



THE YEAR IN REVIEW

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FEE AGREEMENTS “PPPG”

Prof.Cond.R. 1.5 does NOT require that all fee agreements be in writing, BUT...

What types of fee agreements need to be in writing?

- Contingency fees
- Flat fees that are deemed earned upon receipt or non-refundable, 1.5(d)(3)
 - Operating vs. IOLTA
- Fees that are shared with a lawyer from another firm, 1.5(e)

PPPG?

LORAIN COUNTY BAR ASSN.V. BERTA, 2021-OHIO-1264

- Lawyer meets with client to discuss a Dissolution
 - Client brought a friend because she was so emotionally distraught about the prospect of ending her marriage
- Lawyer and client agree upon a \$2,500 flat fee—business card
- Dissolution a no-go after client filed for two restraining orders against her ex
- Lawyer filed for divorce and completed the representation
- Firm bookkeeper sent monthly invoices that tracked lawyer's time @ \$200, but each invoice contained a zero balance and contained the notation, "FF2500"
- Billed secretary's time at \$50 per hour

FINAL INVOICE

- CLIENT KLJ;
- January 23, **2019** File No.: 35373-001D **CONVERT TO DIVORCE- HRLY \$200**
- 11/02/2018 DEPOSIT OF CHECK FROM MILLER TITLE 200.00
- 11/02/2018 DEPOSIT OF CHECK FROM FIFTH THIRD BANK 262.86
- 11/13/2018 RETURN OF STALE CHECK -77.67
- 01/10/2019 ATTY FEES PAYEE:THE S & M LAW FIRM **-7,730.00**
- Closing Balance 172,080.41

NO GOOD DEED...

- Over \$500,000 in assets
- Prepared & Obtained QDRO
- Two restraining orders
- Hearing on deceased child's remains
- 55 hours—no dispute
- Constant email and text communication



SO, WHAT'S THE PROBLEM?

INTAKE FORM

35573.001
in the following areas: injury law; malpractice;
and support; domestic violence; wills, probate and

DATE: 07/12/17
Referred by: Neil Spike
Attorney: J.B.
Consultation Fee: \$200

WANTED YOUR SPOUSE AS A WITNESS? NO
PLEASE SEE THE RECEPTIONIST FOR INSTRUCTIONS.

City/State: Lorain, OH
Zip: 44033
E-mail: Kerri.johnson@gmail.com
Social Security No. [REDACTED]

Do you own real estate? YES
If yes, where is the real estate located?
6227 Sawmill Nest Dr
Lorain, OH 44033
191 Winkles St
Lorain, OH 44033

Handwritten notes: \$2500 net, \$2300, \$230, \$60,000 (net), \$200 hu, \$2500 - divo, \$2500 - net

DEFENSES

- Advised client of the fees for a dissolution versus a divorce
 - Initial consult & before divorce*
- Bookkeeper sent incorrect billing statement
- As an associate, he was not responsible for reviewing the billing invoices
- Saved client money by billing for secretarial time



PUBLIC REPRIMAND

- Prof.Cond.R. 1.5(b) violation
- Caused harm to a vulnerable victim
- Ordered to repay client \$850

*The nature and scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation * * *. Any change in the basis or rate of the fee or expenses is subject to division (a) of this rule [which prohibits excessive fees] and shall promptly be communicated to the client, preferably in writing.*

LESSONS LEARNED



- Put fee agreements in writing
- Keep fee agreements simple
- Have client sign the fee agreement and initial each page
- Review billing statements
- Secretarial time generally considered overhead
- Consider an amicable resolution to excessive fee charges

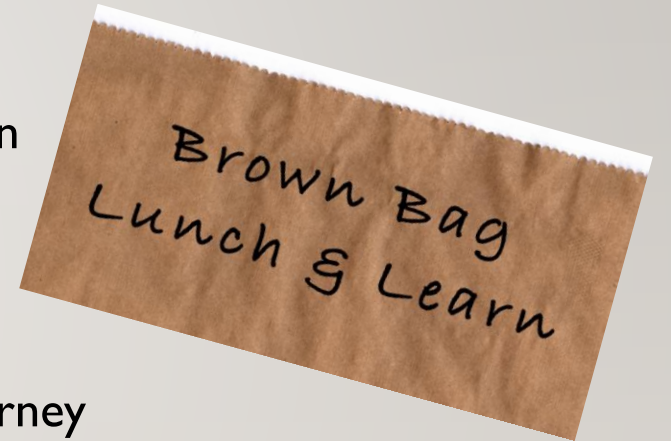
*DISCIPLINARY
COUNSEL V.
THOMAS,
2020-OHIO-
5582*



- Thomas represented woman in a divorce whose husband was in a relationship with D.V.
- Husband testified that D.V. was in the process of adopting a minor child
- Thomas did not have a high opinion of D.V.
- Learned through the public docket that D.V. had intervened in another couple's dissolution to obtain legal custody of their child
- The matter was set for an uncontested, final hearing
- Thomas contacted ODC for guidance

DISCIPLINARY COUNSEL V. THOMAS, 2020-OHIO-5582

- Brown-bag luncheon with judge in attendance
- Judge outlined protocol when she receives an ex parte communication
 - Staff attorney reviews communications; return or take action
- Thomas tells D.V.'s lawyer she is thinking of sending a letter to judge
- Faxes four-page letter to the judge's chambers, addressed to staff attorney
 - "I am sending this correspondence to you since it is an ex parte communication and I do not wish to expose the judge to a situation wherein she feels the need to recuse herself from this matter..."
 - Request the appointment of a GAL or refer to FCS for an investigation



DISCIPLINARY COUNSEL V. THOMAS, 2020-OHIO-5582

- Prof. Cond. R. 3.5(a)(3)(i) prohibits ex parte communication with a judicial officer or other official as to the merits of the case during the proceeding unless authorized by law or court order.
 - Comment [2]
 - Cannot communicate with persons serving in an official capacity in the proceeding, such as judges, masters, magistrates, or jurors.
 - Does a staff attorney serve in an official capacity?

EX PARTE COMMUNICATION (FOR JUDGES)

- It's more than what you think...
 - Ex parte means a communication, concerning a pending or impending matter, between counsel or an unrepresented party and the court when opposing counsel or an unrepresented party is not present or **any other communication made to the judge outside the presence of the parties or their lawyers**





THOMAS'S DEFENSES

- Thomas followed the court's protocol
- The letter was not an ex parte communication
- Thomas offered D.V.'s lawyer the opportunity to review the letter
- The rule does not apply to staff attorneys
- Thomas was trying to protect the child's interests
- Public Reprimand: 6-1

LEARNING FROM THOMAS'S MISTAKES:

- Copy D.V.'s lawyer on the communication
- Call the police or CFS
- Stay out of the matter





CONFIDENTIALITY

- Ethical Concept
- Very broad
 - Anything relating to the representation of a client
 - Includes information protected by the A/C Privilege

ATTORNEY-CLIENT PRIVILEGE

- Evidentiary Concept
- Extremely Narrow
 - Communication
 - Between a lawyer & client
 - In confidence
 - Seeking or providing legal advice
- Compelled disclosure

