence shows that among them were: (1) Advertisement that had to be made for creditors to prove their claims under section 5407 of the Civil Code 1922; (2) the Austin mortgage of $4,000 was to be foreclosed, and there was to be a contest in this foreclosure; (3) the Burke mortgage of about $1,000 to be foreclosed; (4) the Williams mortgage, which they had just started to foreclose had to be foreclosed; (5) Homer Goldsmith had brought a partition suit involving the home and three acres of land known as the Brutontown property, appearing in the appraisal, alleging that it was the property of his father and mother, and the defendant had answered; (6) testator's wife, IJda, had refused to sign the release carrying out the settlement of the main suit, the will contest, and had employed other counsel in these proceedings, and was claiming that she had not agreed to the settlement; (7) the dower decree that had been taken in the probate court (when she refused to sign said release) apparently had not covered all the dower rights of testator's widow, and plaintiffs, for defendant, had brought an action to reform the decree, which was being contested; (8) testator's wife, Lida, was claiming as an additional amount the $500 legacy provided for her in the will; (9) a final statement and proceeding for final discharge would have to be made; and it was impossible yet to tell whether there may not be other contested matters in connection with the affairs of the estate.

The contention of the plaintiffs is that their withdrawal from the relationship was justified by the insufferable conduct of the defendant, although the purposes of their employment had not been fully accomplished; in this position I thoroughly concur; they contend further that for this reason they are entitled to the compensation fixed by the contract, less what the defendant would reasonably be required to pay for the unfinished work, which they fix at $300, the master and circuit judge at $500. In arriving at this compensation, they resort to the contract, and adopt as the tasis the appraisal value of the estate.

Their calculation is substantially this (in view of the provisions of the contract), to ascertain the net difference between: (1) What Mattie Farmer and her daughter became entitled to under the settlement by which the will was sustained; and (2) what Mattie Farmer would have been entitled to if the will had been annulled.

(1)			
The appraised value.			$91,929 90

Less state tax	$1,700 00	
Federal tax	262 00	
Debts	659 00	
Widow	15, 000 00	
Mortgage of widow	750 00	
Bequest Homer	1, 000 00	19, 271 00
Balance		$72,658 90

(2)			
The appraised value			$91,929
		90	
Less state tax			$1,700
		00	
Federal tax			262 00
Debts			559 00
		00	2, 521
Balance			$89,408
		90	
One-fourth to Mattie Farmer			$22,353
		22	
Amount Mattie Farmer and her daughter became entitled to under the settlement sustaining the will			$72,658
		90	
Amount Mattie Farmer would have been entitled to if tho will had been set aside			22, 352
Difference			$50,306
		68	
20 per cent, fee.			$10,061
		24	
By cash			$2,500
		00	
By allowance			500 00
By deduction			600 00
		00	3, 500
Balance			$ 6, 561 24
Master's finding			6, 436
		45	

Difference		$ 124
		79
I think that the time certificate issued by the Bank of		
Commerce for $5,250 00, which was given to Mattie Goldsmith by		$91,929
the testator a few days before his death, should		90
be deducted from the appraised value		
		5, 250
		00
		$86,679
		90
The balance on statement No. 1 above would be reduced to		$67,408
		90
And on statement No. 2 to		21, 039
		72
Difference		$46,369
		18
20 per cent, fee		$ 9,
		273 84
Less deductions		3, 500
		00
		$ 5.773
		84
Master's finding		6, 436
		45
Difference		$ 662
		61

I do not think, however, that the plaintiffs are entitled to use the appraised valuation at all, as the basis of their compensation. The contract does not so provide. The measure fixed by it is perfectly clear, so far as the rule is concerned: "The net difference between the amount the party of the second part would receive under the statute of distributions, and the amount the beneficiaries received under the will, " though it must be admitted that the plaintiffs, who drew the contract, set a difficult task for the parties and the courts. The contract, by repetition, makes it perfectly clear that the compensation was intended to be "based upon *the benefit which the beneficiaries would receive*

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by a decree sustaining the mil. That part of it relating to the compensation, opens with the agreement that the executrix should pay to the plaintiffs, in consideration of the services which would end with the "final determination of the estate matters, " 20 per cent, "of the amount saved to the beneficiaries under the will by reason of the will being sustained." Lest that should not be

sufficiently lucid, the videlicet was added: "that is to say, the net difference between the amount the party of the second part would receive under the statute of distributions, and the amount the beneficiaries received under the will."

The word "net, " in its position in the contract, means nothing. The difference between two sums cannot be anything but "net, " if indeed it be at all necessary to so characterize it. What manifestly was intended was that it should precede the word amount used in both instances: "The difference between the net amount, " etc.

I do not think that the contract can mean anything else; and the necessary inquiry should have been, regardless of the appraised value of the estate, what benefit accrued to the beneficiaries from the decree sustaining the will. That would necessarily involve an ascertainment of the actual value of the assets, real and personal, diminished by the debts which had to be provided for under the terms of the will, as well as under the law. To ingraft upon the contract the parol agreement alleged and testified to by the plaintiffs, to the effect that the basis of the compensation should be the appraised value of the estate, and not the net amount to be received by the beneficiaries, is not only adding something to a written contract by parol, but adding something entirely inconsistent with the terms of that contract; it would be to charge the defendant with the face value of every mortgage listed thereon, regardless of the inquiry whether or not they were worth the face value; to adopt the exceedingly uncertain estimates of the value of $75,000 worth of real estate; and to take no account whatever of the debts of the estate.

The court below allowed for certain debts in arriving at the net value of the estate: State inheritance tax, the federal tax, and a judgment of $559. It is inconceivable that an estate of $90,000 should be charged with but a single debt of $559; the other debts charged, the inheritance tax, of course, did not accrue until the death of the testator. A schedule of debts amounting to practically $30,000 has been filed as an exhibit in the case, including doctor bills, city taxes, state and county taxes, attorneys' fees (not including that of the plaintiffs), court costs, etc. Other debts may be presented besides. It is manifestly unfair to the defendant to disregard them, in the face of the contract which fixes the basis of compensation as the difference between the net amounts receivable by the beneficiaries under the respective con'ditions.

If the will had been annulled, the net amount receivable by Mattie Farmer would have been ascertained by a conversion of the estate into money, deducting the liabilities and distributing what was left.

As the will was sustained, the net amount receivable by Mattie Farmer and her daughter can only be adjudicated in the same manner, or in a proceeding to which they would have something to say as to the valuations. To conclude them now by parol evidence of an agreement antagonistic to the written terms of the contract is as clear a violation of the parol evidence rule as could be conceived.

But it seems to me that there is an insuperable barrier to the recovery by the plaintiffs in this action. The plaintiffs are suing upon a contract which has not been, and can never be, fulfilled. They admit that they withdrew from it in April, 1927, brought suit, and no longer consider it as of any binding force, so far as future services are concerned. Their withdrawal has been justified by the intolerable attitude and conduct of the defendant Mattie Farmer, but, however that may be justified, it does not change the unalterable situation that the contract, unfulfilled, has been terminated. Her conduct made it impossible for the attorneys to continue their services; she prevented them from carrying out the contract, and is directly chargeable, not with

the *breach* of it, but with the *termination* of it, a severance of her relation to them as client to attorneys.

In 2 R, O. L. 957, the rule is thus stated: "The authorities universally recognize the right of a client to terminate the relation between himself and his attorney at his election, with or without caase, the existence or non existence of valid cause for the discharge of the attorney bearing only on his right to compensation. This power cannot be affected by a previous arrangement between the parties, as, for instance, by a contract for a contingent fee. The right of a client to change his attorney at will is based on necessity in view both of the delicate and confidential nature of the relation between them, and of the evil engendered by friction or distrust." See, also, 6 C. J. 673, 676, 677; Texas v. White, 10 Wall. 483, 19 L. Ed. 992; 4 Cyc. 954; Martin v. Camp, 219 N. Y. 170, 114 N. E. 46, L. R. A. 1917F, 402; Price v. Western Co., 35 Utah, 379, 100 P. 677, 19 Ann. Cas. 589; Louque v. Dejan, 129 La. 519, 56 So. 427, 38 *U* R. A. (N. S.) 389.

I think that it is equally clear that under such circumstances the attorney is limited to his action for damages on account of the breach, or to an action for compensation based upon a quantum meruit. It would appear anomalous, indeed, that one should be allowed to recover upon a contract admittedly *terminated.* At the same time, ample com-

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pensation for the work done, or for damages resulting from the breach, should satisfy the injured party.

In Martin v. Camp, 219 N. T. 170, 114 N. E. 46, L. R. A. 1917F, 402, it is said:

"The discharge of the attorney by his client does not constitute a breach of the contract, because it is a term of such contract, implied from the peculiar relationship which the contract calls into existence, that the client may terminate the contract at any time with or without cause. * * * The rule secures to the attorney the right to recover the reasonable value of the services which he has rendered, and is well calculated to promote public confidence in the members of an honorable profession whose relation to their clients is personal and confidential."

In 6 C. J. 724, it is said: "Where the complete performance of an attorney's services has been rendered impossible, or otherwise prevented, by the act of his client, the attorney may as a general rule, recover on a quantum meruit for the services actually rendered, or he may have an action for damages; and in some states he may recover, in an action on the contract, the entire stipulated compensation, where he remains in readiness to render complete performance."

And at page 725: "Where an attorney withdraws from a case or otherwise abandons his employment for a justifiable cause, the client is liable for the services actually rendered, although such withdrawal or abandonment was without his consent or that of the Court."

In Lynn v. Agnew, 179 App. Div. 305, 166 N. Y. S. 274, affirmed Lynn v. McCann, 226 N. Y. 634, 123 N. E. 877, the syllabus is:

"After an attorney has been discharged by his client, * * * he can recover only value of services then rendered."

In Greenberg v. Remick & Co., 230 N. Y. 70, 129 N. E. 211, it held that professional employment contract contains implied condition that,-while attorney shall be bound by its terms, client may discharge him with or without cause, leaving him to recover for value of services.

In Matter of Board of Water Supply of City of New York, 179 App. Div. 877, 167 N. Y. S. 531, it is held that a client has a right

arbitrarily to discharge his attorneys, and, if he does so, he is liable for services rendered by them only up to the time of discharge.

In Ritz v. Carpenter, 43 S. D. 236, 178 N. W. 877, 19 A. L. R. 840, it is held that a discharge of an attorney by his client does not constitute a breach of a contract between them, and the attorney is not entitled to the compensation agreed upon in the contract, but only to the reasonable value of the services which he has rendered, although the contract may well be considered in determining what, as contemplated by the parties themselves, would be the reasonable value of the services rendered.

In Polsley v. Anderson, 7 W. Va. 202, 23 Am. Rep. 613, the syllabus is as follows:

"An attorney made a special contract with a client to prosecute a suit in equity for a certain fee and a further fee contingent on success in the case. The client afterward dismissed his suit without the attorney's consent. Held, that the attorney was not entitled, as a matter of law, to recover the whole contingent fee; but that he might recover, either on a special count or a quantum meruit, the reasonable value of his services."

In French v. Cunningham, 149 Ind. 632, 49 N. E. 797, 798, the court said:

"It is well settled that, where the complete performance of an attorney's services has been rendered impossible, or otherwise prevented, by the client, the attorney may, as a rule, recover on a quantum meruit for the services rendered by him. * * * If the compensation of the attorney agreed upon is contingent on the successful result of the suit, ' the measure of damages is not the contingent fee, but the reasonable value of the services rendered"â€"citing Scobey v. Ross, 5 Ind. 445; Brodie v. Watkins, 33 Ark. 545, 34 Am. Rep. 49; Webb v. Trescony, 76 Cal. 621, 18 P. 796; Moyer v. Cantieny, 41 Minn. 242, 42 N. W. 1060; McElhinney v. Kline, 6 Mo. App. 94; Duke v. Harper, 8 Mo. App. 296; Kersey v. Garton, 77 Mo. 645; Carey v. Gnant, 59 Barb. (N. Y.) 574; Badger v. Mayer, 8 Misc. Rep. 533, 28 N. Y. S. 765; Quint v. Mine Co., 4 Nev. 304; 3 A. & E. Enc. L. (2d Ed.) 425-427; Weeks Attys. at Law (2d Ed.) § 334; Durkee v. Gunn, 41 Kan. 496, 21 P. 637, 13 Am. St. Rep. 300.

