

NO. 14-24-00753-CV

IN THE FOURTEENTH COURT OF APPEALS

RICHARD ALLISON / CAROLINE ALLISON,

Appellants

v.

**BORUNDA, P.C., JORGE BORUNDA, NICHOLAS ABAZA, LAW
OFFICES OF NICHOLAS ABAZA, P.C., MICHAEL TREVINO, AND LAW
OFFICES OF MICHAEL TREVINO, PLLC,**

Appellees

On appeal from Cause No. 2021-80256
In the 269th Judicial District Court of Harris County, Texas

RICHARD ALLISON'S APPELLANT'S BRIEF

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ORAL ARGUMENT REQUESTED

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STATEMENT OF THE CASE

On December 9, 2021, Caroline Allison, one of the appellants, sued the appellees, Borunda, P.C., Jorge Borunda, Nicholas Abaza, Law Offices of Nicholas Abaza, P.C., Michael Trevino, and Law Office of Michael A. Trevino, P.L.L.C. (the “Lawyers”), for legal malpractice, alleging that the Lawyers violated their fiduciary duties to her and that their acts and omissions caused her damages in prosecuting litigation concerning the estate of her deceased father, Dr. Richard Allison. *See* CR.1-25. The Lawyers answered and moved to compel the case to arbitration. CR.179. On May 13, 2022, the Hon. Cory D. Sepolio, presiding judge of the 269th Judicial District Court of Harris County, Texas granted the motion to compel arbitration and stayed all proceedings until an arbitration decision was rendered. CR.257.

The Lawyers issued arbitration demands to Caroline and Mr. Richard (“Rich”) Allison¹ alleging that Caroline and Rich were liable to the Lawyers in their individual capacities for breach of contract. *See* CR.391-402. All six lawyer parties also asserted various equitable, quasi-contract claims against Caroline and Rich. *Id.*

¹ Rich is Dr. Allison’s son, who the Lawyers also represented in the estate litigation, and he is the other appellant in this appeal.

Rich answered and asserted his own claims against the Lawyers, alleging that the Lawyers' negligence and breach of fiduciary duty caused him damages. CR.369-388.

Following a seven-day arbitration hearing, the arbitrator, the Hon. Anne Ashby, issued an "Interim Award" and "Final Award" in favor of all the Lawyers, finding that (1) Rich was individually liable for \$1,416,915.68 to all the Lawyers, and owed \$421,133.32 in pre-judgment interest on that award; (2) Caroline was individually liable for \$1,352,149.80 to all the Lawyers, and owed \$401,883.72 in pre-judgment interest on that award; (3) Rich and Caroline were individually liable for attorneys' fees of \$454,470.20 incurred by the all Lawyers in the arbitration; and (4) Rich and Caroline were liable for administrative fees of the AAA totaling \$56,225.00, and arbitrator's fees totaling \$133,318.81. CR.319. The arbitrator ruled that the award would accrue post-judgment interest, commencing 31 days from the date of the award until paid in full, at a rate of 8.5% per annum. CR.318-320. The arbitrator also (1) ordered a "freeze" on a Charles Schwab One account of the Minaki Limited Partnership—an entity that was not a party to the arbitration and which had not agreed to arbitrate—and (2) ordered Caroline and Rich to "direct the trustee(s) of the Allison Family Trust"—Caroline and Rich are the trustees of the Allison Family Trust but had appeared in the arbitration solely in their individual, not their

trustee, capacities—to “liquidate sufficient trust assets to pay the Final Award and all accrued interest in full.” CR.289-90.

The Lawyers moved the district court to “Confirm, Enforce, and Enter Judgment on Arbitration Awards.” CR.260, 301. Rich filed a petition in intervention (CR.516), and then he and Caroline moved the district court to vacate or modify the arbitration awards (CR.522). The district court denied the motion to vacate or modify the award and signed a final judgment confirming the award on July 15, 2024. CR.4139-40, 4142, 4144-4147.

Rich and Caroline timely filed post-judgment motions requesting modification of the final judgment, which motions were overruled by written order signed August 30, 2024. CR.4346, 4381. Rich and Caroline timely perfected appeal to this Court by filing notices of appeal on October 9, 2024. CR.4387-88, 4390-91.

STATEMENT REGARDING ORAL ARGUMENT

Rich respectfully requests oral argument. As the Court will see the issues presented are factually and legally complex. Hearing from the parties and counsel in person, and having the opportunity to question them, is likely to significantly aid the Court's decisional process.

ISSUES PRESENTED

1. Whether the district court erred in confirming the arbitrator's interim and final awards when the arbitrator exceeded her authority by "freez[ing]" the account of a non-party to the arbitration to secure her awards and by ordering non-party trustees of a trust to "liquidate trust assets" to pay her awards.
2. Whether the district court erred in confirming the arbitrator's interim and final awards when the arbitrator exceeded her authority by enforcing a contract that violates Texas public policy by:
 - a. awarding contingent fees to lawyers and entities that never signed a contingent fee agreement;
 - b. awarding contingent fees to lawyers and entities where the contingent fee contract includes an unseverable provision that violates Rule 1.02 of the Disciplinary Rules of Professional Conduct; and
 - c. awarding contingent fees to lawyers and entities pursuant to equitable quasi-contract theories in violation of the Government Code and the Disciplinary Rules of Professional Conduct.
3. Whether the district court erred in confirming the arbitrator's interim and final awards when the arbitrator failed to provide a reasoned award explaining her reasons for overruling the appellants' affirmative claims for relief and affirmative defenses.
4. Whether the district court erred in confirming the arbitrator's interim and final awards when the arbitrator awarded attorneys fees and expenses not authorized by the parties' agreement.
5. Whether the district court erred in confirming and refusing to modify the arbitrator's interim and final awards when the arbitrator's awards miscalculate pre-judgment interest.

STATEMENT OF FACTS

The Underlying Estate Litigation

On May 26, 1989, Dr. Richard Allison—Rich and Caroline’s father—created the Richard Allison Trust, naming himself trustee and placing the bulk of his assets in the trust. *See* CR.2460. The Richard Allison Trust was amended and restated in its entirety on April 11, 2013, and upon Dr. Allison’s death on April 14, 2017, the Richard Allison Trust created two separate trusts: the Marital Trust and the Family Trust. *See* CR.2460. Following Dr. Allison’s death, Robin Allison, Dr. Allison’s wife, and Rich and Caroline’s step-mother, became the trustee of both the Marital Trust and Family Trust. *See* CR.2460.

In late 2018, Caroline was having difficulty getting information about the Family Trust, in which she knew she was a beneficiary. CR.1856-58. Caroline did not understand the trust or what rights she had under it. CR.1857. Caroline asked Robin to review the trust document, requested an accounting, and wanted to understand what Robin’s plans were with the trust. CR.2702, 2703-04, 2709. Robin, however, did not provide Caroline with the requested information. *See* CR.2706.

In January 2019, Caroline met with attorney Nicholas (Nick) Abaza to discuss her dealings with Robin. CR.1863-64. Caroline gave Abaza information about her father’s sizeable estate, and Abaza gave Caroline statutes to quote in an accounting request to Robin. CR.1863-64.

When that did not succeed in procuring the information Caroline wanted, Abaza advised that her father's will "is problematic and needs to be challenged." CR.2383. Abaza proposed different fee arrangements to Caroline. CR.2747. Caroline made clear to Abaza and Borunda that if Robin "cave[d]" and settled the case, she would not pay a contingency fee. *See* CR.1255. After additional dialogue, Caroline signed an hourly fee contract with Borunda P.C. and Abaza. CR.2754-58. Caroline's brother Rich was not a party to the Caroline/Abaza/Borunda P.C. agreement. *See* CR.2748-51.

Rich subsequently signed a separate representation agreement with Abaza CR.2767 ("This agreement is between Richard Allison Jr. (the Client) and Nicolas Abaza (the Attorney) for the legal representation in prosecuting the claims in the client's interest in the Estate Richard Allison and interest in the Richard Allen [sic] Trust or Trusts")). Regarding payment, the Rich/Abaza agreement provided:

Attorneys' Fees: This agreement is a contingency fee agreement. If the Attorneys are successful in recovering money and/or property from either the Estate or Trust of Richard Allison i.e. client's father, then attorneys shall receive 35% of the amount (money and property) recovered. This also includes and/or any future interest from Richard Allison's estate and/or trust.

CR.2767. The agreement stated that "[t]he contingency fee in this case will be divided between the following law firms as follows of the 35% contingency fee:

Jorge Borunda	60%
Nicolas Abaza	40%"

CR.2770-71. The representation agreement was executed on behalf of Borunda P.C. and Abaza with only Abaza's typed signature. *See* CR.2771 ("x /s/ nick abaza"). Indeed, even though the representation agreement purported to afford him a 60% interest in 35% of any recovery of money or property from Dr. Allison's estate or trust, neither Jorge Borunda, nor any representative of Borunda P.C., signed the contract with Rich. *See* CR.2771. The agreement did not even include a signature block for Borunda or Borunda P.C. to execute. CR.2771.

In any event, at that point, after Rich and Caroline had executed their contracts, the lawyers had a favorable arrangement: Caroline would pay Borunda and Abaza an hourly fee (and half the expenses) (CR.2754-57), while having a contingent fee with Rich on a \$15 million estate to which Caroline and Rich were already remainder beneficiaries (CR.2767-71).

Rich was concerned that a lawsuit may cause Robin to not pay his daughter's tuition. *See* CR.2759-60. Borunda advised from his "perspective as a cynical lawyer," that Robin is only paying because of contemplated legal action, and that a suit would net more than what Robin was offering. CR.2759-60. Borunda recommended "to create significant pressure first...written discovery, deposition, motions to remove her as trustee, etc." CR.2758-59. Borunda convinced Caroline to aggressively pursue a costly legal battle which would cause irreparable damage to her and Rich's family dynamics. CR.1878.

Despite the fact that the lawyers did not know what rights Caroline and Rich possessed under prior estate plans, Abaza advised Caroline and Rich that their father's 2013 will² was problematic and needed to be challenged. CR.1888-89; CR.2383. On July 5, 2019, Rich was awaiting a distribution from Robin to his daughter; so, on Caroline's behalf, Borunda and Abaza sued Robin in Robin's individual capacity and her capacity as trustee of the Richard Allison Trust, seeking to "bust the 2013 trust." CR.1886; CR.2774-82. The lawsuit requested declaratory relief, sought an accounting, alleged breach of fiduciary duty and asked for Robin's removal as trustee. CR.1886; CR.2774-82. Caroline and Rich did not understand what this meant, and were not advised that challenging the will could put their inheritance at risk. CR.1878-79; CR.1889-90. In response, Robin claimed that Caroline and Rich forfeited their right to inheritance by contesting the will. CR.1890; *See* CR.2783-84. Borunda told Caroline not to be concerned, advising "It's a routine request and it's routinely denied." CR.2783-84.

A year after filing, Borunda and Abaza added Rich as a party, and Rich and Caroline made many requests for Borunda to get a complete accounting from Robin. *See* CR.2394. Although Borunda acknowledged that financial/accounting discovery was incomplete, the case mediated in July 2020. *See* 2396-97. Robin's lawyer,

² Dr. Allison signed a purported "Last Will and Testament" dated April 11, 2013. *See* CR.2460.

Michael Collins, reportedly claimed that Robin offered to give Rich and Caroline apartments (valued at \$6 million) to settle. CR.2451, 2452-53. However, none of the Lawyers disclosed the settlement offer and later claimed Collins lied about making it. CR.1533. The case did not settle.

Meanwhile, Caroline's costs escalated to the point that she had paid \$67,275.38 in legal fees and expert costs. CR.2540; CR.2773, CR.2785-86, CR.2787, CR.2790-91, CR.2792-93, CR.2794-95, CR.2801-02, CR.2806-07, CR.2808-09. Caroline discussed with Borunda and Abaza alternate fee arrangements as costs continued increasing (CR.2796-97, CR.2803-04). Caroline asked for an extension in April 2020 to pay Borunda's last invoice because the pandemic had strained her cash flow, so Borunda drew from the retainer. CR.2803. Afterwards, Borunda collected another \$29,542.92 through September 2020 as Caroline paid her half of the expenses. CR.2820-21, CR.2978-79, CR.2980-81, CR.2982-83. Abaza deferred payment "for time being if needed." CR.2813. Abaza told Caroline that her dispute with Robin is "a war and is going to be fight" in response to Caroline's comment about not having a "war chest" (CR.2814), a term that Borunda and Abaza used to scare Caroline (CR.1906-07).

In August 2020, Caroline texted Borunda indicating that she may have to drop the case because she could not afford the hourly fees and inquired about a contingency arrangement if the case was not going to settle. CR.2552. Borunda met

with Caroline to discuss the issue, but Borunda would not provide Caroline with a budget to complete the litigation, did not disclose that a second mediation deadline was approaching, and instead told her trial was imminent and she would “go bankrupt funding a trial.” CR.1906-08, 1910-11, 2069-70. Based on that fear and believing an expensive trial to be the only option, on October 16, 2020, Caroline signed a document titled “Employment Agreement And Power of Attorney (Change to Contingency [F]ee Agreement,” which purported to convert her hourly fee arrangement with Abaza and Borunda P.C. to a contingency fee. CR.3167-71. The agreement also added Michael Trevino, in his individual capacity, as counsel. CR.3167-3171. Like her prior fee agreement, the contingency conversion was signed only by Abaza in his individual capacity, none of the other lawyers or entities purportedly sharing in the contingent fee signed. CR.3171.

Rich was not asked to sign another agreement—or a disciplinary rule compliant consent to associate—even though Trevino was purportedly assigned a share of the contingent fee by Borunda (individually) and Abaza (individually). *See* CR.2770-71, CR.3167-3171.

Just three days after Caroline’s fee was converted, Collins wrote Trevino about engaging in a second mediation. CR.2421-22; *see also* CR.1916-17. Trevino had more calls with Collins about this, but Rich and Caroline were not told Robin wanted to mediate again until October 28, 2020. CR.2425. Prior to conversion,

Caroline would have embraced mediation, but, now on a contingency fee, Caroline wanted additional accounting data (*see* CR.2423) and wanted to know about Robin's assets and estate planning (CR.2427-28). Rich also expressed his concerns about the lack of any defined progress on auditing the finances. CR.2431-32. This information was important to evaluating transfers Robin had made to herself before and after Dr. Allison died and whether any portion of the Family Trust or principal of the Marital Trust would be invaded. Borunda responded with a long email that included a promise to "pursue a motion to compel on this and various other issues shortly." CR.2436.

On October 31, 2020 (now 17 months after having been retained), the Lawyers filed an amended pleading that asserted that Robin still had not provided a proper accounting and had misappropriated trust assets for herself. CR.2837-50 at ¶¶21-23, 31, 33. Despite these ongoing allegations, the Lawyers never filed the promised motion to compel. In fact, between the date of that promise and the second mediation on April 13, 2021, the Lawyers did not file any motions, took just one deposition, issued a few subpoenas, attended and lost a hearing on Robin's motion to expunge *lis pendens*, reviewed documents (*see* CR.1428-29, CR.1520-23), and scheduled mediation (CR.2445). Not only did the amount of work reduce after Caroline was converted, but with Caroline not helping with expenses, Borunda was past due on litigation support invoices. *See* CR.2449-50.

Now on a complete contingency fee, the Lawyers insisted on mediation. Trevino advised the mediator that “significant discovery [is] left to [be] conduct[ed] and Plaintiffs intend to pursue motions to compel proper responses if settlement is not achieved.” CR.2452. Trevino admitted that “no expert witnesses or fact witnesses have been deposed” except one. CR.2452. The Lawyers still had no idea of Robin’s net worth or even whether she had health insurance in place to protect the Marital Trust. CR.1127, CR.1537-38. The mediation went from 9:00 am, past midnight, and into the following morning. CR.922, CR.1048-49, CR.1289. Rich and Caroline were tired, hungry and told the lawyers that they could not “think anymore.” CR.889, CR.1759; CR.1931-32. In that state, the Lawyers advised Rich and Caroline to sign a Mediated Settlement Agreement (“MSA”), telling Rich and Caroline that it provided them unfettered control over a brokerage account valued at \$9.5 million owned by Minaki Limited Partnership, which would be transferred to the Allison Family Trust, and in which Rich and Caroline would be installed as co-trustees. CR.407; CR.976-77; CR.1425; CR.2176; CR.2182. Of course, that advice was wrong. CR.3344-61 at 11-14 (“Pacheco Report”); CR.3362-3415 at 2, 7, 16, 18, 22-23, 28, 41-42, 46 (“Spencer Report”). The Lawyers overlooked section 113.029 of the Estates Code, which precludes the purported unbridled access. CR.3344-61 at 11-14. Rich and Caroline signed the MSA based on that negligent advice. CR.2176, CR.2185.

Days after signing the MSA, Caroline told the Lawyers that she and Rich had been put in a “pressure cooker” at mediation, were not going to sign anything further, and that they wanted to rescind the “bad deal.” CR.2871; CR. 2475; *see also* CR.2558. Trevino met with Caroline and Rich on April 16 and told them they did “not have a good-faith basis to revoke or rescind the MSA.” CR.1600; CR.1765. Caroline and Rich believed they could do nothing but move forward with the MSA, so they did. CR.1765; CR.1935-36.

Then, another issue would arise to which Caroline and Rich expressed concern, like how they were unaware of capital gains issues and the “landmine of taxes getting this account.” CR.2494-97, 2498-2500. Caroline stressed that they were “uncomfortable with the tax implications” and that the settlement is “not something she wants to proceed with.” CR.2498-99. Trevino and Borunda would again assuage the concerns and promise to work with Rich and Caroline “to tackle the issues and limit [their] tax exposure.” CR.2494-97, CR.2910-12. This seesaw of being told the deal was good, believing it, and then having another issue arise continued for months.

Rather than revoke the MSA, as requested, the Lawyers engaged in self-serving conduct to garner settlement approval. CR.1936. The Lawyers consciously omitted language in grandchildren consent forms because they did not want to “spook” them or get “gears turning.” CR.2478; CR.1065. So, the grandkids received

a consent form giving no information to compare the benefits of signing versus not signing and that did not disclose the fees targeted at depleting the inheritance. *See* CR.2873; *see also* CR.1065-66. And the Lawyers did not provide the ad litem with information to allow a reasonable analysis as to whether the settlement was in the minor's best interest (CR.1075-76) or arrange for Caroline to talk to the ad litem (CR.1939).

Although Trevino knew Caroline raised concerns over the fees at an April 16th meeting (CR.1463), he and Borunda sought to add language into a proposed order that not only approved the MSA but found their fee “proper, reasonable and necessary” (CR.2481; CR.2488-2490; CR.2491-93).³ The Lawyers did not disclose these efforts to Rich and Caroline (*see* CR.1075; CR.1778; CR.1941), and Rich and Caroline never asked the Lawyers to file a motion for approval (*see* CR.1075; CR.1941). The language was inserted to improperly limit their liability⁴ knowing Rich and Caroline had already complained.⁵ Fortunately, Collins objected and filed the motion without it, which was approved. *See* CR.2889-2890; CR.2906-2907.

³ The Lawyers added the language despite admitting at the Final Hearing was that it was “incorrect.” CR.1074; CR.1560-61.

⁴ *See* Tex. Disciplinary R. Pro. Conduct 1.08(g) (prohibiting a lawyer from “mak[ing] an agreement prospectively limiting the lawyer's liability to a client for malpractice” unless permitted by law with full disclosure to the client).

⁵ *Stangel v. Perkins*, 87 S.W.3d 706, 710-11 (Tex. App.—Dallas 2002, no pet.) (court's approval of attorney's fees barred subsequent malpractice suit under principals of res judicata).

On November 30, 2021, Trevino falsely wrote that the Lawyers had “completed [their] representation ... when the court approved the settlement several months ago.” CR.2503-04. But the MSA required the Lawyers to amend the Family Trust (CR.2895 at (w)), which was irrevocable (*see* CR.3346, 3353-54). Under section 112.054 of the Estates Code, the trust could only be amended by a court on proof of the proper elements. *See* Tex. Estates Code § 112.054. The Lawyers missed this statute and prepared an ineffectual draft modification to the Family Trust. CR.2926-27. The Lawyers also never prepared a disclaimer of Robin’s interests under Chapter 240 of the Estates Code, and the MSA itself does not have disclaimer language, creating issues over Robin’s interest. *See* CR.3362-3415 at 40-41.

As these errors occurred, Borunda emailed Rich and Caroline in September 2021 saying that Collins threatened contempt if they did not sign the ineffectual modification. CR.2913. Though Borunda admitted that the MSA had not been “implemented” (CR.2479; CR.1069), he again told Caroline it could not be revoked and she had to sign what was an ineffectual modification (CR.2917-2918).

In response, Caroline raised “trust issue[s]” with Borunda, who for the first time ever, advised her to get another attorney. CR.2919; CR.1945-46. Caroline took that advice and consulted Jeff Crouch, who appeared as counsel. *See* CR.2923-24. But the Lawyers refused to withdraw, insisting on a substitution. CR.1947-48; *see* CR.2921-22. Crouch moved to substitute on December 7, 2021. CR.2930. That

day, Borunda filed a sworn verified intervention on Abaza's, Trevino's, and his own behalf against Caroline and Rich seeking "approximately" \$3.5 million as a fee. CR.2508, 2511. Borunda swore to this request even though (1) the purported fee claimed in the arbitration proceeding was \$730,934.52 less (CR.953-54), (2) Trevino has no written contingency fee agreement with Rich (CR.947-48; CR.1519; CR.2770-71), and (3) Caroline has no contingency fee agreement with Borunda (CR.2515-2519).

At the time of the final arbitration hearing, neither Caroline nor Rich had received any distributions from the Family Trust (CR.1952; CR.1780) and they did not—and do not—have the unfettered withdrawal rights that were promised to them (CR.3344-61 at 11-14; CR.3362-3415 at 12). Instead, they had spent substantial time, fees and expenses attempting to remedy the problems with the MSA (CR.3344-61 at 9-18 (outlining problems with the MSA)), including attempting to locate corporate trustees to manage the trust (all of whom have refused) (*see* CR.1953-54) and filing a petition to modify the trust to effectuate the terms of the MSA (which has not been granted). (CR.2570-78; CR.3344-61 at 14). In their new roles as trustees of the Family Trust, Rich and Caroline were also threatened with another lawsuit by Collins, who claimed to represent one of Rich's children. CR.2526-27; *see also* CR.1768-69. They also dealt with generation-skipping tax problems as well as overtures by Robin that she would claw this all back. *See* CR.1766-67, CR.1930-

31, CR.2254. Finally, Caroline and Rich continue to incur substantial fees and expenses defending against the Lawyers' admittedly excessive fee demand, including paying 2/3 of the arbitration costs even though there are six-lawyer claimants. *See* CR.1999-2000.

Procedural Facts Relevant To This Appeal

As noted above, Caroline (in her individual capacity) initially filed the underlying lawsuit against the Lawyers for negligence, breach of fiduciary duty, violations of the Texas Deceptive Trade Practices Act ("DTPA") and for declaratory relief. CR.8-25. Caroline alleged that the Lawyers committed negligence with respect to the MSA, failed to comply with Caroline's directions to revoke the MSA, and failed to provide Caroline with adequate advice with respect to the MSA. CR.17-18. Caroline alleged that the Lawyers breached their fiduciary duties and committed unconscionable conduct in violation of the DTPA by, among other things, "swindle[ing] her into a new contingency fee arrangement without adequate and full disclosure, and without advising her to obtain counsel to review the new transaction." CR.18-19. Caroline sought damages and also declaratory relief that "the [c]ontingency [a]greement [that contained the arbitration clause] is invalid and unenforceable because [the Lawyers] entered into this new transaction with [Caroline] through fraudulent means and without proper disclosure or consent, in violation of their fiduciary duties." CR.21-23.

The Lawyers answered and moved to compel arbitration based on the arbitration provision in the contingency fee agreement. CR.179. Caroline responded, arguing that the arbitration agreement is invalid because it was procured by fraud and violations of legal and ethical standards. CR.196-97. The Lawyers replied, relying on the conclusory affidavit of Borunda to argue that the contingency fee agreement was valid. CR.246-48. The district court granted the motion to compel arbitration. CR.257.

After the Court's ruling, arbitration proceedings were initiated between Caroline and the Lawyers. *See* CR.391-402. The Lawyers also filed an arbitration demand against Rich (in his individual capacity), and the claims were consolidated. *See* CR.391-402; *see also* CR.267-68. Based on the agreement of the parties, the Arbitrator specifically agreed to follow and apply Texas substantive law. *See* CR.271.

The Arbitrator held a seven-day evidentiary hearing in November 2023. *See* CR.268. On April 29, 2024, the Arbitrator issued an Interim Award that (1) overruled Caroline and Rich's objections to arbitration; (2) found for the six lawyers parties on their breach of contract and alternative promissory estoppel, quantum meruit claim, unjust enrichment claims and money had and received claims; (3) summarily overruled Caroline and Rich's defenses to those claims; and (4) found against Caroline and Rich on their affirmative claims. CR.283-88.

Accordingly, the Arbitrator ordered that “Nicholas Abaza, Borunda, P.C., and Michael Trevino shall recover from Ms. Allison the amount of \$1,352,149.80 as damages for Ms. Allison’s breach of contract” or alternatively Borunda, Abaza and Trevino (in their individual capacities) shall recover that amount based on their claims for promissory estoppel, unjust enrichment, quantum meruit or money had and received. CR.287-88. The Arbitrator similarly wrote that “Nicholas Abaza shall recover from Mr. Allison the amount of \$1,416,915.68 as damages for Mr. Allison’s breach of contract...[or]...[a]lternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Mr. Allison \$1,416,915.68 based on their claim for promissory estoppel...quantum meruit...unjust enrichment...money had and received.” CR.283-84, CR.287-88.

The Arbitrator ordered that award to bear pre-judgment interest at a rate of 8.5% beginning on April 13, 2021—which was the day before the MSA was even signed and well before any cause of action even accrued (CR.922, CR.1048-49)—and continuing until the date of entry of the Final Award (CR.289, 291).

The Arbitrator also ordered Rich and Caroline, to, within thirty days after entry of a Final Award, direct the trustees of the Allison Family Trust, i.e., themselves but in their trustee capacity, to “liquidate sufficient trust assets to pay the Final Award and all accrued interest in full.” CR.289. Further, the Arbitrator ordered a “freeze” on a Charles Schwab One account belonging to the Minaki

Limited Partnership (*see* CR.886) and ordered Rich and Caroline to provide appropriate personnel at Charles Schwab with a copy of the Awards, and to provide the Lawyers' counsel "each monthly statement for the Charles Schwab One account within five business days of the date of each statement, until the Final Award and all accrued interest have been paid in full." CR.290. It is undisputed, and indisputable, that Minaki was not a party to the Arbitration or any lawyers' fee contract. *See* CR.640-41. It is also undisputed that Rich and Caroline were never sued as trustees of the Allison Family Trust. CR.391-402

On June 20, 2024, the Arbitrator entered a Final Award that incorporated the Interim Award and awarded the Lawyers \$273,595.93 in attorney's fees and expenses, \$102,418 in expert witness fees, and \$78,456.27 in AAA administrative fees and arbitrator compensation. CR.318-19. The Final Award therefore ordered an award against Caroline individually for \$1,352,149.80, plus \$401,883.72 in pre-judgment interest, which, again, began to accrue on April 13, 2021 (or a total of \$1,754,033.52). CR.318-19. The Final Award also ordered an award \$1,416,915.68 against Rich individually plus \$421,133.32 in pre-judgment interest (or a total of \$1,838,049.00). CR.318-19.

Before the Final Award had been issued, the Lawyers filed a motion asking the district court to confirm, enforce and enter judgment on the arbitrator's Interim Award. CR.260. The Lawyers subsequently supplemented their filing seeking a

final judgment on both the Interim and Final Award. CR.301. Caroline and Rich filed a motion with the district court asking it to vacate, or alternatively, correct and modify the arbitration awards. CR.522, 535-36. On July 15, 2024, the district court signed an order confirming the arbitration awards. CR.4139-40. That same day, the district court signed an order denying Caroline and Rich's motion to vacate or modify the awards. CR.4142. The district court also, on July 15, 2024, signed its final judgment. CR.4144-47.

On August 14, 2024, Caroline and Rich filed a motion for new trial and/or to modify the July 15, 2024 judgment. CR.4346. By written order signed August 30, 2024, the district court denied the motion for new trial and/or to modify judgment CR.4381. This appeal followed. CR.4390-91.

SUMMARY OF THE ARGUMENT

Arbitrations are not lawless. It is axiomatic that the arbitrator has authority only to render a decision binding parties that have agreed to litigate disputes via arbitration and are parties to the arbitration. Moreover, where parties agree that the arbitrator is to apply Texas law, the arbitrator exceeds her authority by rendering a decision that clearly violates the public policy of Texas. The record establishes that the arbitrator violated these principles in rendering her Interim and Final Awards.

Specifically, the district court erred in confirming the arbitrator's Interim and Final Awards because the arbitrator exceeded her authority by (1) "freez[ing]" the

Charles Schwab account of non-party Minaki Limited Partnership; and (2) ordering Rich, in his non-party capacity as trustee of the Allison Family Trust, to “liquidate trust assets” to satisfy the arbitrator’s awards. The arbitrator had no authority to so order because Minaki had not agreed to arbitrate any dispute and was not a party to the arbitration and neither Rich nor Caroline had agreed to arbitrate any dispute in their capacities as trustees and were not before the arbitrator in their capacities as trustees of the Allison Family Trust.

Moreover, the district court erred in confirming the arbitrator’s awards for breach of contract and quasi contract because there is no written agreement signed by Rich and each of the lawyers who were awarded a contingent fee. The arbitrator exceeded her authority by rendering an award in contravention of section 82.065(a) of the Government Code and rules 1.04 and 1.02 of the Rules of Professional Conduct. Tex. Gov’t Code § 82.065(a); Tex. Disciplinary R. Prof. Conduct 1.04(a), (d); Tex. Disciplinary R. Prof. Conduct 1.02.

Further, the district court erred in confirming the arbitrator’s awards because she exceeded her authority by failing to produce a “reasoned award” detailing reasons she ruled against Rich (and Caroline) on their affirmative claims for relief and their affirmative defenses.

The district court also erred in confirming the arbitrator’s awards for attorney’s fees and litigation expenses, when awarding fees and expenses were not

contemplated by the parties' agreement and the award of same exceeded the arbitrator's authority under the arbitration agreement.

Finally, the district court erred in failing to modify the arbitration award where the arbitrator's award miscalculates interest, applying an incorrect accrual date to her calculation of pre-judgment interest.

ARGUMENTS AND AUTHORITIES

I. Standards of Review.

While Texas favors arbitration and judicial review of arbitration awards is narrow (*see E. Tex. Salt Water Disposal Co. v. Werline*, 307 S.W.3d 267, 271 (Tex. 2010)), under the Federal Arbitration Act ("FAA") and Texas General Arbitration Act ("TGAA"), a reviewing court is authorized to vacate or modify an improper arbitration award. *Turner v. Package Express, L.P.*, No. 14-12-00241-CV, 2013 Tex. App. LEXIS 6055, at *12 (Tex. App.—Houston [14th Dist.] May 16, 2013, no pet.); *Las Palmas Med. Ctr. v. Moore*, 349 S.W.3d 57, 64 (Tex. App.—El Paso 2010, no

pet.); 9 U.S.C. §§ 10-11;⁶ Tex. Civ. Prac. & Rem. Code § 171.088.⁷ A party seeking to vacate or modify an arbitration award bears the burden of presenting a complete

⁶ 9 U.S.C. § 10 provides, in pertinent part:

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

- (1) where the award was procured by corruption, fraud, or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

9 U.S.C. § 11 provides, in pertinent part:

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—

- (a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
- (b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
- (c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

⁷ Tex. Civ. Prac. & Rem. Code § 171.088 provides, in pertinent part:

(a) On application of a party, the court shall vacate an award if:

- (1) the award was obtained by corruption, fraud, or other undue means;
- (2) the rights of a party were prejudiced by:
 - (A) evident partiality by an arbitrator appointed as a neutral

record that establishes grounds for vacatur or modification. *Amoco D.T. Co. v. Occidental Petroleum Corp.*, 343 S.W.3d 837, 841 (Tex. App.—Houston [14th Dist.] 2011, no pet.). Rich and Caroline filed a complete record from the arbitration with their Response to Defendants’ Original and Supplemental Motion to Confirm, Enforce, and Enter Judgment On Arbitration Awards, and Motion to Vacate Or Alternatively Modify Or Correct Awards. *See* CR.522-8304.

This Court reviews de novo a trial court’s order confirming or vacating an arbitration award. *Crown Bus. Park v. Imran Muhammed*, No. 14-21-00317-CV, 2022 Tex. App. LEXIS 6015, at *4 (Tex. App.—Houston [14th Dist.] Aug. 18, 2022, no pet.). However, the supreme court recognizes that “an arbitration award has the effect of a judgment of a court of last resort and is entitled to great deference in a court of law.” *Cvn Grp. v. Delgado*, 95 S.W.3d 234, 245 (Tex. 2002). Therefore,

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- arbitrator;
 - (B) corruption in an arbitrator; or
 - (C) misconduct or wilful misbehavior of an arbitrator;
 - (3) the arbitrators:
 - (A) exceeded their powers;
 - (B) refused to postpone the hearing after a showing of sufficient cause for the postponement;
 - (C) refused to hear evidence material to the controversy; or
 - (D) conducted the hearing, contrary to Section 171.043 (Hearing Conducted by Arbitrators), 171.044 (Time and Place of Hearing; Notice), 171.045 (Adjournment or Postponement), 171.046 (Failure of Party to Appear), or 171.047 (Rights of Party at Hearing), in a manner that substantially prejudiced the rights of a party; or
 - (4) there was no agreement to arbitrate, the issue was not adversely determined in a proceeding under Subchapter B, and the party did not participate in the arbitration hearing without raising the objection.

“Every reasonable presumption is indulged to uphold an arbitrator’s decision.” *Id.* “In keeping with this policy favoring arbitration, a trial court may set aside an arbitration award only in limited circumstances. Absent specific common-law or statutory grounds for vacating, modifying, or correcting an award, the reviewing court must confirm it.” *Id.* While the standard of review to set aside an arbitration award is narrow, the record clearly demonstrates that the district court erred in denying Rich and Caroline’s motion to vacate or modify the arbitration awards and in confirming the arbitration awards.

II. The District Court Erred In Confirming The Arbitration Awards Because The Arbitrator Exceeded Her Authority By “Freez[ing]” The Account Of A Non-Party And By Ordering Non-Parties To “Liquidate Trust Assets.”

“Arbitrators exceed their powers when they decide matters not properly before them.” *Elgohary v. Herrera*, 405 S.W.3d 785, 789 (Tex. App.—Houston [1st Dist.] 2013, no pet.). “When the arbitrator issues an award against a party not subject to arbitration, [s]he has exceeded h[er] powers.” *Id.* Indeed, as the Supreme Court of Texas has long instructed, when an arbitrator determines a matter outside of its authority, the arbitrator’s award is void. *Gulf Oil Corp. v. Guidry*, 327 S.W.2d 406, 408 (Tex. 1959).

In her Interim Award, the Arbitrator ordered a “freeze” on the Charles Schwab account owed by Minaki Limited Partnership. CR.4181. Minaki, however, is a

distinct legal entity⁸ that had no arbitration agreement with any of the Lawyers (*see* CR.2748, CR.2754, CR.2767), was a nonparty to the arbitration proceeding (*see, e.g.,* CR.640-41), and was owned by the Allison Family Trust (*see* CR.247-48; *see also* CR.1432). Likewise, the Family Trust was not a party in the arbitration as Rich and Caroline—the trustees of the Family Trust (CR.2054-55, CR.2462-63)—were sued in their individual capacities only (CR.391).

In addition to freezing an asset of an entity not involved in the arbitration (CR.290), the Arbitrator ordered Rich and Caroline to “direct the trustee(s) of the Allison Family Trust,”—i.e., to direct themselves in their trustee capacity—to “liquidate sufficient trust assets to pay the Final Award and all accrued interest in full.” CR.267, 289.⁹ This exceeded the Arbitrator’s powers because neither Minaki

⁸ Minaki Limited Partnership was owned by Richard G. Allison Co, LLC. CR.1432. As part of the underlying settlement, that entity transferred all interests in Minaki to the Allison Family Trust. CR.1432, 1478.

⁹ The judgment confirming the arbitration award provides:

10. Mr. Allison and Ms. Allison shall, within thirty days after entry of the Final Award, (1) direct the trustee(s) of the Allison Family Trust to liquidate sufficient trust assets to pay the Final Award and all accrued interest in full. Pursuant to the MSA and the documents signed to effectuate the MSA, Mr. Allison and Ms. Allison have the legal right - and the legal obligation - to make this direction to the trustee(s) of the Family Trust. Mr. Allison and Ms. Allison are hereby ordered to do so.

11. The “freeze” on the Charles Schwab One account of the Minaki Limited Partnership referenced in the arbitrator’s September 14, 2023 order (attached to the Interim Award as Exhibit A) shall continue in full force and effect until this Final Judgment and all accrued interest have been paid in full. In order to ensure compliance with this Final Judgment, and to prevent any withdrawals or disbursements in violation of this Final Judgment, Mr. Allison and Ms. Allison are both ordered (1) to provide to appropriate personnel at Charles Schwab One a copy

nor Rich and Caroline in their trustee capacities were parties to the arbitration agreement or arbitration proceedings, and exclusive jurisdiction lies with an appropriate court (versus an arbitrator), to “make determinations of fact affecting the administration, distribution, or duration of a trust.” Tex. Prop. Code § 115.001(a)(6).

“Generally, only signatories to an arbitration agreement are bound by the agreement.” *Elgohary*, 405 S.W.3d at 789. Here, Rich and Caroline, only in their individual capacities, contracted with certain of the Lawyers. CR.2748 (“THIS AGREEMENT ... is made ... between Caroline Irene Allison, Boronda, P.C., and Nicholas Abaza”); CR.2767 (This agreement is between Richard Allison Jr. (the Client) and Nicholas Abaza, (the Attorney) ...”). Rich and Caroline executed no contract in their capacities as trustees. CR.2748; CR.2767.

The fact that an individual signed the arbitration agreement in one capacity is not clear and unmistakable evidence that the individual in a separate capacity agreed to arbitrate. *See Elgohary*, 405 S.W.3d at 789. This is because actions taken by an individual in a personal capacity are separate and distinct from actions taken in an

of this Final Judgment with all exhibits, and (2) to provide to Defendants’ counsel, Joseph R. Little, each monthly statement for the Charles Schwab One account within five business days of the date of each statement, until this Final Judgment and all accrued interest have been paid in full.

