Case No. 81018 C/W 81172

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUTH L. COHEN,

Appellant,

v.

PAUL S. PADDA and PAUL PADDA LAW, PLLC,

Respondents.

Appeal from the Eighth Judicial District Court of the State of Nevada,
in and for County of Clark

APPELLANT'S SUPPLEMENTAL REPLY BRIEF TO AMICUS CURIAE BRIEF OF SOUTH ASIAN BAR ASSOCIATION OF LAS VEGAS, VETERANS IN POLITICS INTERNATIONAL, INC. AND JAY BLOOM

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I. INTRODUCTION[1]

Throughout their Amicus Brief, the South Asian Bar Association of Las Vegas[2] ("SABA-LV"), Veterans in Politics International, Inc. ("VIPI") and Jay Bloom ("Bloom") (hereinafter collectively "Amicus Parties") misstate Ms. Cohen's arguments, erroneously argue that Ms. Cohen's positions lack factual support in the record, and brazenly state that the only way to maintain the public faith in the legal profession is to allow the Padda Defendants to defraud Ms. Cohen without any

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[1] For ease of reference, Ms. Cohen will use the same capitalized terms from her Opening Brief.

[2] Since the filing of Ms. Cohen's Opposition to the Amicus Parties' Motion for Leave to File an Amicus Curiae Brief, Ms. Cohen has learned that Paul Padda maintains a very close personal relationship with SABA-LV. Indeed, after reviewing SABA-LV's Facebook page, SABA-LV's only public online presence, every publicly shared post involves the Padda Defendants to some degree and indicate that Paul Padda was at one time Chairman of SABA-LV and has sponsored numerous SABA-LV events. *See* SABA-LV Facebook Page, https://www.facebook.com/sabalasvegas (last accessed June 24, 2021). Furthermore, Paul Padda is openly a member of the South Asian Bar Association of North America, of which SABA-LV is the local chapter. *See* Paul Padda Law, About Paul Padda, https://www.paulpaddalaw.com/about-us/paul-s-padda/ (last accessed June 24, 2021). Lastly, and maybe the most troubling aspect of this discovery, Paul Padda is the ***current President-Elect of SABA-LV***, taking the place of Milan Chatterjee, counsel for SABA-LV in this matter. *See* SABA North America, Our Chapters, https://sabanorthamerica.com/our-chapters/ (last visited June 24, 2021). While the Amicus Parties' arguments focus on maintaining the integrity of the legal profession, it is incredibly concerning that SABA-LV is using an Amicus Brief to assist its former Chairman and current President-Elect without disclosing to the Court the long-standing and very close relationship between SABA-LV and the Padda Defendants. As this Court is aware, an Amicus Curiae is to be a friend to the Court, not a mouthpiece for a party to this Appeal to use to raise further arguments left out of its own briefing.

consequences. The Amicus Parties argue that public policy disfavors permitting any recovery to Ms. Cohen based entirely on an inapplicable ethics opinion that bears no relevance to the issues at bar. The Amicus Parties also argue that public policy disfavors permitting recovery to Ms. Cohen based on unsubstantiated claims that Ms. Cohen abandoned her clients. The Amicus Parties arguments are unpersuasive for a variety of reasons as will be discussed below, but none more so than the glaring fact that there is no public policy interest furthered by protecting the Padda Defendants' fraudulent conduct.

II. ARGUMENT

A. Public Policy Does Not Favor Permitting Padda, as a Fiduciary and Partner to Ms. Cohen, to Defraud Ms. Cohen.

The Amicus Parties open their Brief by addressing Ms. Cohen's position that she had performed all services required of her related to the Pending Cases. First, the Amicus Parties accept the Padda Defendant's positions without question despite Ms. Cohen's conclusive rebuttal of the same. On the other hand, the Amicus Parties erroneously claim that Ms. Cohen presents no factual support for her position that Mr. Padda had taken over the Pending Cases and that there was no suggestion that she abandoned her clients. Amicus Brief ("ACB") 3. To support this contention, Ms. Cohen had referred this Court to the district court's Order Granting Summary Judgment, which stated in its "Findings of Undisputed Fact," that "[n]othing in the Dissolution Agreement required or anticipated that Ms. Cohen would perform work

on the [Pending Cases]." 8 JA 1704:25-27. Thus, while the Amicus Parties contest the fact that Ms. Cohen transferred responsibility and had no obligations to any clients in the Pending Cases, these facts had already been established as undisputed. Indeed, no other conclusion can be drawn from the finding that prior to the Dissolution Agreement, Ms. Cohen had responsibilities, and after the Dissolution Agreement, she did not.