In Lawler v. Dunn, 145 Minn. 281, 176 N. W. 989, the syllabus by the court is as follows:

"The discharge of an attorney without cause does not constitute a breach of contract because it is an implied term of such contract that he may do so, and in such case the attorney may recover only the reasonable value of the services which he has rendered."

In Tenney v. Berger, 93 N. Y. 524, 45 Am. Rep. 263, the court said:

"While the attorney is thus bound to entire performance, and the contract as to him is treated as an entire contract, it is a singular feature of the law that it should not be treated as an entire contract upon the other side; for it is held that a client may discharge his attorney, arbitrarily, without any cause, at any time, and be liable to pay him only for the services which he has rendered up to the time of his discharge."

In Johnson v. Ravitch, 113 App. Div. 810, 99 N. Y. S. 1061, the court said:

"Every attorney enters into the service of his client subject to the, rule that his client may dismiss or supersede him at will; and if he makes a contract for future services to his

[148 S.E. 886]

client, it is necessarily subject to such rule, and made with full knowledge that he may never perform such service, for the reason that his client may not keep him, and that in that event he will not be paid therefor, but

will be entitled to compensation only for the services he has actually rendered."

In Watts v. Tood, 1 McMul. 26, the syllabus is as follows:

"Plaintiff was employed by defendant, to make a crop with him, in 1839, and was to receive for his services one-fourth of the crop made. About the last of August, a misunderstanding arose. Plaintiff was dismissed, and in September following, commenced this action: Held, that plaintiff, by commencing his action in September, after he was dismissed, treated the contract as being rescinded, and has waived his right to recover entire damages for the whole year; and has restricted his right of recovery to a compensation for his services on a quantum meruit."

In Union Bank v. Heyward, 15 S. C. 296, the court said:

"The rule on the subject of damages, in cases of entire contracts, is this: If a party be dismissed without cause he becomes entitled to the full amount of the wages agreed upon; but in such case he should treat the contract as subsisting to the end of the year and he could not recover upon it until the expiration of the term for which he was employed. He has the right, however, to regard the contract as rescinded and put an end to, but in such case he will be held to have waived his claim to damages for the whole period, and will be restricted to compensation on a quantum meruit up to the time of dismissal."

Under ordinary circumstances, a party to a contract, rescinded on account of the act of the other party, would be entitled to one or the other of two remedies: To sue for damages on account of the breach of the contract by the other, or upon a quantum meruit for the value of services rendered up to the time of the breach. In cases, however, of attorney and client, the client who is apparently at fault in bringing about a rescission is exercising an exceptional right which attaches to that relation; and, while he may have *terminated* the contract, he cannot be said to have *breached* it, for he will have simply been exercising an unquestioned right, and could not be required to respond in damages for doing what he had the legal right to do.

In the case at bar, the plaintiffs were confined to the one remedy of an action upon quantum meruit for the value of their services up to the time of the rescission. Having brought their action upon the contract, there is no relief for them from a dismissal of the complaint, which cannot by amendment be transmuted into an action upon quantum meruit. *

"The general rule is well established that suit on an express contract does not admit of a recovery on a quantum meruit; King v. Telegraph Co., 84 S. C. 73, 65 S. E. 944; Cleveland v. Butler, 94 S. C. 406, [78 S. E. 81]."

"The general rule undoubtedly is that plaintiff cannot recover upon a quantum meruit under a complaint based upon a special contract. Fitzsimons v. Guanahani, 16 S. C. 192; Birlant v. Cleckley, 48 S. C. 306. 26 S. E. 600; King v. W. U. Tel. Co., S, 4 S. C. 80, 65 S. E. 944. Hence the respondent might have complained of the charge, but the appellant cannot, because it was too favorable in allowing him to recover upon a special contract even though it should be found that he had failed to perform the stipulated services." Bowen v. Johnson, 87 S. C. 251, 69 S. E. 294.

"The question presented is, whether, under a complaint based upon a special contract for services to be rendered by plaintiff to defendant at a specified price, the plaintiff can recover upon a quantum meruit. This question, it seems to us, is conclusively determined in favor of the appellant by the case of Fitzsimons v. Guanahani Co., 16 S. C. 192; for in that case the action was based

upon a special contract, and it was held that the Circuit Judge erred in instructing the jury that the plaintiff might recover on a quantum meruit." Birlant v. Cleckley, 48 S. C. 306, 26 S. E. 600.

In this case the court added:

"It is very obvious that both the allegations and proofs necessary to sustain a claim under a quantum meruit are very different from those necessary to sustain a claim under a special contract to serve another for a specified time at a specified price, for in the former case it is incumbent on the plaintiff to show that he has served the defendant, the length of such service, and what amount his services are reasonably worth, while in the latter case it is only necessary for the plaintiff to show that he has performed his part of the contract. It would, therefore, be manifestly unjust that a party notified to respond to one kind of claim, should be required, in the midst of the trial, to respond to another kind of claim, depending upon issues different from those which he was notified to meet."

The appellant's counsel have received permission of the court to review the case of Searson v. Sams, 142 S. C. 558, 141 S. E. 107.

The objectionable statement in that opinion, sought to be corrected, is the following quotation from 4 Cyc. 984: "When an attorney makes a contract to perform certain services for an agreed sum and the client, without any valid excuse or reason, discharges him or prevents the fulfillment of the contract, the attorney is entitled to recover the full contract price."

Having concurred in the opinion referred to, I may be free to say that the question now

[148 S.E. 887]

presented did not receive the consideration which its importance, as now appears, would have justified.

The true principle, as I have endeavored to demonstrate, is that a client has the right to discharge his attorney at any time, either with or without cause; he cannot therefore be compelled to pay damages for exercising a right which is an implied condition of the contract; the discharge does not constitute a breach of the contract, and there can be no recovery upon the termination of such contract except upon a quantum meruit. The cases cited to support the text quoted do not do so; they go no further than to hold in a few states that the attorney, in the event of the termination of the contract of employment by the client, may recover full compensation where he remains in readiness to render complete performance; the weight of authority being that he can recover only for services rendered. It is significant that the quotation referred to has been entirely omitted in the later article on "Attorney and Client" in Corpus Juris, which makes no reference to the eases relied on in Cyc. to support the proposition. In lieu of this statement, in the corresponding subtitle in 6 Corpus Juris, 724, appears the statement which is hereinbefore quoted. I do not think, therefore, that the case under criticism should be allowed to overturn the settled law upon the subject.

In my opinion, the judgment of this court should be that the judgment of the circuit court be reversed, and the complaint dismissed, without prejudice to the right of the plaintiffs to bring an action based upon quantum meruit.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Wheeler M. Tillman, Appellant,

v.

Joe L. Grant, Respondent.

Appeal From Jasper County
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2006-UP-340
Submitted September 1, 2006 – Filed October 5, 2006

AFFIRMED

Wheeler M. Tillman, of North Charleston, Pro Se.

Michael A. Jones, of Durham, for Respondent.

PER CURIAM: Wheeler Tillman brought suit against his former client, Joe Grant, to recover attorney's fees under a fee agreement. The agreement provided if Grant fired Tillman before settlement or a verdict, Tillman would receive a contingency percentage of the settlement or an hourly fee, whichever was more. The trial court found the amount due under the hourly rate was unreasonable and awarded Tillman attorney's fees equal to the contingency percentage. Tillman appeals arguing he is entitled to the hourly rate. We affirm.

FACTS

On February 3, 1998, Grant, his sister, and his brother-in-law were involved in a motor vehicle collision with a tractor-trailer. Grant[1] hired Tillman to represent him in a personal injury action he brought against the trucking company.[2] On April 1, 1999, Grant and Tillman signed an attorney/client contract. The relevant portion of the contract provided:

> In the event that I fire my Attorney before settlement or verdict, then I agree to pay my Attorney at the rate of $175.00 per chargeable hour for the work which he has performed in my case, or an amount equal to the contingent percentage set

> forth in this Contract multiplied by the highest offer made, whichever amount is greater.

The contingency percentage was set at forty percent.

On March 26, 2003, near the end of the first day of trial in the personal injury action, Grant agreed in court to settle the case for $90,000. The trial court declared that the "terms of the settlement were placed on the record and the parties acknowledged their consent to settle." The trucking company issued a settlement check and prepared a general release, which it delivered to Tillman.**[3]**

On numerous occasions, Tillman attempted to contact Grant to have him sign the release. However, Grant did not respond to any of his phone calls or letters. Eventually, the trucking company made a motion to compel settlement. On June 6, 2003, the trial court granted the motion. Tillman still attempted to contact Grant to no avail. Approximately one month after the trial court granted the motion to compel settlement, Grant called Tillman and agreed to meet the following day. At the meeting, Grant requested copies of deposition transcripts and refused to sign the release.

On July 8, 2003, the trial court issued a rule to show cause against Grant for his failure to sign the release. At the rule to show cause hearing on July 21, 2003, Grant again refused to sign the release and fired Tillman. The trial court allowed Grant a continuance in order for Grant to obtain new counsel.

On November 18, 2003, Tillman filed suit against Grant for breach of contract. Tillman alleged he spent 353.8 hours on Grant's case and Grant owed him $61,915 in attorney's fees under the hourly rate and $8,320.12 in costs. Additionally, Tillman requested reasonable attorney's fees and costs in bringing the collection action. After Grant failed to serve an answer, Tillman filed an application for default judgment against Grant. The trial court found Grant in default. Further, the trial court found the amount Tillman would be entitled to under the hourly rate was excessive, unreasonable, and unconscionable. In determining the amount was unreasonable, the trial court applied the following factors: "(1) nature, extent, and difficulty of the case; (2) time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency and compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." The court awarded Tillman the amount he would have received under the contingency agreement, $36,000. The court also awarded Tillman the costs he incurred in the personal injury matter as well as the attorney's fees and costs in bringing the collection action. This appeal followed.

STANDARD OF REVIEW

A suit to recover attorney's fees is an action at law. Weatherford v. Price, 340 S.C. 572, 578, 532 S.E.2d 310, 313 (Ct. App. 2000).

> An action by an attorney for compensation, whether on a written contingency agreement or on a quasi-contractual obligation to pay the reasonable value of services prior to its breach, sounds in contract. The proper form of action by which to enforce payment, generally, is by an action at law on the contract . . . .

Lester v. Dawson, 327 S.C. 263, 268, 491 S.E.2d 240, 242 (1997). On appeal of an action at law tried without a jury, the factual findings of the trial court will not be disturbed unless found to be without any evidence which reasonably supports the trial court's findings. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). Additionally, the appellate court can correct errors of law. Okatie River, L.L.C. v. S.E. Site Prep, L.L.C., 353 S.C. 327, 334, 577 S.E.2d 468, 472 (Ct. App. 2003).

LAW/ANALYSIS

Tillman claims the trial court abused its discretion in failing to determine the amount of attorney's fees according to the hourly rate and in failing to make specific findings of fact. We disagree.

The relationship between an attorney and client is by nature a fiduciary one. Hotz v. Minyard, 304 S.C. 225, 230, 403 S.E.2d 634, 637 (1991); see also Weatherford v. Price, 340 S.C. 572, 582, 532 S.E.2d 310, 315 (Ct. App. 2000) ("The relationship of an attorney with his or her client is highly fiduciary in its nature and of a very delicate, exacting and confidential character, requiring a high degree of fidelity and good faith."). The courts examine agreements between attorneys and clients with the utmost care to avoid any improper advantage to the attorney. Royal Crown Bottling Co. v. Chandler, 226 S.C. 94, 105, 83 S.E.2d 745, 750 (1954). In the interest of the profession, the court has the jurisdiction "to see that an attorney will not lower his profession by cheapness, nor promote his own interest by extortion, as well as to the safeguarding of the trust relation which an attorney bears to the public." Bank of Enoree v. Yarborough, 120 S.C. 385, 393, 113 S.E. 313, 315 (1922). Therefore, the court will not allow attorneys to impose excessive charges on their clients because attorneys owe the public a duty of trust. Coley v. Coley, 94 S.C. 383, 386, 77 S.E. 49, 50 (1913). The factors a trial court should consider in determining reasonable attorney's fees are:

> (1) nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained.