CR.4146 (Final Judgment, signed July 15, 2024).

individual's representative capacity. *See Hanschen v. Hanschen*, 605 S.W.3d 57, 57 (Tex. App.—Dallas 2020, no pet.). And it is well-settled that “a judgment cannot be entered against a trust when the trustee appeared solely in her individual capacity.” *U.S. Fid. & Guar. Co. v. Goudeau*, 272 S.W.3d 603, 609 (Tex. 2008).

Rather, “[t]o hold a trust liable, the trustee, not the trust, must be the named defendant, and the trustee must be sued in its capacity as the trustee, not just individually.” *Rainbow Tr. v. W. Am. Nat’l Bank, N.A.*, No. 2-02-347-CV, 2003 Tex. App. LEXIS 7153, at *5 (Tex. App.—Fort Worth Aug. 21, 2003, no pet.) (mem. op.). Likewise, this Court instructs that “a trustee must properly be brought before the trial court for relief to be ordered against a trust.” *Covenant Clearinghouse, LLC v. Kush & Krishna LLC*, No. 14-23-00092-CV, 2024 Tex. App. LEXIS 2793, at *7 (Tex. App.—Houston [14th Dist.] Apr. 23, 2024, pet. denied).

Such holdings are not outliers and comply with the Supreme Court of Texas’s instruction and precedent. *See Ray Malooly Tr. v. Juhl*, 186 S.W.3d 568, 570 (Tex. 2006) (noting “[t]he general rule in Texas (and elsewhere) has long been that suits against a trust must be brought against its legal representative, the trustee”); *see also In re Ashton*, 266 S.W.3d 602, 604 (Tex. App.—Dallas 2008, orig. proceeding) (“Well-settled law requires a suit against a trust to be brought against its legal representative, the trustee. Thus, for relief to be ordered against a trust, its trustee must be properly before the trial court as a result of service, acceptance, or waiver

of process, or an appearance. Stated differently, for relief to be granted against a trust, the trust--through its trustee--must be made a party to the action.”) (internal citations omitted); *Herbig v. Welch*, No. 01-22-00080-CV, 2023 Tex. App. LEXIS 4505, at *35 (Tex. App.—Houston [1st Dist.] June 27, 2023, no pet.) (raising jurisdictional issue of trustee capacity sua sponte and holding that trial court’s order granting relief against a trust is “void for lack of jurisdiction” where the trustee is not sued in his trustee capacity). So clear is this law that even the Lawyers acknowledged it in the arbitration when Borunda testified that it is “axiomatic”¹⁰ that (1) a person acting in a trustee capacity differs from a person acting in an individual capacity, and (2) the assets of a trust are different than assets held individually. *See* CR.3344-61 at 11-14; CR.3362-3415 at 17-19.

Regardless, the Lawyers did not name Rich (or Caroline) as a defendant in the arbitration in any trustee capacity. *See* CR.391. And the Lawyers did not name Minaki as a defendant in the arbitration. *See* CR.391. Because Minaki and Rich/Caroline in their trustee capacities were nonparties to the arbitration agreement and the arbitration proceedings, the Arbitrator had no power to place a freeze on Minaki’s account or to order Rich and Caroline to act in a trustee capacity to

¹⁰ CR.3503 (“Q.Did you agree or disagree with her characterization that assets held in an individual capacity are different than assets held in a trust capacity? A.I think that's an axiomatic proposition. Q.And likewise, would you agree there’s a difference between someone acting in their capacity as a trustee versus someone acting in their individual capacity? MR. LITTLE:· Objection, form A.Yes.”).

“liquidate sufficient trust assets” from the Family Trust to satisfy improper awards rendered against them individually. *See Rapid Settlements, Ltd. v. Green*, 294 S.W.3d 701, 707 (Tex. App.—Houston [1st Dist.] 2009, no pet.) (“trial court did not err by vacating the arbitrator’s award because the arbitrator exceeded his powers in issuing an award against a party not subject to arbitration.”); *Leshin v. Oliva*, No. 04-14-00657-CV, 2015 Tex. App. LEXIS 7802, at *22 (Tex. App.—San Antonio July 29, 2015, no pet.) (arbitrator exceeded his powers by implicitly determining that individual who signed arbitration agreement in trustee capacity “was a party to the arbitration agreement, and thereby bound by any award in his individual capacity.”); *In re Estate of Hendricks*, No. 05-02-00871-CV, 2002 Tex. App. LEXIS 4560, at *1-3 (Tex. App.—Dallas June 27, 2002, no pet.) (arbitration agreement with defendant signed by individual did not bind individual in her capacity as executrix of estate to arbitrate estate’s claims against the defendant).

Indeed, *Tomlinson v. Khoury*, 624 S.W.3d 601 (Tex. App.—Houston [1st Dist.] 2020, pet. denied) is instructive. There, the plaintiff sued a defendant in his individual capacity for a business investment gone wrong. *Id.* at 602. The plaintiff did or sue any trust or name the defendant in his capacity as trustee of any trust. *Id.* The plaintiff appeared and answered only in his individual capacity. *Id.* Following a jury trial, the trial court rendered judgment against the defendant for more than \$1 million. *Id.* The plaintiff then sought to collect the judgment through a turnover

order from a trust that the defendant was the sole beneficiary of. *Id.* at 604. The trial court found the trust not valid, and ordered the defendant to turn over assets “previously held out” as being part of the trust to the sheriff and ordered the sheriff to “treat all assets previously held as trust property” as the defendant’s property. *Id.* at 604-605. The defendant appealed.

The First Court of Appeals reversed. Reiterating that “a trust is not a separate legal entity, but instead is a fiduciary relationship between the trustee and the trust property” and that “in all suits by or against a trustee and all proceedings concerning trusts, the trustee is a necessary party to the action.” *Id.* at 608 (citing Tex. Prop. Code §§ 115.001(a), 115.011(b)(4)). “And where the trustee is not properly before the court as a result of service, acceptance, waiver of process, or an appearance, Texas courts have invalidated orders that grant relief against a trust.” *Id.* at 608. The court held the order of the trial court void because “[a]lthough [the defendant] was before the court in his individual capacity, he was not sued, and did not appear, in his capacity as trustee of the [t]rust.” *Id.* at 610. The trial court therefore “lacked jurisdiction over the [t]rust and thus . . . erroneously required the turnover of [t]rust assets.” *Id.*

As in these cases, the arbitrator exceeded her authority by ordering Rich and Caroline to act in their trustee capacities to “liquidate trust assets” and disregarding the jurisdictional deficiencies by rendering awards against parties not before the

arbitrator and who had not agreed to arbitrate. The district court erred in refusing to vacate the arbitration award on this basis pursuant to the FAA and TGAA. 9 U.S.C. § 10; Tex. Civ. Prac. & Rem. Code § 171.088.¹¹

III. The District Court Erred In Confirming The Arbitration Award Because The Arbitrator Exceeded Her Powers By Enforcing A Legal Fee Contract That Violates Texas Public Policy.

A. The Federal Arbitration Act, The Texas General Arbitration Act, And The Supreme Court Of Texas’s *Nafta* Opinion Permit Judicial Review.

Again, the U.S. Code and Civil Practice and Remedies Code provide that an arbitrator’s award “shall” be vacated by a court when the arbitrator “exceeded their powers.” Tex. Civ. Prac. & Rem. Code § 171.088(a); 9 U.S.C. § 10(a)(4). “In arbitration conducted by agreement of the parties, the rule is well established that an arbitrator derives his power from the parties’ agreement to submit to arbitration.” *Nafta Traders, Inc. v. Quinn*, 339 S.W.3d 84, 90 (Tex. 2011) (internal quotations

¹¹ It is also relevant to note that, even if the Lawyers had sought to name Rich as a defendant in a trustee capacity—which they did not—the Arbitrator would not have had jurisdiction over any claims against Rich in such a capacity as Rich had not agreed to arbitrate in that capacity. *See* CR.2767. Further, even if Rich had so agreed, the Arbitrator still could not have had jurisdiction over the trust because, under Texas law, a district court (and probate court) “has original and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts[.]” Tex. Prop. Code § 115.001(a).

Likewise, even if the Lawyers had sought to name Minaki as a defendant—which they did not—the Arbitrator would not have had jurisdiction over any claims against Minaki as Minaki was not a party to the Lawyers’ retention agreements and had not agreed to arbitrate. CR.2754-58, CR.2767-71, CR.3167-71. Accordingly, the Arbitrator would have lacked authority to freeze Minaki’s assets. *McArdle v. Nelson*, No. 03-08-00057-CV, 2010 Tex. App. LEXIS 2375, at *10 (Tex. App.—Austin Mar. 31, 2010, no pet.) (“An arbitration panel does indeed ‘exceed its powers’ if it presides over claims or persons beyond its jurisdiction.”).

omitted). Here, the parties agreed, and the Arbitrator ordered, that Texas substantive law would be followed, as well as Texas procedural rules if not covered by the rules governing the American Arbitration Association (“AAA”). *See* CR.614, CR.2991 at 26. In other words, the Arbitrator did not have the power to render a decision that violates Texas public policy. *See Nafta*, 339 S.W.3d at 90; *see also Jefferson Cty. v. Jefferson Cty. Constables Ass’n*, 546 S.W.3d 661, 665 (Tex. 2018) (“a contract’s illegality forecloses its enforcement regardless of whether it has been blessed by an arbitrator”). Accordingly, this Court has appellate jurisdiction to review the record to determine whether the arbitrator exceeded her authority by rendering decision in violation of Texas public policy. *Cvn Grp. v. Delgado*, 95 S.W.3d 234, 234 (Tex. 2002) (holding that, while the scope of review is narrow, an appellate court may set aside an arbitrator’s award on public policy grounds where “the award clearly violates carefully articulated, fundamental policy.”).

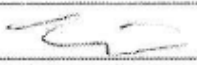
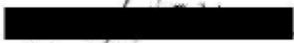
B. Awarding A Contingent Fee To Lawyers Who Have Not Executed Or Signed A Written Contract Affording Such A Fee Violates Texas Public Policy.

As noted above, a contingent fee agreement was entered into between Rich Allison, on the one hand, and Nick Abaza, on the other. CR.2771. No others were parties to the agreement, and the contract was signed only by Rich and Abaza in

their individual capacities. CR.2771.¹² Of course, under Texas law, a lawyer is not entitled to recover a contingent fee from a client in the absence of a contract signed by the lawyer permitting such a fee. Tex. Gov't Code § 82.065(a); Tex. Disciplinary R. Prof. Conduct 1.04(a), (d).

Specifically, Disciplinary Rule 1.04(f) and section 82.065 of the Texas Government Code require contingency fee agreements to be in writing and signed by the client and the lawyer. Tex. Gov't Code § 82.065(a) (“[a] contingent fee contract for legal services must be in writing and signed by the attorney and client.”);

¹² The signature page of the Rich/Abaza contract provides:

☒		
Client (signature)		Telephone Number(s)
		
Street Address		Date of Birth
		last three numbers
City, State & Zip		Social Security Number
		
E-mail Address		

x /s/ nick abaza

Tex. Disciplinary R. Prof. Conduct 1.04(a), (d) (“[a] division or arrangement for division of a fee between lawyers who are not in the same firm may be made only if ... the client consents in writing to the terms of the arrangement prior to the time of the association or referral proposed.”).

While disciplinary rules do not provide a private right of action, “courts may examine [them] to discern the policies and protections embodied in them as an aid in deciding questions of attorney civil liability. *Gillespite v. Hernden*, 516 S.W.3d 541, 547 (Tex. App.—San Antonio 2016, pet. denied). For instance, the supreme court has stated that a fee agreement that fails to comply with the disciplinary rules “violates public policy and is unenforceable.” *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 205 (Tex. 2002); *see also Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 563 (Tex. 2006) (voiding contractual provision that violated Disciplinary Rules 1.04 and 1.08). The supreme court has also held that contingency fee contracts which do not comply with section 82.065(a) of the Texas Government Code are void and unenforceable as a matter of law. *Hill v. Shamoun & Norman, LLP*, 544 S.W.3d 724, 733 (Tex. 2018). This Court has also refused to enforce contracts that violate the disciplinary rules. *See Reich & Binstock, LLP v. Scates*, 455 S.W.3d 178, 181 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (“if the Agreement violated the Disciplinary Rules, it is unenforceable as against public policy.”).

Here the facts were not disputed as to the contracting parties. Neither Trevino nor his law firm had a contingent fee agreement with Rich (CR.2767-71), yet the arbitrator awarded them a contingent fee in violation of Texas public policy requiring contingent fee agreements to be in writing (CR.626-27). Under Texas law, if a lawyer does not execute a written contract with a client, that lawyer is not entitled to a contingent fee. *See Johnson*, 73 S.W.3d at 205; *Law Office of Andrew L. Jones, P.C. v. Schachar*, No. 05-19-00188-CV, 2020 Tex. App. LEXIS 1160, at *10-11 (Tex. App.—Dallas Feb. 11, 2020, no pet.) (affirming dismissal of breach of contract claim for oral fee sharing agreement); *Sanes v. Clark*, 25 S.W.3d 800, 802 (Tex. App.—Waco 2000, pet. denied) (one attorney could not enforce contingency fee contract that was not in writing signed by him even though he was associated by another attorney).

Moreover, while the Rich/Abaza contract contemplates that Borunda would share in a contingent fee, there is no writing signed by Rich and Borunda permitting Borunda (or Borunda, P.C.) any such recovery. *See* CR.2767-71. Accordingly, the Arbitrator's interim and final awards, which order Rich to pay Borunda, Borunda P.C., Trevino, and the Law Office of Michael A. Trevino, P.L.L.C., a contingent fee of \$1,416,915.68 (CR.626-27, CR.637-39) violates Texas public policy and is void. Tex. Gov't Code § 82.065(a); Tex. Disciplinary R. Prof. Conduct 1.04(a), (d).

Because the Arbitrator's award violates the public policy of Texas, the Lawyers' claim for breach of contract and the breach of contract award set forth in the Interim and Final Awards should be vacated and set aside. Because the Arbitrator awarded the Lawyers relief on that claim contrary to Texas law, she exceeded her powers, and the district court erred in confirming those awards. 9 U.S.C. § 10; Tex. Civ. Prac. & Rem. Code § 171.088.

C. The Contract Also Violates Texas Public Policy By Prohibiting Settlement Without The Lawyer's Consent.

Texas law also renders unenforceable as against public policy any fee agreement that prohibits a client from settling without the lawyers' consent. *See* Tex. Disciplinary R. Prof. Conduct 1.02(a)(2); *see also Lopez v. Maldonado*, No. 13-15-00042-CV, 2016 Tex. App. LEXIS 13524, at *3 (Tex. App.—Corpus Christi Dec. 21, 2016, no pet.) (mem. op.); *Davis Law Firm v. Bates*, No. 13-13-00209-CV, 2014 Tex. App. LEXIS 1582, at *10-11 (Tex. App.—Corpus Christi Feb. 13, 2014, no pet.) (mem. op.); *In re Cyr*, 2020 U.S.Dist. LEXIS 257924 (W.D. Tex. 2020). Rule 1.02(a)(2) requires an attorney to “abide by a client’s decision” regarding whether to accept a settlement offer. Tex. Disciplinary R. Prof. Conduct 1.02(a)(2). Comment 5 following the rule provides, in pertinent part: “An agreement concerning the scope of representation must accord with the Disciplinary Rules of Professional Conduct and other law. Thus, the client may not be asked . . . to surrender . . . the

right to settle or continue litigation that the lawyer might wish to handle differently.”
Id., cmt. 5.

The fee contracts include an unethical provision stating: “Client will not make a settlement or offer of settlement without the approval of Attorneys.” CR.331. Abaza, the drafter (CR.1219-20), agrees this provision “run[s] afoul” of the disciplinary rules (CR.359-60). The fee contract has no severability clause (*see* CR.331-35), and cases that have considered a Disciplinary Rule 1.02 violation have not severed that provision to enforce the contract. *See Davis*, 2014 Tex. App. LEXIS 1582, at *10-11; *Lopez*, 2016 Tex. App. LEXIS 13524, at *3. Accordingly, the fee contract is void and unenforceable, and the Arbitrator exceeded her authority by enforcing a contract that violates the public policy of Texas. *Id.* The district court erred when it declined to vacate the Arbitrator’s awards on this basis. 9 U.S.C. § 10; Tex. Civ. Prac. & Rem. Code § 171.088.

D. The Arbitrator’s Alternative Awards Under The Lawyers’ Equitable Theories Likewise Violate Texas Public Policy.

Apparently recognizing that her breach of contract award rests on very shaky ground given the absence of a contract signed by each of the lawyers to which she awarded a contingent fee and the inclusion of a non-severable provision violating the disciplinary rules, the Arbitrator ruled that, even if the “contractual promises to pay a 35% contingent fee ... were held to be unenforceable,” the Lawyers are entitled to recover under various quasi-contract/equitable theories. CR.628-29 (awarding

alternative relief under promissory estoppel, quantum meruit, unjust enrichment, and money had and received theories). However, in doing so, the Arbitrator again violated the clear public policy of the state and exceeded her authority.

First, under Texas law, to recover under the quasi-contract claims, the Lawyers were required to “present evidence of the reasonable value of [their] services.” *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 565-66 (Tex. 2006). Aside from the invoices Caroline paid to the Lawyers before her fee arrangement was converted from hourly billing, no lawyer logged their hours, tasks, or gave hourly rates. CR.1088-89 (Borunda), CR.1236 (Abaza), CR.1525 (Trevino). While Borunda testified that the value of the services rendered is the value of the 35% contingent fee (CR.1091), which testimony the Arbitrator seemingly relied as she found the amount of the 35% contingency fee (\$1,416,915.68) to be the damages for the quasi-contractual claims (CR.267, 285-87), as a matter of Texas law, an attorney cannot support quasi-contractual claims with mere contingent-fee percentages. *See Hoover*, 206 S.W.3d at 565-66 (Tex. 2006) (holding that law firm “no longer has a claim for quantum meruit” arising from services provided under a contingent-fee contract where it had failed to present evidence of the reasonable value of those services); *see also Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 498 (Tex. 2019) (holding that, under Texas law, “the fact finder’s starting point for calculating an attorney’s fee award is determining the reasonable hours worked

multiplied by a reasonable hourly rate, and the fee claimant bears the burden of providing sufficient evidence on both counts).

Second, and perhaps more importantly, allowing licensed lawyers to utilize “quasi-contractual” theories to recover a contingent fee without legally compliant written contingency fee agreements signed by all attorneys and the clients renders section 82.065 and Disciplinary Rule 1.04 meaningless and violates the public policy of Texas as set by the Legislature. Indeed, the Supreme Court of Texas specifically instructs that the doctrine of promissory estoppel is not a valid “exception” to enforce contracts of licensed professionals where a licensed professional failed to comply with the applicable statutes governing its contracts. *Trammel Crow Co. No. 60 v. Harkinson*, 944 S.W.2d 631, 636-37 (Tex. 1997) (holding that real estate brokers cannot “forbear from acting in reliance on anything less than a signed written commission agreement” and, when they do, “[they do] so at [their] own peril.”).

This has long been the rule in Texas. For example, in *Landis v. W. H. Fuqua, Inc.*, real estate brokers sued to recover a commission on an oral contract, asserting that they were entitled to a recovery in quantum meruit despite statutes requiring real estate contracts to be in writing and signed by the promisor. 159 S.W.2d 228, 228-29 (Tex. Civ. App.—Amarillo 1942, writ ref’d). The court rejected the argument because permitting recovery to state licensed professionals governed by statute would render nugatory the statute requiring a written agreement. *Id.* at 230-31.

Following rendition of the court of appeals' judgment, the real estate brokers petitioned the Supreme Court of Texas for review, which refused their petition for writ of error. *Id.* Accordingly, the Amarillo Court of Appeals' opinion and judgment holds same precedential value as an opinion of the Texas Supreme Court. THE GREENBOOK: TEXAS RULES OF FORM, Appendix E at 111 (12th ed. 2010) (noting where a writ of error was "refused" by the supreme court, the "judgment of the court of civil appeals is correct. Such cases have equal precedential value with the Texas Supreme Court's own opinions.").

Likewise, in *Hill v. Shamoun & Norman, LLP*, the Supreme Court of Texas held that, while an attorney working for a client without a written contract is entitled to recover the reasonable value for a reasonable number of hours worked for a client under a quantum meruit theory, a lawyer in such an instance *is not* entitled to a contingent fee based on the results of a case and that "neither the fee an attorney stood to earn under such an unenforceable fee agreement nor the specific result that would entitle the attorney to that contingent fee under the agreement constitutes evidence to be considered[.]" 544 S.W.3d 724, 744 (Tex. 2018); *see also Quigley v. Bennett*, 227 S.W.3d 51, 53 (Tex. 2007) (holding evidence of the value of an agreement that is unenforceable under the statute of frauds "cannot be given any weight or effect and legally cannot be considered as evidence supporting the jury's finding."). Accordingly, pursuant the supreme court's precedents (and precedent

bearing the precedential weight of a supreme court opinion), the Arbitrator exceeded her authority and violated the public policy of Texas by rubber-stamping the Lawyers' 35% contingent fee (\$1,416,915.68) request disguised by various equitable theories asserted. CR.288-89. The Arbitrator's violation of Texas public policy establishes that she exceeded her authority and that her quasi-contractual awards should be vacated. 9 U.S.C. § 10; Tex. Civ. Prac. & Rem. Code § 171.088.

Furthermore, as to Abaza, if the court were to conclude, despite the contract's admitted non-compliance with rule 1.02, that the Rich/Abaza contract is valid,¹³ then the Arbitrator exceeded her authority in rendering an award on the quasi-contract claims because there would be an express contract governing his relationship with Rich. CR.2761-72. Under Texas law, "when a valid, express contract covers the subject matter of the parties' dispute, there can be no recovery under a quasi-contract theory." *Excess Underwriters at Lloyd's v. Frank's Casing Crew & Rental Tools, Inc.*, 246 S.W.3d 42, 50 (Tex. 2008). Here, there is a written contract between Rich and Abaza (individually) covering the legal services at issue. CR.2767-71. If the contract is valid, any "quasi-contractual" claim—i.e., the claims for quantum meruit, unjust enrichment, promissory estoppel, and money had and received—would fail as a matter of law. *See Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 683-84

¹³ Of course, if that were the case then the arbitrator would have awarded Abaza an unconscionably high fee divorced from the parties' agreement which limited Abaza to 40% of the 35% contingency fee. CR.2770-71.

(Tex. 2000) (holding unjust enrichment inapplicable when parties have express contract covering the subject matter of the parties' dispute); *Kam v. Karedia*, No. 03-18-00526-CV, 2019 Tex. App. LEXIS 10819 (Tex. App.—Austin Dec. 13, 2019, no pet.) (mem. op.) (quantum meruit and unjust enrichment claims failed because express contract existed); *Dardas v. Fleming, Hovenkamp & Grayson, P.C.*, 194 S.W.3d 603, 621 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) (promissory estoppel and quantum meruit failed because express contract governed).

IV. The District Court Erred In Confirming The Arbitration Award Because The Arbitrator Failed To Properly Execute Her Powers By Failing To Provide A Reasoned Basis For Overruling Rich's Affirmative Claims And Defenses.

A court must also vacate an arbitration award “if the arbitrators so imperfectly executed their powers that a mutual, final, and definite award upon the subject matter submitted was not made.” *Stage Stores, Inc. v. Gunnerson*, 477 S.W.3d 848, 855 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (quoting 9 U.S.C. § 10(a)(4)) (internal quotations omitted). That occurs when, for instance, the arbitrator agrees to, but fails to submit, a “reasoned award.” *See Stage Stores*, 477 S.W.3d 848, 863. Here, the arbitrator failed to provide a “reasoned award” in disposing of Rich's claims for affirmative relief and his affirmative defenses. *See* CR.485-509.

Although an arbitrator is generally not required to provide a reasoned award, “the arbitrator's notation in the scheduling order that the parties agreed to a reasoned award functions either as the consent of the arbitrator to amend the rules or as a

determination by the arbitrator that a reasoned award was appropriate.” *Stage Stores*, 477 S.W.3d at 857. Here, the Arbitrator agreed to provide a reasoned award as noted in the scheduling order. CR.2987, 2992 (Arbitration Order No. 8 at 31) (“Judge Ashby will write a reasoned final award.”) She also noted this in the title of the “Reasoned Interim Award.” CR.485. Accordingly, the Arbitrator could not merely “announce[] a result without any reasoning or explanation.” *Stage Stores*, 477 S.W.3d at 857. Rather, she was required to submit a reasoned award that contained a “detailed listing or mention of expressions or statements offered as a justification” for her decision respect to each of the claims or “key defenses.” *Id.* at 859-860. The Arbitrator did not do so. CR.485-509.

The Interim Award merely announces a result as to Caroline and Rich’s claims and defenses without any reasoning or explanation. CR.505-06. Rich asserted affirmative claims for negligence, breach of fiduciary duty, fraud, violations of the DTPA, and an accounting. CR.369, 381-85. For each these affirmative claims, the Interim Award merely states the result: “Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for [negligence, breach of fiduciary duty, violations of the Texas Deceptive Trade Practices Act, fraud, declaratory relief, an accounting].” CR.505-06. The Interim Award is even more deficient as to Rich (and Caroline’s) affirmative defenses, which alleged that the Lawyers’ claims were barred by lack of recovery, defects in the underlying settlement giving rise to the

recovery, prior material breach, fraud and estoppel, offset, credit or recoupment, and illegality or unconscionability. CR.369, 373-75. The Interim Award merely states that “[n]either Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on any defense asserted in his or her pleadings” without even mentioning what those defenses are. CR.505-06.

While Rich disagrees with the result reached by the arbitrator because he presented sufficient evidence to establish his affirmative claims and defenses (as is clear from the full record), his complaint here is more fundamental because the arbitrator’s award does not provide any “listing or mention of expressions or statements offered as a justification” for why Rich is not entitled to any relief on his affirmative claims or defenses. *See Stage Stores*, 477 S.W.3d at 863. Rich is entitled to know why the arbitrator rejected his claims and defenses and the district court erred in confirming an award lacking that information. *Id.* (holding district court erred in confirming award when arbitrator disposed of claim and key defenses without “provid[ing] any amount of reasoning”); 9 U.S.C. § 10(a)(4).

V. The District Court Erred In Confirming The Arbitration Award Because The Arbitrator Exceeded Her Authority By Awarding Attorney’s Fees And Expenses Not Authorized By The Parties’ Agreement.

The arbitrator also exceeded her authority by awarding the Lawyers’ fees and expenses not authorized by the Rich/Abaza agreement. An arbitrator exceeds its powers by awarding attorney’s fees and expenses not provided for in the agreement

to arbitrate. *In re C.A.K.*, No. 04-05-00487-CV, 2006 Tex. App. LEXIS 8, at *4 (Tex. App.—San Antonio Jan. 4, 2006, pet. denied). Again, where an arbitrator exceeds her authority in issuing an award, it is long-settled under Texas law that the arbitrator’s award is void. *Gulf Oil Corp. v. Guidry*, 327 S.W.2d at 408.

While the Rich/Abaza agreement is silent on the issue of attorney’s fees or expenses, it incorporates the AAA’s commercial rules. CR.2770. When an arbitration agreement incorporates by reference outside rules, as it does here, those rules will apply unless they conflict with the express terms of the arbitration agreement. *America Life, Inc. v. Myer*, 440 S.W.3d 18, 24 (Tex. 2014). The AAA commercial rule addressing awards of attorney’s fees and expenses provides that in the final award, the arbitrator shall assess fees, expenses and compensation provided in Sections R-53, R-54, and R-55, and may include “an award of attorneys’ fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.” AAA Comm. Rule R-47(c), (d). The AAA’s commercial rules require the arbitrator to apply this rule “insofar as [it] relate[s] to the arbitrator’s powers and duties.” AAA Comm. Rule R-8. The Arbitrator exceeded her powers by awarding fees and expenses not authorized by law or the parties’ agreement.

“The arbitrators shall award attorney’s fees as additional sums required to be paid under the award only if the fees are provided for: (1) in the agreement to arbitrate; or (2) by law for a recovery in a civil action in the district court on a cause

of action on which any part of the award is based.” Tex. Civ. Prac. & Rem. Code § 171.048(c). Here, the arbitration provision does not permit the Arbitrator to award attorney’s fees. CR.6770. Therefore, the Arbitrator could award fees only if such fees were permitted by statute. *MBM Fin. Corp. v. Woodlands Operating Co.*, 292 S.W.3d 660, 669 (Tex. 2009). No statute permits recovery of attorney’s fees for defending against claims for legal malpractice, which “sound in tort.” *Stanfield v. Neubaum*, 494 S.W.3d 90, 97 (Tex. 2016); *Metro. Life Ins. Co. v. Haney*, 987 S.W.2d 236, 243-44 (Tex. App.—Houston [14th Dist.] 1999, pet. denied) (“Attorney’s fees, however, are not recoverable on tort claims.”). “Attorney’s fees that relate solely to a claim for which fees are unrecoverable must be segregated.” *Clearview Props., L.P. v. Prop. Tex. SC One Corp.*, 287 S.W.3d 132, 143 (Tex. App.—Houston [14th Dist.] 2009, pet. denied). It is undisputed, and indisputable, that the Lawyers incurred fees in the arbitration for prosecuting their breach of contract and quasi-contract claims as well as for defending against Rich’s claims for legal malpractice and breach of fiduciary duty.

Despite Texas law mandating that such fees be segregated, the Arbitrator concluded segregation was not necessary because the “claims and defenses factually overlap, arise out of the same transactions, and are so intertwined and inseparable as to make segregation impractical or impossible.” CR.318. However, intertwined facts do not make otherwise unrecoverable fees recoverable; instead, “it is only when

discrete legal services advance both a recoverable and unrecoverable claim that they are so intertwined that they need not be segregated.” *Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 311 (Tex. 2006). Even amongst intertwined claims, parties seeking attorney’s fees bear the burden of demonstrating that segregation is not required. *See 2017 Yale Dev., LLC v. Steadfast Funding, LLC*, No. 01-20-00027-CV, 2023 Tex. App. LEXIS 2904, at *85 (Tex. App.—Houston [1st Dist.] May 2, 2023, pet. denied). The record establishes that the Lawyers completely failed to meet that burden.

To begin with, the Lawyers’ fee invoices are so heavily redacted that it was impossible for the Arbitrator to have sufficient evidence to determine whether the amount requested advanced the contract claim or defense of the tort claims. *See McGibney v. Rauhauser*, 549 S.W.3d 816, 824-25 (Tex. App.—Fort Worth 2018, pet. denied). While some of the billing entries showed with reasonable clarity the types of tasks that were performed, the redactions eliminated virtually all specificity about those tasks and therefore largely prevent a meaningful evaluation of their reasonableness and necessity as to the recoverable breach of contract claim. *See Person v. MC Simpsonville, SC-I-UT, LLC*, No. 03-20-00560-CV, 2021 Tex. App. LEXIS 7155, at *22 (Tex. App.—Austin Aug. 27, 2021, no pet.) (mem. op.). For example:

1/10/2022	JRL	Telephone conference with clients [REDACTED]	0.50	\$150.00
1/19/2022	JRL	Telephone conference with clients [REDACTED]	0.60	\$180.00

3/9/2022	JRL	Correspondence to and from clients regarding [REDACTED]	1.20	\$360.00
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4/3/2023	JRL	Legal research regarding [REDACTED]	2.30	\$690.00
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7/11/2023	JRL	Telephone conference with clients regarding [REDACTED]	1.30	\$390.00
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	JRL	Research regarding [REDACTED]	5.60	\$1,680.00
8/17/2023	JRL	[REDACTED]	6.80	\$2,040.00

CR.3181.

13112	TIME	Joe	0.40	200.00	80.00
2/7/2022		Communication/OUT	0.00	T@4	
Billed	G:10551	4/29/2023 Attorney Protective.Trev	0.00		
Telephone conference with [REDACTED] regarding L120 Analysis/Strategy			0.00		

13130	TIME	Joe	3.10	200.00	620.00
2/14/2022		Research	0.00	T@4	
Billed	G:10551	4/29/2023 Attorney Protective.Trev	0.00		
Legal research regarding [REDACTED] L120 Analysis/Strategy			0.00		

13135	TIME	Joe	0.60	200.00	120.00
2/15/2022		Communication/CLI	0.00	T@4	
Billed	G:10551	4/29/2023 Attorney Protective.Trev	0.00		
Telephone conferences with client regarding [REDACTED] L120 Analysis/Strategy			0.00		

14367	TIME	Joe	0.10	200.00	20.00
12/7/2022		Communication/OUT	0.00	T@4	
Billed	G:10566	7/16/2023 Attorney Protective.Trev	0.00		
Correspondence to [REDACTED] regarding L210 Pleadings			0.00		

14370	TIME	Joe	1.50	200.00	300.00
12/8/2022		Communication/CLI	0.00	T@4	
Billed	G:10566	7/16/2023 Attorney Protective.Trev	0.00		
Meeting with client regarding [REDACTED] L120 Analysis/Strategy			0.00		

14760	TIME	Joe	0.60	200.00	120.00
3/9/2023		Research	0.00	T@4	
Billed	G:10575	8/25/2023 Attorney Protective.Trev	0.00		
Legal research regarding [REDACTED] L120 Analysis/Strategy			0.00		

15162	TIME	Joe	0.20	200.00	40.00
5/30/2023		Communication/OUT	0.00	T@4	
Billed	G:10583	9/24/2023 Attorney Protective.Trev	0.00		
Telephone conference with [REDACTED] regarding L420 Expert Witnesses			0.00		

15189	TIME	Joe	2.90	200.00	580.00
6/6/2023		Research	0.00	T@4	
Billed	G:10583	9/24/2023 Attorney Protective.Trev	0.00		
Research regarding [REDACTED] L420 Expert Witnesses			0.00		

CR.3188, 3195, 3199, 3201.

Indeed, most entries in the redacted billing records show only that the Lawyers’ counsel had a telephone conference with somebody about something, emailed somebody about something, discussed something with somebody, reviewed something, researched something, drafted something, coordinated something, or worked on something. *See* CR.3181-3229. Accordingly, the record is not sufficient, in light of the supreme court’s admonitions concerning the need to identify specific tasks performed, to allow the Arbitrator to evaluate the reasonableness and necessity of hours worked and whether that work was performed related to the recoverable breach of contract claim or in defense of the tort claims.

Moreover, some of the unredacted entries establish that the Lawyer’s counsel performed work *solely* related to the tort claims. For instance, entries relating to discussions with the “standard of care” expert to rebut Caroline’s negligence claim:

15908	TIME	Joe	1.30	200.00	260.00
10/19/2023		Communication/OUT	0.00	T@4	
Billed	G:10623	1/4/2024 Attorney Protective,Trev	0.00		
Telephone conference with our standard of care expert regarding opinions.			L420 Expert Witnesses	0.00	

15911	TIME	Joe	4.30	200.00	860.00
10/20/2023		Plan and prepare for	0.00	T@4	
Billed	G:10623	1/4/2024 Attorney Protective,Trev	0.00		
Prepare for conference call with client and our standard of care expert regarding opinions.			L420 Expert Witnesses	0.00	

15912	TIME	Joe	2.00	200.00	400.00
10/20/2023		Appear for/attend	0.00	T@4	
Billed	G:10623	1/4/2024 Attorney Protective,Trev	0.00		
Attend conference call with client and our standard of care expert.			L420 Expert Witnesses	0.00	

15963	TIME	Joe	1.40	200.00	280.00
10/31/2023		Communication/OUT	0.00	T@4	
Billed	G:10623	1/4/2024 Attorney Protective,Trev	0.00		
Telephone conferences with our standard of care expert regarding trial testimony.			L420 Expert Witnesses	0.00	

16242	TIME	Joe	0.40	200.00	80.00
1/15/2024		Communication/OUT	0.00	T@4	
WIP		Attorney Protective,Trev	0.00		
Telephone conferences with damages expert and standard of care expert regarding reports.			L420 Expert Witnesses	0.00	

CR.3214, 3217, 3225. Likewise, entries for time billed by counsel communicating with the “ethics expert” to rebut Caroline’s claim for breach of fiduciary duty:

15731	TIME	Joe	0.20	200.00	40.00
9/13/2023		Communication/OUT	0.00	T@4	
Billed	G:10605	11/4/2023 Attorney Protective Trev	0.00		
Telephone conference with ethics expert regarding		L420 Expert Witnesses	0.00		

15965	TIME	Joe	0.70	200.00	140.00
10/31/2023		Communication/OUT	0.00	T@4	
Billed	G:10623	1/4/2024 Attorney Protective Trev	0.00		
Telephone conference with our ethics expert regarding recent depositions.		L420 Expert Witnesses	0.00		

CR.3209, 3217.

“[W]hen, as here, it cannot be denied that at least some of the attorney’s fees are attributable only to claims for which fees are not recoverable, segregation of fees ought to be required[.]” *Tony Gullo Motors*, 212 S.W.3d at 314. Indeed, even though the Lawyers took the position in arbitration that segregation is not required, their counsel, in fact, segregated invoices relating to the recoverable “Fee Claims,” which were paid by the Lawyers, and those paid by Trevino’s insurer in defense of the malpractice claims. CR.3175; *compare* CR.3181-84 (“Fee Claim” invoices) *with* CR.3186-3229 (invoices paid by Trevino’s insurance company). Notably, Trevino’s insurance policy would not pay to pursue Trevino’s breach of contract, and related, claims. CR.3303. Rather, the policy only required Trevino’s insurer to pay for attorney’s fees and expenses incurred defending “an act, error or omission in [Trevino’s] performance of legal services for others.” CR.3304.

Accordingly, the Arbitrator exceeded her authority by awarding fees not contemplated by the Rich/Abaza contract, the AAA rules, or Texas law, and the

district court should have vacated the arbitration awards for that reason as void. Indeed, this is highlighted by the fact that fees were incurred by all six of the lawyer parties with no effort to segregate between them, even though it is undisputed and indisputable that only Rich and Abaza signed any contract. CR.2767-2771.¹⁴

Alternatively, the Arbitrator exceeded her authority by awarding fees that clearly were incurred for defense of the tort claims—i.e., the \$214,160 in fees paid by Trevino’s malpractice insurer and which the carrier and Lawyers clearly segregated as being related to the legal malpractice claim. Those fees are not recoverable under Texas law, could not properly be awarded by the Arbitrator, and, at the very least, the Arbitration award should be modified to vacate those fees. *See* AAA Comm. R. R-47(d)(ii); Tex. Civ. Prac. & Rem. Code § 171.048(c); *see also In re C.A.K.*, 2006 Tex. App. LEXIS 8, at *4-5 (arbitrator exceeded its authority in ordering party to pay his own attorney’s fees when agreement only permitted an award to pay the legal fees of another party).

The Arbitrator also exceeded her powers by awarding \$39,035.93 in expenses, which include copy reproduction and travel expenses, and \$102,418.00 in fees paid to expert witnesses, including the standard of care and ethics experts used to defend

¹⁴ This lack of segregation is so egregious that the arbitrator awarded fees to the Law Offices of Nicholas Abaza, P.C. (CR.318) even though Abaza testified that its charter was forfeited *in 2017* and *after 2017 there was no entity Nicholas Abaza, P.C.* (CR.1296).

against the tort claims. CR.318-19; CR.3176-77. Neither the arbitration agreement nor Texas law permits such an award.