The Amicus Parties then allege that Ms. Cohen's referencing of arguments raised in front of the district court is somehow improper, despite those references being solely used to prove that arguments were not being raised for the first time on appeal. ACB 3-4. The Amicus Parties then argue that the issue of whether Mr. Padda took over the Pending Cases was strongly disputed, despite the district court's findings of undisputed facts. ACB 4-5. Notably, while the Amicus Parties fault Ms. Cohen for failing to provide evidence for her position, even when she does, the Amicus Parties cite no evidence to support their own.

The Amicus Parties then fault Ms. Cohen for not referencing Nevada Committee on Ethics & Professional Responsibility Formal Opinion No. 18. ACB 5. Formal Opinion No. 18 is focused on the narrow issue of fee splitting between an attorney that was hired and then terminated by a client and the client's subsequent attorney. The issues at bar are wholly inapposite. Ms. Cohen was not terminated by the subject clients. Mr. Padda was not the subject clients' subsequent attorney.

Rather, the subject clients retained the law firm of Cohen & Padda and, after Ms. Cohen decided she wanted to end the partnership, Ms. Cohen and Mr. Padda entered into the Dissolution Agreement. Accordingly, the conclusion that "[a] terminated attorney is entitled to a quantum meruit settlement of fees at the conclusion of the client's case" is wholly irrelevant in this proceeding.[3]

The purpose of the opinion was to address how the terminated attorney would be compensated *vis a vie* the successor attorney because there was no agreement concerning fee splitting between the two. That question does not exist in this case; Ms. Cohen and Mr. Padda entered into a contract and expressly agreed to the allocation of fees. Indeed, the author(s) specifically recognized that, if it were present, "significant weight" would be given to any express language concerning the fee allocation after a termination.

> An additional consideration would be whether the fee agreement contains a clause which sets the fee amount in the event of a termination without cause. Such a clause, if openly arrived at and reasonable under the circumstances, would be given significant weight in the event of termination and a subsequent fee dispute.[4]

The opinion indicated that "significant weight" would be afforded such a clause, *versus it simply being accepted as a valid and binding agreement*, due to variables that do not exist in this case (*i.e.,* how much work the first/terminated

[3] *See* Formal Opinion No. 18 attached as **Exhibit 1** at 4.
[4] *Id.* at 3.

attorney actually performed). This variable has no relevance to the facts of this appeal as Ms. Cohen and Mr. Padda are not making competing quantum meruit claims, but rather, litigating over whether Mr. Padda defrauded Ms. Cohen out of fees she was promised in a dissolution agreement. In other words, this is not a case of two unrelated attorneys fighting over who should receive what percentage of a judgment/settlement. This case is about two partners that owned a business together and agreed to an allocation of profits and business assets in connection with the dissolution of the business.

The Amicus Parties then go on to absurdly claim that if Ms. Cohen was able to hold the Padda Defendants liable for their fraud, it would "invite gamesmanship, abuse and, frankly, chaos/disrespect into the attorney licensing system in Nevada." ACB 6-7. The Amicus Parties state that any attorney facing suspension/disbarment would suddenly start entering into agreements to obtain windfalls. *Id.* The Amicus Parties ignore that it takes two parties to form an agreement, and there is no reason why anyone in a situation other than the very particular one involved in this matter would simply agree to give a stranger a share of their fee in return for zero work. This is nothing more than a false parade of horribles based on absurd assumptions. While the Amicus Parties call the means by which Ms. Cohen was ultimately defrauded a "lucrative business model," Ms. Cohen was simply trying to wind down

her practice of law when Mr. Padda decided to defraud her, his partner and mentor, out of millions of dollars.