Blumberg v. Nealco Inc., 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993).

We have reviewed the record, including Tillman's time sheets from the personal injury action, and in light of the Blumberg factors listed above, we find the trial court did not abuse its discretion in awarding the contingency fee. In comparing the contingency fee to the hourly fees, we find the hourly fees were excessive because they nearly doubled the amount due under the contingency agreement. Further, the hourly fees would have nearly exhausted Grant's settlement of $90,000. In our view, the contingency fee provided Tillman with just compensation for his services. Accordingly, the trial court's award of the contingency fee instead of the hourly rate was not an abuse of discretion. **[4]**

Tillman claims the trial court abused its discretion by not awarding him attorney's fees for his services rendered to Grant after he agreed to settle in court until he fired Tillman. We disagree.

The contingency fee encompasses all fees owed to Tillman in the underlying personal injury suit. Therefore, it would have been improper for the trial court to award Tillman additional fees in the same action when it determined that awarding Tillman more than the contingency clause would be unreasonable. However, it was proper for the trial court to award Tillman costs for his time spent attempting to collect his fees. The current collection action is distinctly different from the personal injury action. Because Grant's behavior caused Tillman to spend time collecting a fee that was rightfully his, the court was justified in awarding Tillman reasonable damages.

CONCLUSION

The trial court did not abuse its discretion in awarding Tillman the contingency fee instead of a fee based on an hourly rate. It is incumbent on the trial court to examine attorney's fees to ensure they are not unreasonable. The trial court found that the fee would be unreasonable and excessive, if it was determined by the hourly rate. Evidence in the record supports such a finding. Therefore, the order of the trial court is

AFFIRMED.[5]

GOOLSBY, BEATTY, and WILLIAMS, JJ., concur.

---

[1] Grant's sister and brother-in-law brought suit with Tillman as their attorney as well. They behaved in the same manner as Grant: agreeing to settle, not responding to Tillman's attempts at contact, and firing the attorneys just before settling. This suit involves only the attorney's fees for Grant's case.

[2] Before Grant hired Tillman, he hired other attorneys to represent him in the personal injury action. He fired the first attorney, and the second one withdrew. Grant then hired Michael Rose, who associated Tillman to be lead counsel in the case. Rose and Tillman also associated Tom Johnson for the case. Rose and Johnson are not involved in Tillman's lawsuit.

[3] Some confusion exists regarding the settlement draft or check. Grant claims he never saw the settlement draft while Tillman claims he asked Grant to sign it, but it eventually expired and had to be returned to the trucking company.

[4] Further, we note Tillman originally sought only the contingency fee. It was not until Grant refused to release Tillman's payment from the settlement that Tillman sought the hourly fees. It is apparent from the record that Tillman grew frustrated with Grant, and this suit arose out of that frustration.

[5] We decide this case without oral argument pursuant to Rule 215, SCACR.

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427 S.E.2d 659
310 S.C. 492
Theresa L. BLUMBERG, Robert L. Blumberg, Frederick Trust, by Frederick J. Loef, and Frederick J. Loef, Petitioners,
v.
NEALCO, INC., and Robert O. Collins, Respondents.
No. 23809.
Supreme Court of South Carolina.
Heard Jan. 6, 1993.
Decided Feb. 22, 1993.

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Donald J. Budman, of Solomon, Kahn, Budman & Stricker, Charleston, for petitioners.

Desa A. Ballard, of Ness, Motley, Loadholt, Richardson & Poole, P.A., Barnwell, for respondents.

MOORE, Justice:

We granted certiorari to review the Court of Appeals' decision in Blumberg v. Nealco, Inc., --- S.C. ----, 416 S.E.2d 211 (Ct.App.1992). Petitioners Theresa L. Blumberg, Robert L. Blumberg, Frederick Loef, Trust, by Frederick J. Loef, and Frederick J. Loef (Blumberg) contend the Court of Appeals erred in reversing without remand the trial court's award of attorney's fees. We affirm as modified.

[310 S.C. 493] FACTS

In September 1987, Blumberg and Respondents (Nealco) executed a five-year lease. The lease provided for reasonable attorney's fees if Nealco failed to comply with its terms. In August 1988, Blumberg filed a complaint seeking among other things past due and future rent and reasonable attorney's fees. The circuit court awarded Blumberg past due rent and reasonable attorney's fees which he found to be $5,000.00. Nealco appealed.

The Court of Appeals reversed and remanded for reconsideration both the award of damages and attorneys' fees. Nealco moved for a rehearing on the issue of remanding the award of attorney's fees claiming that Blumberg had failed to establish any attorney's fees and should not be permitted to "reopen" the record and introduce evidence on remand. The Court of Appeals modified its holding and reversed the award of attorney's fees and remanded for reconsideration only the award of damages. Blumberg now appeals the Court of Appeals' failure to remand the issue of attorney's fees.

ISSUE

The sole issue for review is whether the Court of Appeals erred in reversing the award of attorney's fees without remanding the issue.

DISCUSSION

The general rule is that attorney's fees are not recoverable unless authorized by contract or statute. Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989); Hegler v. Gulf Ins. Co., 270 S.C. 548, 243 S.E.2d 443 (1978); Collins v. Collins, 239 S.C. 170, 122 S.E.2d 1 (1961). When there is a contract, the award of attorney's fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown. Baron, supra. "Where an attorney's services and their value are determined by the trier of fact, an appeal will not prevail if the findings of fact are supported by any competent evidence." Baron, 297 S.C. at 384, 377 S.E.2d 296 (emphasis added).

There is no dispute that the lease provided for attorney's fees. The dispute centers around whether the recovery of attorney's fees was waived because no evidence[310 S.C. 494] was offered to

establish if any fees were incurred. The only evidence which was offered at trial to establish the attorney's fees was Blumberg's testimony that the petitioners were seeking reasonable fees.

There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. Collins, supra. Nealco contends that no proof was offered at trial that any attorney's fees had been incurred and, therefore, Blumberg essentially waived an award. We disagree.

Although several cases have reversed, without remanding, an award of attorney's fees based on a lack of evidence, these cases can be distinguished. Gainey v. Gainey, 279 S.C. 68, 301 S.E.2d 763 (1983) (no request for attorney's fees); Snider v. Butler, 278 S.C. 231, 294 S.E.2d 246 (1982) (did not fall under an exception to the bar of recovering attorney's fees).

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Other cases have reversed an award of fees and remanded the issue when there was a lack of evidence. In Sunrise Sav. & Loan Ass'n v. Mariner's Cay Dev. Corp., 295 S.C. 208, 367 S.E.2d 696 (1988), this Court remanded the issue of attorney's fees because the award was unsupported by the evidence and held it was necessary to take evidence on the reasonableness of the award. See also Farmers & Merchants Bank v. Fargnoli, 274 S.C. 23, 260 S.E.2d 185 (1979).

When an award of attorney's fees is requested and authorized by contract or statute, the court should make specific findings of fact on the record for each factor set forth in Collins, supra. On appeal, absent sufficient evidentiary support on the record for each factor, the award should be reversed and the issue remanded for the trial court to make specific findings of fact. The Court of Appeals should have remanded the issue of attorney's fees. Accordingly, the Court of Appeals' decision is

AFFIRMED AS MODIFIED.

HARWELL, C.J., and CHANDLER, FINNEY and TOAL, JJ., concur.

Pricing Toolkit

for attorneys seeking to serve
low- and moderate-income clients

Step-by-Step Toolkit for Pricing Legal Services for Low- and Moderate-Income Clients

This toolkit provides a set of considerations for pricing legal services for attorneys who are primarily focused on serving low- and moderate-income clients. Use this toolkit to help guide pricing of legal services utilizing fee arrangements alternative to the billable hour.

Introduction

One of the most fundamental ways lawyers can make their services more accessible to low- and moderate-income clients is by using what are commonly referred to as alternative pricing structures. This is particularly true for lawyers practicing in areas where the billable hour has been the prevalent way of pricing services. Alternative fee arrangements have proven to be very effective in other legal and non-legal settings. Avoiding or doing away with the billable hour in your pricing sets the stage for more affordable, accessible, and transparent services for the client and a more fulfilling and successful practice for the lawyer.

This Pricing Toolkit and the accompanying materials were developed to provide attorneys serving low- and moderate-income clients with a guide to pricing their legal services using fee arrangements other than the billable hour. Attorneys serving clients in higher income brackets can also benefit from using the Pricing Toolkit.

☐ Confirm the Basics of Your Practice

Pricing legal services requires having some fundamental aspects of your approach to practice already in place. A variety of resources exist on these topics, but we do not address them here. Instead, we make the following assumptions about users of this checklist:

- The users are already familiar with the areas of law in which they have chosen to practice.
- The users have already determined their firm brand and identity, which should be reflected in their value and pricing.
- The users have already identified their target client base.

☐ Understand Why the Billable Hour Presents a Problem for Clients and Why Alternative Fee Arrangements Offer Better Options for Clients

Clients are used to paying a set price for just about everything in their lives, and just about every other consumer market (including most other professional services) offers transparent pricing. While there may be a menu of prices or the requirement of an estimate to arrive at a price, the client can see a price, determine whether they can afford to pay it, and decide whether they will get commensurate value in exchange for it.

For legal services based on the billable hour, this is not the case. While these services in many cases might actually be affordable for clients, there is no way for the clients to know that until later, because they are typically being asked to make what amounts to an open-ended commitment with no sense of control over what it might ultimately cost. Transparency, however, is just one part of a larger problem with the billable hour. The billable hour also acts as a perverse disincentive to efficiency--a lawyer who uses the latest technology to work more efficiently makes less under that system--and that can subtly discourage lawyers from making strategic decisions regarding the best use of their time and their client's money.

In addition, the billable hour system generally does not align with value to the client or the results the client is seeking to achieve. The billable hour puts the focus on the lawyer's inputs rather than on the resulting value to the client. Clients are not seeking to buy your time; what they want is to buy your services to help them achieve a particular end goal (e.g., a business deal, recovery or protection of funds, peace of mind, etc.). When the lawyer earns money based only on the amount of time spent, and not on the results achieved, those goals are not aligned well. And all of the risk effectively sits with the client if things do not go as planned. A quick chat with clients about the problems associated with the billable hour and its perverse incentives can quickly result in a client who is even more enthusiastic about alternatives than the lawyer—regular folks take this reasoning to heart!

It wasn't always this way, and there is no reason it has to be this way going forward. While the billable hour may seem to be inextricably embedded into the DNA of our profession, this is not the case. It wasn't until the 1970s that the billable hour became the prevalent form of pricing in our profession, after literally centuries where the profession apparently functioned quite well without it (see Johnson, "Alternative Fees Aren't So 'Alternative,'" American Lawyer, August 24, 2015"). For many areas of law—including immigration, real estate, DUI and traffic, and minor criminal cases—fixed fees are still the norm today. In addition, for personal injury and many other types of cases, contingent fees are the norm. It is noteworthy that with few exceptions, the consumer markets for these areas of law function significantly better than for other areas where the billable hour remains the norm.

Using fee arrangements other than the billable hour offers the opportunity for increased affordability, transparency, and accessibility for clients by incentivizing client value, innovation, and efficiency. These arrangements are good for you as a lawyer, too, helping you to distinguish yourself in the market, opening up what are now latent client opportunities, and allowing you to focus on providing client value rather than on the amount of time you are billing. This toolkit offers more information and resources for these fee arrangements and how you can use them to develop a successful practice that is a win-win for both you and your clients.