Under Texas substantive law, “expert witness fees are not recoverable as costs of litigation.” *Bundren v. Holly Oaks Townhomes Ass’n*, 347 S.W.3d 421, 440 (Tex. App.—Dallas 2011, pet. denied). Additionally, expenses for reproduction, meals, and travel are also not recoverable as costs. *Top Cat Ready Mix, LLC v. Alliance Trucking, L.P.*, No. 05-18-00175-CV, 2019 Tex. App. LEXIS 369, at *18 (Tex. App.—Dallas Jan. 22, 2019, no pet.) (mem. op.). Although the arbitration agreement is silent on any expense award, the AAA commercial rules only allow the final award to include “fees, expenses, and compensation provided in Sections R-53, R-54, and R-55.” AAA Comm. R. R-47(c). Rule R-53 governs administrative fees paid to the AAA “for the cost of providing administrative services.” *Id.* at Rule R-53. Rule 55 governs arbitrator compensation. *Id.* at Rule R-55. Rule R-54 governs “expenses” but specifically provides that “[t]he expenses of witnesses for either side **shall be paid by the party producing such witnesses.**” *Id.* at Rule AAA Comm. R. R-54 (emphasis added). Only “expenses of the arbitrator” or “any witness and the cost of any proof produced at the direct request for the arbitrator” may be assessed “against any specified party or parties.” *Id.*

The Arbitrator therefore did not have authority to award a “remedy not expressly provided for under existing state or federal law.” *Nafta*, 339 S.W.3d at 88;

Taylor Morrison of Tex., Inc. v. Fulcher, No. 13-20-00332-CV, 2022 Tex. App. LEXIS 5521, at *16 (Tex. App.—Corpus Christi Aug. 4, 2022, pet. denied) (arbitrator exceeded authority and trial court erred by awarding expert witnesses fees as arbitration expenses). The arbitrator exceeded her authority in doing so, which renders the arbitration awards void. 9 U.S.C. § 10; Tex. Civ. Prac. & Rem. Code § 171.088(a)(3)(A).

VI. The District Court Erred In Confirming The Arbitration Award Because The Arbitrator’s Award Miscalculates Interest.

In the alternative, and in the event the Court were to conclude that the arbitrator did not exceed her authority by freezing the account of a non-party, by ordering non-parties to liquidate trust assets, by awarding the Lawyers a contingent fee in the absence of a contract complying with the Disciplinary Rules and the Government Code, by failing to produce a reasoned award, and by awarding attorney’s fees and expenses to all six lawyer parties in contravention of Texas law, there is also good cause to modify the arbitration awards and final judgment because the award and judgment include a “material miscalculation” that may and should be modified without effecting the merits. 9 U.S.C. § 11(a)-(c); Tex. Civ. Prac. & Rem. Code § 171.091(a).

As noted above, the arbitration awards and judgment order prejudgment interest to begin on April 13, 2021 (CR.319), the day before the MSA was signed after midnight (CR.415). There is no legal basis for prejudgment interest to begin

on that date. The Interim Award makes clear that the parties agreed that “Texas substantive law governs the parties’ claims and defenses.” CR.271. Under Texas law, “prejudgment interest awarded under common law should conform to the statutory accrual and compounding formulas applicable to suits for wrongful death, personal injury, and property damages.” *De La Garza v. De La Garza*, 185 S.W.3d 924,928 (Tex. App.—Dallas 2006, no pet.). Under that statute, “prejudgment interest accrues on the amount of a judgment during the period beginning on the earlier of the 180th day after the date the defendant receives written notice of a claim or the date the suit is filed and ending on the day preceding the date judgment is rendered.” Tex. Fin. Code § 304.104. It is an abuse of discretion to award prejudgment interest “using the wrong accrual date.” *City of San Antonio v. El Dorado Amusement Co.*, 195 S.W.3d 238, 248 (Tex. App.—San Antonio 2006, pet. denied).

The earliest date Rich and Caroline received written notice of the claim was on December 7, 2021, when the Lawyers filed the intervention in the underlying probate proceedings. *See* CR.2508, 2513. However, Rich and Caroline did not receive an accounting and calculation of the fees allegedly owed until August 17, 2023 (CR.2970-73), after the Arbitrator ordered the Lawyers to provide a settlement statement in accordance with their fiduciary obligations. That accounting demonstrated that the December 7, 2021, demand was inaccurate and sought

\$730,000 more from than what was actually owed. *Compare* CR.2508-13 with CR.2970-73; CR.915-54. The Arbitrator should not have awarded pre-judgment interest before August 17, 2023, when the settlement statement and accounting identifying the amounts actually owed was produced. But if an earlier date was to be selected, the Arbitrator was required to use December 7, 2021, when the notice of the claim was made, not the day before the MSA was signed (CR.1048-49), or approved by a court (CR.3121-22). *See* Tex. Fin. Code § 304.104. Because the Arbitrator disregarded Texas law in calculating pre-judgment interest, she exceeded her powers, and the district court erred in refusing to vacate or modify the arbitration award on this ground.

CONCLUSION AND PRAYER

The arbitrator exceeded her powers by (1) ordering a “freeze” of an account owned by a non-party to the arbitration who had not agreed to arbitrate and (2) ordering Rich and Caroline, in their capacity as trustees of the Allison Family Trust, to “liquidate trust assets” to pay the arbitrator’s award; (3) awarding lawyers a contingent fee on the basis of a contract that violates the public policy of the State of Texas; (4) awarding lawyers a contingent fee on the basis of various quasi-contractual claims in violation of the public policy of the State of Texas; (5) failing to provide a “reasoned award” explaining her rationale for rejecting Rich and Caroline’s affirmative claims and defenses; and (6) ordering Rich to pay

unsegregated attorney's fees and litigation expenses outside the scope of the arbitration agreement. Accordingly, the district court's judgment should be reversed and the arbitrator's interim and final awards vacated. 9 U.S.C. § 10; Tex. Civ. Prac. & Rem. Code § 171.088.

In the alternative, the district court's judgment should be reversed and the arbitrator's awards modified to correct the calculation of pre-judgment interest.

Respectfully submitted,

/s/ Robert T. Owen

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CERTIFICATE OF COMPLIANCE

This is to certify that, excluding those portions of the brief as instructed by Rule 9.4(i)(1), this computer-generated Appellant's Brief contains 13,183 words (includes words contained in images).

/s/ Robert T. Owen

Robert T. Owen
March 12, 2025

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this Appellant's Brief has been served on March 12, 2025 through the Court's e-filing system on the following:

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APPENDIX

1. Final Judgment (CR.4144-4147)
2. Interim Award (CR.267-291)
3. Final Award (CR.318-320)
4. Employment Agreement (CR.2767-2771)
5. Tex. Gov't Code § 82.065
6. Tex. Disciplinary R. Professional Conduct 1.04
7. Tex. Disciplinary R. Professional Conduct 1.02

Appendix 1

CAROLINE ALLISON

Plaintiff

VS.

BORUNDA, P.C., JORGE BORUNDA,
NICHOLAS ABAZA, LAW OFFICES OF
NICHOLAS ABAZA, P.C., MICHAEL
TREVINO AND LAW OFFICE OF
MICHAEL A. TREVINO, P.L.L.C.

Defendants

VS.

RICHARD ALLISON, JR.

Intervenor

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

269TH JUDICIAL DISTRICT

MONEX
ATFEX
8I

FINAL JUDGMENT

By Order dated _____, 2024, this Court granted the Motion to Confirm, Enforce, and Enter Judgment on Arbitration Awards (including a supplement to that motion) filed by Defendants Borunda, P.C., Jorge Borunda, Nicholas Abaza, Law Offices of Nicholas Abaza, P.C., Michael Trevino, and Law Office of Michael A. Trevino, P.L.L.C. (collectively, "Defendants").

By Order dated _____, 2024, the Court likewise denied the Motion to Vacate or Alternatively Modify or Correct Awards filed by Plaintiff Caroline Allison and Intervenor Richard Allison, Jr.

The Court now enters this Final Judgment. The arbitrator's confirmed Interim Award is attached hereto as Exhibit A and is incorporated by reference as if fully set out in this Final Judgment. The arbitrator's confirmed Final Award is attached hereto as Exhibit B and is also incorporated by reference as if fully set out in this Final Judgment. The confirmed Interim

Award and the confirmed Final Award are referred to collectively in this Final Judgment as “the Awards.”

It is ORDERED, ADJUDGED, and DECREED that, in conformity with the Awards:

1. Nicholas Abaza shall recover from Richard Allison, Jr. the amount of \$1,416,915.68 as damages for Mr. Allison’s breach of contract. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Mr. Allison \$1,416,915.68 based on their claim(s) for promissory estoppel, quantum meruit, unjust enrichment, and/or money had and received.
2. Nicholas Abaza shall recover from Richard Allison, Jr. the amount of \$421,133.32 for pre-judgment interest. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Mr. Allison the amount of \$421,133.32 for pre-judgment interest.
3. Nicholas Abaza, Borunda, P.C., and Michael Trevino shall recover from Caroline Allison the amount of \$1,352,149.80 as damages for Ms. Allison’s breach of contract. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Ms. Allison \$1,352,149.80 based on their claim(s) for promissory estoppel, quantum meruit, unjust enrichment, and/or money had and received.
4. Nicholas Abaza, Borunda, P.C., and Michael Trevino shall recover from Caroline Allison the amount of \$401,883.72 for pre-judgment interest. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Ms. Allison the amount of \$401,883.72 for pre-judgment interest.
5. Nicholas Abaza, Jorge Borunda, Borunda, P.C., and Michael Trevino shall recover from Richard Allison, Jr. and Caroline Allison, jointly and severally, \$376,013.93 for attorneys’ fees and expenses.
6. Nicholas Abaza, Jorge Borunda, Borunda, P.C., and Michael Trevino shall recover from Richard Allison, Jr. and Caroline Allison, jointly and severally, \$78,456.27 for administrative arbitration fees and arbitrator compensation.
7. The above sums are to be paid on or before 30 days from the date of the Final Award.
8. The above sums shall accrue post-judgment interest at the rate of 8.5% per annum commencing 31 days from the date of the Final Award until paid in full.
9. Nicholas Abaza, Jorge Borunda, Borunda, P.C., and Michael Trevino shall recover from Richard Allison, Jr. and Caroline Allison, jointly and severally, reasonable and necessary attorneys’ fees and expenses incurred to obtain this Final Judgment and/or to enforce the Interim Award and/or the Final Award

and/or this Final Judgment. Any subsequent proceedings with additional courts or tribunals shall set the fees.

10. Mr. Allison and Ms. Allison shall, within thirty days after entry of the Final Award, (1) direct the trustee(s) of the Allison Family Trust to liquidate sufficient trust assets to pay the Final Award and all accrued interest in full and (2) shall pay the Final Award and all accrued interest in full. Pursuant to the MSA and the documents signed to effectuate the MSA, Mr. Allison and Ms. Allison have the legal right -- and the legal obligation -- to make this direction to the trustee(s) of the Family Trust. Mr. Allison and Ms. Allison are hereby ordered to do so.
11. The “freeze” on the Charles Schwab One account of the Minaki Limited Partnership referenced in the arbitrator’s September 14, 2023, order (attached to the Interim Award as Exhibit A) shall continue in full force and effect until this Final Judgment and all accrued interest have been paid in full. In order to ensure compliance with this Final Judgment, and to prevent any withdrawals or disbursements in violation of this Final Judgment, Mr. Allison and Ms. Allison are both ordered (1) to provide to appropriate personnel at Charles Schwab One a copy of this Final Judgment with all exhibits, and (2) to provide to Defendants’ counsel, Joseph R. Little, each monthly statement for the Charles Schwab One account within five business days of the date of each statement, until this Final Judgment and all accrued interest have been paid in full.
12. On February 23, 2023, the arbitrator signed a protective order. That protective order is vacated to the extent that otherwise-confidential information is either admissible or discoverable in any legal proceeding in which (1) either Ms. Allison or Mr. Allison or both of them attempt to modify the Family Trust in a manner that is inconsistent with the MSA and/or (2) either Ms. Allison or Mr. Allison or both of them attempt to delay or to avoid paying the Interim Award and/or the Final Award and/or this Final Judgment and/or (3) any one or more of the Defendants participate in order to defend or to collect amounts awarded in the Interim Award and/or the Final Award and/or this Final Judgment.
13. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for negligence.
14. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for breach of fiduciary duty.
15. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for alleged violations of the Texas Deceptive Trade Practices Act.
16. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for fraud.
17. Neither Mr. Allison nor Ms. Allison is entitled to declaratory relief.

18. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a request for an accounting.
19. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on any defense asserted in his or her pleadings.
20. Nothing that was alleged in Mr. Allison's live arbitration pleading entitles him to any relief or any recovery of any kind.
21. Nothing that was alleged in Ms. Allison's live arbitration pleading entitles her to any relief or any recovery of any kind.

It is further ORDERED, ADJUDGED and DECREED that Defendants are entitled to all writs and processes as may be necessary to enforce or to collect this Final Judgment, for which let execution issue.

This is a final judgment that disposes of all claims of all parties and is immediately appealable.

Signed on this ____ day of _____, 2024.

Signed:
7/15/2024



PRESIDING JUDGE

Appendix 2

Richard Allison, Jr. (“Mr. Allison”). The arbitration proceedings were consolidated. The parties conducted substantial pre-hearing discovery, including written discovery and oral depositions.

II. THE ARBITRATION HEARING AND EVIDENCE

The Arbitrator held a seven-day evidentiary arbitration hearing on November 13, 14, 15, 16, 17, 20, and 21, 2023, in Houston, Texas. Ms. Allison appeared in person and was represented by attorneys Lance Kassab and David Kassab of The Kassab Law Firm. Mr. Allison appeared in person and was represented by attorneys Dale Jefferson and Raul Suazo of Martin, Disiere, Jefferson, and Wisdom, L.L.C. Jorge Borunda, Nicholas Abaza, and Michael Trevino all appeared in person on behalf of themselves and as representatives of their respective law firms and were all represented by attorney Joseph R. Little of The Little Law Firm, P.L.L.C. The Official Record of the evidentiary hearing was transcribed by Laurie Carlisle, CSR, CM, CRR and Delicia Struss, CSR, TCRR of Monarch Reporting, Inc. Testimony from multiple witnesses was presented and hundreds of exhibits consisting of thousands of pages of documents were admitted into evidence.

At the time of the arbitration hearing, the live pleadings were: (1) Mr. Allison’s Answering Statement and Statement of Claims, filed on December 2, 2022; (2) Ms. Allison’s Second Amended Complaint and First Amended Answering Statement to Counter-claim, filed on December 7, 2022; (3) the Lawyers’ Amended Statement of Claims, filed on April 3, 2023; and (4) the Lawyers’ Consolidated and Amended Answering Statement to the Clients’ Statements of Claims, filed on May 1, 2023.

In accordance with the orders of the Arbitrator, the parties submitted the following expert reports: (1) an October 6, 2023, report from Rob Hancock; (2) a November 10, 2023, report from Lillian B. Hardwick; (3) a November 12, 2023, report from Karl Schwabauer; (4) a November 19, 2023, supplemental report from Mr. Hancock; (5) a December 20, 2023, report

from Daniel D. Tostrud; (6) a December 20, 2023, report from Kevin Spencer; (7) a December 20, 2023, report from Sarah Pacheco; (8) a January 17, 2024, supplemental report from Mr. Schwabauer; (9) a January 17, 2024, rebuttal report from Mr. Tostrud; and (10) a January 17, 2024, report from P. Keith Staubus.

In accordance with the orders of the arbitrator, the parties submitted post-hearing briefs on February 23, 2024, reply briefs on March 8, 2024, and draft Reasoned Interim Awards on March 29, 2024.

The arbitration record was closed on March 29, 2024.

III. MATTERS CONSIDERED

The Arbitrator has considered all pleadings (including all claims and all defenses of all parties), all hearing testimony and exhibits, all expert reports, and all briefs. The Arbitrator has also assessed the credibility of the witnesses. The factual and legal findings and conclusions set out in this Interim Award are determined by the Arbitrator to be true and necessary to the award. To the extent that the factual and legal findings and conclusions set out in this Interim Award differ from a position of any party, that is a result of the Arbitrator's determinations as to credibility, burdens of proof, relevance, and the weight of the testimony and other evidence.

IV. CREDIBILITY OF THE HEARING WITNESSES

With respect to the credibility of the witnesses who testified at the hearing: (1) Jorge Borunda was a credible witness who provided credible testimony; (2) Nicholas Abaza was a credible witness who provided credible testimony; (3) Michael Trevino was a credible witness who provided credible testimony; (4) Ms. Allison, although credible at times, was not always a credible witness; and (5) Mr. Allison was not a credible witness and his testimony was not credible.

V. RULING REGARDING OBJECTIONS TO ARBITRATION

Mr. Allison and/or Ms. Allison have objected to arbitration. The Arbitrator has considered these objections and finds them to be without merit. All objections to arbitration are overruled.

After Ms. Allison sued the Lawyers in state district court, the trial court granted the Lawyers' motion to compel arbitration. Ms. Allison argued in the district court, as she argued in this proceeding, that her contingent fee contract, which contains an arbitration agreement, is invalid and unenforceable. "The Texas Supreme Court has held that the validity of the contract as a whole must be submitted to arbitration as long as the arbitration provision is valid." *Petroleum Analyzer Co. v. Olstowski*, No. 01-09-00076-CV, at *17 (Tex.App.—Houston [1st. Dist.] 2010, no pet.). "The United States Supreme Court has explained that arbitration and forum-selection clauses should be enforced, even if they are part of an agreement alleged to have been fraudulently induced, as long as the specific clauses were not themselves the product of fraud or coercion." *In re Prudential Ins. Co. of America*, 148 S.W.3d 124, 134 (Tex. 2003).

After careful consideration of the law, the evidence, and the parties' conflicting testimony, the Arbitrator finds:

1. that the contingent fee contracts containing the arbitration agreements (Lawyers' Exhibit 106 for Mr. Allison and Lawyers' Exhibit 169 for Ms. Allison) are fair, reasonable, valid, and enforceable;
2. that the arbitration agreements contained in these contracts (Lawyers' Exhibits 106 and 169) are also fair, reasonable, valid, and enforceable;
3. that any and all necessary or appropriate advice and disclosures regarding these contingent fee contracts (Lawyers' Exhibits 106 and 169) were provided;
4. that any and all necessary or appropriate advice and disclosures regarding the arbitration agreements contained in these contracts (Lawyers' Exhibits 106 and 169) were provided;

5. that Mr. Allison was not fraudulently induced to sign Lawyers' Exhibit 106;
6. that Ms. Allison was not fraudulently induced to sign Lawyers' Exhibit 169;
7. that the arbitration agreement in Lawyers' Exhibit 106 was not the product of fraud or coercion;
8. that the arbitration agreement in Lawyers' Exhibit 169 was not the product of fraud or coercion; and
9. that, as in other circumstances in which the parties' testimony conflicted, the Lawyers' evidence and testimony on these issues was credible and Mr. Allison's and Ms. Allison's evidence and testimony on these issues was not credible.

All claims and all defenses asserted in this arbitration proceeding are within the scope of the parties' arbitration agreements. The arbitration agreement in each of the contracts (Lawyers' Exhibit 106 and Lawyers' Exhibit 169), standing alone, is independently sufficient to compel arbitration of all claims and all defenses of all parties. The Lawyers did not waive their right to arbitration. The applicable arbitration rules are the American Arbitration Association's Commercial Arbitration Rules and Mediation Procedures, Including Procedures for Large Complex Commercial Disputes as amended and in effect October 1, 2013, ("the Commercial Rules"). The arbitrator has been designated, appointed, and qualified in accordance with the Commercial Rules.

Jurisdiction over all parties, and all claims and all defenses of all parties, exists. Texas substantive law governs the parties' claims and defenses. The burden of proof is by a preponderance of the evidence unless otherwise stated.

VI. FACTUAL AND LEGAL FINDINGS AND CONCLUSIONS

Mr. Allison and Ms. Allison had a difficult and complicated relationship with their father. For many reasons, their father restructured his estate plan in 2013 to leave sole access to -- and

sole control of -- all of his assets to Robin, his wife of (at that time) approximately 21 years. And he did so without telling Mr. Allison and Ms. Allison.

Based on estate planning documents that their father had signed before he married Robin, and/or based on their father's much earlier representations to them, Mr. Allison and Ms. Allison believed that when their father died they would each inherit half of his assets. Mr. Allison and Ms. Allison didn't find out about their father's restructured estate plan -- which gave them no access to, and no control of, any of their father's assets as long as Robin was alive -- until after their father died in 2017.

Mr. Allison and Ms. Allison had no guarantee of any inheritance under their father's 2013 estate plan. As long as Robin was alive, Mr. Allison and Ms. Allison had a right to request discretionary distributions from the Allison Family Trust ("the Family Trust") and limited recourse if Robin declined. Robin repeatedly demonstrated a disinclination to make discretionary distributions to Mr. Allison and Ms. Allison. As "descendants" and contingent remainder beneficiaries, Mr. Allison and Ms. Allison also stood to inherit at least some of whatever was left of their father's assets when Robin died. But their contingent remainder interests depended on numerous variables, all or almost all of which were not only unknown but also unknowable.

When Mr. Allison and Ms. Allison -- especially Ms. Allison -- discovered that they would have no access to, and no control of, any of their father's assets until after Robin died, they were perhaps understandably surprised and upset. They realized that Robin, who was 62 years old when Dr. Allison died, might reasonably be expected to live for another 20 or 25 years (or more) -- meaning that Mr. Allison and Ms. Allison might be in their mid-60s or early-70s (or older) before they gained access to, and control of, whatever was left of their father's assets.

Further, Mr. Allison and Ms. Allison were legitimately concerned that “whatever was left” after Robin’s death might end up being very little or literally nothing.

Mr. Allison and Ms. Allison were convinced that their father’s 2013 estate plan was not what he had intended. They insisted that this estate plan was a result of Robin’s undue influence over their father during a time when he lacked testamentary capacity. So, in 2019, Mr. Allison and Ms. Allison sought legal counsel to help them remedy this perceived injustice.

Before Mr. Allison and Ms. Allison (hereafter collectively referred to in this Interim Award as “the Clients”) retained counsel, they generally understood their inability to access or to control any of their father’s assets as long as Robin was alive. Mr. Abaza and Mr. Borunda answered the Clients’ questions and explained additional details about (1) the Clients’ rights (or lack of them) regarding their father’s assets and (2) various arrangements for paying attorneys’ fees, including an hourly fee contract, a contingent fee contract, or a hybrid arrangement. Mr. Allison elected to proceed on a contingent fee basis and signed a contingent fee contract. He read the contract carefully -- as evidenced by his numerous handwritten notes and interlineations, which were eventually incorporated into a second contingent fee contract that he signed later. Thinking that the dispute would be quickly resolved, Ms. Allison elected at that time to proceed on an hourly fee basis and signed an hourly fee contract.

The Lawyers prosecuted probate litigation designed to achieve Mr. Allison and Ms. Allison’s stated goals of (1) invalidating their father’s 2013 estate plan (which included a will, a trust, and a beneficiary designation in a retirement account) and (2) reverting to the result that they asserted their father had intended: that Mr. Allison and Ms. Allison would each receive 1/2 of his assets free of trust.

As the Clients’ litigation against Robin progressed, Ms. Allison quickly got behind on paying her legal fees and expenses. Eventually, Ms. Allison made the decision to switch from an

hourly fee contract to a contingent fee contract like Mr. Allison's. Ms. Allison claims that she made this decision because Mr. Borunda "deceived" her. However, her words and actions -- and Mr. Borunda's -- at the time that the events at issue transpired are inconsistent with her hearing testimony. None of the Lawyers ever requested, suggested, or implied that Ms. Allison should switch to a contingent fee contract. None of the Lawyers ever raised this issue. Ms. Allison raised the issue multiple times.

Mr. Abaza and Mr. Borunda repeatedly offered Ms. Allison accommodations to help her manage the financial burden of the litigation and maintain her hourly contract. However, Ms. Allison ultimately chose to switch to a contingent fee contract because she believed -- with good reason -- that it was to her advantage to do so. She received a draft contingent fee contract, considered it, reviewed it carefully (catching two typographical errors), and then initialed each page of the draft contract and signed it at the end. She then talked to Mr. Abaza and Mr. Borunda to confirm that she would no longer be responsible for outstanding hourly fees and litigation expenses for which these lawyers had already sent invoices and expected payment. Ms. Allison's switch to a contingent fee contract eliminated all of her explicitly stated concerns about cash flow, crushing legal fees, keeping up with hourly invoices, paying expenses, funding a trial, not having a "war chest," being forced to drop the case, feeling overwhelmed, feeling worried, being stressed, being scared and having migraines. The Lawyers now bore those burdens -- just as they undertook the risk that they could work on the case for years and obtain no payment.

Ms. Allison's contingent fee contract (Lawyers' Exhibit 169) is now, and was at the time it was signed, valid, enforceable, fair, and reasonable. Likewise, Mr. Allison's contingent fee contract (Lawyers' Exhibit 106) is and was valid, enforceable, fair, and reasonable. These contingent fee contracts satisfy the requirements of applicable Texas law, including but not

limited to Texas Government Code § 82.065(a), and the Texas Disciplinary Rules of Professional Conduct, including but not limited to Rule 1.04(d). The divisions of fees between the Lawyers, as referenced in the contingent fee contracts, satisfy the requirements of Texas Disciplinary Rule of Professional Conduct 1.04(f). Ms. Allison's contingent fee contract also complies with Texas Disciplinary Rule of Professional Conduct 1.08. Mr. Trevino had no attorney-client relationship with Ms. Allison prior to her signing her contingent fee contract, so Rule 1.08 does not apply to Mr. Trevino. Further, the terms of the contingent fee contract that Ms. Allison reviewed, revised, approved, and initialed on each page and signed at the end were fair and reasonable to her and were fully disclosed in a reasonably understandable manner. Ms. Allison had a reasonable opportunity to seek the advice of independent counsel. That is all that is required by Rule 1.08. Although they were not required to do so -- by Rule 1.08 or any other rule -- both Mr. Abaza and Mr. Borunda did advise Ms. Allison to seek the advice of independent counsel.

The Lawyers' risk of working for years without receiving any payment increased as the Clients' case developed. Mr. Allison and Ms. Allison had assured the Lawyers that everyone in the family "hated" Robin and would testify favorably both regarding Robin's undue influence and Dr. Allison's lack of capacity. Those assurances proved false. During her deposition, Mr. Allison's ex-wife Kim did not support the Clients' positions on these issues. Conversations with Mr. Allison's children did not yield helpful evidence. Hundreds of pages of medical records obtained included only a single note that might have supported a lack of capacity argument: a lone reference in a 2014 record that Dr. Allison had been having memory issues for a year or so. The Lawyers subpoenaed a pre-marital and a marital agreement, but those documents did not yield the hoped-for benefit. The corporate books and records that Mr. Trevino inspected contained evidence that Dr. Allison had been keeping partnership financial records by hand after

2013, and that Robin's involvement in Dr. Allison's business affairs did not substantially increase until after 2013.

These negative developments accentuated complications in the Clients' case that had manifested earlier. The Clients had gone years at a time with literally no contact with their father. Dr. Allison kept a file of letters to and from his children, some of which Robin used as summary judgment exhibits -- and which would likely have been trial exhibits if the Clients had not accepted Robin's last and best settlement offer at mediation. These letters would have been decidedly unfavorable for the Clients if their case against Robin had gone to trial. While the Clients' case against Robin was not unwinnable, substantial evidence existed that could (and more likely than not would) have led a jury reasonably to conclude that Dr. Allison changed his estate plan for reasons other than a lack of capacity and Robin's undue influence. Additionally, had Mr. Allison and Ms. Allison prevailed at trial, the most likely result would have been that they each would have received one sixth of their father's assets, after those assets had been significantly reduced by a carveout for Robin, estate taxes, and community property claims.

After almost two years of contentious litigation, at a mediation on April 13, 2021, Robin made a last and best settlement offer to Mr. Allison and Ms. Allison. Mr. Allison and Ms. Allison chose to accept Robin's last and best offer. Mr. Allison, Ms. Allison, and Robin signed a Mediated Settlement Agreement ("the MSA") in which they agreed to settle their disputes.

The parties' April 13, 2021, mediation was discussed at length during the hearing. Before the Clients signed the MSA, the Lawyers and the Clients discussed, and the Clients knew and understood, (1) the total value of all assets at issue in their dispute with Robin, (2) that their settlement recovery was to include a brokerage account that contained cash and securities, and (3) that there were potential capital gains issues with the assets in the brokerage account. (Capital gains taxes would be incurred only if a trust asset was eventually sold for more than the

applicable tax basis at the time of the sale, which might or might not ever have happened.) After full explanation by the Lawyers and significant input from the mediator, Jeffrey Yates, the Clients made an informed decision to accept Robin's last and best offer to settle the case. The Clients thus gained complete control of the Minaki Limited Partnership and recovered various items of personal property and a Fidelity brokerage account in the name of the Minaki Limited Partnership. On the date of the settlement, the Fidelity brokerage account had an asset balance of \$9,900,609.53. This Fidelity brokerage account, which was the main asset in the Clients' settlement recovery, was allocated to the Family Trust.

The Clients have attempted to fashion an argument that they received no "personal" or "individual" recoveries. That argument is devoid of merit. The MSA defined Mr. Allison and Ms. Allison only in their individual capacities. Mr. Allison and Ms. Allison signed the MSA in their individual capacities. The recovery obtained by Mr. Allison and Ms. Allison pursuant to the MSA was obtained in their individual capacities. Robin signed the MSA both individually and as trustee of the Family Trust (and as trustee of all other trusts that were established when Dr. Allison died). The MSA provided that, in addition to various items of personal property, Mr. Allison and Ms. Allison -- in their individual capacities -- "have the right to access all principal and income from the Family Trust" except for a \$1,000,000.00 holdback for their children's educational expenses. Lawyers' Exhibit 193, ¶ 3.1.p)iii.

In the immediate aftermath of the settlement, Ms. Allison sent two e-mails expressing concerns. Mr. Trevino met with the Clients at a restaurant in Sugar Land and addressed any concerns raised by Mr. Allison or by Ms. Allison. At the conclusion of this dinner meeting, the Clients expressed their understanding of, and appreciation for, the settlement recovery that they had achieved. Ms. Allison had a waiter take a picture of her and Mr. Allison and Mr. Trevino.

The next day, Ms. Allison sent Mr. Trevino a text message exclaiming “We are excited! Thanks for everything you guys have done!” Lawyers’ Exhibit 201.

Over the next couple of months, the Lawyers and the Clients worked cooperatively to obtain court approval of the MSA. Mr. Trevino drafted consents for Mr. Allison’s children and sent them to the Clients, asking whether the Clients wanted him to contact the children or “if you think it is better coming from you. Basically, the consent agreements are to make sure the kids are aware of the settlement and are fine with everything.” Lawyers’ Exhibit 203. Mr. Allison chose to take the lead on communicating with his children, and at least two of them indicated that they were going to seek independent legal advice before signing the consent agreements. All three of Mr. Allison’s children eventually signed the consent agreements -- which read in part that “I have had the opportunity to review [the MSA] and have it explained to me to my satisfaction by the attorney of my choosing. I affirm that I understand the [MSA]. I accept and agree to the [MSA’s] effect on the structure and terms of [Dr. Allison’s estate, his will, his assets, and all of his trusts]. It is my wish and intent that the [MSA] resolve all disputes, claims, and controversies of any nature by any party regarding [Dr. Allison’s estate, his will, his assets, and all of his trusts]. To that end, I waive and release any and all claims I may have against any and all parties in any capacity regarding [Dr. Allison’s estate, his will, his assets, and all of his trusts].” Lawyers’ Exhibits 206, 207, 208, 210, 211.

Ms. Allison wanted to be sure that all issues regarding “baby Kensington” were addressed and communicated with Mr. Trevino regarding the guardian ad litem for her minor daughter. Lawyers’ Exhibit 202. In May, Ms. Allison formed Kensington Station, L.L.C., her sole member LLC that owns some of the houses in the real estate portfolio that Ms. Allison has amassed since the settlement. Ms. Allison voiced no complaints about the settlement when Mr. Trevino delivered the paintings that the Clients received as part of their recovery. The Lawyers

consulted with tax advisors to try to minimize any tax burden of the settlement on the Clients by offsetting capital gains against attorneys' fees. On May 27, 2021, -- about three weeks before court approval of the MSA -- Mr. Abaza e-mailed to Mr. Allison and Ms. Allison contact information for Scott Robertson and a message from this CPA explaining that attorneys' fees might be used to offset any potential capital gains when trust assets were eventually sold. The subject line of the e-mail was "Scott Robertson's Zoom Meeting." Lawyers' Exhibit 217. The Lawyers repeatedly attempted to get the Clients to participate in a Zoom meeting or a conference call with the CPA, but the Clients never agreed.

On June 14, 2021, with the consent and approval of every person who had, or might have had, an interest in the settlement, Judge Weldon Copeland approved the MSA. Lawyers' Exhibit 220. Judge Copeland further ordered the parties to "execute each and every document needed to effectuate the agreements set forth in the MSA on or before **June 30, 2021**, and if there is any problem as to a form of any document to be executed, same should be brought to the attention of the Court to resolve the disagreement in order to finalize the MSA." Lawyers' Exhibit 220, bold in original. In fact, the MSA was approved by all affected or potentially-affected parties -- including the surviving settlor of the Family Trust and all contingent remainder beneficiaries of the Family Trust -- and by as many as nine attorneys: (1) Mr. Allison, (2) Ms. Allison, (3) the Lawyers (the first three attorneys), (4) Robin, (5) Robin's attorney Michael Collins (the fourth attorney), (6) mediator Jeffrey Yates (the fifth attorney), (7) Mr. Allison's three adult children, at least two of whom apparently obtained advice from their own attorneys (the sixth and seventh attorneys), (8) guardian ad litem Jack Wilburn on behalf of Ms. Allison's minor child (the eighth attorney), and (9) the Honorable Weldon Copeland, presiding judge of Probate Court No. 1 of Collin County, Texas (the ninth attorney).

After Judge Copeland approved the MSA and ordered all parties to sign all documents necessary to effectuate the settlement as set out in the MSA, the Clients began “ghosting” the Lawyers, refusing to meet and/or to discuss the final settlement documents that were supposed to be signed before the end of June. On November 3, 2021, Judge Copeland conducted a video hearing regarding enforcement of the MSA. By this time, the Clients had relieved the Lawyers of their duty -- and their authority -- to represent the Clients. The Clients, by November 3, 2021, had prohibited the Lawyers from taking any further action or performing any further work on the Clients’ behalf.

No later than November 10, 2021, Ms. Allison hired a lawyer named Jeff Crouch to review the final settlement documents. No later than November 15, 2021, Ms. Allison hired The Kassab Firm to sue the Lawyers, although she didn’t disclose that fact to them. The extent to which Mr. Crouch and Mr. Kassab collaborated in advance of the Clients’ subsequent signing of the final settlement documents -- which Mr. Crouch reviewed, revised, and eventually approved - - is unknown.

The final settlement documents that Mr. Crouch reviewed, revised, and eventually approved included a trust “Modification and Amendment” that was consistent with the terms of the MSA, specifically ¶ 3.1.p)iii. Again, that provision of the MSA stated that Mr. Allison and Ms. Allison -- in their individual capacities -- “have the right to access all principal and income from the Family Trust” except for a \$1,000,000.00 holdback for their children’s educational expenses. Similarly, the trust “Modification and Amendment” (1) defined the trust “Beneficiaries” as “Ms. Allison and Mr. Allison.” and (2) provided that the trustee(s) of the trust -- whoever that might be -- “shall distribute the income and principal of the trust to the Beneficiaries in such amounts as the Beneficiaries, in their discretion, may direct.” Lawyers’ Exhibit 275. Thus, like the MSA, the trust “Modification and Amendment” also provided that

Mr. Allison and Ms. Allison -- in their individual capacities -- could direct the trustee(s) to distribute trust assets, with the sole exception of the \$1,000,000.00 educational holdback, based on a pure discretionary standard.

At a final December 7, 2021, hearing, Mr. Crouch, as the new attorney for the Clients, approved the final settlement documents -- including the above-referenced trust “Modification and Amendment.” Judge Copeland had explicitly ordered on June 14, 2021, that “if there is any problem as to a form of any document to be executed, same should be brought to the attention of the Court to resolve the disagreement in order to finalize the MSA.” Lawyers’ Exhibit 220. Nevertheless, despite having had several weeks to prepare for the December 7 hearing, Mr. Crouch did not say at the hearing that there was any problem with the form of any of the final settlement documents. He did not say that there was any dispute or disagreement that needed to be resolved by court ruling. He did not say that the court needed to sign any additional order or take any additional action to finalize the MSA. For example, he did not say that a formal judicial modification was necessary or appropriate -- although there was no one then (and there remains no one now) who could object to a judicial modification that followed the intent of the parties as expressed in the MSA. In fact, Mr. Crouch did not make even one of the arguments or allegations that the Clients or their expert witnesses have made in this arbitration proceeding. Instead, Mr. Crouch as the new attorney for the Clients simply approved the final settlement documents. Ms. Allison signed the documents that day. Mr. Allison signed them the next day.

Despite their repeated representations and sworn testimony to the contrary, Mr. Allison and Ms. Allison -- especially Ms. Allison -- have accepted the benefits of their settlement recovery. The Clients received, and have never returned, items of personal property that they recovered in the settlement. In December 2021, less than three weeks after Ms. Allison signed the final settlement documents on the advice of her new attorney Jeff Crouch, Ms. Allison

transferred the assets in the Fidelity brokerage account -- which by that time had appreciated to almost \$11,000,000.00 -- to a new brokerage account at Schwab (where she used to work). Ms. Allison used some of the income and/or principal of the Clients' settlement recovery to amass significant real estate holdings that are owned by Kensington Station, L.L.C., a sole-member L.L.C. that Ms. Allison formed on May 25, 2021, about six weeks after she signed the MSA. Ms. Allison admitted that she has unilaterally -- i.e., acting without Mr. Allison -- withdrawn principal from the Schwab account, loaned that money to Kensington Station, L.L.C., and then used the money to make real estate purchases for her sole-member L.L.C. Mr. Allison and Ms. Allison have also used Family Trust assets to pay lawyers, expert witnesses, and other expenses that they, in their individual capacities, have incurred in this arbitration proceeding.