The Amicus Parties conclude their arguments by implausibly claiming that by holding the Padda Defendants accountable, it would create public outrage and criticism. ACB 7-8. This position is laughable. It is hard to imagine a member of the public that would be upset about an elderly, retired attorney receiving monies she was entitled to pursuant to a contract, but not upset about a fiduciary and partner of the same attorney defrauding her out of millions of dollars.

Simply put, there is no legitimate public policy reason for the numerous authorities cited by Ms. Cohen to be ignored. Further, the Amicus Parties do not address in any fashion the large portion of the Pending Cases that were resolved and paid out prior to Ms. Cohen's suspension, which clearly show that summary judgment was improper.

B. There is No Evidence that Ms. Cohen Abandoned Any Client, As She Had No Continuing Responsibilities to Those Clients in the First Place.

This case involves two law partners that agreed to dissolve the partnership and separate. This happens regularly in every state. Notwithstanding the same, the Amicus Parties and Respondents insist on vilifying Ms. Cohen in an effort to inject needless emotion into the case. Specifically, the Amicus Parties' brief is riddled with attacks that Ms. Cohen "abandoned" her clients, "hid" from her clients and is seeking a "windfall" for services she never provided. The truth is, the dissolution of

Cohen & Padda happened in much the same fashion as any other law firm dissolution. However, without any evidence to support its baseless attacks, the Amicus Parties have done their best to vilify Ms. Cohen as a sneaky lawyer that "abandoned" her clients.

The Amicus Parties argue that Ms. Cohen did not comply with Supreme Court Rule 115 because she did not provide notice of her suspension to the clients, adverse parties, and courts involved in each of the Pending Cases. The Amicus Parties offer this Court no evidence of the foregoing violation. Instead, the Amicus Parties simply cite to a portion of the Padda Defendants Answering Brief wherein Supreme Court Rule 115 is mentioned in a completely different context.

The Amicus Parties then re-argue that Ms. Cohen failed to introduce any evidence to support the clear fact that she did not abandon the clients in the Pending Cases. This was addressed above. Further, the Amicus Parties are looking for Ms. Cohen to prove a negative, that is to provide evidence that there was no abandonment, while at the same time the Amicus Parties provide no evidence of any sort to indicate there ***was*** an abandonment. The Amicus Parties also allege that Ms. Cohen did not rebut any of the "facts" presented in the Padda Defendants' Answering Brief but fail to reference any such facts to the Court. Yet again, while the Amicus Parties erroneously accuse Ms. Cohen of making claims without support

in the record, the Amicus Parties' arguments are the only ones without any factual predicate.

None of the alleged acts recited by the Amicus Parties as "clear and unequivocal acts of abandonment" are remotely close to being so. Ms. Cohen wanted to wind down her practice and left the Pending Cases in the hands of her partner at her law firm. Ms. Cohen had no remaining duties to any client on any of the Pending Cases when she was suspended from the practice of law. The Amicus Parties present no evidence that Ms. Cohen violated any portion of Supreme Court Rule 115, nor any analysis as to how a violation of that rule by a lawyer not actively involved in any case would constitute abandonment. Ms. Cohen simply stepped back from an active role in litigation, a move that had no adverse impact on any client in the Pending Cases; she did not abandon or harm Cohen & Padda's clients in any way.

The Amicus Parties conclude by trying to assign importance to whether Ms. Cohen's success in *this* lawsuit would benefit the clients in any way. "Benefits" to the clients is not at issue in *this* lawsuit. Ms. Cohen's success in the instant fraud lawsuit against Mr. Padda has nothing to do with how the underlying clients were represented. How do any clients benefit from Mr. Padda escaping any consequence for his illegal and unethical conduct? It is ironic that the Amicus Parties argue that Ms. Cohen's position is selfish and self-centered, despite the incredibly egregious

conduct that the Amicus Parties are hoping to assist Mr. Padda in effectuating. It is also curious that the Amicus Parties argue that protecting an elderly retired attorney from being defrauded out of millions of dollars would "send the wrong message" to other attorneys.