While it may feel like you are swimming against the tide at first by not using the billable hour, keep in mind that:

- There are well-functioning markets for many consumer legal services that don't depend on the billable hour (e.g. personal injury, real estate closings, etc.);

- Companies that offer fixed fee referral options (e.g. Avvo Advisor) or what they describe as legal solutions for fixed prices (e.g. LegalZoom) are growing their market share every day;
- Many larger companies and a growing number of law firms serving them are successfully using fee arrangements other than the billable hour (see the Association for Corporate Counsel Value Challenge for examples); and
- Other professional services like accounting and consulting have been able to transition away from the billable hour, showing this is not only possible, but also potentially lucrative.

As Evan Chesler, chairman of one of the most successful law firms in the world stated a few years ago in an op-ed piece in Forbes, lawyers should be able to do what contractors and many others do: "Identify the potential client's objectives, measure, calculate, build in a contingency, and come back with a price."

Even without the billable hour, you will still want to understand how much time you are spending on your legal matters for a variety of reasons. First, time is a key ingredient in determining your costs (as there are only so many hours you can work) and efficiency. Second, you may need to document the time you have spent on a matter for a fee petition or to respond to inquiries about the work you have done for a client. Once you leave the billable hour behind, though, you can look at your time in the context of how you can most efficiently use technology, collaboration, and other means to deliver the highest value to your client at a price that allows you to be successful.

☐ Understand the Guiding Concepts

Providing value to the client should be the guiding principle in all pricing, and in the following section, we discuss the many ways clients are likely to find the most value in your services. The following fundamental concepts will help you work most efficiently and effectively, guide your approach to selecting mutually beneficial fee arrangements, and assign appropriate pricing to your legal services:

Understanding What Success Means to the Client: "Success" can mean many different things, and it is important that you determine what it means to each potential client so that you can determine what you realistically can help them achieve, and choose an appropriate fee arrangement that aligns with their goals. In some cases, success means a specific outcome, such as being designated as the custodial parent in a custody case or being awarded damages in a breach of contract case. In other cases, success may be more general or intangible, such as minimizing conflict, finding a resolution that is workable for the client, or gaining peace of mind by resolving the matter in a timely fashion.

Providing Choices and Empowering the Client: Attorneys distinguish themselves and build positive relationships with clients by providing choices to clients and empowering them to participate more fully in the resolution of their legal matter. While you should try to limit the options you offer in each case to no more than two or three choices so that it doesn't become overwhelming to the potential client, even giving them two alternatives can be the deciding factor in whether a potential client ultimately decides to retain your services. For example, offering unbundled service options for pricing provides potential clients with choices and more control, which fosters a positive working relationship even when the client chooses a traditional approach. You can also empower clients by pointing them towards information and resources they can use on their own to prepare for and supplement your services, such as a link to www.illinoislegalaid.org for free resources and court forms.

Providing Transparency and Price Certainty: Being transparent with clients about how your pricing works and providing options that offer price certainty will help you attract clients and maintain relationships.

People who need legal help face many challenges finding information about how much legal help will cost and whether the services are a good value. If possible, your website should provide price ranges, explanations about your approaches to pricing, or other information to help a potential client understand whether your services will be affordable and a good value.

People who need legal help can also benefit greatly from knowing exactly how much they are going to pay for legal services. It is generally hard to budget for the unknown, and the unknown can often cause unnecessary anxiety. By offering fee arrangements that whenever possible are transparent and predictable, you are allowing potential clients to make more informed decisions with respect to their procurement of legal services and helping to reduce anxiety associated with the legal process.

Utilizing Project Management and Process Improvement: In order to offer the best value to clients, you should continually analyze and improve how you deliver legal services so that you are working at maximum efficiency. By fully understanding the component parts to a given matter and the various contingencies that may arise, you also can better determine where you are offering the most value to the client, how you might price the matter in phases of the case, and whether you can offer an unbundled approach. One of many advantages of moving away from the billable hour is to fully incentivize efficiency and innovation.

Utilizing the "Guardrails" Concept: Be sure to have a written fee agreement with your client. In order to effectively price a particular matter in whole or in part, it's critical to understand and document the key assumptions that you and your client are making as you enter into an agreement. For example, in a divorce matter, you may understand the situation to be uncontested when you are initially meeting with your client and price it accordingly, but things could turn out very differently later in the case. In that situation, your agreement should contain "guardrails" to ensure that you and your client both understand and agree that your agreement terminates or can be modified at that point, and a new or modified agreement reflecting these materially changed circumstances must be reached if the representation is to continue.

As another example, for more potentially complex litigation, it might not be possible in your initial meeting with a potential client to be able to assess and factor in all of the potential variables to determine what will be the best agreement for that case. In this instance, your agreement may be limited to just the initial assessment phase of the case for an agreed upon fee, with the explicit understanding that after that point you and your client will revisit the agreement and pricing for further representation in the case.

These are just two examples of the many similar situations in which this concept becomes important. Being clear with your client about key assumptions up front, and getting those assumptions down in writing, protects both of you in the event that an unexpected major turn of events in a case materially changes the matter that was the basis for your original agreement.

Incentivizing "Good Behavior" for Both Lawyer and Client: Pricing should align the interests of you and the client. For example, pricing should allow clients to feel like they can contact you without being nickeled and dimed, but in a way that does not inadvertently encourage repeated and inefficient calls because there is no "cost" to the client. Similarly, utilizing pricing that reflects the client's contributions to the process (e.g. providing you with complete and organized documents), can keep costs down for the client and save you time. Including specific provisions about these types of expectations in your legal representation agreement and discussing them clearly with the client helps everyone understand roles and expectations and increases efficiency. Explaining your reasoning for these expectations can also help you build rapport with your clients: by and large, people will understand your motivations and will be respectful of your time.

Experimenting and Adapting: In the end, this may be the most important. There are no silver bullets to determining the proper fee arrangement or pricing for each particular case. The best way to get started is to consider the concepts in this toolkit and start testing out alternative fee arrangements in actual cases. There undoubtedly will be cases where your arrangement turns out both better and worse for you from a business standpoint, and the key is to learn from your experiences and adapt your strategies going forward. Through time and more experience, the fee arrangements and pricing that work best for your practice will become clearer, and both you and your clients will be much happier and better off having left the billable hour behind.

Creating Client Value and Determining What Legal Services You Will Offer

Having reviewed the guiding concepts, it's time to focus on how you are going to put them to work. The first step in this process is determining the value you will offer to clients and how you will present it to them. The value you are providing should tie together with and be reflected in your firm's branding and pricing.

☐ Determine the Value You Will Offer to Potential Clients

Potential clients are coming to you first and foremost for your legal expertise. As a general matter, there are five ways you can offer value to a potential client in virtually any kind of legal matter. While the amount of value for each potential client will vary based on the circumstances, assessing the value in each situation will help you determine the appropriate pricing for that matter.

Counsel: While potential clients increasingly have access to legal information and resources that enable them to do more tasks on their own, the trained and objective advice of an attorney remains critical. Even in simpler matters where a potential client may be able to access information or forms that would allow them to proceed with a lawsuit or enter a contract, they often do not have the expertise or objectivity to determine whether doing so is the best option for their goals and interests or how best to proceed. Moreover, even if the potential client might be able to proceed prudently on his or her own, an attorney's counsel can provide peace of mind that the potential client is pursuing the proper course of action.

Advocate: A skilled advocate may have even greater value to many potential clients, particularly where the power dynamics in the legal matter leave the potential client on unequal footing. Examples include where the creditor in a consumer debt case or one spouse in a divorce has significantly more resources and is represented by counsel, or where a budding small business is working on an important deal with a much larger company. In these kinds of situations and in many other instances, even when the matter itself isn't complicated, the impact of having a trained advocate on the potential client's side can make a tremendous difference in the outcome and to the potential client's peace of mind.

Navigator: While there are ongoing efforts to make the legal system more user friendly and accessible, in most instances, it is still a very complex system that can be quite intimidating to regular people. Brief advice and coaching to help potential clients navigate the system may provide huge value to a potential client who is unfamiliar with the system but otherwise well positioned to adequately handle their case on their own.

Information Broker: This traditionally was one of the core values a lawyer delivered to a client, but with the growth of online legal information, forms, and resources, it is not as significant in consumer practice today, except in practices that specialize in complex and fast-changing areas of law, such as cybersecurity and regulatory compliance. Unlike consumers in the past, many consumers today expect to find answers to their questions on the internet. Distilling this information into what is most important for the client's situation is one way a lawyer can still provide significant value for them.

Maintaining awareness of where potential clients can get free and reliable information and resources, such as www.illinoislegalaid.org and court websites, and making this information freely available to potential clients, is a great way to build trust and loyalty with them [Baer, Jay, Youtility: Why Smart Marketing is about Help not Hype. New York: Penguin, 2013. Print]. After you have provided your potential clients with this information, you can then focus your time on more significant and income-generating ways you can offer value to your clients as noted above.

Connector: Oftentimes, a client needs other services in addition to the legal assistance you provide in order to fully resolve their problem. Two examples are when a domestic violence victim seeking an order of protection needs help finding safe housing, or when a small business client needs a valuation consultant. By identifying when potential clients might benefit from social or other services and connecting clients with those services to help them achieve their goals, you are offering them value.

In addition to your legal expertise, the average legal consumer is also seeking some or all of the following:

Price Certainty: For some matters, this might be a flat fee, such as in a routine traffic case. In other cases, it might be a range of pricing or contingent fee options that depend on the complexity of the case and the amount at stake, such as in a contested court proceeding. Still in other matters, this might be a relatively modest fixed fee for advice and coaching that can lead to other service arrangements going forward, such as in a debt collection case. Whatever the case, remember to always have a written fee agreement, and the more certainty you can offer the potential client as to what your services will cost, the better. The lack of price certainty has been one of the biggest problems with the billable hour system.

Transparency: A close cousin of price certainty is transparency. Letting potential clients know up front as much as you can about your pricing will help you stand out and be more accessible to potential clients. As noted above, this doesn't need to be in the form of flat fee quotes for the entire matter, and should not be unless the matter is amenable to that arrangement, but most lawyers and firms historically have been very opaque to consumers when it comes to pricing.

Clear and Consistent Communication: This one is pretty straightforward. You might be surprised by how many attorneys don't do this.

Affordable Fees: If potential clients cannot afford your fees, they will not retain you for your legal expertise. Offering reasonable fees that are competitive in the marketplace will help you attract and keep clients.

Collaboration: Working closely with the client builds empowerment and trust, and can reduce the expense for the client as well. If a client is able and willing to handle some parts of a legal matter themselves, offering unbundled options that reduce the overall costs through collaboration with the client can make all the difference. Technology increasingly allows online collaboration as a way for clients to complete forms and other key documents.

Convenience: While working from 9:00 a.m. to 5:00 p.m. Monday through Friday is convenient for you, it might not be convenient for your potential clients. Offering hours that are more convenient for your potential clients can be of great value to them.

Flexibility and a Variety of Potential Fee Arrangements: Offering a variety of fee arrangements allows potential clients to choose the option that works best for their particular situation and shows potential clients that you are working to meet their needs. You should choose no more than two or three potential fee arrangements to offer for a particular matter so as not to overwhelm the potential client.

☐ Select the Fee Arrangements You Will Offer Potential Clients

After considering the value propositions that you are best positioned to offer your potential clients, identify the fee arrangements that are consistent with those propositions, your practice areas, and your firm brand. Because limited scope representation is central to many fee arrangements, we briefly touch on limited scope representation here before addressing related fee arrangements.

Limited Scope Representation/Unbundling

Limited scope representation, often referred to as "unbundling," allows attorneys to provide legal services on a portion of a potential client's legal matter rather than seeing it through from beginning to end, so long as it is reasonable under the circumstances. "The client and attorney agree on the specific discrete tasks to be performed by the client and the attorney. Depending on the nature of the work being performed" and the attorney's involvement, "the attorney may or may not enter an appearance with the court. The client represents himself or herself in all other aspects of the case." M. Sue Talia, PLI Program - Expanding Your Practice Using Limited Scope Representation Program, January 30, 2015.