In summary:

- The Lawyers have earned and are immediately entitled to the recoveries set out in this Award;
- The Clients are immediately obligated to pay the recoveries set out in this Award;
- All conditions precedent to the Clients' payment of the recoveries set out in this Award have occurred and/or have been fully performed and/or fully satisfied;
- The MSA is now, and was as of April 13, 2021, a valid and enforceable contract that is binding on Mr. Allison and Ms. Allison;
- Judge Copeland approved the MSA;
- Judge Copeland ordered the parties to "execute each and every document needed to effectuate the agreements set forth in the MSA on or before June 30, 2021";
- The Lawyers repeatedly asked the Clients to meet with them, and with other professionals such as tax advisors, to discuss the final settlement documents that Judge Copeland ordered the parties to sign;
- The Clients refused to meet with the Lawyers and with other professionals to discuss the final settlement documents;
- On or before November 3, 2021, the Clients relieved the Lawyers of their duty -- and their authority -- to represent the Clients;

- No later than November 10, 2021, the Clients retained a new attorney to review the final settlement documents that Judge Copeland ordered them to sign;
- The Clients' new attorney reviewed, revised, and eventually approved the final settlement documents;
- On the advice of their new attorney, Mr. Allison and Ms. Allison signed the final settlement documents in December 2021;
- Mr. Allison and Ms. Allison are the beneficiaries of the Family Trust;
- As the beneficiaries of the Family Trust, Mr. Allison and Ms. Allison have the right to direct the trustee(s) of the Family Trust to distribute all trust income and principal with the exception of the \$1,000,000.00 educational holdback;
- Mr. Allison and Ms. Allison have the present right, and the immediate obligation, to direct the trustee(s) of the Family Trust to pay the Lawyers the recoveries set out in this Award;
- No one has a right to object to the terms of the MSA, the implementation of the terms of the MSA, or Mr. Allison's and Ms. Allison's enjoyment of the benefits they received in the MSA -- in fact, all such objections have been waived;
- No claim or allegation asserted by the Clients in this proceeding affects, or could subsequently affect, the Lawyers' immediate entitlement to the recoveries set out in this Award;
- No claim or allegation asserted by the Clients in this proceeding affects, or could subsequently affect, the Clients' immediate obligation to pay the recoveries as set out in this Award;
- No relief that could be awarded in the Clients' pending judicial modification proceeding affects, or could subsequently affect, the Lawyers' immediate entitlement to the recoveries set out in this Award;
- No relief that could be awarded in the Clients' pending judicial modification proceeding affects, or could subsequently affect, the Clients' immediate obligation to pay the recoveries set out in this Award.

VII. DETERMINATION OF THE PARTIES' CLAIMS AND DEFENSES

A. The Lawyers' Breach of Contract Claim

Mr. Allison and Nicholas Abaza agreed that Mr. Allison would pay a 35% contingent fee on his settlement recovery, which was to be split 60% to Jorge Borunda and 40% to Nicholas

Abaza, and that Mr. Allison would pay 50% of any costs and expenses incurred in obtaining a recovery. Lawyers' Exhibit 106. See, Texas Pattern Jury Charge ("PJC") 101.1. Mr. Allison failed to comply with his agreement. See, PJC 101.2. Mr. Allison's failure to comply is not excused. See, PJC 101.7. Mr. Allison was not fraudulently induced to enter into his agreement. See, PJC 101.31. The sum of money, if paid now in cash, that would fairly and reasonably compensate Nicholas Abaza for his damages, that resulted from Mr. Allison's failure to comply is \$1,416,915.68. See, PJC 115.3. Mr. Allison's settlement recovery, reduced by all appropriate credits and offsets, is accurately set out in the settlement statement provided by the Lawyers in compliance with Texas Disciplinary Rule of Professional Conduct 1.04(d). Lawyers' Exhibit 304. Mr. Allison's settlement recovery is \$4,001,795.62. The 35% contingent fee that Mr. Allison owes is therefore \$1,400,628.47. Mr. Allison also owes 50% of the Lawyers' litigation expenses, which is an additional \$16,287.21. Therefore, Mr. Allison's contractual debt on the date of the settlement (April 13, 2021) was \$1,416,915.68. Pursuant to Texas Disciplinary Rule of Professional Conduct 1.04(g)(1), Mr. Trevino is entitled to recover the reasonable value of legal services provided to Mr. Allison despite the absence of Mr. Allison's written consent to a fee division including Mr. Trevino (although this recovery must come out of the \$1,416,915.68 owed by Mr. Allison).

Ms. Allison and Nicholas Abaza, Borunda, P.C., and Michael Trevino agreed that Ms. Allison would pay a 35% contingent fee on her settlement recovery, which was to be split 40% to Jorge Borunda, 30% to Nicholas Abaza, and 30% to Michael Trevino, that Ms. Allison would pay 50% of any costs and expenses incurred in obtaining a recovery, and that Ms. Allison would receive a credit for previously-paid hourly fees if she obtained a recovery. Lawyers' Exhibit 169. See, PJC 101.1. Ms. Allison failed to comply with her agreement. See, PJC 101.2. Ms. Allison's failure to comply is not excused. See, PJC 101.7. Ms. Allison was not fraudulently

induced to enter into her agreement. See, PJC 101.31. Michael Trevino had no fiduciary relationship with Ms. Allison prior to her signing Lawyers' Exhibit 169. The sum of money, if paid now in cash, that would fairly and reasonably compensate Nicholas Abaza, Borunda, P.C., and Michael Trevino for their damages that resulted from Ms. Allison's failure to comply is \$1,352,149.80. See, PJC 115.3. Ms. Allison's settlement recovery, reduced by all appropriate credits and offsets, is accurately set out in the settlement statement provided by the Lawyers in compliance with Texas Disciplinary Rule of Professional Conduct 1.04(d). Lawyers' Exhibit 304. Ms. Allison's settlement recovery is \$4,001,795.62. The 35% contingent fee that Ms. Allison owes is therefore \$1,400,628.47. Ms. Allison also owes 50% of the Lawyers' litigation expenses, which is an additional \$16,287.21. Ms. Allison is entitled to a credit or offset of \$64,765.88 for attorneys' fees and expenses previously paid. Therefore, Ms. Allison's contractual debt on the date of the settlement (April 13, 2021) was \$1,352,149.80.

B. The Lawyers' Promissory Estoppel Claim

Even if the Clients' contractual promises to pay a 35% contingent fee plus costs and expenses were held to be unenforceable, Mr. Abaza, Mr. Borunda, and Mr. Trevino would be entitled to recover based on promissory estoppel. These lawyers substantially relied to their detriment on Mr. Allison's promise to pay a 35% contingent fee on his settlement recovery plus 50% of any costs and expenses incurred in obtaining a recovery. This reliance was foreseeable by Mr. Allison. See, PJC 101.41. The sum of money, if paid now in cash, that would fairly and reasonably compensate these lawyers for their damages that resulted from their reliance on Mr. Allison's promise is \$1,416,915.68. See, PJC 115.6. In addition, these lawyers substantially relied to their detriment on Ms. Allison's promise to pay a 35% contingent fee on her settlement recovery plus 50% of any costs and expenses incurred in obtaining a recovery. This reliance was foreseeable by Ms. Allison. See, PJC 101.41. The sum of money, if paid now in cash, that

would fairly and reasonably compensate these lawyers for their damages that resulted from their reliance on Ms. Allison's promise is \$1,352,149.80. See, PJC 115.6.

C. The Lawyers' Quantum Meruit Claim

Even if the Clients' contingent fee contracts were held to be unenforceable, Mr. Abaza, Mr. Borunda, and Mr. Trevino would be entitled to recover based on quantum meruit. These lawyers performed compensable work for Mr. Allison for which these lawyers were not compensated. These lawyers rendered valuable services to Mr. Allison; Mr. Allison accepted, used, and benefitted from the services; and, under the circumstances, Mr. Allison was reasonably notified that these lawyers expected to be compensated for the services. See, PJC 101.42. The reasonable value of such compensable work at the time and place it was performed was \$1,416,915.68. See, PJC 115.7. In addition, these lawyers performed compensable work for Ms. Allison for which these lawyers were not compensated. These lawyers rendered valuable services to Ms. Allison; Ms. Allison accepted, used, and benefitted from the services; and, under the circumstances, Ms. Allison was reasonably notified that these lawyers expected to be compensated for the services. See, PJC 101.42. The reasonable value of such compensable work at the time and place it was performed was \$1,352,149.80. See, PJC 115.7.

D. The Lawyers' Unjust Enrichment Claim

Even if the Clients' contingent fee contracts were held to be unenforceable, Mr. Abaza, Mr. Borunda, and Mr. Trevino would be entitled to recover based on unjust enrichment. Mr. Allison obtained a benefit from these lawyers by fraud, duress, or the taking of undue advantage. Mr. Allison has wrongfully secured a benefit or has passively received one which it would be unconscionable to retain. The sum of money, if paid now in cash, that would fairly and reasonably compensate these lawyers for their damages that resulted from Mr. Allison's unjust enrichment is \$1,416,915.68. See, PJC 101.44. In addition, Ms. Allison obtained a benefit from

these lawyers by fraud, duress, or the taking of undue advantage. Ms. Allison has wrongfully secured a benefit or has passively received one which it would be unconscionable to retain. The sum of money, if paid now in cash, that would fairly and reasonably compensate these lawyers for their damages that resulted from Ms. Allison's unjust enrichment is \$1,352,149.80. See, PJC 101.44.

E. The Lawyers' Claim for Money Had and Received

Even if the Clients' contingent fee contracts were held to be unenforceable, impossible, not fully performed, thwarted by mutual mistake, or void for other legal reasons, Mr. Abaza, Mr. Borunda, and Mr. Trevino would be entitled to recover based on money had and received. Mr. Allison holds money that in equity and good conscience belongs to these lawyers. The sum of money, if paid now in cash, that would fairly and reasonably compensate these lawyers for their damages relating to this claim against Mr. Allison is \$1,416,915.68. See, PJC 101.43. In addition, Ms. Allison holds money that in equity and good conscience belongs to these lawyers. The sum of money, if paid now in cash, that would fairly and reasonably compensate these lawyers for their damages relating to this claim against Ms. Allison is \$1,352,149.80. See, PJC 101.43.

F. The Clients' Claims and Defenses

Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for negligence. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for breach of fiduciary duty. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for alleged violations of the Texas Deceptive Trade Practices Act. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a claim for fraud. Neither Mr. Allison nor Ms. Allison is entitled to declaratory relief. Neither Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on a request for an accounting. Neither

Mr. Allison nor Ms. Allison is entitled to any relief or recovery based on any defense asserted in his or her pleadings. To be clear, (1) nothing that was alleged in Mr. Allison's live pleading entitles him to any relief or any recovery of any kind, and (2) nothing that was alleged in Ms. Allison's live pleading entitles her to any relief or any recovery of any kind.

VIII. AWARD

Nicholas Abaza shall recover from Mr. Allison the amount of \$1,416,915.68 as damages for Mr. Allison's breach of contract. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Mr. Allison \$1,416,915.68 based on their claim for promissory estoppel. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Mr. Allison \$1,416,915.68 based on their claim for quantum meruit. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Mr. Allison \$1,416,915.68 based on their claim for unjust enrichment. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Mr. Allison \$1,416,915.68 based on their claim for money had and received. The award of \$1,416,915.68 shall bear pre-judgment interest at 8.5% compounded annually beginning on April 13, 2021, and continuing until the date of the entry of a Final Award.

Nicholas Abaza, Borunda, P.C., and Michael Trevino shall recover from Ms. Allison the amount of \$1,352,149.80 as damages for Ms. Allison's breach of contract. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Ms. Allison \$1,352,149.80 based on their claim for promissory estoppel. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Ms. Allison \$1,352,149.80 based on their claim for quantum meruit. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover from Ms. Allison \$1,352,149.80 based on their claim for unjust enrichment. Alternatively, Nicholas Abaza, Jorge Borunda, and Michael Trevino shall recover

from Ms. Allison \$1,352,149.80 based on their claim for money had and received. The award of \$1,352,149.80 shall bear pre-judgment interest at 8.5% compounded annually beginning on April 13, 2021, and continuing until the date of the entry of a Final Award.

The Lawyers are entitled to recover from Mr. Allison and Ms. Allison, jointly and severally, reasonable and necessary attorneys' fees and expenses in an amount to be determined in a Final Award. These attorneys' fees and expenses shall include those incurred (1) in the lawsuit filed by Ms. Allison on December 9, 2021, (2) in the arbitration proceedings before consolidation and after consolidation into this proceeding, (3) to obtain a judgment based on, and/or to enforce, this Interim Award and/or the Final Award, (4) any subsequent proceedings with additional courts or tribunals shall set the fees.

The Lawyers are entitled to recover from Mr. Allison and Ms. Allison, jointly and severally, (1) all administrative arbitration fees paid, (2) all expert witness fees and expenses incurred for the preparation of the reports that were produced at the direct request of the arbitrator, and (3) all arbitrator compensation paid. Pre-judgment interest will be calculated for the Final Award. The amount of these fees, expenses, compensation and pre-judgment interest shall be determined in the Final Award.

The total amount awarded in the Final Award shall bear post-judgment interest at 8.5% compounded annually beginning on the date of the Final Award until paid in full.

Mr. Allison and Ms. Allison shall, within thirty days after entry of a Final Award (1) direct the trustee(s) of the Allison Family Trust to liquidate sufficient trust assets to pay the Final Award and all accrued interest in full and (2) shall pay the Final Award and all accrued interest in full. Pursuant to the MSA and the documents signed to effectuate the MSA, Mr. Allison and Ms. Allison have the legal right -- and the legal obligation -- to make this direction to the trustee(s) of the Family Trust. Mr. Allison and Ms. Allison are hereby ordered to do so.

The “freeze” on the Charles Schwab One account of the Minaki Limited Partnership referenced in the arbitrator’s September 14, 2023, order (attached as Exhibit A) shall continue in full force and effect until the Final Award and all accrued interest have been paid in full. In order to ensure compliance with this Award, and to prevent any withdrawals or disbursements in violation of this Award, Mr. Allison and Ms. Allison are both ordered (1) to provide to appropriate personnel at Charles Schwab One a copy of this Interim Award, the Final Award, and any judgment based on either or both of these Awards, and (2) to provide to the Lawyers’ counsel, Joseph R. Little, each monthly statement for the Charles Schwab One account within five business days of the date of each statement, until the Final Award and all accrued interest have been paid in full.

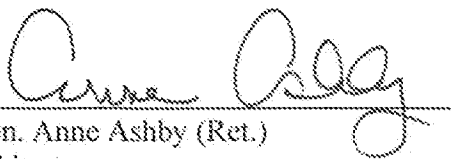
On February 23, 2023, the arbitrator signed a protective order. That protective order is vacated to the extent that otherwise-confidential information is either admissible or discoverable in any legal proceeding in which (1) either or both of the Clients attempt to modify the Family Trust in a manner that is inconsistent with the MSA and/or (2) either or both of the Clients attempt to delay or to avoid paying this Interim Award and/or the Final Award and/or any judgment based on either or both of these awards and/or (3) any one or more of the Lawyers participate in order to defend or to collect amounts awarded in this Interim Award and/or the Final Award and/or any judgment based on either or both of these awards.

This Interim Award is in full settlement of the merits of all claims submitted to this Arbitration, except for the determination of reasonable attorney fees and costs in favor of the Lawyers as set forth above. The Arbitrator retains jurisdiction to address the Lawyers’ claims for reasonable attorney fees and costs. The Lawyers shall submit their accounting of such reasonable attorney fees and costs and any supporting documents related thereto to the Arbitrator within 7 business days of the date of this Interim Award. The Clients shall submit any responsive

statement and supporting documents within 7 business days of receipt of the Lawyers' fees submission. Upon and after such submissions, the matter shall be deemed submitted to the Arbitrator for determination in a Final Award.

This Interim Award shall remain in full force and effect until the Arbitrator renders a Final Award.

Signed this 29th day of April, 2024.


Hon. Anne Ashby (Ret.)
Arbitrator

Appendix 3

Allison on December 9, 2021, and in the arbitration proceedings are \$273,595.93. This amount includes recoverable fees of \$234,560.00 plus recoverable expenses in the amount of \$39,035.93.

- Expert witness fees and expenses that were produced at the request of arbitrator are \$102,418.00. This amount includes \$15,023.00 in recoverable fees and expenses relating to the expert reports of Karl Schwabauer, \$34,295.00 in recoverable fees and expenses relating to the expert reports of Dan Tostrud. \$53,100.00 in recoverable fees and expenses relating to the expert report of Keith Staubus.
- Incurred AAA administrative fees and arbitrator compensation in the amount of \$78,456.27.

The total value of these attorneys' fees and expenses that are recoverable is \$454,470.20. Clients shall be liable, jointly and severally, for these fees and expenses.

Recoverable pre-judgment interest (at 8.5% compounded annually beginning on April 13, 2021, and continuing to Thursday, June 20, 2024) on the \$1,416,915.68 award against Richard Allison, Jr. is **\$421,133.32**. Therefore, the award against Mr. Allison with accrued pre-judgment interest shall be **\$1,838,049.00**.

Recoverable pre-judgment interest at 8.5% compounded annually beginning on April 13, 2021, and continuing until June 20, 2024, on the **\$1,416,915.68** award against Richard Allison, Jr. is calculated as follows.

- $\$1,416,915.68 \times .085 = \$120,437.83$. Thus, the amount of the award plus pre-judgment interest as of April 13, 2022, is \$1,537,353.51.
- $\$1,537,353.51 \times .085 = \$130,675.05$. Thus, the amount of the award plus pre-judgment interest as of April 13, 2023, is \$1,668,028.56.
- $\$1,668,028.56 \times .085 = \$141,782.43$. Thus, the amount of the award plus pre-judgment interest as of April 13, 2024, is \$1,809,810.99.
- $\$1,809,810.99 \times .085 = \$153,833.93 / 365 = \$421.4628$. Thus, the amount of pre-judgment interest that accrues daily until April 13, 2025, is \$421.4628.
- Additional pre-judgment interest will be calculated as: Interest for 67 days from April 14, 2024, through June 20, 2024, will be 67 days times \$421.4628 = \$28,238.01.

Recoverable pre-judgment interest (at 8.5% compounded annually beginning on April 13, 2021, and continuing to Thursday, June 20, 2024) on the \$1,352,149.80 award against Caroline Allison is **\$401,883.72**. Therefore, the award against Ms. Allison with accrued pre-judgment interest shall be **\$1,754,033.52**.

Recoverable pre-judgment interest at 8.5% compounded annually beginning on April 13, 2021, and continuing until June 20, 2024, on the **\$1,352,149.80** award against Caroline Allison is calculated as follows.

- $\$1,352,149.80 \times .085 = \$114,932.73$. Thus, the amount of the award plus pre-judgment interest as of April 13, 2022, is \$1,467,082.53.
- $\$1,467,082.53 \times .085 = \$124,702.02$. Thus, the amount of the award plus pre-judgment interest as of April 13, 2023, is \$1,591,784.55.
- $\$1,591,784.55 \times .085 = \$135,301.69$. Thus, the amount of the award plus pre-judgment interest as of April 13, 2024, is \$1,727,086.24.
- $\$1,727,086.24 \times .085 = \$146,802.33 / 365 = \$402.1982$. Thus, the amount of pre-judgment interest that accrues daily until April 13, 2025, is \$402.1982
- Additional pre-judgment interest will be calculated as: Interest for 54 days from April 14, 2024, through June 20, 2024, will be 67 days times \$402.1982 = \$26,947.28.

Therefore, I AWARD as follows:

Clients shall be liable, jointly and severally, to pay Lawyers the sum of **\$376,013.93** for attorneys' fees and expenses.

Mr. Allison shall pay to Lawyers the sum of **\$421,133.32** for pre-judgment interest. The award against Mr. Allison with accrued pre-judgment interest shall be **\$1,838,049.00**.

Ms. Allison shall pay to Lawyers the sum of **\$401,883.72** for pre-judgment interest. The award against Ms. Allison with accrued pre-judgment interest shall be **\$1,754,033.52**.

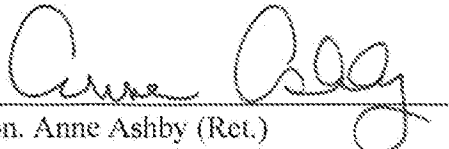
The administrative fees of the American Arbitration Association (AAA) totaling \$56,225.00 shall be borne by Clients, jointly and severally, and the compensation of the arbitrator totaling \$133,318.81 shall be borne by Clients, jointly and severally. Therefore, in addition to the other sums awarded above, Clients (jointly and severally) shall reimburse Lawyers the sum of \$78,456.27, representing that portion of said fees, compensation, and expenses in excess of the apportioned costs previously incurred by Lawyers.

The above sums are to be paid on or before 30 days from the date of this Award.

Clients shall be liable, jointly and severally, to pay Lawyers post-judgment interest at the rate of 8.5% per annum commencing 31 days from the date of this Award until paid in full.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are, hereby, denied.

Signed this 20th day of June, 2024.


 Hon. Anne Ashby (Ret.)
 Arbitrator

Appendix 4

EMPLOYMENT AGREEMENT AND POWER OF ATTORNEY

This agreement is between Richard Allison Jr. (the Client) and Nicholas Abaza, (the Attorney) for the legal representation in prosecuting the claims in the client's interest in the Estate Richard Allison and interest in the Richard Allen Trust or Trusts.

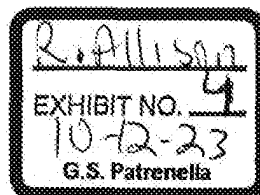
Attorneys' Fees: This agreement is a contingency fee agreement. If the Attorneys are successful in recovering money and/or property from either the Estate or Trust of Richard Allison i.e. client's father, then attorneys shall receive 35% of the amount (money and property) recovered. This also includes and/or any future interest from Richard Allison's estate and/or Trust.

Client also agree to compensate attorney for sums put back into a trust and/or removed from the trust for his benefit. However, attorneys will not effectively take more than 35% of the gross recovered. Attorneys fees will be paid first from the recovery and thereafter attorneys will recover their expenses. If there are no recovery, then the client owes no expenses.

Client does not object to the participation of any lawyers Attorneys may choose to involve in this action including Jorge Borunda who is representing his sister and waves any potential conflict should one arise. Client and Attorneys further agree that if, after investigation of the facts and research of the law, Attorneys believe that Client's claims are of limited merit, Attorneys may terminate this agreement with Client and said termination will release Attorneys from any further action on Client's claim, and discharge Attorneys from this Employment Agreement. Termination will be effective via regular mail or delivery service with signature receipt to the last address provided by Client to Attorneys. This fee is not set by law and is negotiable between Attorney and Client.

In some instances, it may be necessary for Attorneys to retain special outside counsel to assist on matters other than prosecuting Client's claims for damages as a result of injuries sustained by Client. Examples of such instances include the following: a defendant may seek bankruptcy protection; or a defendant may attempt to fraudulently transfer some of its assets to avoid paying the Client's claim; or a complex, multi-party settlement may require an ethics opinion from outside counsel; or special action in probate court may be necessary apart from the usual probate proceedings involved in an estate; or a separate lawsuit may need to be filed against a defendant's insurance company. Client agrees that attorneys may retain such special outside counsel to represent Client when Attorneys deem such assistance to be reasonably necessary, and that the fees for such counsel will be deducted from Client's share of recovery.

Approval Necessary for Settlement: Attorneys will not settle the claims without Client's approval. However, Client will not make a settlement or offer of settlement without the approval of Attorneys.



Initials
Page 1 of 5

Attorneys are hereby granted a power of attorney so that they may have full authority to prepare, sign, and file all legal instruments, pleadings, drafts, authorizations, and papers as shall be reasonably necessary to conclude this representation including settlement and/or reducing to possession any and all monies or other things of value due to the Client in connection with the Claims as fully as the Client could do so in person. Attorneys are also authorized and empowered to act as Client's negotiator in any and all settlement negotiations concerning the subject of this Agreement.

Client hereby authorizes Attorneys to negotiate a settlement of Client's claims in whatever manner, and using whatever negotiation strategy, Attorneys deem appropriate. Client understands that Attorneys may, if appropriate, negotiate a settlement of Client's claim and the claims of other clients similarly situated on an aggregate basis.

Attorneys may represent multiple individuals with separate claims arising out of this matter. Clients acknowledge that conflicts may arise during the negotiations and or settlement discussions if Clients are faced with the task of dividing settlement proceeds among such individual claims. In such circumstances, Clients understand that Attorneys cannot determine such allocation for Clients and cannot favor one Client over the other(s). Clients understand that they will need to come to agreement amongst themselves regarding such division. Having been fully informed, Clients hereby agree to waive any such conflicts that exist, and request that Attorneys represent them collectively and individually.

Medicare: Client understands that current regulations may require Attorneys to compromise, settle, or execute a release of Medicare's reimbursement claim prior to distributing any settlement or verdict proceeds. Client further understands that Attorneys may be required to take such steps to determine if such reimbursement claims exist even if they have received no such notice from Medicare prior to any verdict or settlement disbursement.

Costs and Other Expenses: It will be necessary for the Attorneys to incur and advance certain court costs and expenses for the Client. These costs and other expenses may include, but are not limited to, the following: filing and service fees; costs for medical exams, reports and records; cost for investigative services; travel expenses (including air fare, ground transportation, vehicle mileage, lodging and meals); deposition expenses and court reporter fees; costs and fees associated with any necessary foreign estate administration procedures; outside trial service providers; trial equipment rental and operation fees; preparation of exhibits and graphics; and copying, postage, shipping; courier expenses and common benefit costs. Common benefit costs are those court costs and expenses that are properly chargeable for the investigation, preparation, trial, and/or settlement of more than one Client's cause of action. Common benefit costs are routinely shared by more than one Claimant and shall be deducted from the Client's recovery in an equitable and reasonably proportionate manner.

*50% expenses cost shared with Caroline
expense fees paid excluding attorneys fees*

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Page 2 of 5

In addition, it will be necessary to employ medical or technical expert witnesses to examine and report on the fact of Client's cause of action. Client agrees that Attorneys may, in their discretion employ and pay these expert witnesses. Client further agrees to reimburse Attorneys for all such costs and expenses from Client's share of any money recovered by settlement or judgment.

The Client agrees to reimburse any and all necessary expenses out of any settlement proceeds that may be received. The Clients will not owe any expenses if there is no recovery. Upon receipt by the Attorneys of any proceeds of any recovery, the Attorneys shall (1) first deduct 35% from the amount as attorneys' fees, (2) then deduct any costs or expenses already paid by the Attorneys and (3) disburse the remainder to the Client.

Note expenses will be shared equally with client's sister.

Power of Attorney: This agreement gives Attorneys a power of attorney to execute all reasonable and necessary documents connected with the handling of this cause of action, including pleadings, contracts, checks or drafts, settlement agreements, compromises and releases, verifications, dismissals and orders, and all other documents that the Client could properly execute.

Liens: Creditors of a litigant sometimes have a right to file a lien in the case to recover from amounts disbursed or awarded to the litigant. If Attorneys are notified of such lien claims, they will notify Client. However, the responsibility of paying any lien claim is Client's and not Attorneys'. Liens are paid from Client's share of the recovery and do not reduce attorney fees.

In the event that the Client's health care provider refuses to authorize payment for medical treatment required by the Client for an injury related to SSRI's, Attorney shall attempt to facilitate such treatment and/or payment of such treatment by offering to place a lien on the case in favor of the health care provider.

If several members of the same family and/or heirs of the same deceased person have retained Attorneys to represent them in a single lawsuit, these clients understand that a potential conflict of interest may exist between them concerning the division of proceeds from the lawsuit, and hereby waive any real or potential conflict of interest and agree that Attorneys may represent them all.

____ Initials
Page 3 of 5

Distribution of Settlements: Once Attorneys obtain settlement funds, the issue arises about how those funds are to be distributed among the clients. To avoid later conflict, we ask all Client's heirs to agree among themselves on a formula for distribution of settlement proceeds, and to confirm that agreement in writing. Be aware that once clients reach an agreement regarding the division of settlement funds, if a potential conflict arises among those clients, Attorneys will have a conflict of interest and cannot advise any one client with respect to rights against another client. We are prepared to offer our advice and guidance with respect to how a court would likely order settlement proceeds divided among clients and make suggestions for all to consider. However, each client is entitled to obtain separate and independent advice and/or representation with respect to how the funds should be divided. Attorneys will hold all net proceeds in an interest-bearing trust account until an agreement is reached regarding the distribution of settlement proceeds.

Cooperation; Address Change; Return of Documents: Client agrees to cooperate with Attorneys to permit Client's claims to be investigated and developed; to disclose to Attorneys all facts relevant to the claim; and to be reasonably available to attend any necessary meetings, medical exams, depositions, preparation sessions, hearings, and trial. Client agrees to notify Attorneys in writing of each change in Client's mailing address during the term of this representation within seven (7) days of each such change of address. When the case is over, Attorney will provide Client the opportunity to retrieve any documents and/or materials that Client has provided or that Attorneys have obtained from other sources in connection with the case. However, if Client has not retrieved those documents and/or materials within ninety days after Attorneys have given Client written notice that the case is over and that those documents and/or materials are available to Client, Attorneys may dispose of those documents and/or materials.

Arbitration: Any and all disputes, controversies, claims or demands arising out of or relating to this Agreement or any provision hereof, the providing of services by Attorney to Client, or in any way relating to the relationship between Attorney and Client, whether in contract, tort or otherwise, at law or in equity, for damages or any other relief, shall be resolved by binding arbitration pursuant to the Federal Arbitration Act in accordance with the Commercial Arbitration Rules then in effect with the American Arbitration Association. Any such arbitration proceeding shall be conducted in Harris County, Texas. This arbitration provision shall be enforceable in either federal or state court in Harris County, Texas pursuant to the substantive federal laws established by the Federal Arbitration Act. Any party to any award rendered in such arbitration proceeding may seek a judgment upon the award and that judgment may be entered by any federal or state court in Harris County, Texas, having jurisdiction.

Consent to Associate: The contingency fee in this case will be divided between the following law firms as follows of the 35% contingency fee:

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Jorge Borunda
Nicholas Abaza

60%
40%

Each attorney and/or law firm sharing in the division of the contingency fee will assume joint responsibility for representation as to the claims described in paragraph one of this agreement.

If Client refuses to assist Attorneys in the prosecution of this lawsuit, including responding to requests for information about the case by phone or mail, Attorneys may withdraw from representing Client in this matter.

WITNESS my hand this 13 day of June, 2019.

X 	
Client (signature)	Telephone Number(s)
	
Street Address	Date of Birth
	last three numbers _____
City, State & Zip	Social Security Number
	
E-mail Address	

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x /s/ nick abaza

____ Initials
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Allison, Caroline 2771 000064

Appendix 5

[Tex. Gov't Code § 82.065](#)

*** This document is current through the 2023 Regular Session; the 1st C.S.; the 2nd C.S.; the 3rd C.S. and the 4th C.S. of the 88th Legislature; and the November 7, 2023 general election results. ***

Texas Statutes & Codes Annotated by LexisNexis® > Government Code > Title 2 Judicial Branch (Subts. A — M) > Subtitle G Attorneys (Chs. 81 — 90) > Chapter 82 Licensing of Attorneys (Subchs. A — D) > Subchapter C Attorney Conduct (§§ 82.061 — 82.066)

Sec. 82.065. Contract for Legal Services.

- (a) A contingent fee contract for legal services must be in writing and signed by the attorney and client.
- (b) Any contract for legal services is voidable by the client if it is procured as a result of conduct violating [Section 38.12\(a\) or \(b\), Penal Code](#), or [Rule 7.03 of the Texas Disciplinary Rules of Professional Conduct](#) of the State Bar of Texas, regarding barratry by attorneys or other persons.
- (c) An attorney who was paid or owed fees or expenses under a contract that is voided under this section may recover fees and expenses based on a quantum meruit theory if the client does not prove that the attorney committed barratry or had actual knowledge, before undertaking the representation, that the contract was procured as a result of barratry by another person. To recover fees or expenses under this subsection, the attorney must have reported the misconduct as required by the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, unless:
 - (1) another person has already reported the misconduct; or
 - (2) the attorney reasonably believed that reporting the misconduct would substantially prejudice the client's interests.

History

Enacted by [Acts 1989, 71st Leg., ch. 866 \(S.B. 843\), § 3](#), effective September 1, 1989; am. [Acts 2011, 82nd Leg., ch. 94 \(S.B. 1716\), § 1](#), effective September 1, 2011; am. [Acts 2013, 83rd Leg., ch. 315 \(H.B. 1711\), § 1](#), effective September 1, 2013.

Annotations

Notes

STATUTORY NOTES

Amendment Notes

2011 amendment, deleted “Contingent Fee” from the beginning of the section heading; in (b), substituted “Any contract” for “A contingent fee contract,” added “Texas” after “state or the,” and added “Professional Conduct of”; and added (c).

2013 amendment, substituted “Section 38.12(a) or (b), Penal Code, or Rule 7.03 of” for “the laws of this state or” in (b); and made a stylistic change.

Applicability

Acts 2011, 82nd Leg., ch. 94 (S.B. 1716), § 3(a) provides: “[Section 82.065, Government Code](#), as amended by this Act, applies only to a contract entered into on or after the effective date of this Act [September 1, 2011]. A contract entered into before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.”

Acts 2013, 83rd Leg., ch. 315 (H.B. 1711), § 4(a) provides: “[Section 82.065\(b\), Government Code](#), as amended by this Act, applies only to a contract procured as a result of conduct described by that subsection, as amended by this Act, occurring on or after the effective date of this Act [September 1, 2013]. A contract procured as a result of conduct occurring before the effective date of this Act is governed by the law applicable to the contract immediately before the effective date of this Act, and that law is continued in effect for that purpose.”

Notes to Decisions

Bankruptcy Law: Claims: Proof: Content, Evidence & Form

Civil Procedure: Justiciability: Standing: Third Party Standing

Civil Procedure: Jurisdiction: Personal Jurisdiction & In Rem Actions: In Personam Actions: Purposeful Availment

Civil Procedure: Alternative Dispute Resolution: Arbitrations

Civil Procedure: Remedies: Costs & Attorney Fees: General Overview

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: General Overview

Civil Procedure: Appeals: Costs & Attorney Fees

Contracts Law: Contract Conditions & Provisions: Arbitration Clauses

Contracts Law: Remedies: Equitable Relief: Quantum Meruit

Contracts Law: Remedies: Rescission & Redhibition: General Overview

Contracts Law: Statutes of Frauds

Contracts Law: Statutes of Frauds: Exceptions: Subsequent Oral Agreements

Contracts Law: Statutes of Frauds: Requirements: Signatures

Legal Ethics: Client Relations: Attorney Fees: General Overview

Legal Ethics: Client Relations: Attorney Fees: Contingency Fees

Legal Ethics: Client Relations: Attorney Fees: Fee Agreements

Legal Ethics: Client Relations: Attorney Fees: Fee Splitting

Legal Ethics: Client Relations: Conflicts of Interest

Legal Ethics: Legal Services Marketing: Advertising

Legal Ethics: Legal Services Marketing: Direct Contact With Prospective Clients

Legal Ethics: Professional Conduct: Nonlawyers**Legal Ethics: Unauthorized Practice of Law****Torts: Procedure: Attorney-Client Relationship****Torts: Procedure: Settlements: General Overview****Bankruptcy Law: Claims: Proof: Content, Evidence & Form**

Claims of a debtor's attorneys for 40% of the commissioners' award to the debtor in a condemnation action were allowed because the claims, which included an attachment of the contingency fee agreement on which the claims were based, were prima facie valid; the agreement, which was in writing and signed by the debtor and an attorney as required by [Tex. Gov't Code Ann. § 82.065](#), was fair in that the attorneys successfully negotiated an agreement with the condemning authority to move a pipeline to cause less disruption and damage to the debtor's property; and the debtors' objection that the agreement was terminated by the debtor pursuant to a court order, which merely permitted the rejection of the agreement for the limited purpose of hiring new counsel in the condemnation action and did not terminate the contract, was insufficient to shift the burden to the attorneys. [In re Am. REIT, Inc., No. 07-40308, 2008 Bankr. LEXIS 1206 \(Bankr. E.D. Tex. Apr. 15, 2008\)](#).

Civil Procedure: Justiciability: Standing: Third Party Standing

While the client could challenge the contract, neither debtor nor his counsel had standing to void her counsel's oral contingency agreement; because the client had not challenged the oral contract, it was legal and enforceable. [Griggs v. Webber \(In re Webber\), 350 B.R. 344, 2006 Bankr. LEXIS 2383 \(Bankr. S.D. Tex. 2006\)](#).

Civil Procedure: Jurisdiction: Personal Jurisdiction & In Rem Actions: In Personam Actions: Purposeful Availment

Law firm's actions in meeting with the client for the purpose of obtaining him as a client violated [Tex. Disciplinary R. Prof. Conduct 5.03](#) and [7.03](#), reprinted in Tex. Gov't Code Ann. tit. 2, subtit. G app. A (2005) (Tex. State Bar R. art. X, sec. 9) and therefore the contingent fee contract was voidable by the client, [Tex. Gov't Code Ann. § 82.065\(b\)](#); because the primary purpose of the agreement was voided, and activity stemming from the void agreement was the only contact with Texas, there was no evidence to establish specific jurisdiction and the trial court erred by determining that it could exercise specific jurisdiction over the client. [Cobb v. Stern, Miller & Higdon, 305 S.W.3d 36, 2009 Tex. App. LEXIS 4995 \(Tex. App. Houston 1st Dist. July 2, 2009, no pet.\)](#).

Civil Procedure: Alternative Dispute Resolution: Arbitrations

Trial court abused its discretion in staying arbitration between a law firm and its former client because the former client failed to show that there was not an agreement to arbitrate, given that the parties' contingency fee agreement that contained the arbitration provision was eventually countersigned by an attorney with the firm, and that the firm's plea in intervention seeking attorney fees could not be classified as a personal injury claim because it was premised on provisions in the fee agreement and not on a personal injury. [Law Office of Thomas J. Henry v. Garcia, No. 13-18-00275-CV, 2019 Tex. App. LEXIS 1224 \(Tex. App. Corpus Christi Feb. 21, 2019\)](#).

Civil Procedure: Remedies: Costs & Attorney Fees: General Overview

Trial judge lacked the authority to change the terms of fully-performed contingent fee contracts between attorneys and their clients in mass tort litigation where such contracts complied with [Tex. Gov't Code Ann. § 82.065](#), absent

pleading and proof of barratry, fraud, breach of fiduciary duty, incapacity, illegality, class action, or the applicability of the 'common fund doctrine.'" [*In re Polybutylene Plumbing Litig. v. Hoechst Celanese Corp.*, 23 S.W.3d 428, 2000 Tex. App. LEXIS 2105 \(Tex. App. Houston 1st Dist. Mar. 30, 2000, no pet.\)](#).

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: General Overview

While the client could challenge the contract, neither debtor nor his counsel had standing to void her counsel's oral contingency agreement; because the client had not challenged the oral contract, it was legal and enforceable. [*Griggs v. Webber \(In re Webber\)*, 350 B.R. 344, 2006 Bankr. LEXIS 2383 \(Bankr. S.D. Tex. 2006\)](#).