The Amicus Parties arguments are entirely without factual or legal support and should be disregarded. Further, the Amicus Parties' alleged concerns about the public interest are laughable when analyzed against the true issue in this case. The Amicus Parties have not presented a single plausible reason as to why the public or public concern would support the Padda Defendants over Ms. Cohen in this matter.

III. CONCLUSION

Based on the foregoing, Ms. Cohen respectfully requests that the Court reverse the district court's order granting summary judgment and remand this matter for further proceedings on Ms. Cohen's claims against the Padda Defendants.

DATED this 24th day of June, 2021.

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Reply Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the Nevada Rules of Appellate Procedure.

I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the typestyle requirements of NRAP 32(a)(6) as this brief was prepared in a proportionally spaced typeface using Times New Roman 14 pt font.

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I also certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) as it contains 2,229 words.

DATED this 24th day of June, 2021

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT'S SUPPLEMENTAL REPLY BRIEF TO AMICUS CURIAE BRIEF OF SOUTH ASIAN BAR ASSOCIATION OF LAS VEGAS, VETERANS IN POLITICS INTERNATIONAL, INC. AND JAY BLOOM** was filed electronically with the Nevada Supreme Court on the 24th day of June, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Exhibit 1

STATE BAR OF NEVADA
STANDING COMMITTEE ON
ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion No. 18
April 29, 1994

QUESTION

What portion of a contingent fee is a discharged attorney entitled to when the discharge occurs after an initial offer of settlement has been made?

ANSWER

The attorney is entitled to a recovery in quantum meruit.

AUTHORITIES RELIED ON

Nevada Rule of Professional Conduct (Supreme Court Rule) 155, and 166.4, NRS 18.015, Formal Opinions #4 and #17, *In re Kaufman*, 93 Nev. 452, 567 P.2d 957 (1977)), ABA Informal Op. 86-1521 (1986), *Hayes v. Secretary of Health and Human Services*, 923 F.2d 418 (6th Cir. 1991), G. Hazard & W. Hodes, *The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct* (1985); R. Aronson, *Professional Responsibility in a Nutshell* (1990).

DISCUSSION

Supervision of contingent fee agreements rests with the state supreme courts. In Nevada, as in the majority of jurisdictions, the supreme court has determined through case law that disputes arising out of contingent fee agreements based upon the discharge of the attorney are to be determined in quantum meruit.[1]

The question asked of this committee presupposes that the contingent fee agreement at issue was in writing, that the terms were reasonable and that the discharge was without cause. This committee's response is based upon those

[1] Because of the universal application of this standard, attorneys are advised to keep complete and accurate time records in contingency fee cases. See Closen and Tobin, *The Contingent Contingency Fee Arrangement: Compensation of the Contingency Fee Attorney Discharged by the Client*, 76 Ill. B.J. 916 (1987).

presuppositions, but would point out that an attorney normally has an obligation to advise a prospective client of alternative fee arrangements, such as a reasonable fixed fee, if there exists any doubt as to the reasonableness of a contingent fee under the circumstances. ABA Informal Op. 86-1521 (1986).

If a dispute and subsequent discharge arises between an attorney and a client, the attorney must take affirmative steps not to prejudice the client's case. NRS 18.015, authorizes and sets out the procedure for exercising an attorney's lien for an attorney's lien for fees. It does not authorize the retention of a client's papers. While SCR 166.4 recognizes that an attorney" …may retain papers relating to the client to the extent permitted by other law", the case law developed pursuant to the issue appears to condemn such an approach. (The case law specifically recognizes NRS 18.015 as the charging lien, as opposed to a common law retaining lien). The exercise of retaining liens in Nevada has resulted in sanctions against the attorney when the client can demonstrate prejudice. *In re Kaufman*, 93 Nev. 452, 567 P.2d 957 (1977). SCR 166.4 calls upon the terminated attorney to "surrender papers and property to which the client is entitled..". SCR 166.4 also calls upon the terminated attorney to "take steps to the extent reasonably practicable to protect a client's interests..".