Limited scope representation allows potential clients who cannot afford to pay for full representation to still hire an attorney for what the potential client, with the attorney's counsel, determines to be the part(s) of the matter for which an attorney is most needed. Limited scope can be used for both discrete tasks, such as drafting pleadings or providing advice and coaching on an issue, and for particular issues in a case, such as custody. Unbundling also allows you to charge a fixed fee by task or phase of a case, creating a win-win for you and your client.

Unbundling is a newer and rapidly growing approach to delivering legal services. A variety of resources exist to help you offer unbundled services, including resources from other states that adopted rules earlier than Illinois.

Fee Arrangements

Alternative fee arrangements are growing in importance and becoming more prevalent by the day as potential clients seek greater value, including by paying less for legal services and having certainty up front about how much they will need to pay. Below are some examples of fee arrangements that have worked for attorneys in various practice areas. Please note that this is by no means an exhaustive list of fee arrangements and not every fee arrangement will work for you or your potential clients. Some fee arrangements require a client with a certain amount of sophistication. This section was compiled with input from several helpful sources, including Patrick Lamb's article, What Is, And is Not, An Alternative Fee Arrangement that appeared in Law Technology Today on December 10, 2014.

Fixed Fee by Phase or Task: This is where an attorney charges a specified sum for the completion of a certain task or phase associated with the case. Some examples of tasks and phases include: drafting a pleading or motion; completing discovery; defending someone in a deposition; and representing a client at a hearing that is scheduled for a specific date. It should be noted that the terms "fixed fee" and "flat fee" are often used interchangeably.

Fixed Fee by Case: This is where an attorney charges a specified sum for handling the entire case. A common example is charging a set amount for an uncontested divorce. This fee structure works well for cases in a variety of practice areas where the range of potential work involved is relatively predictable. Attorneys offering these arrangements grapple with concern about underbidding the case or potential "windfalls" if the case is resolved quickly, and how to handle the fee if that happens. For this reason and for ethical reasons, all potential outcomes and associated probabilities should be fully explained to the potential client during the initial consultation, and you should settle on a median price that takes into account the uncertainties involved.

Recurring Fixed Fee: There are two types of recurring fixed fee arrangements, and both involve charging a standard fee on a recurring monthly (or other time increment) basis. A non-litigation recurring fixed fee arrangement is typically used in the context of advising clients, such as an on-call general counsel arrangement for a small company. A litigation recurring fixed fee arrangement provides clients with more certainty with respect to their litigation budgets, such as paying a set amount for services each quarter that a case is pending.

Recurring fixed fee arrangements should not be confused with retainers. Many attorneys and legal consumers alike use the term "retainer" when either referring to a legal representation agreement that involved fixed fees, or to an advanced payment made to an attorney to perform agreed upon legal services that is then drawn upon and replenished as the attorney incurs fees and works on the case. The latter is subject to specific guidelines under the Illinois Rules of Professional Conduct.

When using a recurring fixed fee arrangement, it is important for ethical reasons that attorneys regularly review the agreement to make sure it makes sense for the potential client. For example, if you agree to a fixed fee that is based on you having to go to court on a monthly basis, but something changes and you now only have to go to court twice a year, you and your client should revisit your agreement and make adjustments accordingly if doing so is in the client's best interest.

Pure Contingency: In a pure contingency fee arrangement, the attorney recovers a specified percentage of the amount recovered. The client typically will be charged all hard costs associated with the case, but the client does not pay a fee unless the case results in a successful recovery. This structure is a way to share the risk between attorney and client, and works well when the amount at stake and the potential for recovery is sufficient for an attorney to incur the risk to handle a case. Sometimes the potential recovery can be quite large, such as in some personal injury cases. Other times, the potential recovery is more modest, such as in smaller breach of contract cases.

Reverse Contingency: Reverse contingency fee arrangements are similar to pure contingency fee arrangements but are based on the percentage of the amount of money saved for the client. The base amount from which savings are calculated should be agreed upon with the client up front and reasonable under the circumstances.

Fee-Shifting: Hundreds of state and federal statutes provide for attorney fee-shifting when the client prevails in a case. When available, this type of fee arrangement works particularly well for clients who can afford to pay little or no money for your services and the client's case has potential merit.

Contract Recurring Fee: The attorney charges an initial fee for the creation of a document, such as a sales contract, licenses the document to a client, and earns a licensing fee every time the client uses the document. This fee arrangement works best when an attorney creates a contract or similarly licensable document.

Hybrid: A hybrid fee arrangement uses more than one fee structure. Below are some examples of hybrid fee arrangements.

> **Flat Fee Plus Contingency**: In a flat fee plus contingency fee arrangement, the attorney charges an agreed-upon flat fee in addition to the hard costs associated with the case, and also receives a specified percentage of the amount recovered. This arrangement works best in cases when liability is an issue and the client can benefit from receiving brief advice from counsel and/or having a lawyer as an advocate to negotiate or obtain a better result than the client likely would be able to obtain on his or her own.
>
> **Flat Fee Plus Reverse Contingency**: In a flat fee plus reverse contingency fee arrangement, the attorney charges an agreed upon flat fee up front in addition to recovering a percentage of the amount saved for the client. This fee arrangement works well in credit card collection defense cases.

Success Fees: This fee arrangement sets a bonus that the attorney receives in addition to the core fee arrangement if the result meets agreed-upon criteria. Success fees can be a good way to align incentives for the lawyer and client.

Holdback: A holdback fee arrangement specifies that the client will receive back an agreed-upon portion of the total fee unless the attorney obtains a particular result, which is usually tied to client satisfaction. This fee arrangement encourages both the attorney and the client to measure success quantifiably and qualitatively.

Value Adjustment Line: In any fee arrangement, you can include a value adjustment line that gives the client the option of adjusting the fee up or down. The law firm Valorem Law Group has used this strategy very effectively to build trust with clients and underscore the value they are providing: http://www.valoremlaw.com/value-adjustment-line.

Taking an Interest in a Client's Company: In exchange for legal services, the client offers the attorney stock options or equity in his or her company. This fee structure only works with clients who own companies. It can be particularly useful when a client, such as a business start-up, cannot afford to pay any money up front for legal services related to the business. Take care to avoid conflicts of interest if you are considering this type of arrangement.

Fee Arrangements Using the Billable Hour: While we do not recommend including the billable hour in any of your regular fee offerings for the reasons explained throughout this toolkit, there may be times when a more sophisticated client may actually request it. In these instances, the following two approaches can help align incentives for the lawyer and client.

Capped Fees with Shared Savings: In a capped fee with shared savings arrangement, an attorney's total fee is capped at a set amount. If the attorney bills lower than the cap, then the client and attorney share in savings (usually on an equal basis). This differs from a standard capped fees arrangement, which incentivizes attorneys to bill as close to the agreed upon cap as possible, but does not allow for the attorney to share in any savings.

Collar Fees: A fee collar is a variation of the capped fees with shared savings fee arrangement. With this fee arrangement, the client and attorney set an amount the attorney is to be paid. If the attorney's hours and fee then come in on target or at an agreed-upon percentage above or below the agreed-upon amount, the fee becomes final. If the hours and fee fall below the agreed-upon percentage, the client and attorney share the savings. If the hours and fee exceed the negotiated amount, the attorney is only paid an agreed-upon percentage of the excess amount billed. For example, if a client and attorney agree upon a $20,000 fee with a 20 percent up and down collar, this means that the attorney receives $20,000 if the fee falls between $16,000 and $24,000. If the attorney works only $12,000 in billable time, the $4,000 difference is split and the client receives a $2,000 credit, meaning the final bill would be $18,000. If the attorney works $28,000 in billed time, the attorney is paid fifty percent of the amount over the $24,000 collar, meaning the final bill would be $22,000.

While not covered in this Toolkit, how and when you will get paid by the clients is an important topic that relates to pricing. Payment plans, including ACH payments and other arrangements, may allow clients to pay smaller amounts more consistently. Newer methods of paying for legal services, such as crowdfunding or litigation financing, may help your clients pay for services. Through crowdfunding, for example, a person with a legal issue can raise money from people within their family or community to pay for legal fees. Funded Justice is an example of a legal crowdfunding website.

See the Fee Arrangement Matrix

☐ Understand the Steps and Variables Involved in Your Matters and Whether Technology or Other Methods Might Help You Do the Work More Efficiently

Mapping out and fully understanding the component parts to a given matter and the various contingencies that may arise gives you the means to determine where you are offering the most value to your client and how best to price it. This process will help you create a pricing baseline and "guardrails" – pricing highs and lows for each piece of work that account for the mutual assumptions built into each pricing arrangement. When breaking down matters involving litigation, such as contested divorces, it is important in this exercise to work through all potential outcomes, including unknown variables and worst case scenarios, so that you can generate the most accurate baselines and guardrails possible.

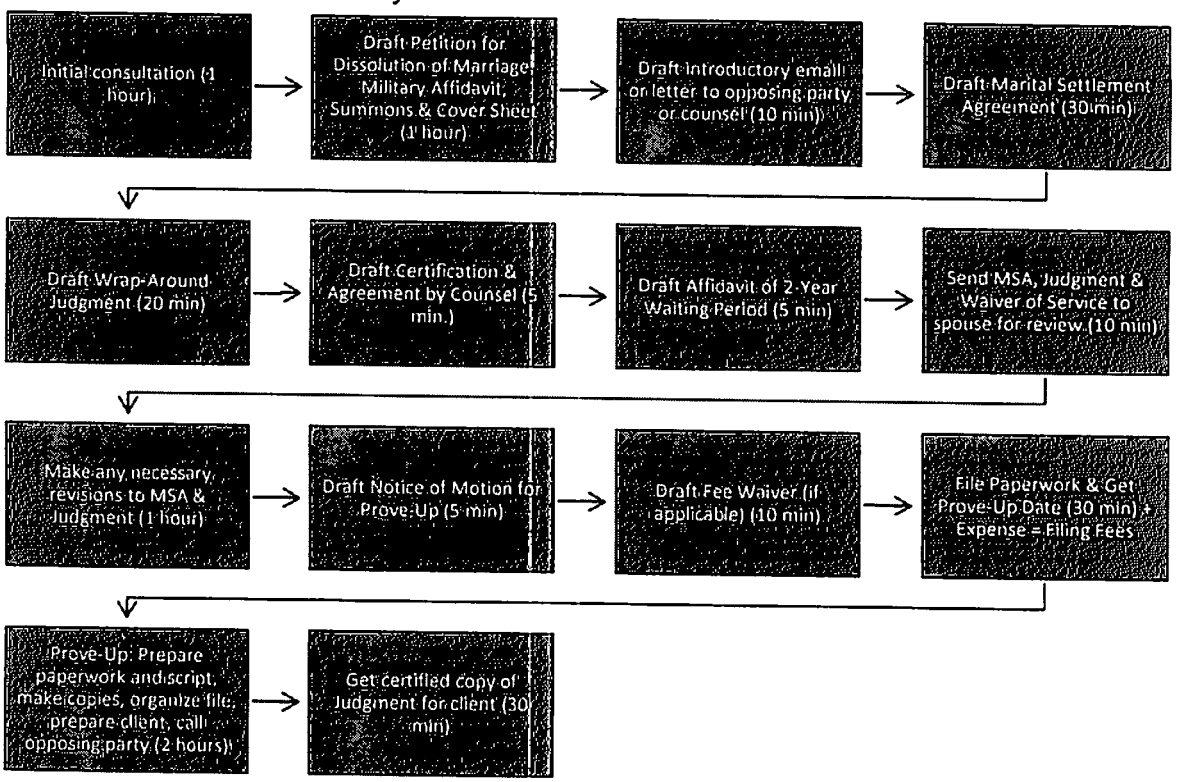
This process, sometimes referred to as "process mapping" or "process improvement," also helps you identify how you can work more efficiently by forcing you to contemplate what goes into each task and how using technology tools such as document automation and e-filing can help you work faster and oftentimes more competently. In addition, process mapping can help you better understand all of the steps involved in a particular case and identify and eliminate redundancies and inefficiencies in the way you are doing your work. Finally, when you are offering unbundled services or breaking your pricing down by task or phase of the case, process mapping will help you better understand how and when that will work most efficiently and effectively for you and your client.