Civil Procedure: Appeals: Costs & Attorney Fees

On an action for declaratory judgment to determine whether an attorney was authorized to sign his client's name to a settlement and indemnity agreement, the alleged agreements to allow another attorney to represent the clients on a contingent fee basis were voidable under [*Tex. Gov't Code Ann. § 82.065*](#), because the attorney had no written agreement with the clients and the clients gave notice of their intent to avoid the agreements. [*Sanes v. Clark*, 25 S.W.3d 800, 2000 Tex. App. LEXIS 4981 \(Tex. App. Waco July 26, 2000, no pet.\)](#).

Contracts Law: Contract Conditions & Provisions: Arbitration Clauses

Law firm's failure to sign a fee contract did not make the contract's arbitration clause unenforceable because (1) the firm's conduct showing agreement to the contract showed a meeting of the minds, (2) any noncompliance with [*Tex. Gov't Code Ann. § 82.065\(a\)*](#) did not make the agreement unenforceable against the client, and (3) an arbitrator had to decide the client's attack on the contract's enforceability. [*Law Office of Thomas J. Henry v. Cavanaugh*, No. 05-17-00849-CV, 2018 Tex. App. LEXIS 3182 \(Tex. App. Dallas May 7, 2018\)](#).

Contracts Law: Remedies: Equitable Relief: Quantum Meruit

Overview: *Trial court erred when it granted summary judgment and dismissed appellant's breach-of-contract claim as to his loans to appellee and her IOU as there was genuine issue of material fact as to whether there was valid contract between parties. Evidence included a copy of the IOU from appellee in which she admitted that appellant had loaned her money.*

- A party generally cannot recover under a quantum-meruit claim when there is a valid contract covering the services or materials furnished. A contingent-fee contract for legal services, however, must be in writing and signed by the attorney and client to be enforceable. [*Tex. Gov't Code Ann. § 82.065\(a\)*](#).

[*DeGomez v. Haworth*, No. 03-23-00057-CV, 2024 Tex. App. LEXIS 2165 \(Tex. App. Austin Mar. 28, 2024\)](#), op. withdrawn, sub. op., reh'g denied, [*No. 03-23-00057-CV, 2024 Tex. App. LEXIS 4550 \(Tex. App. Austin June 28, 2024\)*](#).

Common law has provided for quantum-meruit recoveries for attorneys who did not have written contingent-fee agreements that complied with [*Tex. Gov't Code Ann. § 82.065\(c\)*](#). [*Hill v. Shamoun & Norman, LLP*, 544 S.W.3d 724, 2018 Tex. LEXIS 309 \(Tex. 2018\)](#).

[*Tex. Gov't Code Ann. § 82.065\(c\)*](#) does not preclude a law firm's quantum-meruit recovery as a matter of law for legal services performed under an unenforceable contingent-fee agreement. [*Hill v. Shamoun & Norman, LLP*, 544 S.W.3d 724, 2018 Tex. LEXIS 309 \(Tex. 2018\)](#).

Contracts Law: Remedies: Rescission & Redhibition: General Overview

Clients could sue for rescission of a contingency-fee agreement allegedly procured by barratry, although the contract had been fully performed, but they had an obligation to make counter-restitution and were not entitled to total fee forfeiture. Ratification was not shown, and the claim was timely under the four-year residual statute of limitations. [*Neese v. Lyon*, 479 S.W.3d 368, 2015 Tex. App. LEXIS 8102 \(Tex. App. Dallas July 31, 2015\)](#), reh'g denied, [*No. 05-13-01597-CV*, 2015 Tex. App. LEXIS 13082 \(Tex. App. Dallas Nov. 19, 2015\)](#).

Contracts Law: Statutes of Frauds

In a law firm's suit to recover the reasonable value of its services in assisting its client reach a comprehensive settlement of various lawsuits, the statute of frauds did not prevent the law firm's quantum-meruit recovery for services it performed under an oral contingent-fee agreement that was not memorialized in a signed writing. [*Hill v. Shamoun & Norman, LLP*, 544 S.W.3d 724, 2018 Tex. LEXIS 309 \(Tex. 2018\)](#).

Common law has provided for quantum-meruit recoveries for attorneys who did not have written contingent-fee agreements that complied with [*Tex. Gov't Code Ann. § 82.065\(c\)*](#). [*Hill v. Shamoun & Norman, LLP*, 544 S.W.3d 724, 2018 Tex. LEXIS 309 \(Tex. 2018\)](#).

[*Tex. Gov't Code Ann. § 82.065\(c\)*](#) does not preclude a law firm's quantum-meruit recovery as a matter of law for legal services performed under an unenforceable contingent-fee agreement. [*Hill v. Shamoun & Norman, LLP*, 544 S.W.3d 724, 2018 Tex. LEXIS 309 \(Tex. 2018\)](#).

Contracts Law: Statutes of Frauds: Exceptions: Subsequent Oral Agreements

In an action by a law firm and attorney against a former client to recover fees allegedly owed under an oral flat-fee agreement for legal services, the trial court did not err in granting the client's motion for summary judgment because even though the original contingency fee agreement was required to be in writing, plaintiffs failed to meet the burden of demonstrating a genuine issue as to whether the subsequent oral modification materially altered the parties' written agreement. [*Law Office of Andrew L. Jones, P.C. v. Schachar*, No. 05-19-00188-CV, 2020 Tex. App. LEXIS 1160 \(Tex. App. Dallas Feb. 11, 2020\)](#).

Contracts Law: Statutes of Frauds: Requirements: Signatures

Attorneys' failure to sign a contingent fee contract did not render a choice-of-law provision in the contract void under [*Tex. Gov't Code Ann. § 82.065\(a\)*](#) because the contract was signed by the client and fully performed by the attorneys. [*Cagle v. James St. Group*, 400 Fed. Appx. 348, 2010 U.S. App. LEXIS 22359 \(10th Cir. Okla. 2010\)](#).

Legal Ethics: Client Relations: Attorney Fees: General Overview

Attorney and law firm which did not obtain the signature on a fee contract of insurance company whose insured was pursuing medical malpractice and product liability claims did not, pursuant to [*Tex. Gov't Code Ann. § 82.065*](#), have a binding contingent fee contract to represent the insurance company in those cases; thus, the parties' agreement that they represent the insurance company in an intervention suit in the products liability case was voidable by the insurance company, was voided by it before attorney and law firm fully performed, and left attorney and law firm with no enforceable contingent fee contract. [*Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356, 2001 Tex. App. LEXIS 4927 \(Tex. App. Dallas July 25, 2001, no pet.\)](#).

Trial judge lacked the authority to change the terms of fully-performed contingent fee contracts between attorneys and their clients in mass tort litigation where such contracts complied with [*Tex. Gov't Code Ann. § 82.065*](#), absent

pleading and proof of barratry, fraud, breach of fiduciary duty, incapacity, illegality, class action, or the applicability of the 'common fund doctrine.'" [*In re Polybutylene Plumbing Litig. v. Hoechst Celanese Corp.*, 23 S.W.3d 428, 2000 Tex. App. LEXIS 2105 \(Tex. App. Houston 1st Dist. Mar. 30, 2000, no pet.\)](#).

Legal Ethics: Client Relations: Attorney Fees: Contingency Fees

Overview: *Trial court erred when it granted summary judgment and dismissed appellant's breach-of-contract claim as to his loans to appellee and her IOU as there was genuine issue of material fact as to whether there was valid contract between parties. Evidence included a copy of the IOU from appellee in which she admitted that appellant had loaned her money.*

- A party generally cannot recover under a quantum-meruit claim when there is a valid contract covering the services or materials furnished. A contingent-fee contract for legal services, however, must be in writing and signed by the attorney and client to be enforceable. [*Tex. Gov't Code Ann. § 82.065\(a\)*](#).

[*DeGomez v. Haworth*, No. 03-23-00057-CV, 2024 Tex. App. LEXIS 2165 \(Tex. App. Austin Mar. 28, 2024\)](#), op. withdrawn, sub. op., reh'g denied, [*No. 03-23-00057-CV, 2024 Tex. App. LEXIS 4550 \(Tex. App. Austin June 28, 2024\)*](#).

Overview: *In an appeal from a grant of a summary judgment in favor of the defendant, any claim for breach of a contingency fee agreement failed because no writing as required by [*Tex. Gov't Code Ann. § 82.065\(a\)*](#) was in the record and there was nothing to indicate the parties agreed to conduct their transaction by electronic means.*

- By statute, a contingent fee contract for legal services must be in writing and signed by the attorney and client. [*Tex. Gov't Code Ann. § 82.065\(a\)*](#).

[*Gutman v. Jameson*, No. 05-21-01005-CV, 2023 Tex. App. LEXIS 252 \(Tex. App. Dallas Jan. 13, 2023\)](#).

Trial court abused its discretion in staying arbitration between a law firm and its former client because the former client failed to show that there was not an agreement to arbitrate, given that the parties' contingency fee agreement that contained the arbitration provision was eventually countersigned by an attorney with the firm, and that the firm's plea in intervention seeking attorney fees could not be classified as a personal injury claim because it was premised on provisions in the fee agreement and not on a personal injury. [*Law Office of Thomas J. Henry v. Garcia*, No. 13-18-00275-CV, 2019 Tex. App. LEXIS 1224 \(Tex. App. Corpus Christi Feb. 21, 2019\)](#).

In a law firm's suit to recover the reasonable value of its services in assisting its client reach a comprehensive settlement of various lawsuits, the statute of frauds did not prevent the law firm's quantum-meruit recovery for services it performed under an oral contingent-fee agreement that was not memorialized in a signed writing. [*Hill v. Shamoun & Norman, LLP*, 544 S.W.3d 724, 2018 Tex. LEXIS 309 \(Tex. 2018\)](#).

Contingent-fee provision in the retainer agreement informed the client of all material facts and the trial court did not err when it determined the particular contingency percentage was enforceable; the client did not provide any argument demonstrating why the contingent-fee provision of the retainer agreement was unconscionable and contrary to public policy, and therefore, unenforceable. [*Douglas-Peters v. Cho, Choe & Holen, P.C.*, No. 05-15-01538-CV, 2017 Tex. App. LEXIS 1836 \(Tex. App. Dallas Mar. 3, 2017\)](#).

Attorney's e-mails to his client concerning an alleged contingency fee agreement did not satisfy the requirement that the contract be in writing, as the client requested a writing rather than agreeing to conduct transactions by electronic means. [*Celmer v. McGarry*, 412 S.W.3d 691, 2013 Tex. App. LEXIS 9985 \(Tex. App. Dallas Aug. 8, 2013\)](#), reh'g denied, [*No. 05-10-01133-CV, 2013 Tex. App. LEXIS 15562 \(Tex. App. Dallas Nov. 21, 2013\)*](#).

Client did not seek to void the contingent fee agreement because the heir was not the client and the contingent fee agreement was fully performed before the heir filed his motion to set aside the contract. [*In the Estate of Arizola*, 401 S.W.3d 664, 2013 Tex. App. LEXIS 4992 \(Tex. App. San Antonio Apr. 24, 2013, no pet.\)](#).

Because an attorney and law firm were the parties enforcing the contingent fee agreement against the client and because the clients signed the agreements in the instant case, [*Tex. Gov't Code Ann. 82.065\(a\)*](#)'s purpose was fulfilled and the contract was not void. [*Chambers v. O'Quinn*, 305 S.W.3d 141, 2009 Tex. App. LEXIS 7702 \(Tex. App. Houston 1st Dist. Oct. 1, 2009, no pet.\)](#).

Claims of a debtor's attorneys for 40% of the commissioners' award to the debtor in a condemnation action were allowed because the claims, which included an attachment of the contingency fee agreement on which the claims were based, were prima facie valid; the agreement, which was in writing and signed by the debtor and an attorney as required by [*Tex. Gov't Code Ann. § 82.065*](#), was fair in that the attorneys successfully negotiated an agreement with the condemning authority to move a pipeline to cause less disruption and damage to the debtor's property; and the debtors' objection that the agreement was terminated by the debtor pursuant to a court order, which merely permitted the rejection of the agreement for the limited purpose of hiring new counsel in the condemnation action and did not terminate the contract, was insufficient to shift the burden to the attorneys. [*In re Am. REIT, Inc., No. 07-40308*, 2008 Bankr. LEXIS 1206 \(Bankr. E.D. Tex. Apr. 15, 2008\)](#).

Neither of two documents were enforceable contingency fee agreements under [*Tex. Gov't Code Ann. § 82.065*](#) or *Tex. Disciplinary R. Prof. Conduct 1.04(d)*, as one mentioned nothing about attorney's fees and the other, which was executed by an executrix, did not reflect that she signed the document other than in her own behalf; in further support of the denial of the request for fees was the fact that the attorney did not comply with *Tex. Disciplinary R. Prof. Conduct 1.06*, by obtaining his clients' consent after disclosure of a conflict of interest. *Ray v. T.D.*, No. 03-06-00242-CV, 2008 Tex. App. LEXIS 986 (Tex. App. Austin Feb. 7, 2008).

Legal Ethics: Client Relations: Attorney Fees: Fee Agreements

Overview: *In an appeal from a grant of a summary judgment in favor of the defendant, any claim for breach of a contingency fee agreement failed because no writing as required by [*Tex. Gov't Code Ann. § 82.065\(a\)*](#) was in the record and there was nothing to indicate the parties agreed to conduct their transaction by electronic means.*

- By statute, a contingent fee contract for legal services must be in writing and signed by the attorney and client. [*Tex. Gov't Code Ann. § 82.065\(a\)*](#).

[*Gutman v. Jameson*, No. 05-21-01005-CV, 2023 Tex. App. LEXIS 252 \(Tex. App. Dallas Jan. 13, 2023\)](#).

Law firm's failure to sign a fee contract did not make the contract's arbitration clause unenforceable because (1) the firm's conduct showing agreement to the contract showed a meeting of the minds, (2) any noncompliance with [*Tex. Gov't Code Ann. § 82.065\(a\)*](#) did not make the agreement unenforceable against the client, and (3) an arbitrator had to decide the client's attack on the contract's enforceability. [*Law Office of Thomas J. Henry v. Cavanaugh*, No. 05-17-00849-CV, 2018 Tex. App. LEXIS 3182 \(Tex. App. Dallas May 7, 2018\)](#).

Oral fee-sharing agreement did not require attorneys to forfeit agreed fees because, under the circumstances, clients received all the protections intended by [*Tex. Gov't Code Ann. § 82.065*](#) and *Tex. Disciplinary R. Prof. Conduct 1.04(f)*. [*Gillespie v. Hernden*, 516 S.W.3d 541, 2016 Tex. App. LEXIS 13191 \(Tex. App. San Antonio Dec. 14, 2016, no pet.\)](#).

Clients could sue for rescission of a contingency-fee agreement allegedly procured by barratry, although the contract had been fully performed, but they had an obligation to make counter-restitution and were not entitled to total fee forfeiture. Ratification was not shown, and the claim was timely under the four-year residual statute of limitations. [*Neese v. Lyon*, 479 S.W.3d 368, 2015 Tex. App. LEXIS 8102 \(Tex. App. Dallas July 31, 2015\)](#), reh'g denied, [*No. 05-13-01597-CV*, 2015 Tex. App. LEXIS 13082 \(Tex. App. Dallas Nov. 19, 2015\)](#).

Tex. Gov't Code § 82.065

Attorney's e-mails to his client concerning an alleged contingency fee agreement did not satisfy the requirement that the contract be in writing, as the client requested a writing rather than agreeing to conduct transactions by electronic means. [*Celmer v. McGarry*, 412 S.W.3d 691, 2013 Tex. App. LEXIS 9985 \(Tex. App. Dallas Aug. 8, 2013\)](#), reh'g denied, [*No. 05-10-01133-CV*, 2013 Tex. App. LEXIS 15562 \(Tex. App. Dallas Nov. 21, 2013\)](#).

Attorneys' failure to sign a contingent fee contract did not render a choice-of-law provision in the contract void under [*Tex. Gov't Code Ann. § 82.065\(a\)*](#) because the contract was signed by the client and fully performed by the attorneys. [*Cagle v. James St. Group*, 400 Fed. Appx. 348, 2010 U.S. App. LEXIS 22359 \(10th Cir. Okla. 2010\)](#).

Legal Ethics: Client Relations: Attorney Fees: Fee Splitting

Oral fee-sharing agreement did not require attorneys to forfeit agreed fees because, under the circumstances, clients received all the protections intended by [*Tex. Gov't Code Ann. § 82.065*](#) and *Tex. Disciplinary R. Prof. Conduct 1.04(f)*. [*Gillespie v. Hernden*, 516 S.W.3d 541, 2016 Tex. App. LEXIS 13191 \(Tex. App. San Antonio Dec. 14, 2016, no pet.\)](#).

Legal Ethics: Client Relations: Conflicts of Interest

Neither of two documents were enforceable contingency fee agreements under [*Tex. Gov't Code Ann. § 82.065*](#) or *Tex. Disciplinary R. Prof. Conduct 1.04(d)*, as one mentioned nothing about attorney's fees and the other, which was executed by an executrix, did not reflect that she signed the document other than in her own behalf; in further support of the denial of the request for fees was the fact that the attorney did not comply with *Tex. Disciplinary R. Prof. Conduct 1.06*, by obtaining his clients' consent after disclosure of a conflict of interest. *Ray v. T.D.*, *No. 03-06-00242-CV*, 2008 Tex. App. LEXIS 986 (Tex. App. Austin Feb. 7, 2008).

Legal Ethics: Legal Services Marketing: Advertising

Overview: *Alleged acts of barratry were not extraterritorial. As such, the trial court erred in granting summary judgment to any of the attorneys on the basis that [*Tex. Gov't Code Ann. § 82.0651*](#) had no extraterritorial reach. The focus was on the attorney's own acts that allegedly violated the barratry statute, which, if they occurred, occurred in Texas.*

- Clients have been able to rescind contracts obtained through solicitation in violation of [*Tex. Penal Code Ann. § 38.12*](#) or in violation of [*Tex. Disc. R. Prof. Conduct 7.03*](#). [*Tex. Gov't Code Ann. § 82.065*](#). Rule 7.03 concerns prohibited solicitations and payments and provides that a lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule. [*Tex. Disc. R. Prof. Conduct 7.03\(b\)*](#). Nor may a lawyer, in order to solicit professional employment, pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by *Tex. Disc. R. Prof. Conduct 1.08(d)*, to a prospective client or any other person. [*Tex. Disc. R. Prof. Conduct 7.03\(c\)*](#).

[*Cheatham v. Pohl*, 690 S.W.3d 322, 2022 Tex. App. LEXIS 6528 \(Tex. App. Houston 1st Dist. Aug. 30, 2022, no pet.\)](#).

Legal Ethics: Legal Services Marketing: Direct Contact With Prospective Clients

Overview: *Alleged acts of barratry were not extraterritorial. As such, the trial court erred in granting summary judgment to any of the attorneys on the basis that [*Tex. Gov't Code Ann. § 82.0651*](#) had no extraterritorial reach.*

The focus was on the attorney's own acts that allegedly violated the barratry statute, which, if they occurred, occurred in Texas.

- Clients have been able to rescind contracts obtained through solicitation in violation of [Tex. Penal Code Ann. § 38.12](#) or in violation of [Tex. Disc. R. Prof. Conduct 7.03](#). [Tex. Gov't Code Ann. § 82.065](#). Rule 7.03 concerns prohibited solicitations and payments and provides that a lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule. [Tex. Disc. R. Prof. Conduct 7.03\(b\)](#). Nor may a lawyer, in order to solicit professional employment, pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by [Tex. Disc. R. Prof. Conduct 1.08\(d\)](#), to a prospective client or any other person. [Tex. Disc. R. Prof. Conduct 7.03\(c\)](#).

[Cheatham v. Pohl, 690 S.W.3d 322, 2022 Tex. App. LEXIS 6528 \(Tex. App. Houston 1st Dist. Aug. 30, 2022, no pet.\)](#).

Law firm's actions in meeting with the client for the purpose of obtaining him as a client violated [Tex. Disciplinary R. Prof. Conduct 5.03](#) and [7.03](#), reprinted in Tex. Gov't Code Ann. tit. 2, subtit. G app. A (2005) (Tex. State Bar R. art. X, sec. 9) and therefore the contingent fee contract was voidable by the client, [Tex. Gov't Code Ann. § 82.065\(b\)](#); because the primary purpose of the agreement was voided, and activity stemming from the void agreement was the only contact with Texas, there was no evidence to establish specific jurisdiction and the trial court erred by determining that it could exercise specific jurisdiction over the client. [Cobb v. Stern, Miller & Higdon, 305 S.W.3d 36, 2009 Tex. App. LEXIS 4995 \(Tex. App. Houston 1st Dist. July 2, 2009, no pet.\)](#).

Legal Ethics: Professional Conduct: Nonlawyers

Overview: *Alleged acts of barratry were not extraterritorial. As such, the trial court erred in granting summary judgment to any of the attorneys on the basis that [Tex. Gov't Code Ann. § 82.0651](#) had no extraterritorial reach. The focus was on the attorney's own acts that allegedly violated the barratry statute, which, if they occurred, occurred in Texas.*

- Clients have been able to rescind contracts obtained through solicitation in violation of [Tex. Penal Code Ann. § 38.12](#) or in violation of [Tex. Disc. R. Prof. Conduct 7.03](#). [Tex. Gov't Code Ann. § 82.065](#). Rule 7.03 concerns prohibited solicitations and payments and provides that a lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule. [Tex. Disc. R. Prof. Conduct 7.03\(b\)](#). Nor may a lawyer, in order to solicit professional employment, pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by [Tex. Disc. R. Prof. Conduct 1.08\(d\)](#), to a prospective client or any other person. [Tex. Disc. R. Prof. Conduct 7.03\(c\)](#).

[Cheatham v. Pohl, 690 S.W.3d 322, 2022 Tex. App. LEXIS 6528 \(Tex. App. Houston 1st Dist. Aug. 30, 2022, no pet.\)](#).

Legal Ethics: Unauthorized Practice of Law

Overview: *Alleged acts of barratry were not extraterritorial. As such, the trial court erred in granting summary judgment to any of the attorneys on the basis that [Tex. Gov't Code Ann. § 82.0651](#) had no extraterritorial reach. The focus was on the attorney's own acts that allegedly violated the barratry statute, which, if they occurred, occurred in Texas.*

- Clients have been able to rescind contracts obtained through solicitation in violation of [Tex. Penal Code Ann. § 38.12](#) or in violation of [Tex. Disc. R. Prof. Conduct 7.03](#). [Tex. Gov't Code Ann. § 82.065](#). Rule 7.03 concerns prohibited solicitations and payments and provides that a lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule. [Tex. Disc. R. Prof. Conduct 7.03\(b\)](#). Nor may a lawyer, in order to solicit professional employment, pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by [Tex. Disc. R. Prof. Conduct 1.08\(d\)](#), to a prospective client or any other person. [Tex. Disc. R. Prof. Conduct 7.03\(c\)](#).

[Cheatham v. Pohl, 690 S.W.3d 322, 2022 Tex. App. LEXIS 6528 \(Tex. App. Houston 1st Dist. Aug. 30, 2022, no pet.\)](#).

Torts: Procedure: Attorney-Client Relationship

Attorney and law firm which did not obtain the signature on a fee contract of insurance company whose insured was pursuing medical malpractice and product liability claims did not, pursuant to [Tex. Gov't Code Ann. § 82.065](#), have a binding contingent fee contract to represent the insurance company in those cases; thus, the parties' agreement that they represent the insurance company in an intervention suit in the products liability case was voidable by the insurance company, was voided by it before attorney and law firm fully performed, and left attorney and law firm with no enforceable contingent fee contract. [Tillery & Tillery v. Zurich Ins. Co., 54 S.W.3d 356, 2001 Tex. App. LEXIS 4927 \(Tex. App. Dallas July 25, 2001, no pet.\)](#).

Contingency agreement which lacked a signature of the attorney responsible for the case and therefore did not conform to the requirements of [Tex. Gov't Code § 82.065\(a\)](#), was not void where there was no fraud and where the minor client, and the managing conservator, his mother, signed the agreement and supported its enforcement. [Enochs v. Brown, 872 S.W.2d 312, 1994 Tex. App. LEXIS 565 \(Tex. App. Austin Mar. 16, 1994\)](#), limited, [Tillery & Tillery v. Zurich Ins. Co., 54 S.W.3d 356, 2001 Tex. App. LEXIS 4927 \(Tex. App. Dallas July 25, 2001\)](#), overruled, [Roberts v. Williamson, 111 S.W.3d 113, 2003 Tex. LEXIS 110 \(Tex. 2003\)](#).

Torts: Procedure: Settlements: General Overview

On an action for declaratory judgment to determine whether an attorney was authorized to sign his client's name to a settlement and indemnity agreement, the alleged agreements to allow another attorney to represent the clients on a contingent fee basis were voidable under [Tex. Gov't Code Ann. § 82.065](#), because the attorney had no written agreement with the clients and the clients gave notice of their intent to avoid the agreements. [Sanes v. Clark, 25 S.W.3d 800, 2000 Tex. App. LEXIS 4981 \(Tex. App. Waco July 26, 2000, no pet.\)](#).

Research References & Practice Aids

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[6-105 Texas Torts and Remedies § 105.01](#), REMEDIES, ATTORNEY'S FEES AND COSTS, Fee Agreement With Client, Texas Torts and Remedies.

[10-56 Texas Transaction Guide—Legal Forms § 56.32](#), COMMERCIAL TRANSACTIONS, Contracts, Attorneys, Texas Transaction Guide—Legal Forms.

Practice Guides

[1-3 Dorsaneo, Texas Litigation Guide § 3.04](#), Pretrial Practice (Chs. 1-114), Prelitigation Planning (Chs. 1-4), Creating and Maintaining Attorney-Client Relationship, Dorsaneo, Texas Litigation Guide.

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[1-3 Dorsaneo, Texas Litigation Guide § 3.200](#), Pretrial Practice (Chs. 1-114), Prelitigation Planning (Chs. 1-4), Texas Statutes and Rules, Dorsaneo, Texas Litigation Guide.

2-22 Dorsaneo, Texas Litigation Guide § 22.01, Pretrial Practice (Chs. 1-114), General Claims for Relief (Chs. 20-22), Attorney's Right to Recover Fees, Dorsaneo, Texas Litigation Guide.

2-22 Dorsaneo, Texas Litigation Guide § 22.02, Pretrial Practice (Chs. 1-114), General Claims for Relief (Chs. 20-22), Attorney's Enforcement of Agreement to Provide Legal Services, Dorsaneo, Texas Litigation Guide.

2-22 Dorsaneo, Texas Litigation Guide § 22.60, Pretrial Practice (Chs. 1-114), General Claims for Relief (Chs. 20-22), Preliminary Determinations, Dorsaneo, Texas Litigation Guide.

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Appendix 6

Tex. R. Prof Conduct 1.04

The State and Federal rules are current through February 28, 2025. Local District rules are updated periodically throughout the year.

TX - Texas Local, State & Federal Court Rules > TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT > I. CLIENT-LAWYER RELATIONSHIP

Rule 1.04. Fees.

- (a) A lawyer shall not enter into an arrangement for, charge, or collect an illegal fee or unconscionable fee. A fee is unconscionable if a competent lawyer could not form a reasonable belief that the fee is reasonable.
- (b) Factors that may be considered in determining the reasonableness of a fee include, but not to the exclusion of other relevant factors, 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, if apparent to the client, 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 on results obtained or uncertainty of collection before the legal services have been rendered.
- (c) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.
- (d) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (e) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined. If there is to be a differentiation in the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, the percentage for each shall be stated. The agreement shall state the litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement describing the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
- (e) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.
- (f) A division or arrangement for division of a fee between lawyers who are not in the same firm may be made only if:
- (1) the division is:
 - (i) in proportion to the professional services performed by each lawyer; or

- (ii) made between lawyers who assume joint responsibility for the representation; and
- (2) the client consents in writing to the terms of the arrangement prior to the time of the association or referral proposed, including
 - (i) the identity of all lawyers or law firms who will participate in the fee-sharing arrangement, and
 - (ii) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation, and
 - (iii) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made; and
- (3) the aggregate fee does not violate paragraph (a),
- (g) Every agreement that allows a lawyer or law firm to associate other counsel in the representation of a person, or to refer the person to other counsel for such representation, and that results in such an association with or referral to a different law firm or a lawyer in such a different firm, shall be confirmed by an arrangement conforming to paragraph (f). Consent by a client or a prospective client without knowledge of the information specified in subparagraph (f)(2) does not constitute a confirmation within the meaning of this rule. No attorney shall collect or seek to collect fees or expenses in connection with any such agreement that is not confirmed in that way, except for:
 - (1) the reasonable value of legal services provided to that person; and
 - (2) the reasonable and necessary expenses actually incurred on behalf of that person.
- (h) Paragraph (f) of this rule does not apply to payment to a former partner or associate pursuant to a separation or retirement agreement, or to a lawyer referral program certified by the State Bar of Texas in accordance with the Texas Lawyer Referral Service Quality Act, [Tex. Occ. Code 952.001](#) et seq., or any amendments or recodifications thereof.

Annotations

Commentary

General Comments

Comment: 1. A lawyer in good conscience should not charge or collect more than a reasonable fee, although he may charge less or no fee at all. The determination of the reasonableness of a fee, or of the range of reasonableness, can be a difficult question, and a standard of reasonableness is too vague and uncertain to be an appropriate standard in a disciplinary action. For this reason, paragraph (a) adopts, for disciplinary purposes only, a clearer standard: the lawyer is subject to discipline for an illegal fee or an unconscionable fee. Paragraph (a) defines an unconscionable fee in terms of the reasonableness of the fee but in a way to eliminate factual disputes as to the fees reasonableness. The Rules unconscionable standard, however, does not preclude use of the reasonableness standard of paragraph (b) in other settings.

Basis or Rate of Fee

2. When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. If, however, the basis or rate of fee being charged to a regularly represented client differs from the understanding that has evolved, the lawyer should so advise the client. In a new client-lawyer relationship, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, in order to identify the factors that may be taken into account in finally fixing the fee. When developments occur during the

representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding, and when the lawyer has not regularly represented the client it is preferable for the basis or rate of the fee to be communicated to the client in writing. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth. In the case of a contingent fee, a written agreement is mandatory.

Types of Fees

3. Historically lawyers have determined what fees to charge by a variety of methods. Commonly employed are percentage fees and contingent fees (which may vary in accordance with the amount at stake or recovered), hourly rates, and flat fee arrangements, or combinations thereof.

4. The determination of a proper fee requires consideration of the interests of both client and lawyer. The determination of reasonableness requires consideration of all relevant circumstances, including those stated in paragraph (b). Obviously, in a particular situation not all of the factors listed in paragraph (b) may be relevant and factors not listed could be relevant. The fees of a lawyer will vary according to many factors, including the time required, the lawyer's experience, ability and reputation, the nature of the employment, the responsibility involved, and the results obtained.

5. When there is a doubt whether a particular fee arrangement is consistent with the client's best interest, the lawyer should discuss with the client alternative bases for the fee and explain their implications.

6. Once a fee arrangement is agreed to, a lawyer should not handle the matter so as to further the lawyer's financial interests to the detriment of the client. For example, a lawyer should not abuse a fee arrangement based primarily on hourly charges by using wasteful procedures.

Unconscionable Fees

7. Two principal circumstances combine to make it difficult to determine whether a particular fee is unconscionable within the disciplinary test provided by paragraph (a) of this Rule. The first is the subjectivity of a number of the factors relied on to determine the reasonableness of fees under paragraph (b). Because those factors do not permit more than an approximation of a range of fees that might be found reasonable in any given case, there is a corresponding degree of uncertainty in determining whether a given fee is unconscionable. Secondly, fee arrangements normally are made at the outset of representation, a time when many uncertainties and contingencies exist, while claims of unconscionability are made in hindsight when the contingencies have been resolved. The unconscionability standard adopts that difference in perspective and requires that a lawyer be given the benefit of any such uncertainties for disciplinary purposes only. Except in very unusual situations, therefore, the circumstances at the time a fee arrangement is made should control in determining a question of unconscionability.

8. Two factors in otherwise borderline cases might indicate a fee may be unconscionable. The first is over-reaching by a lawyer, particularly of a client who was unusually susceptible to such overreaching. The second is a failure of the lawyer to give at the outset a clear and accurate explanation of how a fee was to be calculated. For example, a fee arrangement negotiated at arms length with an experienced business client would rarely be subject to question. On the other hand, a fee arrangement with an uneducated or unsophisticated individual having no prior experience in such matters should be more carefully scrutinized for overreaching. While the fact that a client was at a marked disadvantage in bargaining with a lawyer over fees will not make a fee unconscionable, application of the disciplinary test may require some consideration of the personal circumstances of the individuals involved.

Fees in Family Law Matters

9. Contingent and percentage fees in family law matters may tend to promote divorce and may be inconsistent with a lawyer's obligation to encourage reconciliation. Such fee arrangements also may tend to create a conflict of interest between lawyer and client regarding the appraisal of assets obtained for client. See also Rule 1.08(h). In certain family law matters, such as child custody and adoption, no res is created to fund a fee. Because of the

human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relations cases are rarely justified.

Division of Fees

10. A division of fees is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fees facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring or associating lawyer initially retained by the client and a trial specialist, but it applies in all cases in which two or more lawyers are representing a single client in the same matter, and without regard to whether litigation is involved. Paragraph (f) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes joint responsibility for the representation.

11. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (d) of this Rule.

12. A division of a fee based on the proportion of services rendered by two or more lawyers contemplates that each lawyer is performing substantial legal services on behalf of the client with respect to the matter. In particular, it requires that each lawyer who participates in the fee have performed services beyond those involved in initially seeking to acquire and being engaged by the client. There must be a reasonable correlation between the amount or value of services rendered and responsibility assumed, and the share of the fee to be received. However, if each participating lawyer performs substantial legal services on behalf of the client, the agreed division should control even though the division is not directly proportional to actual work performed. If a division of fee is to be based on the proportion of services rendered, the arrangement may provide that the allocation not be made until the end of the representation. When the allocation is deferred until the end of the representation, the terms of the arrangement must include the basis by which the division will be made.

13. Joint responsibility for the representation entails ethical and perhaps financial responsibility for the representation. The ethical responsibility assumed requires that a referring or associating lawyer make reasonable efforts to assure adequacy of representation and to provide adequate client communication. Adequacy of representation requires that the referring or associating lawyer conduct a reasonable investigation of the client's legal matter and refer the matter to a lawyer whom the referring or associating lawyer reasonably believes is competent to handle it. See Rule 1.01. Adequate attorney-client communication requires that a referring or associating lawyer monitor the matter throughout the representation and ensure that the client is informed of those matters that come to that lawyer's attention and that a reasonable lawyer would believe the client should be aware. See Rule 1.03. Attending all depositions and hearings, or requiring that copies of all pleadings and correspondence be provided a referring or associating lawyer, is not necessary in order to meet the monitoring requirement proposed by this rule. These types of activities may increase the transactional costs, which ultimately the client will bear, and unless some benefit will be derived by the client, they should be avoided. The monitoring requirement is only that the referring lawyer be reasonably informed of the matter, respond to client questions, and assist the handling lawyer when necessary. Any referral or association of other counsel should be made based solely on the client's best interest.

14. In the aggregate, the minimum activities that must be undertaken by referring or associating lawyers pursuant to an arrangement for a division of fees are substantially greater than those assumed by a lawyer who forwarded a matter to other counsel, undertook no ongoing obligations with respect to it, and yet received a portion of the handling lawyer's fee once the matter was concluded, as was permitted under the prior version of this rule. Whether such activities, or any additional activities that a lawyer might agree to undertake, suffice to make one lawyer participating in such an arrangement responsible for the professional misconduct of another lawyer who is participating in it and, if so, to what extent, are intended to be resolved by Texas Civil Practice and Remedies Code, ch. 33, or other applicable law.

15. A client must consent in writing to the terms of the arrangement prior to the time of the association or referral proposed. For this consent to be effective, the client must have been advised of at least the key features of that arrangement. Those essential terms, which are specified in subparagraph (f)(2), are 1) The identity of all lawyers or

law firms who will participate in the fee-sharing agreement, 2) Whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation, and 3) The share of the fee that each lawyer or law firm will receive or the basis on which the division will be made if the division is based on proportion of service performed. Consent by a client or prospective client to the referral to or association of other counsel, made prior to any actual such referral or association but without knowledge of the information specified in subparagraph (f)(2), does not constitute sufficient client confirmation within the meaning of this rule. The referring or associating lawyer or any other lawyer who employs another lawyer to assist in the representation has the primary duty to ensure full disclosure and compliance with this rule.

16. Paragraph (g) facilitates the enforcement of the requirements of paragraph (f). It does so by providing that agreements that authorize an attorney either to refer a person's case to another lawyer, or to associate other counsel in the handling of a client's case, and that actually result in such a referral or association with counsel in a different law firm from the one entering into the agreement, must be confirmed by an arrangement between the person and the lawyers involved that conforms to paragraph (f). As noted there, that arrangement must be presented to and agreed to by the person before the referral or association between the lawyers involved occurs. See subparagraph (f)(2). Because paragraph (g) refers to the party whose matter is involved as a "person" rather than as a "client," it is not possible to evade its requirements by having a referring lawyer not formally enter into an attorney-client relationship with the person involved before referring that person's matter to other counsel. Paragraph (g) does provide, however, for recovery in quantum meruit in instances where its requirements are not met. See subparagraphs (g)(1) and (g)(2).

17. What should be done with any otherwise agreed-to fee that is forfeited in whole or in part due to a lawyer's failure to comply with paragraph (g) is not resolved by these rules.

18. Subparagraph (f)(3) requires that the aggregate fee charged to clients in connection with a given matter by all of the lawyers involved meet the standards of paragraph (a)—that is, not be unconscionable.

Fee Disputes and Determinations

19. If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by a bar association, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, or when a class or a person is entitled to recover a reasonable attorneys fee as part of the measure of damages. All involved lawyers should comply with any prescribed procedures.