Since an attorney's fee in a contingent fee case has not been earned until there has been a recovery, an attorney acts at extreme risk in exercising a lien against a client's file. The preferred method, as set out in NRS 18.015, would be to notify the client, the succeeding attorney and the insurance carrier (if one exists) as to the written agreement, so that when the matter is resolved, the fees of the first attorney, to the extent earned, will be protected.

Ethics authorities have recognized that a strict application of the terms of the contingent fee, for example a claim of one third of the settlement after the deduction of expenses, would work an undue hardship on the client in the pursuant of subsequent legal help. See G. Hazard & W. Hodes, *The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct* (1985); R. Aronson, *Professional Responsibility in a Nutshell* (1990). The first attorney is obligated to wait for the conclusion of the case in order to determine what, if any, fee the attorney is entitled to. It is possible that a subsequent loss of the case at trial will result in no recovery to the first attorney, even if a settlement offer had been previously advanced.

Once the case is resolved and the total recovery is known, the two attorneys can then determine how much of their individual efforts should be proportioned against a total legal fee of one third. If NRS 18.015 is utilized, the court can be asked to settle the matter if the attorneys cannot come to an agreement. Since the one third fee (or other agreed amount) can be placed in escrow pending this resolution and one third would be the total legal fee under most circumstances, distribution of proceeds in whole or

substantial part can be made to the client, thus avoiding unnecessary delay.[2]

Quantum meruit is simply the application of a reasonable fee based upon the results, the time expended and the other factors enumerated in SCR 155. See our Formal Opinion #17. The Sixth Circuit has opined that a fee is presumed to be reasonable if it does not exceed twice the prevailing fee in the relevant market for comparable work charged on an hourly basis. Hayes v. Secretary of Health and Human Services, 923 F.2d 418 (6th Cir. 1991). However, what is reasonable will always be fact specific and is an issue for the court (or fee dispute committee) to decide on a fully developed record. See our Formal Opinion #4.

This committee does not have enough information to offer an opinion as to whether one third of the initial offer is reasonable, with the second attorney taking one third of any subsequent increases of that offer. The initial offer may have been made based upon an immediate recognition of liability and damages. The first attorney may have received such an offer only after a few hours of time expended. In such a situation, the hourly rate may amount to several thousand dollars an hour, which would be unreasonable and a violation of SCR 155. On the other hand, the first attorney may, by reputation, experience and ability have acquired an offer which would not normally have been made at a given stage in the case, and which offer constitutes a significant percentage of the total recovery. In that event the first attorney may be entitled to a proportion of the legal fees in excess of twice the hourly rate. The novelty and complexity of the case and the issues it presents, the more reasonable it becomes to apply a time expended/hourly rate analysis.

An additional consideration would be whether the fee agreement contains a clause which sets the fee amount in the event of a termination without cause. Such a clause, if openly arrived at and reasonable under the circumstances, would be given significant weight in the event of termination and a subsequent fee dispute.

This committee cannot emphasize enough the importance of advising the client as to his or her fee options, drafting a comprehensive and fair fee agreement which takes into account the demands of the case, and of keeping good time records. For when a fee dispute arises, the burden will be placed upon the attorney to establish the reasonableness of the fee. What is reasonable will be based upon the time expended, results obtained, the nature of the case and the understanding of the parties.

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[2] SCR 165.2 requires a prompt notification and delivery of funds received on behalf of a client. SCR 165.3 permits any disputed portion of funds (property) to be set aside until the dispute is resolved. Caution must be exercised here as at least two reported cases have held that a refusal to turn over unearned fees constitutes misappropriation. See In Re Garcia, 366 N.W. 2d 482 (N.D. 1985); In Re Hedrick, 301 Or. 750, 725 P.2d 343 (1986).

CONCLUSION

A terminated attorney is entitled to a quantum meruit settlement of fees at the conclusion of the client's case. The total fee must be reasonable, and the terminated attorney should protect his or her fee in accordance with NRS 18.015. The fact that an offer of settlement has been made to the first attorney is just one factor to be considered in reaching an equitable division of fees.