Below are examples of how process mapping can help you by visually breaking down each matter into discrete tasks with associated units of time. To do this, you will have to start at a baseline. What information do you know about the potential client and potential issues that could arise in this type of matter? What resources (e.g. templates, automated document preparation, past cases that were very similar) do you have to work with?

Uncontested Divorce Case*

Assumptions:

- No kids
- Draft all paperwork prior to filing
- Limited assets
- Using templates as starting points for all drafting
- Filing in person (so no electronic filing fee)
- Postage (if any) will be absorbed into the final fee; try to communicate and exchange documents electronically



**The time increments used in the example above were arbitrarily selected and are being used for illustration purposes only.*

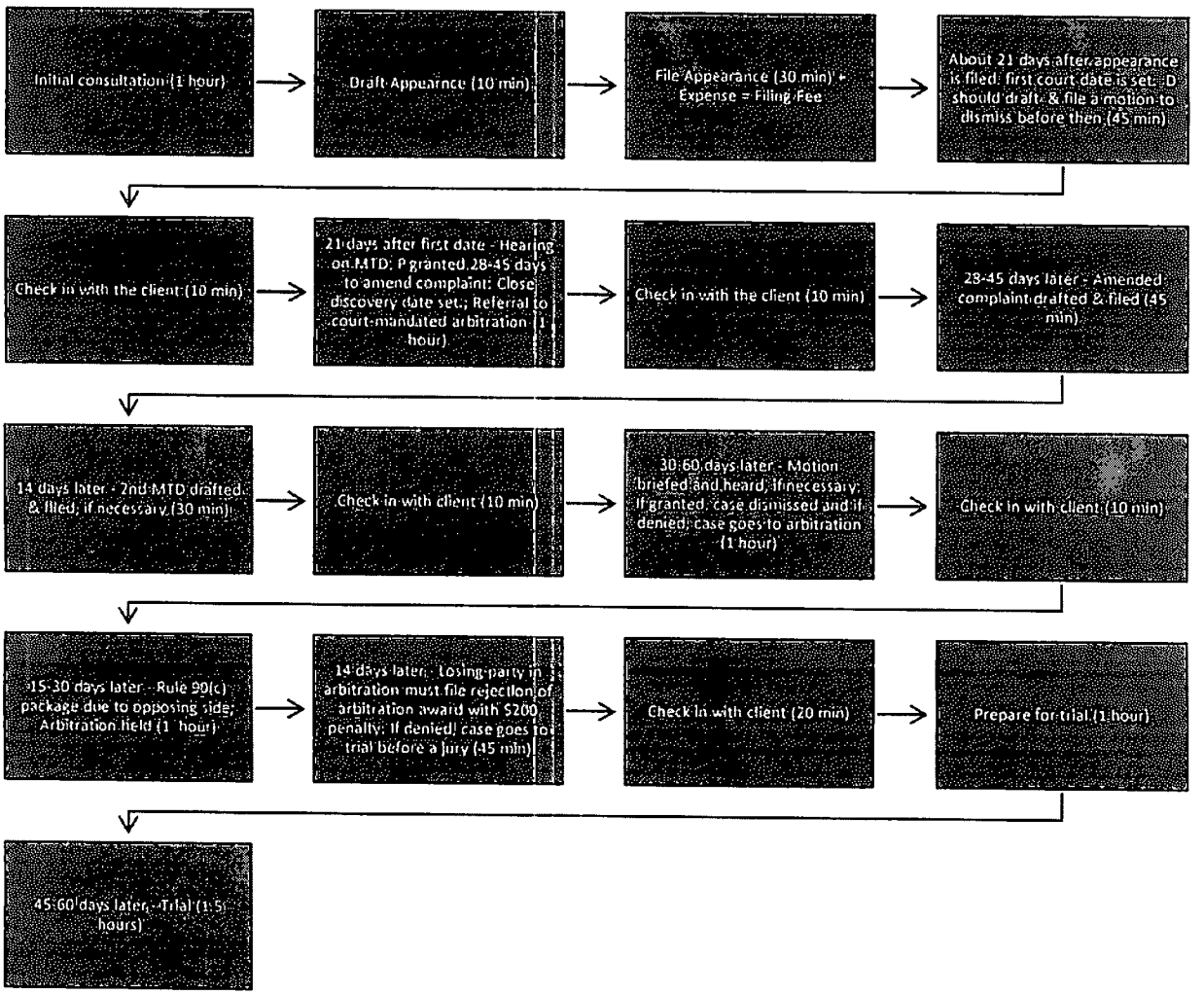
Credit Card Defense Case Involving Fraud*

Assumptions:

- The motions schedule could change and thus the timing would change
- The court could grant extensions that are not reflected below
- Contested case, over $10,000 at stake, and a jury demand is filed
- Filing in person (so no electronic filing fee)

Refer back to Table of Contents

- Using templates as starting points for all drafting
- Postage (if any) will be absorbed into the fee; try to communicate and exchange documents electronically



**The time increments, prices and other information used in the example above were arbitrarily selected and are being used for illustration purposes only.*

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Calculating your Business Expenses, Minimum Salary, Desired Salary, and Revenue Goals

An important step in evaluating your pricing structure and your approach to delivering client services is understanding three things: how much it costs to run your business; how much money you need to live on; and, given the stage of your practice, how much money you ultimately want to make beyond that.

☐ Identify and Calculate Your Monthly Business Expenses

Your business expenses include all costs and expenses associated with running your firm, including office expenses, insurance, software, and other technology expenses; marketing and other professional expenses; and general administration and overhead costs. Taxes (e.g. self-employment taxes, if applicable) should be included as well.

☐ Identify and Calculate Your Personal Living Expenses/Minimum Annual Salary

For purposes of this checklist, your annual personal living expenses include all expenses that are necessary to maintain health, safety, well-being, and the ability to earn money. Examples may include costs associated with housing, utilities, food, clothing, and transportation, and various types of insurance, such as health, disability, and automobile. Once you have calculated your annual personal living expenses, add the income taxes that would be paid on your annual personal living expenses in order to calculate your minimum annual salary.

☐ Determine Your Desired Annual Salary

Your desired annual salary will take into account your annual personal living expenses and the additional disposable income you want to spend and save each month (e.g. recreational activities, saving for vacations, saving for retirement, etc.), and remembering to also take into account income taxes. Obviously, your desired annual salary needs to be realistic for the stage of your practice. If you have just started your firm, your desired salary realistically may be just above what it takes to meet your expenses, while at later stages, it should be more realistic to aim higher.

By understanding your costs and identifying realistic income goals, you can determine how much per month or per week you need to average in order to meet your goals. If, for example, your business and living costs add up to $40,000 per year and you hope to make at least $10,000 beyond that, you need to average $1,000 per week to achieve your goal (assuming you take off for holidays and some vacation time).

Looking at your expenses and goals in this fashion helps free you from looking at things through the hourly lens, helps inform your pricing strategies, and helps you evaluate how you are doing. Instead of looking at how much you should charge a client for each hour, you can look at what mix of paid services you need to average each week/month/year to meet your revenue goals.

Conduct Market Research

An important step in the pricing process is determining what other attorneys and businesses in your service area are charging for similar services or other types of resources where there is a discernable market for that service, such as Avvo.com or the online legal forms market. What is the going rate for your type of service? How are lawyers or firms in your practice area and community branding and marketing their services? The purpose of this market research is not to encourage a race to the bottom or suggest that your pricing should match what others may be offering, but your competitor's pricing and branding will help you understand the market. Differentiating yourself and explaining the value you offer will help you attract prospective clients and is an essential part of your branding. If your proposed pricing does not appear competitive in the marketplace, you may need to assess whether you can become more efficient or reinvent your processes in order to effectively compete in that space.

For example, a brief Google search showed that in the Chicago area, online divorce forms can be completed through an online service such as LegalZoom for as little as $299.00. For as little as $499.00, an attorney will complete the documents and handle the associated court hearing. Potential clients searching for legal services on the internet are unable to assess the quality of these forms and services. The prices associated with these forms and services are what they will see, however, and if price certainty and affordable fees are valuable to them, they are likely to be interested in contacting these attorneys and online services.

Putting it All Together

☐ Assign Pricing to Your Legal Services

Now that you have determined what value and services you will offer potential clients, understand the steps and variables involved in your matters, know your business expenses and revenue targets, and have conducted market research, it's finally time to use all of the information you have collected and assign pricing to your legal services.

For more predictable matters or tasks (e.g. routine court hearings, counsel, and preparation of simple contracts or other documents), you may be able to establish standard prices for each time you do it based on the consistent value you are offering your clients in those situations. For other matters, it might be a range of prices you offer based on the value you can offer in the particular circumstances involved (e.g. lower end of range if an eviction can be resolved short of trial, higher end of range if a trial is required). Even for matters where you can't have a set price for all situations due to the variables involved, staying away from the billable hour and being transparent with potential clients about the range of prices, and the reasons for that range, is valuable and helps provide some certainty to the potential client.

For other matters, you may have two or three options you can offer the potential client, depending on particular facts involved and the client's ability and willingness to do parts of it on his or her own. For example, in a collection defense case, you might offer the potential client a fixed fee to negotiate and attempt to settle the matter for the client, with three options for what happens next: an additional set amount for a contested hearing or trial, possibly broken into phases depending on the complexity; a reverse contingency arrangement based on how much you are able to save the client in the case regardless of the stage at which you are able to achieve that resolution; or an unbundled arrangement where you provide coaching to the client and the client then proceeds on his or her own for the remainder of the case.

These are just a few examples of how you might look at pricing a particular matter. It's important to understand that there is no silver bullet here or magic formula that can be used to determine optimal pricing for legal services in every situation. Attorneys must do what business owners do in other industries – understand the value they can deliver to their customer, use the information they have available to them to make the most educated decisions possible, and then experiment and adjust based on experience. It is a given that not every arrangement will work out in your favor, but carefully monitoring each matter will help you learn from your experiences and make adjustments to your pricing approaches going forward.

If you have established a relationship with your client based on trust and have identified for your client the key assumptions and variables that were taken into account in your original pricing, you may be able to go back to your client and discuss renegotiating the agreed upon pricing if doing so would be reasonable. Just be sure to include a clause in your Legal Representation Agreement that allows you to have this conversation and to draft and sign a new or modified Legal Representation Agreement if changes to the pricing are in fact made.

☐ Develop Checklists and Templates for Each Matter

Developing checklists and templates for particular types of legal matters and unbundling options is an integral step in streamlining your intake and pricing processes. For example, it is helpful to develop a checklist for your initial consultations. Depending on your practice, it generally is also helpful to develop templates for certain pleadings, agreements, or letters that will increase efficiency and allow you to standardize your approach.

☐ Experiment, Track Your Time, and Make Adjustments As You Go

Once you have assigned pricing to your legal services and begin to experiment, it is important to track your time and make adjustments as you go for at least the first year or two. This process will help you create a pricing baseline and guardrails, and will help you to better price your services going forward.

We are not suggesting that you track your time for the purpose of billing by the hour or pricing your services in accordance with it. Instead, we suggest that you track and evaluate how much time you are spending on particular tasks and matters. This allows you to understand if your pricing for particular matters has the potential to match your income goals over time. It may also help you determine efficiencies or better ways of doing the work. And finally, in cases where fee shifting is available or a dispute develops over the work you have done, you will often need to produce time records to substantiate your work. Unfortunately, for fee shifting, the time records may need to be in the dreaded increments from the billable hour world. See Andy Norman's article, Attorneys' Fees, Maximize Your Recovery in Fee-Shifting Cases, which appeared in the Illinois Bar Journal in February 2015, for additional information on how to track time.

Conclusion

Offering a variety of fee arrangements that are not based on the billable hour has tremendous potential for you to attract new clients, to strengthen relationships with your existing clients, and to have a more fulfilling practice that gives you every incentive to innovate and maximize efficiency in how you offer value to your clients. While there is no silver bullet here to determine which arrangement to use and how much to charge in every situation as you get started, you can set yourself up for longer-term success by using the tools and resources recommended in this Toolkit, experimenting with different fee arrangements, tracking your results, and adapting as you learn. In the process, you'll be helping move our profession towards a better future where regular people do not feel priced out of the market for necessary legal services.