Notes to Decisions

Antitrust & Trade Law: Consumer Protection: Deceptive Acts & Practices: State Regulation

Bankruptcy Law: Case Administration: Professional Services: Compensation: General Overview

Bankruptcy Law: Case Administration: Professional Services: Compensation: Debtor's Counsel

Bankruptcy Law: Case Administration: Professional Services: Compensation: Interim Compensation

Bankruptcy Law: Case Administration: Professional Services: Compensation: Limitations

Bankruptcy Law: Claims: Types: Unsecured Priority Claims: Administrative Expenses: Professional Services

Bankruptcy Law: Practice & Proceedings: Professional Responsibility

Civil Procedure: Declaratory Judgment Actions: State Judgments: General Overview

Civil Procedure: Declaratory Judgment Actions: State Judgments: Scope

Civil Procedure: Summary Judgment: General Overview

Civil Procedure: Alternative Dispute Resolution: Judicial Review

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Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: Reasonable Fees

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: Statutory Awards

Civil Procedure: Appeals: Costs & Attorney Fees

Civil Procedure: Appeals: Reviewability: Preservation for Review

Civil Procedure: Appeals: Standards of Review: Substantial Evidence: Sufficiency of Evidence

Civil Procedure: Eminent Domain Proceedings: Attorney Fees

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Legal Ethics: Client Relations: Attorney Fees: Fee Splitting

Legal Ethics: Client Relations: Conflicts of Interest

Legal Ethics: Sanctions: Disciplinary Proceedings: Appeals

Antitrust & Trade Law: Consumer Protection: Deceptive Acts & Practices: State Regulation

In an action under the Texas Deceptive Trade Practices Act, the amount of attorney's fees awarded was upheld where a case had been pending for 9 years, it had been ready for trial 3 times, an attorney testified about his rate

per hour and the time that he spent, and he testified that his fees were reasonable, necessary, and customary. The attorney accounted for deductions for nonstatutory claims for which his fees were not recoverable and for a continuance that was his fault due to a surgery. [*Carpenter v. De La Cruz*, No. 04-11-00285-CV, 2012 Tex. App. LEXIS 5961 \(Tex. App. San Antonio July 25, 2012\)](#).

Bankruptcy Law: Case Administration: Professional Services: Compensation: General Overview

Local attorney and an out of state law firm entered into a Referral Agreement but such agreement did not shed light on the division of services to determine if the fee was proportional to each parties' respective duties. [*In re Zuniga*, 332 B.R. 760, 2005 Bankr. LEXIS 2037 \(Bankr. S.D. Tex. 2005\)](#).

Fee received by both the out-of-state law firm and local counsel was unreasonable, as neither attorney had the skill requisite to perform the legal service properly. This conclusion was apparent in light of both attorneys' failures to abide by the local rules and communicate properly with debtor. [*In re Zuniga*, 332 B.R. 760, 2005 Bankr. LEXIS 2037 \(Bankr. S.D. Tex. 2005\)](#).

A written agreement with the client was required for a fee splitting arrangement where contract, which debtor signed, did not mention the local attorney by name; it only stated that the out-of-state law firm would contact and use the services of local counsel. [*In re Zuniga*, 332 B.R. 760, 2005 Bankr. LEXIS 2037 \(Bankr. S.D. Tex. 2005\)](#).

Bankruptcy Law: Case Administration: Professional Services: Compensation: Debtor's Counsel

There was legally sufficient evidence that post-confirmation fees were reasonable and necessary in a Chapter 11 bankruptcy case because the attorney explained that the fees were in line with other attorneys' fees and even on the low side, and the bankruptcy proceeding was complicated. The evidence was factually sufficient given that there was no evidence controverting reasonableness or necessity. [*Jones v. Baker*, No. 01-22-00013-CV, 2023 Tex. App. LEXIS 6406 \(Tex. App. Houston 1st Dist. Aug. 22, 2023\)](#).

Bankruptcy Law: Case Administration: Professional Services: Compensation: Interim Compensation

There was legally and factually sufficient evidence that pre-confirmation fees were reasonable and necessary in a Chapter 11 bankruptcy case because the bankruptcy court determined the pre-confirmation fees were reasonable, there was no evidence controverting reasonableness or necessity, and the appellate court had no authority to review the order for error even if there were. [*Jones v. Baker*, No. 01-22-00013-CV, 2023 Tex. App. LEXIS 6406 \(Tex. App. Houston 1st Dist. Aug. 22, 2023\)](#).

Bankruptcy Law: Case Administration: Professional Services: Compensation: Limitations

Trustee was entitled to disgorgement of a referral or forwarding fee, pursuant to [*11 U.S.C.S. § 504\(a\)*](#), because the fee was paid by the Chapter 7 debtor's state court counsel to the bankruptcy counsel out of settlement proceeds without the trustee's knowledge and out of compensation counsel expected to and did receive from the estate post-petition under [*11 U.S.C.S. § 503\(2\)*](#) and *11 U.S.C.S. § 330(a)* and the fact that *Tex. Disciplinary R. Prof. Conduct 1.04(f)*, reprinted in *Tex. Gov't Code Ann.*, tit. 2, subtit. G app. A (*Tex. State Bar R. art. X, sec. 9*), at the time, permitted the payment of a fee did not provide a safe harbor for the attorney. [*Goldberg v. Vilt \(In re Smith\)*, 397 B.R. 810, 2008 Bankr. LEXIS 3602 \(Bankr. E.D. Tex. 2008\)](#).

Bankruptcy Law: Claims: Types: Unsecured Priority Claims: Administrative Expenses: Professional Services

Where a debtor's bankruptcy attorney received a referral fee post-petition from the debtor's non-bankruptcy lawyer in violation of [11 U.S.C.S. § 504\(a\)](#), former *Tex. Disciplinary R. Prof. Conduct 1.04(f)*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (2005) (Tex. State Bar R. art. X, sec. 9), was superseded by § 504(a). [Goldberg v. Clay, 2008 Bankr. LEXIS 3178 \(Bankr. E.D. Tex. Dec. 9 2008\)](#).

Bankruptcy Law: Practice & Proceedings: Professional Responsibility

Fee received by both the out-of-state law firm and local counsel was unreasonable, as neither attorney had the skill requisite to perform the legal service properly. This conclusion was apparent in light of both attorneys' failures to abide by the local rules and communicate properly with debtor. [In re Zuniga, 332 B.R. 760, 2005 Bankr. LEXIS 2037 \(Bankr. S.D. Tex. 2005\)](#).

Civil Procedure: Declaratory Judgment Actions: State Judgments: General Overview

In a case where a president was accused of misusing a company asset to finance a personal loan, attorney's fees and court costs were recoverable because a declaratory judgment was sought to invalidate a lien; moreover, the fees were reasonable and necessary. The case was pursued in a reasonably cost-efficient manner, two companies prevailed on their declaratory judgment claim, and the case involved extensive briefing and discovery over a two-year period; moreover, the bench trial lasted nearly three days, the trial court heard hours of testimony from fact and expert witnesses, and multiple exhibits were received into evidence. [Max Duncan Family Invs. Ltd. v. NTFN, Inc., 267 S.W.3d 447, 2008 Tex. App. LEXIS 6513 \(Tex. App. Dallas Aug. 26, 2008, no pet.\)](#).

Civil Procedure: Declaratory Judgment Actions: State Judgments: Scope

Regarding the factual sufficiency of the evidence to support an award of trial attorney fees to appellees under the Declaratory Judgment Act, a reviewing court could not say that the verdict was so contrary to the overwhelming weight of the evidence that it was clearly wrong and unjust because although appellees' counsel did not precisely follow the elements listed by *Tex. Disciplinary R. Prof. Conduct 1.04*, counsel's testimony adequately provided evidence of the time and labor required, of the fee customarily charged for similar representation in that particular county, and of counsel's experience and ability, and, thus, from counsel's testimony, reasonable and fair-minded jurors could have determined that \$ 100,000 in trial attorney fees was reasonable and necessary; however, because counsel testified about only trial attorney fees and did not provide any evidence regarding appellate attorney fees, appellees presented no evidence to support the trial court's award of appellate attorney fees. [McCalla v. Ski River Dev., Inc., 239 S.W.3d 374, 2007 Tex. App. LEXIS 9967 \(Tex. App. Waco Oct. 10, 2007, no pet.\)](#).

Civil Procedure: Summary Judgment: General Overview

Association was improperly awarded attorney's fees in a dispute over assessments because an affidavit from an attorney did not identify the services rendered, itemize the hours expended, or identify the hourly rate; moreover, controverting evidence regarding reasonableness under [Tex. Civ. Prac. & Rem. Code Ann. § 38.003](#) barred summary judgment. A property owner contended that the amount charged was not reasonable because he had tendered a check before receiving a demand, the association delayed opening the mail, and the association returned his check and demanded additional money after a further delay. [McGlown v. Ashford Park Homeowners Ass'n, No. 01-08-00619-CV, 2009 Tex. App. LEXIS 4197 \(Tex. App. Houston 1st Dist. June 11, 2009\)](#), dismissed, [No. 01-10-00803-CV, 2012 Tex. App. LEXIS 2737 \(Tex. App. Houston 1st Dist. Apr. 5, 2012\)](#).

Civil Procedure: Alternative Dispute Resolution: Judicial Review

Tex. R. Prof Conduct 1.04

Arbitrator's award in a legal fee dispute that exceeded the amount in the engagement letter did not violate public policy because the attorney provided additional services and did not create duress by telling the client that he would otherwise withdraw, which he had a right to do under *Tex. Disciplinary R. Prof. Conduct 1.15(b)(5)*; however, the attorney could not receive fees for a motion to withdraw and a related mandamus proceeding because those services did not benefit the client and the award of fees therefore contravened public policy prohibiting unconscionable fees, as expressed in *Tex. Disc. R. Prof. Conduct 1.04(a)*. [*Lee v. Daniels & Daniels*, 264 S.W.3d 273, 2008 Tex. App. LEXIS 3474 \(Tex. App. San Antonio May 14, 2008\)](#), reh'g denied, [*No. 04-07-00096-CV, 2008 Tex. App. LEXIS 7935 \(Tex. App. San Antonio July 28, 2008\)*](#).

Civil Procedure: Settlements: Settlement Agreements: Enforcement: Breach of Contract Actions

In an action in which the issue was whether a *Tex. R. Civ. P. 11* agreement between an attorney employee and his former attorney employer evidenced the parties' intent to collect fees that neither party earned, the trial court properly determined the amount of the employee's earned fee and properly found that the agreement, which when interpreted against how attorneys earned contingency fees was not ambiguous, governed the division of the employee's fee because the agreement was akin to a separation agreement, and, thus, while attorneys in a separation agreement were not subject to the proportionality of services required under the Texas Rules of Professional Conduct for contingency fees, the Rule 11 agreement used language that manifested an objective intent to divide "fees earned;" in that agreement, the attorneys divided "fees earned," both now and in the future, and with respect to the present fee, the trial court found that the employee "earned" a fee of \$ 80,000 and that the employee earned no fees on the matter other than the \$ 80,000 referral fee. [*Lewis v. Chatelain*, 245 S.W.3d 641, 2008 Tex. App. LEXIS 633 \(Tex. App. Beaumont Jan. 31, 2008, no pet.\)](#).

Civil Procedure: Judgments: Entry of Judgments: General Overview

In a disciplinary matter, the allegations in a second amended petition supported a trial court's judgment entered against a lawyer, as required by [*Tex. R. Civ. P. 301*](#); the Texas Commission for Lawyer Discipline's pleadings gave adequate notice that it sought disciplinary action based on *Tex. Disciplinary R. Prof. Conduct 1.04*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9), *Tex. Disciplinary R. Prof. Conduct 1.14(a)-(c)*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9), and [*Tex. Disciplinary R. Prof. Conduct 8.04*](#), reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9). Further, the trial court's judgment mirrored the Commission's petition, identifying the same rules as the basis for its disciplinary action against the lawyer. [*Onwuteaka v. Comm'n for Lawyer Discipline*, No. 14-07-00544-CV, 2009 Tex. App. LEXIS 351 \(Tex. App. Houston 14th Dist. Jan. 20, 2009\)](#), op. withdrawn, sub. op., [*No. 14-07-00544-CV, 2009 Tex. App. LEXIS 1694 \(Tex. App. Houston 14th Dist. Mar. 12, 2009\)*](#).

Civil Procedure: Remedies: Costs & Attorney Fees: General Overview

In an action for breach of contract, the trial court did not err by awarding attorney fees to the prevailing party in an amount greater than the lodestar amount because there was some evidence that the award was reasonable. [*Toshiba Mach. Co. v. SPM Flow Control, Inc.*, 180 S.W.3d 761, 2005 Tex. App. LEXIS 9478 \(Tex. App. Fort Worth Nov. 10, 2005\)](#), pet. granted, judgment vacated w.r.m. [*No. 05-1090, 2006 Tex. LEXIS 251 \(Tex. Mar. 31, 2006\)*](#).

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: General Overview

When the trial court denied the ex-wife's claims for child support and discovery sanctions, the evidence was sufficient to support its award of \$2,500 for the ex-husband's attorney's fees under *Tex. Disc. R. Prof. Conduct 1.04(b)*. An affidavit from his attorney indicated that he charged \$250 per hour and he worked more than 40 hours trying to resolve the case. [*Legere v. Legere*, No. 03-12-00046-CV, 2013 Tex. App. LEXIS 1768 \(Tex. App. Austin 3d Dist. Feb. 22, 2013\)](#).

Judgment was modified to reflect \$ 23,166 in attorney fees rather than the \$ 24,611 awarded, because the attorney stated that her attorney fees were \$ 23,166, and the decision to award attorney fees was not wholly arbitrary, when the stepfather testified he hired the attorney and agreed to pay her reasonable attorney fees, and the attorney's affidavit indicated the work completed, which included preparing discovery, interviewing witnesses and preparing for trial. [*Johnson v. Oliver*, 250 S.W.3d 182, 2008 Tex. App. LEXIS 2592 \(Tex. App. Dallas Apr. 9, 2008, no pet.\)](#).

In a breach of contract case, because the lessors damages were substantially reduced because they were not entitled to damages dating back to 1985, under *Tex. Disciplinary R. Prof. Conduct 1.04*, the award of attorney's fees to the lessors might also be reduced. The appellate court could not simply reduce or remit excessive attorney's fees according to the percentages found by the jury; thus, the award of attorney's fees had to be reversed and remanded to the trial court. [*Southwest Grain Co. v. Garza*, No. 13-04-409-CV, 2007 Tex. App. LEXIS 2807 \(Tex. App. Corpus Christi Apr. 12, 2007\)](#), reh'g denied, [*No. 13-04-409-CV, 2007 Tex. App. LEXIS 4596 \(Tex. App. Corpus Christi May 10, 2007\)*](#), pet. abated [*No. 07-0495, 2008 Tex. LEXIS 212 \(Tex. Mar. 14, 2008\)*](#).

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: Reasonable Fees

Evidence was insufficient to support the jury's finding as to attorneys' fees, because appellee presented no evidence to show the reasonableness of the fees and no evidence that the fees charged were the usual and customary attorneys' fees charged in a suit for breach of contract. [*Cannon v. Castillo*, No. 11-12-00256-CV, 2014 Tex. App. LEXIS 8656 \(Tex. App. Eastland Aug. 7, 2014\)](#).

Amount of fees awarded to property owners as to an attorney hired to assist their lead attorney in a city's unsuccessful eminent-domain case was not error because the assistant attorney's testimony about her unbilled trial work was some evidence on which to base an award of attorney fees under the lodestar method, as it concerned contemporaneous or immediately completed work for which she had not had time to bill, or presumably even record, in her billing system. [*City of Laredo v. Montano*, 414 S.W.3d 731, 2013 Tex. LEXIS 890 \(Tex. 2013\)](#).

Amount of attorney fees awarded to property owners as to their lead attorney in a city's unsuccessful eminent-domain case was error because deficiencies remained in the owners' proof under the lodestar method, as the lead attorney offered nothing to document his time other than his generalized testimony about the tasks he performed and his belief as to the number of hours he spent preparing and trying the case. [*City of Laredo v. Montano*, 414 S.W.3d 731, 2013 Tex. LEXIS 890 \(Tex. 2013\)](#).

Evidence supported the trial court's award of reasonable attorney's fees in an amount less than requested, but more than the opposing party argued was justified, in a proceeding for enforcement of contractual alimony. Failing to award conditional attorney's fees for the appeal was error, however. [*Johnson v. Ventling*, No. 13-12-00398-CV, 2013 Tex. App. LEXIS 7848 \(Tex. App. Corpus Christi June 27, 2013\)](#), op. withdrawn, sub. op., reh'g denied, [*462 S.W.3d 92, 2013 Tex. App. LEXIS 15208 \(Tex. App. Corpus Christi Dec. 19, 2013\)*](#).

In a collection suit brought by a law firm and an attorney, the jury reasonably refused to award fees under [*Tex. Civ. Prac. & Rem. Code Ann. § 38.001\(8\)*](#) for work performed by in-house counsel, which the jury could have found was duplicative of work done by outside counsel, and for defending the client's counterclaims. Conditional appellate attorney's fees should have been awarded, however, absent any evidence casting doubt on their reasonableness or necessity. [*Nalle Plastics Family v. Porter*, 406 S.W.3d 186, 2013 Tex. App. LEXIS 4826 \(Tex. App. Corpus Christi Apr. 18, 2013, no pet.\)](#).

There was no testimony that supported the failure of the trial court to award conditional prospective attorney fees in the event of a third appeal, which came to fruition here; appellant was a winner in this case, in light of the court's prior opinions, plus the attorneys for the parties agreed that an award of conditional prospective fees was warranted and reasonable, and thus under *Tex. R. App. P. 43.3*, the court rendered a judgment accordingly, as the court found the amounts testified to by counsel were reasonable and necessary. [*Johnson v. Ventling*, No. 13-12-00398-CV, 2013 Tex. App. LEXIS 2326 \(Tex. App. Corpus Christi Mar. 7, 2013\)](#), reh'g denied, op. withdrawn, sub. op., [*No. 13-12-00398-CV, 2013 Tex. App. LEXIS 7848 \(Tex. App. Corpus Christi June 27, 2013\)*](#).

Tex. R. Prof Conduct 1.04

For purposes of [Tex. Civ. Prac. & Rem. Code Ann. § 38.001\(8\)](#) and *Tex. Disciplinary R. Prof. Conduct 1.04(b)*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9), the court found the attorney fee award of previously-incurred fees was not an abuse of discretion and was supported by the evidence; the trial court was vested with discretion to believe or disbelieve the testimony of counsel and the court could not disturb that finding. [Johnson v. Ventling, No. 13-12-00398-CV, 2013 Tex. App. LEXIS 2326 \(Tex. App. Corpus Christi Mar. 7, 2013\)](#), reh'g denied, op. withdrawn, sub. op., [No. 13-12-00398-CV, 2013 Tex. App. LEXIS 7848 \(Tex. App. Corpus Christi June 27, 2013\)](#).

Reasonable and fair-minded jury could have found that \$ 66,287 was a reasonable attorney's fee because the evidence showed that: (1) the attorney became involved in the dispute in January 2010; (2) the attorney had unique experience trying cases involving the enforcement of settlement agreements and had a sterling reputation; (3) the attorney and appellee entered into a contingency fee agreement in which appellee agreed to pay the attorney one-third of any award she recovered in her suit; (4) the jury's award for the attorney's fees in preparing for trial was approximately one-third of the \$ 199,060 in damages awarded to appellee; (5) the amount of money involved in the case was significant, as evidence established that the value of the life insurance policy and bank accounts exceeded \$ 200,000; and (6) another attorney testified that the circumstances of the case made time of the essence. [McDonald v. Fox, No. 13-11-00479-CV, 2012 Tex. App. LEXIS 9518 \(Tex. App. Corpus Christi Nov. 15, 2012\)](#).

Award of attorney's fees under [Tex. Civ. Prac. & Rem. Code Ann. § 37.009](#) in a shareholder oppression case was reasonable under the factors set forth in *Tex. Disciplinary R. Prof. Conduct 1.04(b)*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, § 9) and was adequately supported by counsel's testimony. Counsel sufficiently discussed how fees had been segregated, and no controverting evidence was presented. [Cardiac Perfusion Servs. v. Hughes, 380 S.W.3d 198, 2012 Tex. App. LEXIS 6134 \(Tex. App. Dallas July 26, 2012\)](#), reh'g denied, [No. 05-10-00286-CV, 2012 Tex. App. LEXIS 9138 \(Tex. App. Dallas Oct. 16, 2012\)](#), aff'd in part and rev'd in part, [436 S.W.3d 790, 2014 Tex. LEXIS 532 \(Tex. 2014\)](#).

Probate court's decision to award attorney's fees to a guardian relating to a breach of fiduciary duty lawsuit was supported by sufficient evidence because the probate court admitted and reviewed redacted billing statements that showed the date, the billing person, the hours billed, the amount billed, and a description of the work performed. There was testimony that the billed hours and expenses were reasonable and necessary; moreover, there was testimony regarding the reasonableness of the fees based on the factors in *Tex. Disciplinary R. Prof. Conduct 1.04*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (2005) (Tex. State Bar R. art. X, sec. 9). [In the Estate of Johnston, No. 04-11-00467-CV, 2012 Tex. App. LEXIS 4255 \(Tex. App. San Antonio May 30, 2012\)](#).

Lessee did not cite to authority showing why a statement made during closing argument by the owner's attorney amounted to evidence or would have been binding on the trial court, and the statement did not amount to a judicial admission; the statement did not preclude the trial court from determining what were necessary and reasonable fees. [Ardmore, Inc. v. Rex Group, Inc., 377 S.W.3d 45, 2012 Tex. App. LEXIS 3032 \(Tex. App. Houston 1st Dist. Apr. 19, 2012, no pet.\)](#).

There was factually sufficient evidence to support the finding that the fees were reasonable and necessary and the fee award was not clearly wrong, even though there was not evidence of every factor under *Tex. Disciplinary R. Prof. Conduct 1.04(b)*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9). [M. Lawrence Naumann & Naumann Farm, LLC v. Lee, No. 03-11-00066-CV, 2012 Tex. App. LEXIS 2756 \(Tex. App. Austin 3d Dist. Apr. 5, 2012\)](#).

For purposes of *Tex. Disciplinary R. Prof. Conduct 1.04(b)*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9), in applying the factors in this case, the court found no abuse of discretion in the trial court's attorney fee award under Tex. Civ. Prac. & Rem. Code Ann. § 37.009, given that (1) appellees' attorney and an attorney appearing as an expert witness testified that they were board certified and the facts and issues in the case were complex, (2) the attorney testified to the time spent on the case, (3) attorney witnesses stated that the work performed was necessary and fees were reasonable, and (4) appellants offered no testimony to counter

that of the attorneys who testified. [M. Lawrence Naumann & Naumann Farm, LLC v. Lee, No. 03-11-00066-CV, 2012 Tex. App. LEXIS 2756 \(Tex. App. Austin 3d Dist. Apr. 5, 2012\).](#)

Although the trial court could reasonably have reduced the attorneys' fee award based upon the amount in controversy in relation to the effort expended, the trial court did not act unreasonably, arbitrarily, or without reference to guiding principles by awarding a fee for all of the work performed at the billed rate. [Morrell Masonry Supply, Inc. v. Lupe's Shenandoah Reserve, LLC, 363 S.W.3d 901, 2012 Tex. App. LEXIS 2210 \(Tex. App. Beaumont Mar. 22, 2012, no pet.\).](#)

Seller did not explain why it was necessary for the buyer to produce an attorney fee agreement, or how that should have affected the trial court's determination of fees, for purposes of considering the reasonableness of the fees. [Petro-Hunt, L.L.C. v. Wapiti Energy, L.L.C., No. 01-10-01030-CV, 2012 Tex. App. LEXIS 1860 \(Tex. App. Houston 1st Dist. Mar. 8, 2012\).](#)

In connection with considering the reasonableness of attorney fees, assuming without deciding that prior litigation allowed a buyer's attorneys to "ramp up" before filing this suit, nothing showed that this was not already reflected in the fees that were charged. [Petro-Hunt, L.L.C. v. Wapiti Energy, L.L.C., No. 01-10-01030-CV, 2012 Tex. App. LEXIS 1860 \(Tex. App. Houston 1st Dist. Mar. 8, 2012\).](#)

Although it was a factor to be considered, just showing that the amount of fees awarded was equal to 75 percent of the actual damages awarded did not alone establish that fees were unreasonable. [Petro-Hunt, L.L.C. v. Wapiti Energy, L.L.C., No. 01-10-01030-CV, 2012 Tex. App. LEXIS 1860 \(Tex. App. Houston 1st Dist. Mar. 8, 2012\).](#)

Upon objection, a buyer provided evidence that included an itemized breakout of the work performed, the seller did not object to this additional evidence, and the seller's claim that nothing precluded the buyer's counsel from working for other clients was not explained; the seller did not explain how additional evidence was insufficient, and the court affirmed the award of attorney fees as reasonable. [Petro-Hunt, L.L.C. v. Wapiti Energy, L.L.C., No. 01-10-01030-CV, 2012 Tex. App. LEXIS 1860 \(Tex. App. Houston 1st Dist. Mar. 8, 2012\).](#)

Once the lodestar is calculated, *Tex. R. Civ. P. 42(i)(1)* requires the court to award an amount in the range of 25 percent to 400 percent of the lodestar figure. A multiplier of 2.17 is not unusual in large, complex, and expedited cases. [Stratton v. XTO Energy Inc., No. 02-10-00483-CV, 2012 Tex. App. LEXIS 1089 \(Tex. App. Fort Worth Feb. 9, 2012\).](#)

Attorney fee award in a class action was inadequate because the unenhanced lodestar did not reflect the exceptional results achieved by plaintiffs' counsel, the undesirability of this litigation, the high risk borne by its contingent nature, or the fact that the fee award requested was comparable to that awarded in similar class action litigation, all of which were directly established by uncontradicted evidence. The trial court was obligated to consider the adjustment based on that evidence and the Johnson factors, and it was an abuse of discretion to fail to do so based on an unsubstantiated assumption that the Johnson factors were applied in justifying the hourly rates requested. [Stratton v. XTO Energy Inc., No. 02-10-00483-CV, 2012 Tex. App. LEXIS 1089 \(Tex. App. Fort Worth Feb. 9, 2012\).](#)

For purposes of [Tex. Civ. Prac. & Rem. Code Ann. § 37.009](#), the award of attorney fees in this contested case was not unjust or inequitable, and the trial court had evidence to support its award, for purposes of *Tex. Disciplinary R. Prof. Conduct 1.04*, reprinted in *Tex. Gov't Code Ann.*, tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9), given that (1) the attorney had practiced law since 1976, (2) he was familiar with the reasonable fees in the area, (3) the oil and gas properties involved were located in different states and involved over 300 properties, (4) appellant had requested extensive discovery document production, (5) the attorney worked on the case for almost one year, and a summary judgment motion was filed based on settlement and release agreements, and (6) much work went into researching title. [Neidert v. Collier, No. 11-10-00007-CV, 2011 Tex. App. LEXIS 7830 \(Tex. App. Eastland Sept. 29, 2011\).](#)

Tex. R. Prof Conduct 1.04

Award of attorney fees to an ex-wife under [Tex. Fam. Code Ann. § 81.005\(a\)](#) was proper, given that (1) the attorney was sufficiently skilled and experienced to be board certified, (2) she believed her fees were reasonable and necessary, (3) the ex-husband presented no evidence countering the attorney's testimony, (4) the ex-wife prevailed at each state of the protective order proceeding, and (5) although the award appeared in the divorce decree, it did not specify the basis, and the award could be compensation solely for work leading to the protective order. [Monroy v. Monroy, No. 03-10-00275-CV, 2011 Tex. App. LEXIS 7268 \(Tex. App. Austin 3d Dist. Aug. 31, 2011\).](#)

Evidence supported an award of attorney fees to an electricity supplier in its breach of contract action against a buyer because application of the factors in *Tex. Disciplinary R. Prof. Conduct 1.04(b)*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9) did not invite significant reductions in the request for fees; the trial court had made certain reductions in light of the evidence and arguments presented. [RM Crowe Prop. Servs. Co., L.P. v. Strategic Energy, L.L.C., 348 S.W.3d 444, 2011 Tex. App. LEXIS 5867 \(Tex. App. Dallas July 29, 2011, no pet.\).](#)

Trial court affirmatively stated that it had considered the factors set forth in *Tex. Disciplinary R. Prof. Conduct 1.04(b)*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A-1 (Tex. State Bar R. art. X, sec. 9) in awarding attorney's fees, and absent objection, counsel's unsworn testimony sufficiently established the amount of fees incurred. Thus, although the supporting affidavits were hearsay because they did not comply with the requirements of [Tex. Civ. Prac. & Rem. Code Ann. § 18.001](#) and the invoices were hearsay because they were not properly authenticated as business records under *Tex. R. Evid. 803(6)*, their admission was harmless error. [Good v. Baker, 339 S.W.3d 260, 2011 Tex. App. LEXIS 2167 \(Tex. App. Texarkana Mar. 25, 2011, no pet.\).](#)

There was sufficient evidence to support the award of attorney fees; even if the court examined the company's representations regarding a reasonable rate and a reasonable amount of time spend on the case, the court derived a figure that was very close to that awarded by the trial court to the customer. [Michael Smith Custom Clothier, Inc. v. Constantini, No. 14-09-01089-CV, 2011 Tex. App. LEXIS 1698 \(Tex. App. Houston 14th Dist. Mar. 10, 2011\).](#)

In considering the factors for purposes of case law and *Tex. Disciplinary R. Prof. Conduct 1.04*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9), the court found that the fees were reasonable, for purposes of [Tex. Civ. Prac. & Rem. Code Ann. § 38.001](#), given that (1) to the extent certain matters could be described as inconsistencies, the trial court could resolve the matter in favor of the creditor, (2) given that the attorney was required to prepare for and attend three hearings and prepare for one hearing later postponed by the debtor's counsel, the hours claimed were not unreasonable, (3) it was unreasonable for the creditor to decline a settlement attempt that did not offer to pay all fees accrued, (4) the debtor offered no authority for the proposition that fees incurred in the pursuit of fees were not reasonable under [Tex. Civ. Prac. & Rem. Code Ann. § 38.001](#), (5) the debtor offered no opposing evidence when the attorney testified that he was aware of customary fees, (6) the fees were not per se unreasonable simply due to the disparity between the amount in controversy and the amount of the fee award, as that was only one factor to consider, and (7) the attorney had significant experience. [Santos v. Tex. Enters., No. 03-09-00579-CV, 2010 Tex. App. LEXIS 8322 \(Tex. App. Austin 3d Dist. Oct. 15, 2010\).](#)

Award does not become unreasonable simply because reasonableness was not established as a matter of law; instead, the trial court retains its role as fact-finder and resolves any conflicts of evidence. [Santos v. Tex. Enters., No. 03-09-00579-CV, 2010 Tex. App. LEXIS 8322 \(Tex. App. Austin 3d Dist. Oct. 15, 2010\).](#)

Debtor contended that the evidence was insufficient, for purposes of [Tex. Civ. Prac. & Rem. Code Ann. § 38.001](#), to establish the reasonableness of the amount awarded; although under [Tex. Civ. Prac. & Rem. Code Ann. § 38.003](#), it was presumed that the fees were reasonable, the presumption could be rebutted, and the court reviewed the evidence in support of the relevant factors under *Tex. Disciplinary R. Prof. Conduct 1.04*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9). [Santos v. Tex. Enters., No. 03-09-00579-CV, 2010 Tex. App. LEXIS 8322 \(Tex. App. Austin 3d Dist. Oct. 15, 2010\).](#)

Nothing in case law or the Professional Rules themselves, including *Tex. Disciplinary R. Prof. Conduct 1.04*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9), suggests that proof of all

eight factors is necessary regarding the reasonableness of fees. [Santos v. Tex. Enters., No. 03-09-00579-CV, 2010 Tex. App. LEXIS 8322 \(Tex. App. Austin 3d Dist. Oct. 15, 2010\).](#)

Counsel's fee affidavit stating the amount incurred and stating counsel's opinion that the amount was reasonable and necessary raised a fact question; thus, the trial court abused its discretion in summarily denying fees for a period of litigation while an appeal from a summary judgment order was pending. [CSFB 1998-PI Buffalo Speedway Office, Ltd. P'ship v. Amtech Elevator Servs. Co., No. 01-08-00639-CV, 2010 Tex. App. LEXIS 6830 \(Tex. App. Houston 1st Dist. Aug. 19, 2010\).](#)

Evidence supported a finding that homeowners' counsel's attorney fees under [Tex. Bus. & Com. Code Ann. § 17.50\(d\)](#) were reasonable and necessary, given that counsel testified on each of the factors enumerated in case law to establish reasonableness and the companies did not object to or rebut this testimony; the court did not consider the information that was not presented to the jury in no-evidence points of error. [Turull v. Ferguson, No. 01-09-00067-CV, 2010 Tex. App. LEXIS 6134 \(Tex. App. Houston 1st Dist. July 29, 2010\),](#) reh'g denied, [No. 01-09-00067-CV, 2010 Tex. App. LEXIS 8010 \(Tex. App. Houston 1st Dist. Sept. 30, 2010\).](#)

Attorney fee award was not supported by legally sufficient evidence where although there was some evidence to support an award of attorney fees, there was not enough to support the award given by the trial court. A party's contingent fee agreement alone could not support an award of attorney fees. [Garcia v. Guerrero, No. 04-09-00002-CV, 2010 Tex. App. LEXIS 321 \(Tex. App. San Antonio Jan. 20, 2010\).](#)

Evidence was insufficient to support an award of attorney fees, for purposes of [Tex. R. Disciplinary P. 1.04](#), reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A-1 (2005), because counsel's bare testimony of his law school's name, his years of practice, and the hours he worked on the case did not establish that any particular fee was reasonable; the evidence was legally insufficient to give the jury a basis for determining that any amount of fees was reasonable and necessary. [O & B Farms v. Black, 300 S.W.3d 418, 2009 Tex. App. LEXIS 8286 \(Tex. App. Houston 14th Dist. Oct. 29, 2009, no pet.\).](#)

In two former employees' whistleblower lawsuit against a county in which the employees prevailed, the trial court abused its discretion in awarding the employees such a small fraction of their reasonable attorney fees where there was no evidentiary basis for the trial court's attorney fee awards of \$ 15,000 to one employee and \$ 10,000 to the other, but, rather it appeared that the trial court simply chose those numbers arbitrarily, as there was no logical basis for the awards reflected in the record. Moreover, an award of attorney fees to a successful whistleblower plaintiff that is less than 17 percent of the lodestar amount of fees incurred by the plaintiff could have a chilling effect on future whistleblowers' willingness to bring suit, which, in turn, would frustrate the purposes of the Texas Whistleblower Act, [Tex. Gov't Code Ann. §§ 554.001-.010.](#) [Bates v. Randall County, 297 S.W.3d 828, 2009 Tex. App. LEXIS 7508 \(Tex. App. Amarillo Sept. 25, 2009, no pet.\).](#)

Attorney's fees in the amount of \$ 2,000, which were awarded in a forcible entry and detainer case, were not unreasonable where counsel for a landlord testified about the number of hours spent on the case, the amount he regularly charged, the rate of other firms specializing in this type of work, and the amount of work that was done. [Simmons v. Hollyview Apts., No. 01-08-00231-CV, 2009 Tex. App. LEXIS 7495 \(Tex. App. Houston 1st Dist. Sept. 24, 2009\),](#) pet. dismiss'd w.o.j. [No. 09-0978, 2010 Tex. LEXIS 398 \(Tex. May 7, 2010\).](#)

Association was improperly awarded attorney's fees in a dispute over assessments because an affidavit from an attorney did not identify the services rendered, itemize the hours expended, or identify the hourly rate; moreover, controverting evidence regarding reasonableness under [Tex. Civ. Prac. & Rem. Code Ann. § 38.003](#) barred summary judgment. A property owner contended that the amount charged was not reasonable because he had tendered a check before receiving a demand, the association delayed opening the mail, and the association returned his check and demanded additional money after a further delay. [McGlown v. Ashford Park Homeowners Ass'n, No. 01-08-00619-CV, 2009 Tex. App. LEXIS 4197 \(Tex. App. Houston 1st Dist. June 11, 2009\),](#) dismissed, [No. 01-10-00803-CV, 2012 Tex. App. LEXIS 2737 \(Tex. App. Houston 1st Dist. Apr. 5, 2012\).](#)

Tex. R. Prof Conduct 1.04

When multiple causes of action are asserted, some of which allow fee recovery and some of which do not, then evidence of time or money necessary only to the litigation of claims for which attorney fees are not recoverable must be segregated from evidence of the reasonable amount of time or money necessary for the performance of legal services necessary to litigate claims for which attorney fees are recoverable, and if a particular legal service was necessary to litigate a cause of action for which attorney fees are recoverable, such fees are not rendered unrecoverable merely because they also advance a claim for which attorney fees would not be otherwise available. Accordingly, in a case in which real party in interest asserted claims under the Declaratory Judgments Act and the Texas Property Code, the amount determined by the factfinder to be the reasonable and necessary fees for litigation of claims for which recovery was authorized set the outer boundary of fees that could be awarded under the Declaratory Judgments Act or [Tex. Prop. Code Ann. § 114.064](#), and the trial court could award so much of that sum as it determined to be both equitable and just. [In re Lesikar, 285 S.W.3d 577, 2009 Tex. App. LEXIS 3221 \(Tex. App. Houston 14th Dist. May 7, 2009, no pet.\)](#).

Affidavit demonstrated on its face an attorney's competency to swear to the facts stated in the affidavit and his capacity to state that he had personal knowledge of those facts, for purposes of attorney fees sought under [Tex. Civ. Prac. & Rem. Code Ann. § 38.001](#), and the affidavit tracked seven of the eight recognized factors courts considered in determining the reasonableness of a fee, for purposes of *Tex. Disciplinary R. Prof. Conduct 1.04(b)*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. (Tex. State Bar R. art. X, sec. 9). [Haden v. Sacks, 332 S.W.3d 503, 2009 Tex. App. LEXIS 3199 \(Tex. App. Houston 1st Dist. May 7, 2009\)](#), reh'g denied, [No. 01-01-00200-CV, 2009 Tex. App. LEXIS 10072 \(Tex. App. Houston 1st Dist. Sept. 11, 2009\)](#).

In considering the reasonableness of attorney fees awarded under *Tex. Disciplinary R. Prof. Conduct 1.04*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A., a fact issue existed concerning reasonableness, such that the trial court erred in granting a corporation summary judgment for attorney fees. [Jay Petroleum, L.L.C. v. EOG Res., Inc., 332 S.W.3d 534, 2009 Tex. App. LEXIS 3182 \(Tex. App. Houston 1st Dist. May 7, 2009, no pet.\)](#).

Trial court erred in finding that a contractor failed to prove that its requested fees were reasonable and that its requested fees were excessive in the contractor's action to recover under its contract with a hotel owner where the uncontroverted testimony of the contractor's in-house counsel established that the fees were both reasonable and necessary, and where the uncontroverted testimony of the in-house counsel and the contractor's local counsel established the market value of the in-house counsel's services. The trial court's findings that the contractor failed to prove the existence of a fee contract between itself and the in-house counsel and the actual incurrence of fees were irrelevant to the contractor's right to recover attorney fees. [AMX Enters., L.L.P. v. Master Realty Corp., 283 S.W.3d 506, 2009 Tex. App. LEXIS 2659 \(Tex. App. Fort Worth Apr. 9, 2009, no pet.\)](#).

Appropriate method by which to calculate in-house counsel's attorney fees is the market value method. The market value method for calculating in-house counsel's attorney fees has the virtue of being predictable for the parties and easy to administer, and it prevents a losing defendant from benefitting from the prevailing party's decision to control its own costs by employing in-house counsel and is consistent with the factors Texas courts consider when assessing attorney fees, including the fee customarily charged in the locality for similar legal services. [AMX Enters., L.L.P. v. Master Realty Corp., 283 S.W.3d 506, 2009 Tex. App. LEXIS 2659 \(Tex. App. Fort Worth Apr. 9, 2009, no pet.\)](#).

Legally sufficient evidence existed to uphold the reasonableness of attorney fees awarded to a lender in its suit against a borrower to recover the amount due under two promissory notes where the testimony of the lender's trial attorney was not conclusory because he provided facts to support most of the Arthur Andersen factors and based his opinions on his experience and knowledge of the practice of law in the county in which the suit was brought by, among other things, testifying that the case was more difficult and time-consuming than most other cases because of delay tactics employed by the borrower, and by also testifying that he practiced commercial litigation and had been licensed by the State of Texas for 20 years. The trial court was permitted to take judicial notice of the usual and customary attorney fees and of the contents of the case file without receiving further evidence because the award of attorney fees in the case arose under [Tex. Civ. Prac. & Rem. Code Ann. § 38.001](#). [Alsheikh v. Arabian Nat'l Shipping Corp., No. 01-08-00007-CV, 2009 Tex. App. LEXIS 2227 \(Tex. App. Houston 1st Dist. Apr. 2, 2009\)](#).

Tex. R. Prof Conduct 1.04

In a breach of contract case, a contractor was able to recover attorney's fees under [Tex. Civ. Prac. & Rem. Code Ann. § 38.001](#) because the proper method of calculating in-house counsel fees was through the market value method, a trial court improperly found that the request for attorney's fees was excessive, unreasonable, and without sufficient evidentiary basis, proof of an existence of a fee contract and the actual incurrence of fees was not required, the trial court's finding that it was not necessary or reasonable to incur fees of local counsel was improper, and, although the contractor was not able to recover fees on all of its claims, a failure to segregate did not mandate the denial of all of the fees requested. [AMX Enters., L.L.P. v. Master Realty Corp., No. 2-07-239-CV, 2009 Tex. App. LEXIS 147 \(Tex. App. Fort Worth Jan. 8, 2009\)](#), reh'g denied, op. withdrawn, sub. op., [283 S.W.3d 506, 2009 Tex. App. LEXIS 2659 \(Tex. App. Fort Worth Apr. 9, 2009\)](#).

Evidence was sufficient to support the jury's award of trial and appellate attorney's fees under Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9); the bank presented no evidence that a rate of \$ 250 per hour for a Houston attorney was unreasonable or that the amount of time dedicated to the case was unreasonable, and given the amount of time invested in the case by the customer's attorney, charged at a reasonable rate for the area for an attorney with the experience of the attorney, the fees were not excessive or unreasonable. [Bank of Tex. v. VR Elec., Inc., 276 S.W.3d 671, 67 U.C.C. Rep. Serv. 2d \(CBC\) 713, 2008 Tex. App. LEXIS 9745 \(Tex. App. Houston 1st Dist. Dec. 31, 2008, no pet.\)](#).

Bank challenged only the amount of attorney's fees in relation to the amount in controversy, which is only one of several factors to be considered, for purposes of *Tex. Disciplinary R. Prof. Conduct 1.04*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9), but the court addressed the evidence presented in light of each of the factors. [Bank of Tex. v. VR Elec., Inc., 276 S.W.3d 671, 67 U.C.C. Rep. Serv. 2d \(CBC\) 713, 2008 Tex. App. LEXIS 9745 \(Tex. App. Houston 1st Dist. Dec. 31, 2008, no pet.\)](#).

Issue is not whether the fees are proportionate to another party's, as the court does not examine the magnitude of fees in a vacuum; the focus of our inquiry is whether the other party controverted the evidence that the fees were reasonable or necessary. [Blockbuster, Inc. v. C-Span Entm't, Inc., 276 S.W.3d 482, 2008 Tex. App. LEXIS 6083 \(Tex. App. Dallas Aug. 12, 2008, no pet.\)](#).

Parties' contract allowed for attorney fees and the company was the prevailing party; a summary of records established the fees the company incurred and lead counsel testified concerning many of the factors identified in *Tex. Disciplinary R. Prof. Conduct 1.04(b)*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9), and because the company presented competent, uncontroverted evidence of its right to attorney fees and the evidence was not contradicted, the court awarded an amount of fees that were reasonable and necessary, under Tex. R. App. P. 43.3(a). [Blockbuster, Inc. v. C-Span Entm't, Inc., 276 S.W.3d 482, 2008 Tex. App. LEXIS 6083 \(Tex. App. Dallas Aug. 12, 2008, no pet.\)](#).

Because no one testified to the reasonable attorney fee factors under *Tex. Disciplinary R. Prof. Conduct 1.04*, and no expert testified that the fees actually incurred were reasonable and necessary, there was no evidence to support the jury's answer as to damages in this regard, for purposes of [Tex. Civ. Prac. & Rem. Code Ann. § 38.001](#). [Cunningham v. Williams, No. 2-06-154-CV, 2007 Tex. App. LEXIS 9894 \(Tex. App. Fort Worth Dec. 20, 2007\)](#).

In a divorce proceeding, attorney fees were properly awarded to the husband and to a guardian ad litem for the children where the evidence sufficiently addressed the factors in *Tex. Disciplinary R. Prof. Conduct 1.04(b)*, and supported the conclusion that the fees were reasonable and necessary. [Diamond v. San Soucie, 239 S.W.3d 428, 2007 Tex. App. LEXIS 9136 \(Tex. App. Dallas Nov. 20, 2007, no pet.\)](#).

Ample evidence supported a trial court's award of attorney fees pursuant to [Tex. Prop. Code Ann. § 21.019\(b\)](#) to a property owner in eminent domain proceedings in which the condemnor voluntarily dismissed the proceedings after the special commissioners appointed pursuant to [Tex. Prop. Code Ann. § 21.014\(a\)](#) determined the value of the property at issue where both an expert witness on the subject of attorney fees in condemnation cases and the owner's attorney testified that they considered each of the *Tex. Disciplinary R. Prof. Conduct 1.04* factors in setting fees, and where both also testified that, considering the Rule 1.04 factors, the owner's attorney fee (and thus the

trial court's award) was a reasonable and necessary fee. [Brazos Elec. Power Coop., Inc. v. Weber, 238 S.W.3d 582, 2007 Tex. App. LEXIS 8792 \(Tex. App. Dallas Nov. 6, 2007, no pet.\)](#).

Regarding the factual sufficiency of the evidence to support an award of trial attorney fees to appellees under the Declaratory Judgment Act, a reviewing court could not say that the verdict was so contrary to the overwhelming weight of the evidence that it was clearly wrong and unjust because although appellees' counsel did not precisely follow the elements listed by *Tex. Disciplinary R. Prof. Conduct 1.04*, counsel's testimony adequately provided evidence of the time and labor required, of the fee customarily charged for similar representation in that particular county, and of counsel's experience and ability, and, thus, from counsel's testimony, reasonable and fair-minded jurors could have determined that \$ 100,000 in trial attorney fees was reasonable and necessary; however, because counsel testified about only trial attorney fees and did not provide any evidence regarding appellate attorney fees, appellees presented no evidence to support the trial court's award of appellate attorney fees. [McCalla v. Ski River Dev., Inc., 239 S.W.3d 374, 2007 Tex. App. LEXIS 9967 \(Tex. App. Waco Oct. 10, 2007, no pet.\)](#).

For purposes of *Tex. Disciplinary R. Prof. Conduct 1.04*, the insured presented no evidence that the attorney's rate of \$ 150 per hour for a trial attorney was unreasonable and, even keeping in mind that the case involved a \$ 2,000 claim and the fee amount awarded greatly exceeded the amount of actual damages, the court was unable to say that the amount awarded for trial and appellate attorney fees was excessive or unreasonable. [USAA County Mut. Ins. Co. v. Cook, 241 S.W.3d 93, 2007 Tex. App. LEXIS 6599 \(Tex. App. Houston 1st Dist. Aug. 16, 2007, no pet.\)](#).

Trial court had sufficient information upon which to determine that a [Tex. Prop. Code Ann. § 21.019\(c\)](#) attorney fee award was reasonable under *Tex. Disciplinary R. Prof. Conduct 1.04(b)*. [Falls County Water Control & Improvement Dist. No. 1 v. Haak, 220 S.W.3d 92, 2007 Tex. App. LEXIS 925 \(Tex. App. Waco Feb. 7, 2007, no pet.\)](#).

Where an advertiser was entitled to summary judgment as to its breach of contract and quantum meruit claims against a customer, the advertiser failed to demonstrate the reasonableness and necessity of attorney's fees because the advertiser's attorney's failure to provide a copy of a written contingency fee agreement created an attendant circumstance surrounding the alleged existence of a contingency fee agreement. [Mercier v. Southwestern Bell Yellow Pages, Inc., No. 13-05-700-CV, 2006 Tex. App. LEXIS 10945 \(Tex. App. Corpus Christi Dec. 21, 2006\)](#).

Judgment was properly entered against an attorney for fraud where, after leaving a law firm at which, during his tenure, he obtained a judgment on behalf of a client against appellee, he, without authority, sought a writ of execution for the judgment, causing appellee to make payments to him, not knowing that the attorney was acting sans authority; moreover, an award of attorney's fees against the attorney, in the amount of \$ 9,500, was not excessive, despite the attorney's contention that it was excessive because the trial only lasted two hours; appellee's counsel represented that he charged \$250 per hour, and that he spent 38 hours on the case, which included his time discussing the case with appellee, preparing and filing a motion to enforce the settlement agreement, negotiating for the writ of execution that the attorney had filed, preparing and filing pleadings and a response to the attorney's motion for summary judgment, and negotiating in court-ordered mediation. [Oko v. Oguntope, No. 01-06-00589-CV, 2006 Tex. App. LEXIS 11204 \(Tex. App. Houston 1st Dist. Oct. 18, 2006\)](#).

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: Statutory Awards

Attorney's fees in the amount of \$ 2,000, which were awarded in a forcible entry and detainer case, were not unreasonable where counsel for a landlord testified about the number of hours spent on the case, the amount he regularly charged, the rate of other firms specializing in this type of work, and the amount of work that was done. [Simmons v. Hollyview Apts., No. 01-08-00231-CV, 2009 Tex. App. LEXIS 7495 \(Tex. App. Houston 1st Dist. Sept. 24, 2009\)](#), pet. dism'd w.o.j. [No. 09-0978, 2010 Tex. LEXIS 398 \(Tex. May 7, 2010\)](#).

In a case involving child custody, attorney's fees were properly awarded to a mother where her attorney testified about his experience, how much he charged, and that his fees were reasonable and necessary; no documentary evidence was required. The father failed to preserve an issue relating to the classification of the attorney's fees as

child support for appellate review because no motion or objection was raised before the trial court on that issue. [In the Interest of A.B.P., 291 S.W.3d 91, 2009 Tex. App. LEXIS 4477 \(Tex. App. Dallas June 17, 2009, no pet.\).](#)

When multiple causes of action are asserted, some of which allow fee recovery and some of which do not, then evidence of time or money necessary only to the litigation of claims for which attorney fees are not recoverable must be segregated from evidence of the reasonable amount of time or money necessary for the performance of legal services necessary to litigate claims for which attorney fees are recoverable, and if a particular legal service was necessary to litigate a cause of action for which attorney fees are recoverable, such fees are not rendered unrecoverable merely because they also advance a claim for which attorney fees would not be otherwise available. Accordingly, in a case in which real party in interest asserted claims under the Declaratory Judgments Act and the Texas Property Code, the amount determined by the factfinder to be the reasonable and necessary fees for litigation of claims for which recovery was authorized set the outer boundary of fees that could be awarded under the Declaratory Judgments Act or [Tex. Prop. Code Ann. § 114.064](#), and the trial court could award so much of that sum as it determined to be both equitable and just. [In re Lesikar, 285 S.W.3d 577, 2009 Tex. App. LEXIS 3221 \(Tex. App. Houston 14th Dist. May 7, 2009, no pet.\).](#)

In a breach of contract case, a contractor was able to recover attorney's fees under [Tex. Civ. Prac. & Rem. Code Ann. § 38.001](#) because the proper method of calculating in-house counsel fees was through the market value method, a trial court improperly found that the request for attorney's fees was excessive, unreasonable, and without sufficient evidentiary basis, proof of an existence of a fee contract and the actual incurrence of fees was not required, the trial court's finding that it was not necessary or reasonable to incur fees of local counsel was improper, and, although the contractor was not able to recover fees on all of its claims, a failure to segregate did not mandate the denial of all of the fees requested. [AMX Enters., L.L.P. v. Master Realty Corp., No. 2-07-239-CV, 2009 Tex. App. LEXIS 147 \(Tex. App. Fort Worth Jan. 8, 2009\)](#), reh'g denied, op. withdrawn, sub. op., [283 S.W.3d 506, 2009 Tex. App. LEXIS 2659 \(Tex. App. Fort Worth Apr. 9, 2009\)](#).

In a case where a president was accused of misusing a company asset to finance a personal loan, attorney's fees and court costs were recoverable because a declaratory judgment was sought to invalidate a lien; moreover, the fees were reasonable and necessary. The case was pursued in a reasonably cost-efficient manner, two companies prevailed on their declaratory judgment claim, and the case involved extensive briefing and discovery over a two-year period; moreover, the bench trial lasted nearly three days, the trial court heard hours of testimony from fact and expert witnesses, and multiple exhibits were received into evidence. [Max Duncan Family Invs. Ltd. v. NTFN, Inc., 267 S.W.3d 447, 2008 Tex. App. LEXIS 6513 \(Tex. App. Dallas Aug. 26, 2008, no pet.\).](#)

Civil Procedure: Appeals: Costs & Attorney Fees

In a fee-share dispute over attorney's fees, because there was no evidence in the record showing the district consented to or knew of appellant's share of attorney's fees, the agreement was unenforceable and void as against public policy under the statute. [Garcia-Vela v. Jolly, No. 04-21-00541-CV, 2023 Tex. App. LEXIS 2469 \(Tex. App. San Antonio Apr. 19, 2023\)](#).

Civil Procedure: Appeals: Reviewability: Preservation for Review

In a case involving child custody, attorney's fees were properly awarded to a mother where her attorney testified about his experience, how much he charged, and that his fees were reasonable and necessary; no documentary evidence was required. The father failed to preserve an issue relating to the classification of the attorney's fees as child support for appellate review because no motion or objection was raised before the trial court on that issue. [In the Interest of A.B.P., 291 S.W.3d 91, 2009 Tex. App. LEXIS 4477 \(Tex. App. Dallas June 17, 2009, no pet.\).](#)

Civil Procedure: Appeals: Standards of Review: Substantial Evidence: Sufficiency of Evidence

Tex. R. Prof Conduct 1.04

Evidence was sufficient to show that an attorney violated *Tex. Disciplinary R. Prof. Conduct 1.04(a)*, charging an excessive fee, because even after the attorney paid all miscellaneous expenses, medical costs, and cash advances to the clients, he still collected a fee that exceeded 40 percent. [*Onwuteaka v. Comm'n for Lawyer Discipline, No. 14-07-00544-CV, 2009 Tex. App. LEXIS 1694 \(Tex. App. Houston 14th Dist. Mar. 12, 2009\)*](#).

There was factually and legally sufficient evidence to support findings of professional misconduct when an attorney acting as a trustee in bankruptcy failed to hold a client's funds separate and apart of his own, failed to render an accounting, failed to promptly deliver the funds, and charged an unconscionable fee. [*Kaufman v. Comm'n for Lawyer Discipline, 197 S.W.3d 867, 2006 Tex. App. LEXIS 6288 \(Tex. App. Corpus Christi July 20, 2006\)*](#), cert. denied, 552 U.S. 935, 128 S. Ct. 331, 169 L. Ed. 2d 233, 2007 U.S. LEXIS 10939 (U.S. 2007).

Civil Procedure: Eminent Domain Proceedings: Attorney Fees

Amount of fees awarded to property owners as to an attorney hired to assist their lead attorney in a city's unsuccessful eminent-domain case was not error because the assistant attorney's testimony about her unbilled trial work was some evidence on which to base an award of attorney fees under the lodestar method, as it concerned contemporaneous or immediately completed work for which she had not had time to bill, or presumably even record, in her billing system. [*City of Laredo v. Montano, 414 S.W.3d 731, 2013 Tex. LEXIS 890 \(Tex. 2013\)*](#).

Amount of attorney fees awarded to property owners as to their lead attorney in a city's unsuccessful eminent-domain case was error because deficiencies remained in the owners' proof under the lodestar method, as the lead attorney offered nothing to document his time other than his generalized testimony about the tasks he performed and his belief as to the number of hours he spent preparing and trying the case. [*City of Laredo v. Montano, 414 S.W.3d 731, 2013 Tex. LEXIS 890 \(Tex. 2013\)*](#).

Ample evidence supported a trial court's award of attorney fees pursuant to [*Tex. Prop. Code Ann. § 21.019\(b\)*](#) to a property owner in eminent domain proceedings in which the condemnor voluntarily dismissed the proceedings after the special commissioners appointed pursuant to [*Tex. Prop. Code Ann. § 21.014\(a\)*](#) determined the value of the property at issue where both an expert witness on the subject of attorney fees in condemnation cases and the owner's attorney testified that they considered each of the *Tex. Disciplinary R. Prof. Conduct 1.04* factors in setting fees, and where both also testified that, considering the Rule 1.04 factors, the owner's attorney fee (and thus the trial court's award) was a reasonable and necessary fee. [*Brazos Elec. Power Coop., Inc. v. Weber, 238 S.W.3d 582, 2007 Tex. App. LEXIS 8792 \(Tex. App. Dallas Nov. 6, 2007, no pet.\)*](#).

Trial court had sufficient information upon which to determine that a [*Tex. Prop. Code Ann. § 21.019\(c\)*](#) attorney fee award was reasonable under *Tex. Disciplinary R. Prof. Conduct 1.04(b)*. [*Falls County Water Control & Improvement Dist. No. 1 v. Haak, 220 S.W.3d 92, 2007 Tex. App. LEXIS 925 \(Tex. App. Waco Feb. 7, 2007, no pet.\)*](#).

Contracts Law: Breach: Causes of Action: General Overview

In a breach of contract case, because the lessors damages were substantially reduced because they were not entitled to damages dating back to 1985, under *Tex. Disciplinary R. Prof. Conduct 1.04*, the award of attorney's fees to the lessors might also be reduced. The appellate court could not simply reduce or remit excessive attorney's fees according to the percentages found by the jury; thus, the award of attorney's fees had to be reversed and remanded to the trial court. [*Southwest Grain Co. v. Garza, No. 13-04-409-CV, 2007 Tex. App. LEXIS 2807 \(Tex. App. Corpus Christi Apr. 12, 2007\)*](#), reh'g denied, [*No. 13-04-409-CV, 2007 Tex. App. LEXIS 4596 \(Tex. App. Corpus Christi May 10, 2007\)*](#), pet. abated [*No. 07-0495, 2008 Tex. LEXIS 212 \(Tex. Mar. 14, 2008\)*](#).

In an action for breach of contract, the trial court did not err by awarding attorney fees to the prevailing party in an amount greater than the lodestar amount because there was some evidence that the award was reasonable. [*Toshiba Mach. Co. v. SPM Flow Control, Inc., 180 S.W.3d 761, 2005 Tex. App. LEXIS 9478 \(Tex. App. Fort Worth Nov. 10, 2005\)*](#), pet. granted, judgment vacated w.r.m. [*No. 05-1090, 2006 Tex. LEXIS 251 \(Tex. Mar. 31, 2006\)*](#).

Contracts Law: Defenses: Public Policy Violations

Contingency fee contract that required the client to obtain the law firm's consent to settle violated *Tex. Disc. R. Prof. Conduct 1.02(a)(2)* cmt. 5, and was unenforceable as against public policy; even if this provision were severable, the fee charged, \$70,000 for no services, was unconscionable under *Tex. Disc. R. Prof. Conduct 1.04(a)*. [*Davis Law Firm v. Bates*, No. 13-13-00209-CV, 2014 Tex. App. LEXIS 1582 \(Tex. App. Corpus Christi Feb. 13, 2014\).](#)

It was undisputed that plaintiff attorney and defendant attorney were members of the same firm; plaintiff was paid as an employee of the firm. The alleged oral contract was a fee arrangement between lawyers of the same firm, and was not barred by *Tex. Disciplinary R. Prof. Conduct 1.04(f)*, reprinted in *Tex. Gov't Code Ann.*, tit. 2, subtit. G app A-1 (*Tex. State Bar R. art. X, sec. 9*). [*Gonzalez v. Cantu \(In re Cantu\)*, No. 08-70260, No. 08-07039, 2009 Bankr. LEXIS 4447 \(Bankr. S.D. Tex. Feb. 24, 2009\).](#)

In a dispute over a fee-sharing agreement (FSA), although the legal disciplinary rules could not have been the basis for a private cause of action, a trial court appropriately considered the rules in determining that the FSA was against public policy where it allowed for the sharing of fees with a lawyer that had been suspended and later disbarred. [*Cruse v. O'Quinn*, 273 S.W.3d 766, 2008 Tex. App. LEXIS 8990 \(Tex. App. Houston 14th Dist. Nov. 25, 2008, no pet.\).](#)

In a dispute over a fee-sharing agreement (FSA), a second law firm met its burden of showing that the agreement was illegal and violated public policy because it allowed for fee splitting with a lawyer that was suspended and later disbarred; therefore, the attorney was prohibited from receiving fees on cases subject to the FSA that were not settled or otherwise finally resolved before he was suspended and disbarred. Also, he was unable to show that he was a forwarding attorney based on the terms of the FSA. [*Cruse v. O'Quinn*, 273 S.W.3d 766, 2008 Tex. App. LEXIS 8990 \(Tex. App. Houston 14th Dist. Nov. 25, 2008, no pet.\).](#)

Contract providing for a division of fees among law firms in class action litigation could not be found unenforceable because there was no summary judgment evidence showing that the contract contemplated a disproportionate division of fees or that any clients who were not informed of the agreement would have objected. [*Dardas v. Fleming, Hovenkamp & Grayson, P.C.*, 194 S.W.3d 603, 2006 Tex. App. LEXIS 3668 \(Tex. App. Houston 14th Dist. Apr. 27, 2006, no pet.\).](#)

Contracts Law: Defenses: Unconscionability: General Overview

Evidence supported the trial court's findings that a fee agreement was unconscionable to the extent it required the client to pay the attorney over 50 percent of her total recovery, and that forfeiture of all fees was not warranted because the attorney performed valuable services for her. [*Celmer v. McGarry*, 412 S.W.3d 691, 2013 Tex. App. LEXIS 9985 \(Tex. App. Dallas Aug. 8, 2013\)](#), reh'g denied, [No. 05-10-01133-CV, 2013 Tex. App. LEXIS 15562 \(Tex. App. Dallas Nov. 21, 2013\).](#)

Trial court erred in conforming the arbitration award of fees incurred incident to the law firm's motion to withdraw and petition for mandamus because no lawyer could form a reasonable belief that fees incident to such time spent adversarial to the client and in pursuit of the attorney's own interests was the rendering of "legal services" for the client. [*Lee v. Daniels & Daniels*, 264 S.W.3d 273, 2008 Tex. App. LEXIS 3474 \(Tex. App. San Antonio May 14, 2008\)](#), reh'g denied, [No. 04-07-00096-CV, 2008 Tex. App. LEXIS 7935 \(Tex. App. San Antonio July 28, 2008\).](#)

Estate, Gift & Trust Law: Conservators & Guardians: General Overview

Personal guardian was awarded less attorney's fees and paralegal expenses than were sought under [Tex. Prob. Code Ann. § 666](#) because an attorney's testimony only raised a fact issue for the probate court given the attendant circumstances surrounding his work; the customary fee was set forth in the probate court's fee schedule, the attorney did not provide testimony about his paralegal's skills and qualifications, he did not provide clear and unequivocal testimony about the results he obtained for much of his work, and the attorney's testimony about his agreement with the personal guardian was not clear and unequivocal where he did not show that the personal guardian agreed with his hourly rate. [In re Hanker, No. 01-12-00507-CV, 2013 Tex. App. LEXIS 7705 \(Tex. App. Houston 1st Dist. June 25, 2013\)](#).

Estate, Gift & Trust Law: Probate: Procedures in Probate: Costs & Expenses

Personal guardian was awarded less attorney's fees and paralegal expenses than were sought under [Tex. Prob. Code Ann. § 666](#) because an attorney's testimony only raised a fact issue for the probate court given the attendant circumstances surrounding his work; the customary fee was set forth in the probate court's fee schedule, the attorney did not provide testimony about his paralegal's skills and qualifications, he did not provide clear and unequivocal testimony about the results he obtained for much of his work, and the attorney's testimony about his agreement with the personal guardian was not clear and unequivocal where he did not show that the personal guardian agreed with his hourly rate. [In re Hanker, No. 01-12-00507-CV, 2013 Tex. App. LEXIS 7705 \(Tex. App. Houston 1st Dist. June 25, 2013\)](#).

Evidence: Judicial Notice: Adjudicative Facts: General Overview

Legally sufficient evidence existed to uphold the reasonableness of attorney fees awarded to a lender in its suit against a borrower to recover the amount due under two promissory notes where the testimony of the lender's trial attorney was not conclusory because he provided facts to support most of the Arthur Andersen factors and based his opinions on his experience and knowledge of the practice of law in the county in which the suit was brought by, among other things, testifying that the case was more difficult and time-consuming than most other cases because of delay tactics employed by the borrower, and by also testifying that he practiced commercial litigation and had been licensed by the State of Texas for 20 years. The trial court was permitted to take judicial notice of the usual and customary attorney fees and of the contents of the case file without receiving further evidence because the award of attorney fees in the case arose under [Tex. Civ. Prac. & Rem. Code Ann. § 38.001](#). [Alsheikh v. Arabian Nat'l Shipping Corp., No. 01-08-00007-CV, 2009 Tex. App. LEXIS 2227 \(Tex. App. Houston 1st Dist. Apr. 2, 2009\)](#).

Evidence: Procedural Considerations: Weight & Sufficiency

Award of attorney's fees under [Tex. Civ. Prac. & Rem. Code Ann. § 37.009](#) in a shareholder oppression case was reasonable under the factors set forth in [Tex. Disciplinary R. Prof. Conduct 1.04\(b\)](#), reprinted in [Tex. Gov't Code Ann., tit. 2, subtit. G app. A \(Tex. State Bar R. art. X, § 9\)](#) and was adequately supported by counsel's testimony. Counsel sufficiently discussed how fees had been segregated, and no controverting evidence was presented. [Cardiac Perfusion Servs. v. Hughes, 380 S.W.3d 198, 2012 Tex. App. LEXIS 6134 \(Tex. App. Dallas July 26, 2012\)](#), reh'g denied, [No. 05-10-00286-CV, 2012 Tex. App. LEXIS 9138 \(Tex. App. Dallas Oct. 16, 2012\)](#), aff'd in part and rev'd in part, [436 S.W.3d 790, 2014 Tex. LEXIS 532 \(Tex. 2014\)](#).

Labor & Employment Law: Wrongful Termination: Whistleblower Protection Act: Remedies

In two former employees' whistleblower lawsuit against a county in which the employees prevailed, the trial court abused its discretion in awarding the employees such a small fraction of their reasonable attorney fees where there was no evidentiary basis for the trial court's attorney fee awards of \$ 15,000 to one employee and \$ 10,000 to the other, but, rather it appeared that the trial court simply chose those numbers arbitrarily, as there was no logical basis for the awards reflected in the record. Moreover, an award of attorney fees to a successful whistleblower

plaintiff that is less than 17 percent of the lodestar amount of fees incurred by the plaintiff could have a chilling effect on future whistleblowers' willingness to bring suit, which, in turn, would frustrate the purposes of the Texas Whistleblower Act, [Tex. Gov't Code Ann. §§ 554.001-.010. *Bates v. Randall County*, 297 S.W.3d 828, 2009 Tex. App. LEXIS 7508 \(Tex. App. Amarillo Sept. 25, 2009, no pet.\)](#).

Legal Ethics: Client Relations: Attorney Fees: General Overview

Evidence was insufficient to support the jury's finding as to attorneys' fees, because appellee presented no evidence to show the reasonableness of the fees and no evidence that the fees charged were the usual and customary attorneys' fees charged in a suit for breach of contract. [*Cannon v. Castillo*, No. 11-12-00256-CV, 2014 Tex. App. LEXIS 8656 \(Tex. App. Eastland Aug. 7, 2014\)](#).

When the trial court denied the ex-wife's claims for child support and discovery sanctions, the evidence was sufficient to support its award of \$2,500 for the ex-husband's attorney's fees under *Tex. Disc. R. Prof. Conduct 1.04(b)*. An affidavit from his attorney indicated that he charged \$250 per hour and he worked more than 40 hours trying to resolve the case. [*Legere v. Legere*, No. 03-12-00046-CV, 2013 Tex. App. LEXIS 1768 \(Tex. App. Austin 3d Dist. Feb. 22, 2013\)](#).

In an action under the Texas Deceptive Trade Practices Act, the amount of attorney's fees awarded was upheld where a case had been pending for 9 years, it had been ready for trial 3 times, an attorney testified about his rate per hour and the time that he spent, and he testified that his fees were reasonable, necessary, and customary. The attorney accounted for deductions for nonstatutory claims for which his fees were not recoverable and for a continuance that was his fault due to a surgery. [*Carpenter v. De La Cruz*, No. 04-11-00285-CV, 2012 Tex. App. LEXIS 5961 \(Tex. App. San Antonio July 25, 2012\)](#).

Probate court's decision to award attorney's fees to a guardian relating to a breach of fiduciary duty lawsuit was supported by sufficient evidence because the probate court admitted and reviewed redacted billing statements that showed the date, the billing person, the hours billed, the amount billed, and a description of the work performed. There was testimony that the billed hours and expenses were reasonable and necessary; moreover, there was testimony regarding the reasonableness of the fees based on the factors in *Tex. Disciplinary R. Prof. Conduct 1.04*, reprinted in *Tex. Gov't Code Ann.*, tit. 2, subtit. G app. A (2005) (*Tex. State Bar R. art. X, sec. 9*). [*In the Estate of Johnston*, No. 04-11-00467-CV, 2012 Tex. App. LEXIS 4255 \(Tex. App. San Antonio May 30, 2012\)](#).

Trial court affirmatively stated that it had considered the factors set forth in *Tex. Disciplinary R. Prof. Conduct 1.04(b)*, reprinted in *Tex. Gov't Code Ann.*, tit. 2, subtit. G app. A-1 (*Tex. State Bar R. art. X, sec. 9*) in awarding attorney's fees, and absent objection, counsel's unsworn testimony sufficiently established the amount of fees incurred. Thus, although the supporting affidavits were hearsay because they did not comply with the requirements of [*Tex. Civ. Prac. & Rem. Code Ann. § 18.001*](#) and the invoices were hearsay because they were not properly authenticated as business records under *Tex. R. Evid. 803(6)*, their admission was harmless error. [*Good v. Baker*, 339 S.W.3d 260, 2011 Tex. App. LEXIS 2167 \(Tex. App. Texarkana Mar. 25, 2011, no pet.\)](#).

Court did not abuse its discretion in ordering the attorney disbarred, because the attorney's actions constituted repeated, egregious breaches of his fiduciary duties to multiple clients, when the attorney failed to provide an accounting of settlement funds, the attorney accepted settlement without consultation, and the attorney ignored attempts at communication and reasonable requests for information. [*James v. Comm'n for Lawyer Discipline*, 310 S.W.3d 586, 2010 Tex. App. LEXIS 2715 \(Tex. App. Dallas Apr. 5, 2010, no pet.\)](#).

Evidence was insufficient to support an award of attorney fees, for purposes of [*Tex. R. Disciplinary P. 1.04*](#), reprinted in *Tex. Gov't Code Ann.*, tit. 2, subtit. G app. A-1 (2005) because counsel's bare testimony of his law school's name, his years of practice, and the hours he worked on the case did not establish that any particular fee was reasonable; the evidence was legally insufficient to give the jury a basis for determining that any amount of fees was reasonable and necessary. [*O & B Farms v. Black*, 300 S.W.3d 418, 2009 Tex. App. LEXIS 8286 \(Tex. App. Houston 14th Dist. Oct. 29, 2009, no pet.\)](#).

Tex. R. Prof Conduct 1.04

Trial court erred in conforming the arbitration award of fees incurred incident to the law firm's motion to withdraw and petition for mandamus because no lawyer could form a reasonable belief that fees incident to such time spent adversarial to the client and in pursuit of the attorney's own interests was the rendering of "legal services" for the client. [Lee v. Daniels & Daniels, 264 S.W.3d 273, 2008 Tex. App. LEXIS 3474 \(Tex. App. San Antonio May 14, 2008\)](#), reh'g denied, [No. 04-07-00096-CV, 2008 Tex. App. LEXIS 7935 \(Tex. App. San Antonio July 28, 2008\)](#).

Judgment was modified to reflect \$ 23,166 in attorney fees rather than the \$ 24,611 awarded, because the attorney stated that her attorney fees were \$ 23,166, and the decision to award attorney fees was not wholly arbitrary, when the stepfather testified he hired the attorney and agreed to pay her reasonable attorney fees, and the attorney's affidavit indicated the work completed, which included preparing discovery, interviewing witnesses and preparing for trial. [Johnson v. Oliver, 250 S.W.3d 182, 2008 Tex. App. LEXIS 2592 \(Tex. App. Dallas Apr. 9, 2008, no pet.\)](#).

For purposes of *Tex. Disciplinary R. Prof. Conduct 1.04*, the insured presented no evidence that the attorney's rate of \$ 150 per hour for a trial attorney was unreasonable and, even keeping in mind that the case involved a \$ 2,000 claim and the fee amount awarded greatly exceeded the amount of actual damages, the court was unable to say that the amount awarded for trial and appellate attorney fees was excessive or unreasonable. [USAA County Mut. Ins. Co. v. Cook, 241 S.W.3d 93, 2007 Tex. App. LEXIS 6599 \(Tex. App. Houston 1st Dist. Aug. 16, 2007, no pet.\)](#).

For purposes of [Tex. R. Civ. P. 173](#), and in considering the factors in *Tex. Disciplinary R. Prof. Conduct 1.04(b)*, an attorney fee of \$ 100,000 for a guardian ad litem was unreasonable, given that no exceptional circumstances existed requiring an enhancement for work not taken, and time spent giving trial strategy tips was not compensable in serving as a guardian. [Land Rover U.K., Ltd. v. Hinojosa, 210 S.W.3d 604, 2006 Tex. LEXIS 1264 \(Tex. 2006\)](#).

Trial court properly awarded heirs and an oil company attorney fees under [Tex. Civ. Prac. & Rem. Code Ann. § 37.009](#) of the Declaratory Judgments Act; the attorneys provided either an affidavit or testimony regarding their work and fees and they all stated they considered the factors in *Tex. Disciplinary R. Prof. Conduct 1.04*, the landowners failed to fully develop and support their argument challenging the ruling and thus showed no abuse of discretion, and the attorneys presented some evidence as to the reasonableness and necessity of the fees and there was no evidence that the award of fees was inequitable or unjust. [Bubenik v. Dorado Oil Co., No. 13-04-579-CV, 2006 Tex. App. LEXIS 10648 \(Tex. App. Corpus Christi Dec. 14, 2006\)](#).

Judgment was properly entered against an attorney for fraud where, after leaving a law firm at which, during his tenure, he obtained a judgment on behalf of a client against appellee, he, without authority, sought a writ of execution for the judgment, causing appellee to make payments to him, not knowing that the attorney was acting sans authority; moreover, an award of attorney's fees against the attorney, in the amount of \$ 9,500, was not excessive, despite the attorney's contention that it was excessive because the trial only lasted two hours; appellee's counsel represented that he charged \$250 per hour, and that he spent 38 hours on the case, which included his time discussing the case with appellee, preparing and filing a motion to enforce the settlement agreement, negotiating for the writ of execution that the attorney had filed, preparing and filing pleadings and a response to the attorney's motion for summary judgment, and negotiating in court-ordered mediation. [Oko v. Oguntope, No. 01-06-00589-CV, 2006 Tex. App. LEXIS 11204 \(Tex. App. Houston 1st Dist. Oct. 18, 2006\)](#).

Where an attorney collected a fee of \$ 300,000 from a prison inmate under a nonrefundable fee agreement to represent the inmate in a new trial after the attorney obtained post-conviction relief for the inmate, but no new trial occurred after the post-conviction relief was reversed, the nonrefundable fee, although otherwise a lawful arrangement, was unconscionable since the new trial was not held, and the inmate was entitled to a refund of \$ 165,000 which was the portion of the fee which was not attributable to the attorney's pretrial efforts. [Hughes v. Wells \(In re Wells\), No. 05-34432-BJH-7, No. ADV PRO 05-3594-BJH, 2006 Bankr. LEXIS 330 \(Bankr. N.D. Tex. Mar. 8, 2006\)](#), aff'd, [294 Fed. Appx. 841, 2008 U.S. App. LEXIS 20569 \(5th Cir. Tex. 2008\)](#).

Legal Ethics: Client Relations: Attorney Fees: Contingency Fees

Evidence supported the trial court's findings that a fee agreement was unconscionable to the extent it required the client to pay the attorney over 50 percent of her total recovery, and that forfeiture of all fees was not warranted because the attorney performed valuable services for her. [*Celmer v. McGarry*, 412 S.W.3d 691, 2013 Tex. App. LEXIS 9985 \(Tex. App. Dallas Aug. 8, 2013\)](#), reh'g denied, [*No. 05-10-01133-CV*, 2013 Tex. App. LEXIS 15562 \(Tex. App. Dallas Nov. 21, 2013\)](#).

Attorney's e-mails to his client concerning an alleged contingency fee agreement did not satisfy the requirement that the contract be in writing, as the client requested a writing rather than agreeing to conduct transactions by electronic means. [*Celmer v. McGarry*, 412 S.W.3d 691, 2013 Tex. App. LEXIS 9985 \(Tex. App. Dallas Aug. 8, 2013\)](#), reh'g denied, [*No. 05-10-01133-CV*, 2013 Tex. App. LEXIS 15562 \(Tex. App. Dallas Nov. 21, 2013\)](#).