Fee Arrangement Matrix

Please note that this is not an exhaustive list of fee structures or the practice areas "ideally suited for" each structure. We hope the examples below will inspire further innovation, and we look forward to adding additional examples to this list as they are identified.

Type	Description	Well-Suited For
Fixed Fee by Task	An attorney charges a specified sum for the completion of a certain task associated with the case or matter (e.g., review of a contract, court appearance, etc).	Most practice areas
Fixed Fee by Phase	An attorney charges a specified sum for the completion of a certain phase associated with the case (e.g., initial case review, discovery, trial, etc.)	Many practice areas, including litigation, landlord/tenant, and domestic relations
Fixed Fee by Case	An attorney charges a specified sum for handling the entire case or matter. This arrangement works best for less complex matters with a higher degree of predictability about the potential range of legal work likely to be involved.	Uncontested divorce, many post-decree domestic relations issues, real estate closings, immigration visas, wills/trusts, less complex estates, landlord/tenant, more modest civil litigation, contract disputes
Recurring Fixed Fee	Recurring fixed fee arrangements can be used both in litigation and transactional settings, and in both instances involve charging a standard fee on a recurring monthly, quarterly, or other time increment basis. Non-litigation recurring fixed fee arrangements are typically used in the context of advising clients. A litigation recurring fixed fee arrangement provides clients with more certainty with respect to their litigation budgets.	Small business (non-litigation), domestic relations (e.g., contested custody cases, contested divorce), condo associations
Contract Recurring Fee	An attorney charges an initial fee for the creation of a document, such as a contract, and earns a fee every time the client uses the document through a licensing agreement or similar arrangement.	Small business (non-litigation)
Pure Contingency	The attorney receives a specified percentage of the amount recovered in the case and either the prospect of recovery and/or the amount that can be recovered is uncertain. The client generally will be charged any hard costs associated with the case, but the attorney does not receive any fee unless the case results in a successful recovery. This structure is a way to share the risk between attorney and client, and works well when the amount at stake and the potential for recovery are sufficient to balance the risk to the lawyer.	Personal injury, breach of contract, debt collection
Reverse Contingency	The attorney receives a percentage of the amount saved for the client. The base amount from which savings are calculated should be agreed upon with the client up front. Reverse contingency fee arrangements work best in cases where liability is an issue but damages are not.	Breach of contract

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Fee-Shifting	Hundreds of state and federal statutes provide for attorney fee-shifting when the client prevails in a case, and also provide bargaining leverage to recover fees during settlement.	Consumer Fraud, Security Deposit, domestic relations (statutory fee shifting allowable where the other party can afford to pay fees)
Flat Fee Plus Contingency	The attorney charges an agreed upon flat fee in addition to a specified percentage of the damages awarded, if any. The client is typically also charged hard costs associated with the case. This arrangement works best in cases when there is greater uncertainty of either liability and/or the amount that may be recovered, yet the client still sees value in pursuing the matter.	Breach of contract
Flat Fee Plus Reverse Contingency	Where the attorney charges an agreed upon flat fee up front in addition to recovering a percentage of the amount saved for the client. The client is typically also charged hard costs associated with the case. This arrangement works well in situations when the client can benefit from receiving brief advice from counsel about their rights and responsibilities in the situation, and benefit from having a lawyer as their advocate to negotiate or obtain a better result than the client likely would be able to obtain on their own.	Consumer debt collection
Holdback	Specifies that the lawyer will withhold an agreed upon portion of the core fee arrangement on behalf of the client and return it to the client unless the attorney obtains a particular result, which is usually tied to client satisfaction.	Currently most often used in more sophisticated business litigation, but has broader potential applicability
Success Fees	Similar to the Holdback, in this instance the attorney receives an agreed upon bonus payment in addition to the core fee arrangement if the result meets agreed upon criteria. Aligns incentives for the lawyer and client.	Typically used in more sophisticated business litigation, but has broader potential applicability

Please see the Fee Arrangements section of the Pricing Toolkit for a full description of each fee arrangement.

Rule 1.16 Declining or Terminating Representation

RULE 1.16: DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services or payment therefor and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been

earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law. The lawyer may retain a reasonable nonrefundable retainer.

Comment

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation. The South Carolina version of paragraph (b)(5) specifically recognizes that nonpayment for services may be a basis for withdrawal.

Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15. When permitted, a nonrefundable retainer still must comply with Rule 1.5 and not be unreasonable.

Last amended by Order dated July 30, 2012.

335 S.C. 242
516 S.E.2d 661

In the Matter of Mary P. MILES, Respondent.

No. 24949.

Supreme Court of South Carolina.

Heard April 8, 1999.

Decided June 1, 1999.

[335 S.C. 243]

Mary P. Miles of Lexington, pro se.

Attorney General Charles M. Condon and Assistant Deputy Attorney General J. Emory Smith, Jr., both of Columbia, for the Office of Disciplinary Counsel.

PER CURIAM:

In this attorney grievance matter, Mary P. Miles (Respondent) is charged with engaging in misconduct in violation of various provisions of the Rules of Professional Conduct (RPC) contained in Rule 407, SCACR, and the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413, SCACR.

PROCEDURAL BACKGROUND

The Commission on Lawyer Conduct (Commission) began investigating these matters after Midlands Medical Center filed a complaint in November 1996. The Court placed Respondent on interim suspension December 10, 1997. The three-member subpanel issued a report October 22, 1998, finding misconduct and recommending that Respondent be indefinitely suspended. The full panel adopted the report and recommendation December 10, 1998.

THE MIDLANDS MATTER

Investigators from the Office of Disciplinary Counsel (disciplinary counsel) reviewed documents provided by Midlands Medical Center in Columbia, as well as financial records and various client files from 1992 to 1997 that were subpoenaed from Respondent. The review showed that, from April 1995 to April 1997, Respondent withheld $21,304 from the settlement

[335 S.C. 244]

of fourteen cases to pay clients' medical bills at Midlands. Respondent delayed payment of the bills from eight to twenty-two months after settlement of the cases. Midlands agreed to reduce the delinquent bills if Respondent did not delay payment any longer. After paying the reduced bills, Respondent failed to return $3,996 in surplus funds to the fourteen clients.

Respondent's trust account during the two-year period should have contained at least the amount of the unpaid medical bills as those amounts accumulated. It did not. For example, in February 1996, when the trust account should have contained at least $7,186, it had a negative balance of $1,050. In February 1997, when the account should have contained at least $17,804, it had a negative balance of nearly $594. The record shows that Respondent either converted the funds for her own use, to pay toward another client's matter, or for purposes other than which they were intended.

IMPROPER USE OF TRUST ACCOUNT AND INSUFFICIENT RECORDKEEPING

Respondent used her trust account from 1992 to 1997 to make contributions to charitable organizations, buy office supplies, buy personal and office lunches, and pay off a personal loan to a car dealer, among other things. Many of the checks contained

inconsistent information. For example, checks to Burlington Coat Factory, Pep Boys, Young's True Value Hardware, J.B. White, S & K Mens Wear, and Champs Sports all listed "office" or "office supplies" in the memorandum line.

Deposits to Respondent's trust account from 1993 to 1997 usually were identified only by the name of the insurance company that wrote the check. Twenty-six of the deposits were made since January 1997. Some deposits listed only the name "Miles" or were deposits of cash, and Respondent was unable to identify the source of the funds. Respondent wrote checks on her trust account made payable to herself and marked "attorney fees." The checks did not identify the client, and Respondent was unable to identify the source of the funds or show that the funds were earned fees and not clients' funds.

[335 S.C. 245]

THE PINCKNEY MATTER

Marvin Pinckney testified he hired Respondent in October 1997 in an effort to set aside a previous judgment in a civil suit because he had not consented to it. He paid Respondent a $1,250 retainer. Respondent filed a two-page motion in circuit court, but did no other work on his case, Pinckney testified. Respondent has not refunded any of the fee. While questioning Pinckney at the subpanel hearing, Respondent noted the retainer was nonrefundable under the fee agreement Pinckney signed.

THE SCHULTZ MATTER

Earl W. Schultz testified he hired Respondent in July 1997 to represent him in an employment discrimination case after the Court suspended his first attorney. He paid her $25 for the initial visit and a $1,000 retainer. Respondent made a couple of telephone calls to a federal agency in Washington, D.C., during the initial visit, but did no other work on the case. His appeal was successful, but that was a result of work done by his first attorney, not Respondent, Schultz testified. Respondent refused to refund any of the fee. Again, while questioning Schultz, Respondent noted the retainer was nonrefundable under the fee agreement Schultz signed.

UNPAID COURT REPORTER CHARGES

Clevette Hudnell, a court reporter, testified she took a deposition at Respondent's request in August 1997. She sent Respondent four notices about the unpaid bill of $299.60, but Respondent never paid her. Another court reporter, Callie Morrison, testified she took a deposition at Respondent's request in March 1996. She sent respondent four notices about the unpaid bill of $229.25, but Respondent never paid her.

DISCUSSION

A disciplinary violation must be proven by clear and convincing evidence. *Matter of Yarborough,* 327 S.C. 161, 488 S.E.2d 871 (1997). While the Court is not bound by the findings of the subpanel and full panel, their findings are

[335 S.C. 246]

entitled to great weight, particularly when the inferences to be drawn from the testimony depend on the credibility of witnesses. *Id.* The Court may make its own findings of fact and conclusions of law, and is not bound by the panel's recommendation. *Burns v. Clayton,* 237 S.C. 316, 117 S.E.2d 300 (1960). The Court must administer the sanction it deems appropriate after a thorough review of the record. *Matter of Kirven,* 267 S.C. 669, 230 S.E.2d 899 (1976).

After examining the facts, we find Respondent's misconduct has been proven by clear and convincing evidence. In the Midlands matter, Respondent misappropriated funds from her trust account and failed to pay the clients' medical bills upon settlement of the cases, a violation of Rule 1.15(a) and (b), RPC. By delaying payment of the medical bills from eight to twenty-two months after settlement of the cases, she failed to act with reasonable diligence and failed to keep her clients reasonably informed about the status of their cases. Those acts were violations of Rules 1.3 and 1.4(a), RPC.

In the matter of improperly using her trust account and insufficient recordkeeping, Respondent violated Rule 1.15, RPC, by commingling funds and using the trust account for personal and family purposes. Although recently enacted Rule 417, SCACR,[1] provides greater guidance in the handling of trust accounts than Rule 1.15, a lawyer has always had the burden of keeping adequate records. "This Court has made it abundantly clear that an attorney is charged with a special responsibility in maintaining and preserving the integrity of trust funds." *Matter of Padgett,* 290 S.C. 209, 349 S.E.2d 338

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(1986) (suspending attorney who failed to maintain adequate records in a single case). When disciplinary counsel presents clear and convincing evidence of trust account violations or other inadequate recordkeeping, a lawyer's records must be sufficiently detailed to overcome the allegations.

In the Pinckney and Schultz matters, Respondent committed misconduct by refusing to refund any portion of the purportedly nonrefundable retainer. A "lawyer may retain a reasonable nonrefundable retainer." Rule 1.16(d), RPC. The fee, however, must be reasonable under the factors outlined in the rules and any unearned portion must be returned to the client. Rule 1.5(a) and Comments, RPC.[2]

In the Hudnell and Morrison matters, Respondent committed misconduct by refusing to pay for transcripts of depositions that she ordered from court reporters. Her conduct violated Rule 8.4(d), RPC. *See Matter of Smith,* 296 S.C. 86, 370 S.E.2d 876 (1988) (failure to pay a court reporter for a transcript held as sanctionable misconduct).