Reasonable and fair-minded jury could have found that \$ 66,287 was a reasonable attorney's fee because the evidence showed that: (1) the attorney became involved in the dispute in January 2010; (2) the attorney had unique experience trying cases involving the enforcement of settlement agreements and had a sterling reputation; (3) the attorney and appellee entered into a contingency fee agreement in which appellee agreed to pay the attorney one-third of any award she recovered in her suit; (4) the jury's award for the attorney's fees in preparing for trial was approximately one-third of the \$ 199,060 in damages awarded to appellee; (5) the amount of money involved in the case was significant, as evidence established that the value of the life insurance policy and bank accounts exceeded \$ 200,000; and (6) another attorney testified that the circumstances of the case made time of the essence. [*McDonald v. Fox*, No. 13-11-00479-CV, 2012 Tex. App. LEXIS 9518 \(Tex. App. Corpus Christi Nov. 15, 2012\)](#).

Attorney fee award was not supported by legally sufficient evidence where although there was some evidence to support an award of attorney fees, there was not enough to support the award given by the trial court. A party's contingent fee agreement alone could not support an award of attorney fees. [*Garcia v. Guerrero*, No. 04-09-00002-CV, 2010 Tex. App. LEXIS 321 \(Tex. App. San Antonio Jan. 20, 2010\)](#).

Neither of two documents were enforceable contingency fee agreements under [*Tex. Gov't Code Ann. § 82.065*](#) or *Tex. Disciplinary R. Prof. Conduct 1.04(d)*, as one mentioned nothing about attorney's fees and the other, which was executed by an executrix, did not reflect that she signed the document other than in her own behalf; in further support of the denial of the request for fees was the fact that the attorney did not comply with *Tex. Disciplinary R. Prof. Conduct 1.06*, by obtaining his clients' consent after disclosure of a conflict of interest. *Ray v. T.D.*, No. 03-06-00242-CV, 2008 Tex. App. LEXIS 986 (Tex. App. Austin 3d Dist. Feb. 7, 2008).

To the extent the attorney implied that he entered into a contingency fee agreement with the company, the attorney failed to present any evidence of such a contract, and thus the attorney's evidence was controverted and questionable, for purposes of [*Tex. Civ. Prac. & Rem. Code Ann. § 38.003*](#), and the evidence did not rise to the level that would have permitted an award of fees under case law. [*Mercier v. Southwestern Bell Yellow Pages, Inc.*, 214 S.W.3d 770, 2007 Tex. App. LEXIS 587 \(Tex. App. Corpus Christi Jan. 25, 2007, no pet.\)](#).

Trial court erred in granting the company attorney fees under [*Tex. Civ. Prac. & Rem. Code Ann. § 38.001*](#) because the attorney's contentions that the company agreed to pay a reasonable fee and that a certain amount was reasonable, without evidence of the other factors in *Tex. Disciplinary R. Prof. Conduct 1.04(d)*, did not prove that the fee was reasonable for purposes of a recovery of fees from the customer. [*Mercier v. Southwestern Bell Yellow Pages, Inc.*, 214 S.W.3d 770, 2007 Tex. App. LEXIS 587 \(Tex. App. Corpus Christi Jan. 25, 2007, no pet.\)](#).

Where an advertiser was entitled to summary judgment as to its breach of contract and quantum meruit claims against a customer, the advertiser failed to demonstrate the reasonableness and necessity of attorney's fees because the advertiser's attorney's failure to provide a copy of a written contingency fee agreement created an attendant circumstance surrounding the alleged existence of a contingency fee agreement. [*Mercier v. Southwestern Bell Yellow Pages, Inc.*, No. 13-05-700-CV, 2006 Tex. App. LEXIS 10945 \(Tex. App. Corpus Christi Dec. 21, 2006\)](#).

Legal fee agreement that provided for a contingent fee and further provided that the client would still owe the fee if the client terminated the representation was in violation of *Tex. Disciplinary R. Prof. Conduct 1.04(a)* and *Tex.*

Disciplinary R. Prof. Conduct 1.08(h), because it penalized the client for changing counsel, granted the firm an impermissible proprietary interest in the client's claims, and unconscionably shifted the risks of the representation almost entirely to the client's detriment. [*Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 2006 Tex. LEXIS 1129 \(Tex. 2006\)](#).

Legal Ethics: Client Relations: Attorney Fees: Excessive Fees

Contingency fee contract that required the client to obtain the law firm's consent to settle violated *Tex. Disc. R. Prof. Conduct 1.02(a)(2)* cmt. 5, and was unenforceable as against public policy; even if this provision were severable, the fee charged, \$70,000 for no services, was unconscionable under *Tex. Disc. R. Prof. Conduct 1.04(a)*. [*Davis Law Firm v. Bates*, No. 13-13-00209-CV, 2014 Tex. App. LEXIS 1582 \(Tex. App. Corpus Christi Feb. 13, 2014\)](#).

In a collection suit brought by a law firm and an attorney, the jury reasonably refused to award fees under [*Tex. Civ. Prac. & Rem. Code Ann. § 38.001\(8\)*](#) for work performed by in-house counsel, which the jury could have found was duplicative of work done by outside counsel, and for defending the client's counterclaims. Conditional appellate attorney's fees should have been awarded, however, absent any evidence casting doubt on their reasonableness or necessity. [*Nalle Plastics Family v. Porter*, 406 S.W.3d 186, 2013 Tex. App. LEXIS 4826 \(Tex. App. Corpus Christi Apr. 18, 2013, no pet.\)](#).

Evidence supported an award of attorney fees to an electricity supplier in its breach of contract action against a buyer because application of the factors in *Tex. Disciplinary R. Prof. Conduct 1.04(b)*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9) did not invite significant reductions in the request for fees; the trial court had made certain reductions in light of the evidence and arguments presented. [*RM Crowe Prop. Servs. Co., L.P. v. Strategic Energy, L.L.C.*, 348 S.W.3d 444, 2011 Tex. App. LEXIS 5867 \(Tex. App. Dallas July 29, 2011, no pet.\)](#).

Counsel's fee affidavit stating the amount incurred and stating counsel's opinion that the amount was reasonable and necessary raised a fact question; thus, the trial court abused its discretion in summarily denying fees for a period of litigation while an appeal from a summary judgment order was pending. [*CSFB 1998-PI Buffalo Speedway Office, Ltd. P'ship v. Amtech Elevator Servs. Co.*, No. 01-08-00639-CV, 2010 Tex. App. LEXIS 6830 \(Tex. App. Houston 1st Dist. Aug. 19, 2010\)](#).

Evidence was sufficient to show that an attorney violated *Tex. Disciplinary R. Prof. Conduct 1.04(a)*, charging an excessive fee, because even after the attorney paid all miscellaneous expenses, medical costs, and cash advances to the clients, he still collected a fee that exceeded 40 percent. [*Onwuteaka v. Comm'n for Lawyer Discipline*, No. 14-07-00544-CV, 2009 Tex. App. LEXIS 1694 \(Tex. App. Houston 14th Dist. Mar. 12, 2009\)](#).

In a disciplinary matter, the allegations in a second amended petition supported a trial court's judgment entered against a lawyer, as required by [*Tex. R. Civ. P. 301*](#); the Texas Commission for Lawyer Discipline's pleadings gave adequate notice that it sought disciplinary action based on *Tex. Disciplinary R. Prof. Conduct 1.04*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9), *Tex. Disciplinary R. Prof. Conduct 1.14(a)-(c)*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9), and [*Tex. Disciplinary R. Prof. Conduct 8.04*](#), reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9). Further, the trial court's judgment mirrored the Commission's petition, identifying the same rules as the basis for its disciplinary action against the lawyer. [*Onwuteaka v. Comm'n for Lawyer Discipline*, No. 14-07-00544-CV, 2009 Tex. App. LEXIS 351 \(Tex. App. Houston 14th Dist. Jan. 20, 2009\)](#), op. withdrawn, sub. op., [*No. 14-07-00544-CV, 2009 Tex. App. LEXIS 1694 \(Tex. App. Houston 14th Dist. Mar. 12, 2009\)*](#).

In a disciplinary matter, there was sufficient evidence to show that a lawyer violated *Tex. Disciplinary R. Prof. Conduct 1.04*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9), where he received more than 40 percent of a settlement in a personal injury case, even after paying all related costs, advances, and expenses. [*Onwuteaka v. Comm'n for Lawyer Discipline*, No. 14-07-00544-CV, 2009 Tex. App.](#)

[LEXIS 351 \(Tex. App. Houston 14th Dist. Jan. 20, 2009\)](#), op. withdrawn, sub. op., [No. 14-07-00544-CV, 2009 Tex. App. LEXIS 1694 \(Tex. App. Houston 14th Dist. Mar. 12, 2009\)](#).

Arbitrator's award in a legal fee dispute that exceeded the amount in the engagement letter did not violate public policy because the attorney provided additional services and did not create duress by telling the client that he would otherwise withdraw, which he had a right to do under *Tex. Disciplinary R. Prof. Conduct 1.15(b)(5)*; however, the attorney could not receive fees for a motion to withdraw and a related mandamus proceeding because those services did not benefit the client and the award of fees therefore contravened public policy prohibiting unconscionable fees, as expressed in *Tex. Disc. R. Prof. Conduct 1.04(a)*. [Lee v. Daniels & Daniels, 264 S.W.3d 273, 2008 Tex. App. LEXIS 3474 \(Tex. App. San Antonio May 14, 2008\)](#), reh'g denied, [No. 04-07-00096-CV, 2008 Tex. App. LEXIS 7935 \(Tex. App. San Antonio July 28, 2008\)](#).

Legal fee agreement that provided for a contingent fee and further provided that the client would still owe the fee if the client terminated the representation was in violation of *Tex. Disciplinary R. Prof. Conduct 1.04(a)* and *Tex. Disciplinary R. Prof. Conduct 1.08(h)*, because it penalized the client for changing counsel, granted the firm an impermissible proprietary interest in the client's claims, and unconscionably shifted the risks of the representation almost entirely to the client's detriment. [Hoover Slovacek LLP v. Walton, 206 S.W.3d 557, 2006 Tex. LEXIS 1129 \(Tex. 2006\)](#).

Attorney violated *Tex. Disciplinary R. Prof. Conduct 1.04(a)*, by charging an excessive fee and violated *Tex. Disciplinary R. Prof. Conduct 1.04(c)* by failing to communicate his fee within a reasonable time when he agreed to represent an indigent client pro bono but had the client sign a 40 percent contingency fee agreement two years later; a public reprimand and restitution of the amount of the fee was a reasonable sanction under [Tex. R. Disciplinary P. 3.10. McCleery v. Comm'n for Lawyer Discipline, 227 S.W.3d 99, 2006 Tex. App. LEXIS 8708 \(Tex. App. Houston 1st Dist. Oct. 5, 2006\)](#), reh'g denied, [No. 01-04-01036-CV, 2006 Tex. App. LEXIS 11345 \(Tex. App. Houston 1st Dist. Nov. 2, 2006\)](#).

Attorney, who was hired on a contingent-fee basis, could not include in his fee agreement a provision stating that, in the event he was discharged before completing the representation, his client had to immediately pay a fee equal to the present value of the attorney's interest in the client's claim; such a provision was unconscionable and unenforceable. [Hoover Slovacek LLP v. Walton, No. 04-1004, 2006 Tex. LEXIS 646 \(Tex. June 30, 2006\)](#), op. withdrawn, sub. op., [206 S.W.3d 557, 2006 Tex. LEXIS 1129 \(Tex. 2006\)](#).

Legal Ethics: Client Relations: Attorney Fees: Fee Agreements

Fee-sharing agreement did not comply with the client consent requirements under this Rule, making it unenforceable as a violation of public policy. In re Bremerton Cellular Tel. Co. Litig., No. 6887-VCL, No. 6888-VCL (Del. Ch. Dec. 9, 2024).

Attorney's e-mails to his client concerning an alleged contingency fee agreement did not satisfy the requirement that the contract be in writing, as the client requested a writing rather than agreeing to conduct transactions by electronic means. [Celmer v. McGarry, 412 S.W.3d 691, 2013 Tex. App. LEXIS 9985 \(Tex. App. Dallas Aug. 8, 2013\)](#), reh'g denied, [No. 05-10-01133-CV, 2013 Tex. App. LEXIS 15562 \(Tex. App. Dallas Nov. 21, 2013\)](#).

There was no merit to a client's argument that its representation agreement with an attorney was unconscionable because it required the client to bear all expenses of litigation; the contract identified the expenses that were the client's responsibility in accordance with *Tex. Disciplinary R. Prof. Conduct 1.04(d)*, reprinted in *Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9)*. [Wythe II Corp. v. Stone, 342 S.W.3d 96, 2011 Tex. App. LEXIS 1717 \(Tex. App. Beaumont Mar. 10, 2011\)](#), reh'g denied, [342 S.W.3d 96, 2011 Tex. App. LEXIS 3381](#)

(*Tex. App. Beaumont May 5, 2011*), cert. denied, 565 U.S. 1179, 132 S. Ct. 1150, 181 L. Ed. 2d 1020, 2012 U.S. LEXIS 1029 (U.S. 2012).

Attorney violated *Tex. Disciplinary R. Prof. Conduct 1.04(a)*, by charging an excessive fee and violated *Tex. Disciplinary R. Prof. Conduct 1.04(c)* by failing to communicate his fee within a reasonable time when he agreed to represent an indigent client pro bono but had the client sign a 40 percent contingency fee agreement two years later; a public reprimand and restitution of the amount of the fee was a reasonable sanction under [*Tex. R. Disciplinary P. 3.10. McCleery v. Comm'n for Lawyer Discipline*, 227 S.W.3d 99, 2006 Tex. App. LEXIS 8708 \(Tex. App. Houston 1st Dist. Oct. 5, 2006\)](#), reh'g denied, [*No. 01-04-01036-CV*, 2006 Tex. App. LEXIS 11345 \(Tex. App. Houston 1st Dist. Nov. 2, 2006\)](#).

Legal Ethics: Client Relations: Attorney Fees: Fee Splitting

It was undisputed that plaintiff attorney and defendant attorney were members of the same firm; plaintiff was paid as an employee of the firm. The alleged oral contract was a fee arrangement between lawyers of the same firm, and was not barred by *Tex. Disciplinary R. Prof. Conduct 1.04(f)*, reprinted in *Tex. Gov't Code Ann.*, tit. 2, subtit. G app A-1 (*Tex. State Bar R. art. X, sec. 9*). [*Gonzalez v. Cantu \(In re Cantu\)*, No. 08-70260, No. 08-07039, 2009 Bankr. LEXIS 4447 \(Bankr. S.D. Tex. Feb. 24, 2009\)](#).

Where a debtor's bankruptcy attorney received a referral fee post-petition from the debtor's non-bankruptcy lawyer in violation of [*11 U.S.C.S. § 504\(a\)*](#), former *Tex. Disciplinary R. Prof. Conduct 1.04(f)*, reprinted in *Tex. Gov't Code Ann.*, tit. 2, subtit. G app. A (2005) (*Tex. State Bar R. art. X, sec. 9*), was superseded by § 504(a). [*Goldberg v. Clay*, 2008 Bankr. LEXIS 3178 \(Bankr. E.D. Tex. Dec. 9 2008\)](#).

In a dispute over a fee-sharing agreement (FSA), although the legal disciplinary rules could not have been the basis for a private cause of action, a trial court appropriately considered the rules in determining that the FSA was against public policy where it allowed for the sharing of fees with a lawyer that had been suspended and later disbarred. [*Cruse v. O'Quinn*, 273 S.W.3d 766, 2008 Tex. App. LEXIS 8990 \(Tex. App. Houston 14th Dist. Nov. 25, 2008, no pet.\)](#).

In a dispute over a fee-sharing agreement (FSA), a second law firm met its burden of showing that the agreement was illegal and violated public policy because it allowed for fee splitting with a lawyer that was suspended and later disbarred; therefore, the attorney was prohibited from receiving fees on cases subject to the FSA that were not settled or otherwise finally resolved before he was suspended and disbarred. Also, he was unable to show that he was a forwarding attorney based on the terms of the FSA. [*Cruse v. O'Quinn*, 273 S.W.3d 766, 2008 Tex. App. LEXIS 8990 \(Tex. App. Houston 14th Dist. Nov. 25, 2008, no pet.\)](#).

Trustee was entitled to disgorgement of a referral or forwarding fee, pursuant to [*11 U.S.C.S. § 504\(a\)*](#), because the fee was paid by the Chapter 7 debtor's state court counsel to the bankruptcy counsel out of settlement proceeds without the trustee's knowledge and out of compensation counsel expected to and did receive from the estate post-petition under [*11 U.S.C.S. § 503\(2\)*](#) and *11 U.S.C.S. § 330(a)* and the fact that *Tex. Disciplinary R. Prof. Conduct 1.04(f)*, reprinted in *Tex. Gov't Code Ann.*, tit. 2, subtit. G app. A (*Tex. State Bar R. art. X, sec. 9*), at the time, permitted the payment of a fee did not provide a safe harbor for the attorney. [*Goldberg v. Vilt \(In re Smith\)*, 397 B.R. 810, 2008 Bankr. LEXIS 3602 \(Bankr. E.D. Tex. 2008\)](#).

In an action in which the issue was whether a *Tex. R. Civ. P. 11* agreement between an attorney employee and his former attorney employer evidenced the parties' intent to collect fees that neither party earned, the trial court properly determined the amount of the employee's earned fee and properly found that the agreement, which when interpreted against how attorneys earned contingency fees was not ambiguous, governed the division of the employee's fee because the agreement was akin to a separation agreement, and, thus, while attorneys in a separation agreement were not subject to the proportionality of services required under the Texas Rules of Professional Conduct for contingency fees, the Rule 11 agreement used language that manifested an objective intent to divide "fees earned;" in that agreement, the attorneys divided "fees earned," both now and in the future,

and with respect to the present fee, the trial court found that the employee “earned” a fee of \$ 80,000 and that the employee earned no fees on the matter other than the \$ 80,000 referral fee. [Lewis v. Chatelain, 245 S.W.3d 641, 2008 Tex. App. LEXIS 633 \(Tex. App. Beaumont Jan. 31, 2008, no pet.\)](#).

Contract providing for a division of fees among law firms in class action litigation could not be found unenforceable because there was no summary judgment evidence showing that the contract contemplated a disproportionate division of fees or that any clients who were not informed of the agreement would have objected. [Dardas v. Fleming, Hovenkamp & Grayson, P.C., 194 S.W.3d 603, 2006 Tex. App. LEXIS 3668 \(Tex. App. Houston 14th Dist. Apr. 27, 2006, no pet.\)](#).

Legal Ethics: Client Relations: Conflicts of Interest

Neither of two documents were enforceable contingency fee agreements under [Tex. Gov't Code Ann. § 82.065](#) or *Tex. Disciplinary R. Prof. Conduct 1.04(d)*, as one mentioned nothing about attorney's fees and the other, which was executed by an executrix, did not reflect that she signed the document other than in her own behalf; in further support of the denial of the request for fees was the fact that the attorney did not comply with *Tex. Disciplinary R. Prof. Conduct 1.06*, by obtaining his clients' consent after disclosure of a conflict of interest. *Ray v. T.D., No. 03-06-00242-CV, 2008 Tex. App. LEXIS 986 (Tex. App. Austin 3d Dist. Feb. 7, 2008)*.

Legal Ethics: Sanctions: Disciplinary Proceedings: Appeals

In a disciplinary matter, there was sufficient evidence to show that a lawyer violated *Tex. Disciplinary R. Prof. Conduct 1.04*, reprinted in *Tex. Gov't Code Ann.*, tit. 2, subtit. G app. A (*Tex. State Bar R. art. X, sec. 9*), where he received more than 40 percent of a settlement in a personal injury case, even after paying all related costs, advances, and expenses. [Onwuteaka v. Comm'n for Lawyer Discipline, No. 14-07-00544-CV, 2009 Tex. App. LEXIS 351 \(Tex. App. Houston 14th Dist. Jan. 20, 2009\)](#), op. withdrawn, sub. op., [No. 14-07-00544-CV, 2009 Tex. App. LEXIS 1694 \(Tex. App. Houston 14th Dist. Mar. 12, 2009\)](#).

Notes to Unpublished Decisions

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: Reasonable Fees

Legal Ethics: Client Relations: Attorney Fees: General Overview

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: Reasonable Fees

Unpublished decision: Because the district court considered the factors of Johnson and those of *Tex. Disciplinary R. Prof. Conduct 1.04(b)*, reprinted in *Tex. Gov't Code Ann.*, tit. 2, subtit. G app. A (*Tex. State Bar R. art. X, sec. 9*), and was mindful that a company's settlement offer was made, and disputed commissions were paid to a broker in the interim, only due to the broker's litigation, the reduced fee award to the broker was not an abuse of discretion on a breach of contract claim. [Maverick Indus. v. Am. Teleconferencing Servs., 524 Fed. Appx. 99, 2013 U.S. App. LEXIS 8720 \(5th Cir. Tex. 2013\)](#).

Legal Ethics: Client Relations: Attorney Fees: General Overview

Unpublished decision: Because the district court considered the factors of Johnson and those of *Tex. Disciplinary R. Prof. Conduct 1.04(b)*, reprinted in *Tex. Gov't Code Ann.*, tit. 2, subtit. G app. A (*Tex. State Bar R. art. X, sec. 9*), and was mindful that a company's settlement offer was made, and disputed commissions were paid to a broker in the interim, only due to the broker's litigation, the reduced fee award to the broker was not an abuse of discretion on a breach of contract claim. [Maverick Indus. v. Am. Teleconferencing Servs., 524 Fed. Appx. 99, 2013 U.S. App. LEXIS 8720 \(5th Cir. Tex. 2013\)](#).

End of Document

Appendix 7

Tex. R. Prof Conduct 1.02

The State and Federal rules are current through February 28, 2025. Local District rules are updated periodically throughout the year.

TX - Texas Local, State & Federal Court Rules > TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT > I. CLIENT-LAWYER RELATIONSHIP

Rule 1.02. Scope and Objectives of Representation.

- (a) Subject to paragraphs (b), (c), (d), (e), and (f), a lawyer shall abide by a client's decisions:
- (1) concerning the objectives and general methods of representation;
 - (2) whether to accept an offer of settlement of a matter, except as otherwise authorized by law;
 - (3) In a criminal case, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.
- (b) A lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation.
- (c) A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning or application of the law.
- (d) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer shall promptly make reasonable efforts under the circumstances to dissuade the client from committing the crime or fraud.
- (e) When a lawyer has confidential information clearly establishing that the lawyer's client has committed a criminal or fraudulent act in the commission of which the lawyer's services have been used, the lawyer shall make reasonable efforts under the circumstances to persuade the client to take corrective action.
- (f) When a lawyer knows that a client expects representation not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

History

Amended by Texas Supreme Court, Misc. Docket No. 21-9061, effective July 1, 2021; amended by Texas Supreme Court, Misc. Docket No. 24-9054, effective October 1, 2024.

Annotations

Commentary

General Comments

Comment:

Scope of Representation

1. Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the objectives to be served by legal representation, within the limits imposed by law, the lawyer's professional obligations, and the agreed scope of representation. Within those limits, a client also has a right to consult with the lawyer about the general methods to be used in pursuing those objectives. The lawyer should assume responsibility for the means by which the client's objectives are best achieved. Thus, a lawyer has very broad discretion to determine technical and legal tactics, subject to the client's wishes regarding such matters as the expense to be incurred and concern for third persons who might be adversely affected.

2. Except where prior communications have made it clear that a particular proposal would be unacceptable to the client, a lawyer is obligated to communicate any settlement offer to the client in a civil case; and a lawyer has a comparable responsibility with respect to a proposed plea bargain in a criminal case.

3. A lawyer should consult with the client concerning any such proposal, and generally it is for the client to decide whether or not to accept it. This principle is subject to several exceptions or qualifications. First, in class actions a lawyer may recommend a settlement of the matter to the court over the objections of named plaintiffs in the case. Second, in insurance defense cases a lawyer's ability to implement an insured client's wishes with respect to settlement may be qualified by the contractual rights of the insurer under its policy. Finally, a lawyer's normal deference to a client's wishes concerning settlement may be abrogated if the client has validly relinquished to a third party any rights to pass upon settlement offers. Whether any such waiver is enforceable is a question largely beyond the scope of these rules. But see comment 5 below. A lawyer reasonably relying on any of these exceptions in not implementing a client's desires concerning settlement is, however, not subject to discipline under this Rule.

Limited Scope of Representation

4. The scope of representation provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined objective. Likewise, representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. Similarly when a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The scope within which the representation is undertaken also may exclude specific objectives or means, such as those that the lawyer or client regards as repugnant or imprudent.

5. An agreement concerning the scope of representation must accord with the Texas Disciplinary Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.01, or to surrender the right to terminate the lawyer's services or the right to settle or continue litigation that the lawyer might wish to handle differently.

6. Unless the representation is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's representation is limited to a specific matter or matters, the relationship terminates when the matter has been resolved. If a lawyer has represented a client over a substantial period in a variety of matters, the client may sometimes assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice to the contrary. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

Criminal, Fraudulent and Prohibited Transactions

7. A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not knowingly assist a client in criminal

Tex. R. Prof Conduct 1.02, Scope and Objectives of Representation.

or fraudulent conduct. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

8. When a client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer may not reveal the client's wrongdoing, except as permitted or required by Rule 1.05. However, the lawyer also must avoid furthering the client's unlawful purpose, for example, by suggesting how it might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposes is legally proper but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required. See Rule 1.16(a)(1).

9. Paragraph (c) is violated when a lawyer accepts a general retainer for legal services to an enterprise known to be unlawful. Paragraph (c) does not, however, preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise.

10. The last clause of paragraph (c) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

11. Paragraph (d) requires a lawyer in certain instances to use reasonable efforts to dissuade a client from committing a crime or fraud. If the services of the lawyer were used by the client in committing a crime or fraud paragraph (e) requires the lawyer to use reasonable efforts to persuade the client to take corrective action.

Notes to Decisions

Business & Corporate Law: Agency Relationships: Types: Attorney & Client

Contracts Law: Defenses: Public Policy Violations

Evidence: Procedural Considerations: Weight & Sufficiency

Governments: Courts: Authority to Adjudicate

Legal Ethics: Client Relations: General Overview

Legal Ethics: Client Relations: Accepting Representation

Legal Ethics: Client Relations: Attorney Fees: Excessive Fees

Legal Ethics: Client Relations: Confidentiality of Information

Legal Ethics: Client Relations: Effective Representation

Business & Corporate Law: Agency Relationships: Types: Attorney & Client

Upon entry of an agreed final divorce decree, the husband filed a motion for new trial in which he alleged his attorney lacked the authority to sign a settlement agreement on his behalf while he was in federal prison. The trial court did not abuse its discretion when it excluded an exhibit consisting of an engagement letter between the husband and his attorney, because the husband identified no aspect of the obligations imposed by the engagement letter that differed from those already existing under Rule 1.02(a). [*Phillips v. Phillips*, No. 14-12-00897-CV, 2013 Tex. App. LEXIS 15275 \(Tex. App. Houston 14th Dist. Dec. 19, 2013\).](#)

Contracts Law: Defenses: Public Policy Violations

Tex. R. Prof Conduct 1.02, Scope and Objectives of Representation.

Contingency fee contract that required the client to obtain the law firm's consent to settle violated *Tex. Disc. R. Prof. Conduct 1.02(a)(2)* cmt. 5, and was unenforceable as against public policy; even if this provision were severable, the fee charged, \$70,000 for no services, was unconscionable under *Tex. Disc. R. Prof. Conduct 1.04(a)*. [*Davis Law Firm v. Bates, No. 13-13-00209-CV, 2014 Tex. App. LEXIS 1582 \(Tex. App. Corpus Christi Feb. 13, 2014\).*](#)

Evidence: Procedural Considerations: Weight & Sufficiency

Trial court's credibility determinations based on conflicting evidence adequately supported a judgment that an attorney had violated *Tex. Disciplinary R. Prof. Conduct 1.02(a)(2)*, *1.03(a)*, (b), *1.06(b)(1)*, reprinted in *Tex. Gov't Code Ann.*, tit. 2, subtit. G app. A (*Tex. State Bar R. art. X, sec. 9*) by failing to communicate with a client and to inform her of settlement offers and a sanctions request. [*James v. Comm'n for Lawyer Discipline, 310 S.W.3d 598, 2010 Tex. App. LEXIS 2703 \(Tex. App. Dallas Apr. 5, 2010, no pet.\).*](#)

Governments: Courts: Authority to Adjudicate

Trial judge did not have the authority (inherent or otherwise) to order the former trial counsel of a client who had received a death sentence to violate his fiduciary duty to the client, and the judge did not have the authority to enforce that order by holding trial counsel in contempt for failing to relinquish the client's file to the client's new habeas counsel, because the client was statutorily presumed competent, he had expressly been found competent by the trial court, and his last instructions to trial counsel were not to release his trial file unless directed to do so. Neither order issued by the trial judge was issued to enforce its jurisdiction. [*In re McCann, 422 S.W.3d 701, 2013 Tex. Crim. App. LEXIS 1691 \(Tex. Crim. App. Nov. 20, 2013, no pet.\).*](#)

Legal Ethics: Client Relations: General Overview

Upon entry of an agreed final divorce decree, the husband filed a motion for new trial in which he alleged his attorney lacked the authority to sign a settlement agreement on his behalf while he was in federal prison. The trial court did not abuse its discretion when it excluded an exhibit consisting of an engagement letter between the husband and his attorney, because the husband identified no aspect of the obligations imposed by the engagement letter that differed from those already existing under Rule 1.02(a). [*Phillips v. Phillips, No. 14-12-00897-CV, 2013 Tex. App. LEXIS 15275 \(Tex. App. Houston 14th Dist. Dec. 19, 2013\).*](#)

Legal Ethics: Client Relations: Accepting Representation

Under *Tex. Disciplinary R. Prof. Conduct 1.02(a)(1)* reprinted in *Tex. Gov't Code Ann.*, tit. 2, subtit. G app. A (2005) (*Tex. State Bar R. art. X, sec. 9*), the attorney's work on writ was within the scope of the original representation of the clients. [*Comm'n for Lawyer Discipline v. Guajardo, No. 01-11-00824-CV, 2012 Tex. App. LEXIS 9469 \(Tex. App. Houston 1st Dist. Nov. 15, 2012\).*](#)

Where the debtor's legal counsel failed to show it had terminated conflicting employment, failed to disclose the conflict and fee arrangement, the counsel violated *Tex. Disciplinary R. Prof. Conduct 1.02* and *1.15(d)*, reprinted in *Tex. Gov't Code Ann.*, tit. 2, subtit. G app. A (*Tex. State Bar R. art. X, sec. 9*). [*In re Cypresswood Land Partners, 410 B.R. 247, 52 Bankr. Ct. Dec. \(LRP\) 9, 2009 Bankr. LEXIS 2171 \(Bankr. S.D. Tex. 2009\)*](#), *aff'd in part and rev'd in part*, [*No. H-09-2620, 2010 U.S. Dist. LEXIS 146549 \(S.D. Tex. June 8, 2010\).*](#)

Legal Ethics: Client Relations: Attorney Fees: Excessive Fees

Tex. R. Prof Conduct 1.02, Scope and Objectives of Representation.

Contingency fee contract that required the client to obtain the law firm's consent to settle violated *Tex. Disc. R. Prof. Conduct 1.02(a)(2)* cmt. 5, and was unenforceable as against public policy; even if this provision were severable, the fee charged, \$70,000 for no services, was unconscionable under *Tex. Disc. R. Prof. Conduct 1.04(a)*. [*Davis Law Firm v. Bates, No. 13-13-00209-CV, 2014 Tex. App. LEXIS 1582 \(Tex. App. Corpus Christi Feb. 13, 2014\).*](#)

Legal Ethics: Client Relations: Confidentiality of Information

Trial judge did not have the authority (inherent or otherwise) to order the former trial counsel of a client who had received a death sentence to violate his fiduciary duty to the client, and the judge did not have the authority to enforce that order by holding trial counsel in contempt for failing to relinquish the client's file to the client's new habeas counsel, because the client was statutorily presumed competent, he had expressly been found competent by the trial court, and his last instructions to trial counsel were not to release his trial file unless directed to do so. Neither order issued by the trial judge was issued to enforce its jurisdiction. [*In re McCann, 422 S.W.3d 701, 2013 Tex. Crim. App. LEXIS 1691 \(Tex. Crim. App. Nov. 20, 2013, no pet.\).*](#)

Texas Court of Criminal Appeals has reaffirmed that a client owns the contents of his or her file, and if an attorney has no reason to believe that his or her client is legally incompetent, the client's decision not to release his or her trial file is unassailable. [*In re McCann, 422 S.W.3d 701, 2013 Tex. Crim. App. LEXIS 1691 \(Tex. Crim. App. Nov. 20, 2013, no pet.\).*](#)

Legal Ethics: Client Relations: Effective Representation

Summary judgment was properly awarded to an attorney in a client's action for breach of fiduciary duty because the attorney properly acted under the guidance of *Tex. Disciplinary R. Prof. Conduct 1.02(g)*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (2005) (Tex. State Bar R. art. X, sec. 9) in filing an application for guardianship of the client on behalf of the client's daughter; the attorney reasonably believed that the client was incompetent and that a guardianship should be pursued to protect the client's interests. [*Franks v. Roades, 310 S.W.3d 615, 2010 Tex. App. LEXIS 2769 \(Tex. App. Corpus Christi Apr. 15, 2010, no pet.\).*](#)

Court did not abuse its discretion in ordering the attorney disbarred, because the attorney's actions constituted repeated, egregious breaches of his fiduciary duties to multiple clients, when the attorney failed to provide an accounting of settlement funds, the attorney accepted settlement without consultation, and the attorney ignored attempts at communication and reasonable requests for information. [*James v. Comm'n for Lawyer Discipline, 310 S.W.3d 586, 2010 Tex. App. LEXIS 2715 \(Tex. App. Dallas Apr. 5, 2010, no pet.\).*](#)

Trial court's credibility determinations based on conflicting evidence adequately supported a judgment that an attorney had violated *Tex. Disciplinary R. Prof. Conduct 1.02(a)(2)*, *1.03(a)*, (b), *1.06(b)(1)*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9) by failing to communicate with a client and to inform her of settlement offers and a sanctions request. [*James v. Comm'n for Lawyer Discipline, 310 S.W.3d 598, 2010 Tex. App. LEXIS 2703 \(Tex. App. Dallas Apr. 5, 2010, no pet.\).*](#)

Client's claim, which focused on *Tex. Disciplinary R. Prof. Conduct 1.02*, *1.03*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Tex. State Bar R. art. X, sec. 9), was with appellees' handling of his case and his dissatisfaction with their work and the results; the claims had to do with the alleged failure to use the proper standard of care and was essentially that appellees were negligent in their communication of some of the terms of the settlement under *Tex. R. Civ. P. 11*, such that the gist of the complaint was professional negligence rather than breach of fiduciary duty. [*Walker v. Morgan, No. 09-08-00362-CV, 2009 Tex. App. LEXIS 8653 \(Tex. App. Beaumont Nov. 12, 2009\).*](#)

Notes to Unpublished Decisions

Criminal Law & Procedure: Counsel: Effective Assistance: Pleas

Criminal Law & Procedure: Appeals: Procedures: Briefs**Legal Ethics: Client Relations: General Overview****Legal Ethics: Professional Conduct: Frivolous Claims****Criminal Law & Procedure: Counsel: Effective Assistance: Pleas**

Unpublished decision: During a proceeding to revoke defendant's deferred adjudication community supervision for five counts of indecency with a child, defendant choose not to follow the advice of counsel in accepting the plea bargain agreement at the insistence of his wife; counsel was not ineffective for failing to request a continuance upon learning of defendant's desire to disavow the plea agreement; *Tex. Disc. R. Prof. Conduct 1.02* required counsel to abide by defendant's decision. [*Duncan v. State*, No. 06-07-00018-CR, 2007 Tex. App. LEXIS 8580 \(Tex. App. Texarkana Oct. 30, 2007\).](#)

Criminal Law & Procedure: Appeals: Procedures: Briefs

Unpublished decision: Appellate counsel was not required to address points of error suggested by the client in a misdemeanor driving while intoxicated case, although counsel might have chosen to present such issues if they were not frivolous. To the extent that issues suggested by a client are frivolous, counsel may not present them to the court of appeals. *Schindley v. State*, 326 S.W.3d 227, 2010 Tex. App. LEXIS 6761 (Tex. App. Texarkana Aug. 11, 2010, no pet.).

Legal Ethics: Client Relations: General Overview

Unpublished decision: Perhaps appellant was correct that counsel was not required to ask the victim the questions as directed by appellant, as case law had concluded that *Tex. Disciplinary R. Prof. Conduct 1.02*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (2005) (Tex. State Bar R. art. X, sec. 9) did not require counsel to present particular issues on appeal on the client's request, but the trial court apparently allowed for a hybrid representation in this case, and although not required to do so, the trial court repeatedly cautioned appellant against his desired course of action, and appellant acknowledged the dangers and decided to take that risk; ineffective assistance was not shown. [*Alexander v. State*, No. 14-09-00881-CR, 2011 Tex. App. LEXIS 2796 \(Tex. App. Houston 14th Dist. Apr. 14, 2011\).](#)

Unpublished decision: Appellant could not satisfy the first prong of the test for ineffective assistance of counsel, and counsel's performance was not deficient, given that (1) counsel and the trial court repeatedly told appellant not to follow a potentially disastrous course by asking the victim questions that would open the door to his prior criminal history, but appellant insisted on the questions being asked, (2) he acknowledged the risk of asking the questions and made a strategic decision, and (3) *Tex. Disciplinary R. Prof. Conduct 1.02*, reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G app. A (2005) (Tex. State Bar R. art. X, sec. 9), provided that an attorney had to abide by a client's decisions unless such would be criminal or fraudulent, and appellant did not argue such; thus, counsel's assistance did not fall below an objective standard of reasonableness when he asked the questions as appellant directed. [*Alexander v. State*, No. 14-09-00881-CR, 2011 Tex. App. LEXIS 2796 \(Tex. App. Houston 14th Dist. Apr. 14, 2011\).](#)

Unpublished decision: During a proceeding to revoke defendant's deferred adjudication community supervision for five counts of indecency with a child, defendant choose not to follow the advice of counsel in accepting the plea bargain agreement at the insistence of his wife; counsel was not ineffective for failing to request a continuance upon learning of defendant's desire to disavow the plea agreement; *Tex. Disc. R. Prof. Conduct 1.02* required counsel to abide by defendant's decision. [*Duncan v. State*, No. 06-07-00018-CR, 2007 Tex. App. LEXIS 8580 \(Tex. App. Texarkana Oct. 30, 2007\).](#)

Legal Ethics: Professional Conduct: Frivolous Claims

Unpublished decision: Appellate counsel was not required to address points of error suggested by the client in a misdemeanor driving while intoxicated case, although counsel might have chosen to present such issues if they were not frivolous. To the extent that issues suggested by a client are frivolous, counsel may not present them to the court of appeals. *Schindley v. State*, 326 S.W.3d 227, 2010 Tex. App. LEXIS 6761 (Tex. App. Texarkana Aug. 11, 2010, no pet.).

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