We have imposed various penalties for similar misconduct in other cases. *See Matter of Floyd,* 321 S.C. 306, 468 S.E.2d 302 (1996) (disbarring attorney who misappropriated client's funds, failed to deliver promptly to client or third party funds that he or she was entitled to receive, and failed to render promptly a full accounting of the property); *Matter of Watson,* 319 S.C. 437, 462 S.E.2d 270 (1995) (three-month definite suspension of attorney who failed in a single case to timely

[335 S.C. 248]

pay medical providers after settling the case; attorney also had misused his trust account); *Matter of Screen,* 318 S.C. 367, 458 S.E.2d 39 (1995) (publicly reprimanding attorney who negligently collected excessive fee, failed to maintain identity of client funds, failed to properly deliver funds to clients or third persons, and neglected a legal matter); *Matter of Edwards,* 323 S.C. 3, 448 S.E.2d 547 (1994) (disbarring attorney who misappropriated client funds, failed to notify medical providers of receipt of settlement and promptly disburse funds to them in numerous cases, failed to diligently and competently represent clients, failed to keep clients informed of status of their cases, knowingly made false statements of material fact, and failed to cooperate in investigation; attorney also had to make restitution).

CONCLUSION

For the foregoing reasons, we find Respondent committed misconduct. We conclude the appropriate sanction is a definite suspension of six months. The definite suspension is retroactive to the date of Respondent's interim suspension, December 10, 1997, meaning Respondent may immediately resume the practice of law after complying with the following conditions. Before the reinstatement of her license to practice law, Respondent shall disburse surplus funds to clients that she received in connection with the Midlands matter, make restitution in the Pinckney and Schultz matters by refunding the unearned portion of the fees,[3] pay the delinquent court reporter charges in the Hudnell and Morrison matters, and obtain legal finance training through the Bar. Respondent shall provide appropriate proof of her compliance with this order pursuant to Rule 32, RLDE.

DEFINITE SUSPENSION.

Notes:

1. Under Rule 417, effective January 1, 1997, a lawyer must keep adequate records showing the date, source or payee, and description of each deposit and disbursement in any bank account which affects the lawyer's practice of law. With trust accounts, the records must show, for each client, the source of all funds deposited, the names of all persons for whom the funds are held, the descriptions and amounts of charges and withdrawals, and the names of persons to whom funds were disbursed. Rule 417(a)(1) and (2), SCACR.

Receipts must be deposited intact and records of deposits should be sufficiently detailed to identify each item. Rule 417(b), SCACR. A lawyer also must keep other records, including copies of accountings to clients or third parties showing the disbursement of funds, copies of bills for legal fees and expenses, and copies of portions of clients' files necessary to understand a particular financial transaction. Rule 417(a)(4), (5), (6) and (9), SCACR.

2. Nonrefundable retainers such as the one at issue in Respondent's case have come under fire in recent years. The New York Court of Appeals recently banned "special nonrefundable retainers" in a landmark case, finding them to be a per se violation of ethics rules. *Matter of Cooperman,* 83 N.Y.2d 465, 611 N.Y.S.2d 465, 633 N.E.2d 1069 (1994).

A special nonrefundable retainer is one in which the client pays a nonrefundable fee for specific services, in advance and irrespective of whether any professional services are actually rendered. *Id.* at 1070. A special retainer is distinguished from a general retainer "in which the client agrees to pay a fixed sum in exchange for the attorney's promise to be available to perform, at an agreed price, any legal services ... that arise during a specified period." Lester Brickman & Lawrence A. Cunningham, *Nonrefundable Retainers Revisited,* 72 N.C.L.Rev. 1, 5-6 (1993); *Cooperman,* 611 N.Y.S.2d 465, 633 N.E.2d. at 1074.

While we do not decide the legitimacy of special nonrefundable retainers today, we urge lawyers to proceed with caution in using such retainers.

3. If Respondent and the clients are unable to agree on what portion of the fees should be refunded, the dispute shall be submitted to the Resolution of Fee Disputes Board of the South Carolina Bar. *See* Comment to Rule 1.5, RPC; Rule 416, SCACR.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Gary Dixon, Plaintiff, v. Carolyn W. Colvin, Acting Commissioner of Social Security, Defendant.	)	Civil Action No.: 5:12-cv-03625-RBH **ORDER**

This matter is before the Court on Plaintiff's motion [ECF #33] and amended motion [ECF #38] for attorney fees under 42 U.S.C. § 406(b)(1). Plaintiff's counsel requests an attorney fee award of $37,751.00, which represents 25% of the past due benefits for Dixon and his dependents. Plaintiff's counsel previously received an attorney fee award under the Equal Access to Justice Act ("EAJA"), 42 U.S.C. § 2412, in the amount of $2,650.88. Plaintiff's counsel agrees that any attorney fees awarded under § 406(b)(1) are subject to offset by a previous EAJA attorney fee award and the lesser of the two amounts must be refunded to the plaintiff.

Title 42 U.S.C. § 406(b)(1)(A) provides that "[w]henever a court renders a judgment favorable to a claimant . . . who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment." 42 U.S.C. § 406(b)(1)(A). In *Gisbrecht v. Barnhart*, the Supreme Court held that § 406(b) sets a statutory ceiling for attorney fees in social security cases of 25 percent of past-due benefits and calls for court review of contingency fee agreements to assure that the agreement yields reasonable results in particular cases. 535 U.S. 789, 807 (2002). Contingency fee agreements are

unenforceable to the extent that they provide for fees exceeding 25 percent of the past-due benefits. *Gisbrecht*, 535 U.S. at 807. When the contingency fee agreement and requested fee do not exceed 25 percent of the past-due benefits, "the attorney for the successful claimant must show that the fee sought is reasonable for the services rendered." *Id.* Even where the requested fee does not exceed 25 percent of past-due benefits, "a reduction in the contingent fee may be appropriate when (1) the fee is out of line with the 'character of the representation and the results ...achieved,' (2) counsel's delay caused past-due benefits to accumulate 'during the pendency of the case in court,' or (3) past-due benefits 'are large in comparison to the amount of time counsel spent on the case'" (i.e., the "windfall" factor). *Mudd v. Barnhart*, 418 F.3d 424, 428 (4th Cir. 2005) (citing *Gisbrecht*, 535 U.S. at 808).

In considering whether plaintiff's counsel would receive a "windfall" from the contingency fee agreement, the Court is mindful of the fact that "contingency fees provide access to counsel for individuals who would otherwise have difficulty obtaining representation." *In re Abrams & Abrams, P.A.*, 605 F.3d 238, 245 (4th Cir. 2010). As the district court noted in *Wilson v. Astrue*,

> there are occasions in the practice of representing claimants where a 25 percent contingent fee agreement is reached between the claimant and counsel, but no fee is awarded because of the result achieved in the case. Thus, adherence to the 25 percent contingent fee allowed by statute in a successful case such as this one recognizes the realities facing practitioners representing social security claimants and sustains those practitioners so as to allow them to continue to make their services available to other claimants.

622 F. Supp. 2d 132, 136-37 (D.Del. 2008); *see also Gisbrecht*, 535 U.S. at 804 (recognizing that "the marketplace for Social Security representation operates largely on a contingency fee basis").

Defendant does not dispute Plaintiff's counsel's entitlement to an attorney fee but argues

that the requested amount of $37,751.00 should be reduced to some extent. Defendant argues that the majority of work was done by paralegals (19.75 hours) and that Plaintiff's counsel and other attorneys at his firm spent only 8.75 hours working on Plaintiff's behalf. Defendant argues that an award of $37,751 in attorney fees would represent attorney compensation at an effective hourly rate of $4,314.40. Defendant further argues that even if this Court deems that paralegal work is compensable under § 406(b), based on the 28.5 hours of combined attorney and non-attorney time spent in the case, the resulting hourly rate of $1,324.59 would constitute an impermissible windfall if the Court were to award the requested $37,751 in attorney fees.

Defendant does not cite any authority in the Fourth Circuit regarding how paralegal work should be compensated under § 406(b). Plaintiff cites *Siraco v. Astrue* for the proposition that the issue is not whether paralegal time is compensable, or if so, what enhancements are proper, but rather whether the percentage contingent-fee agreement yields a reasonable fee amount in the particular case. 806 F. Supp. 2d 272, 278-79 (D.Me. 2011). When faced with a similar issue regarding how and to what extent paralegal time should be compensated under § 406(b), Judge Childs indicated agreement with *Siraco* and held that the issue "becomes whether the overall award is reasonable in light of the amount of work put forth by Plaintiff's counsel and the outcome of Plaintiff's case." *Graham-Willis v. Colvin*, Civil Action No.: 1:12-cv-02489-JMC, 2015 WL 4068597, at *3 (D.S.C. July 1, 2015). In the absence of any authority in the Fourth Circuit or this district to the contrary, this Court is inclined to agree with Judge Childs that the issue is not whether paralegal time is compensable, but whether the contingency fee agreement yields a reasonable fee amount.

Turning to Plaintiff's counsel's fee request, the Court notes that Plaintiff and Plaintiff's

counsel entered into a contingency fee agreement dated June 1, 2010, which provided that if Plaintiff or his family received any back benefits, then Plaintiff agreed to pay Plaintiff's counsel 25% of past-due benefits due to Plaintiff and his family. [ECF #33-1]. Plaintiff's counsel, who has been certified as a social security specialist by the South Carolina Supreme Court and North Carolina Supreme Court, obtained a successful result for Plaintiff and his family and obtained approximately $156,302.00 in past-due benefits. There is no indication that counsel caused any unusual delays in the case. After Plaintiff's counsel filed his 33 page brief in support of Plaintiff's appeal to the district court, Defendant filed a motion to remand the case for further administrative proceedings. Thus, the degree of representation in federal court was somewhat abbreviated. Further, the appeal to district court was not particularly complex or novel as the issues presented are fairly common appellate issues in social security cases. There is no doubt, however, that Plaintiff's counsel provided thorough and adequate representation of Plaintiff.

Considering the relatively small amount of time spent on the case and the lack of novel or complex issues, the Court finds that Plaintiff's requested fee of $37,751.00 should be reduced to avoid an impermissible windfall. The Court finds that Plaintiff's counsel's requested fee should be reduced to $28,500.00, which represents a generous effective hourly rate of $1,000.00. In light of counsel's specialized skill in social security disability cases and the result achieved in this case, an attorney fee award of $28,500.00 with an effective hourly rate of $1,000.00 is reasonable and does not amount to a windfall. The Court notes that other district courts within the Fourth Circuit have approved contingency fee agreements that produce similar hourly rate ranges in successful social security appeals. *See, e.g. Duvall v. Colvin*, Civil Action No. 5:11-577-RMG, 2013 WL 5506081, at *1 (D.S.C. Sept. 30, 2013) (finding contingency fee agreement that produced an effective hourly

rate of $972.00 to be reasonable); *Brown v. Barnhart*, 270 F. Supp. 2d 769, 772 (W.D. Va. 2003) (approving contingency fee agreement with resulting hourly rate of $977.00); *Melvin v. Colvin*, No. 5:10-cv-160-FL, 2013 WL 3340490, at *3 (E.D.N.C. July 2, 2013) (approving contingency fee agreement with resulting hourly rate of $1,043.92); *Claypool v. Barnhart*, 294 F. Supp. 22 829, 833 (S.D.W.Va. 2003) (approving contingency fee agreement with resulting hourly rate of $1,433.12).

For the foregoing reasons, the Court **GRANTS** Plaintiff's motion [ECF #33] and amended motion [ECF #38] for attorney fees under 42 U.S.C. § 406(b)(1), as modified herein, in the amount of $28,500.00. Plaintiff's counsel must refund his EAJA fee award of $2,650.88 to the Plaintiff.[1]

IT IS SO ORDERED.

January 5, 2016
Florence, South Carolina

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

[1] Plaintiff's counsel was previously awarded a lesser amount of fees under the Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA"). [ECF# 30]. "Fee awards may be made under both [EAJA and § 406(b)], but the claimant's attorney must refund to the claimant the amount of the smaller fee . . . up to the point the claimant receives 100 percent of the past-due benefits." *Gisbrecht*, 535 U.S. at 796 (internal quotation marks and citation omitted). Accordingly, Plaintiff's counsel is to refund to the Plaintiff the previously ordered EAJA fees immediately after he receives the payment of the § 406(b) fees.