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BRIEF WHY CASE IS NOT OF PUBLIC OR GENERAL INTEREST

This matter does not serve to have any public or general interest but rather to serve the interest of only one, the Appellant, an Attorney who is bound to follow the case law of this state which governs the division of fees between lawyers of two (2) different firms.

That case of course is *Shimko v, Lobe*, 103 Ohio St.3d 59, 2004 Ohio 4202.

This matter has been pending between the parties since 2006 when Appellee and Appellant entered into a **co-counsel** agreement to represent a mutual client in civil litigation.

Appellee, based on *Shimko*, is surprised the matter has reached this Court. Appellee attempted to resolve the issue with Appellant, he refused. Appellee was forced to take the matter to a local county bar association, per *Shimko*. The issue was properly arbitrated by two (2) arbitrators, on September 19, 2007, a full arbitration panel was *waived* by the parties.

Prior to the arbitration "all" issues were properly briefed and submitted to the local bar association, including the applicability of DR 2-107(A) and 2-107(B).

The panel rendered their decision and awarded Appellee \$18,000. The Cuyahoga County Court of Common Pleas *confirmed* said award. Although unappealable per *Shimko*, Appellant appealed the matter to the Eighth District Court of Appeals. Said Appellate Court **affirmed** the trial Court's confirmation of the arbitration award relying upon *Shimko, supra*.

Appellant now wants this Honorable Court to reverse itself. This case has nothing to do with a prevailing public or general state interest. This matter has nothing to do with time spent in representing the mutual client. This case does have to do with two lawyers of different firms, who have a legitimate fee dispute, must submit, ever since this Court's holding in *Shimko v. Lobe*, 103 Ohio St.3d 59, 2004 Ohio 4202, their dispute to **binding arbitration**. The parties did, Appellant lost, and that should have been the end of this drama.

Shimko, supra, indicated that all awards were "binding and unappealable." *Shimko*, was meant to put an end to litigation between lawyers over a division fees. This Honorable Court rendered *Shimko*, to put an end, for the general public interest, to countless litigation being played out in the media between lawyers over a division of attorney fees.

For the above stated reasons and for the further reasons as illuminated in *Shimko, supra*, this Honorable Court should refuse to grant Appellant jurisdiction to prosecute this appeal.

STATEMENT OF THE FACTS/CASE

These are the **actual** facts. The Appellee was retained by a Ms. Sharon Havanchak (hereinafter referred to as the client) in reference to a paternity action in the Lorain County Court of Common Pleas, Juvenile Court Division against a Mr. J.D. Turza. During the course of the representation of "the client", Appellee discovered that "the client" may have a wrongful termination/employment/pregnancy discrimination lawsuit against her former employer J. D. Turza and Associates dba Gutter Helmet as J. D. Turza, the putative father of her child and also employer, terminated her employment upon learning of her pregnancy.

Appellee, with the consent of "the client", met with Appellant and agreed on a **co-counsel** arrangement to represent "the client" in a wrongful termination/pregnancy discrimination lawsuit against J. D. Turza individually and J. D. Turza and Associates, dba Gutter Helmut.

Both Appellee and Appellant met with "the client." Appellee was to receive for his compensation in this arrangement, 40% of the total 40% contingent fee collected. Ms. Havenchak fully "consented" to this arrangement. .

After the initial meeting, the Appellant drafted and filed a "complaint" for wrongful termination/discrimination in the Court of Common Pleas, General Civil Division, Lorain County, Ohio captioned *Sharon Havanchak v. J.D. Turza, et al.*

Query: Although Appellant attempts to state that Appellee was not co-counsel and only entitled to a "finders fee"; basic evidence of the co-counsel arrangement is in the fact that Appellant, when he filed the "complaint", Appellant not only admittedly listed Appellee as **co-counsel** on the complaint, but Appellant personally signed Appellee's name to same. By listing Appellee as co-counsel,

Appellee became ethically bound for the representation of the "client", Appellee assumed all responsibility for said representation, including Appellee's malpractice carrier etc.

During the pendency of the civil lawsuit, Appellee discussed the "strategy" of the lawsuit, on going discovery and proceedings with both Appellant and "the client." Further, Appellee's entire office staff were made available to assist Appellant and delivered to Appellee all discovery materials gathered during the ongoing paternity action against J. D. Turza, et al.

Appellant settled the lawsuit for \$135,000 during a pre-trial conference. Appellee then placed a demand for the previously agreed upon co-counsel fees. Since the matter could not be resolved amicably, Appellee filed a grievance with the then Cuyahoga County Bar Association per *Shimko v, Lobe*, 103 Ohio St.3d 59, 2004 Ohio 4202.

After an investigation as conducted by said bar association, it was determined that the matter be referred for "binding arbitration." Both Appellant and Appellee signed the "Agreement to Arbitrate" as provided by the Cuyahoga County Bar Association.

Contained in the Bar Associations "Agreement to Arbitrate" that both Appellant and Appellee signed, the following language was included:

"{t}he parties agree and covenant that neither of them will, before of during said arbitration, commence or prosecute any civil action against the other concerning any of the matter in controversy, and that the award to be made by the arbitrator(s) or a majority of them, **shall be valid and binding upon**, and shall well and faithfully be kept, observed and performed by each of them, their assigns, heirs, executors and administrators:"

Emphasis added

The bar association requested the parties to submit briefs regarding their respective positions as to, **A) contingency fee division; B) How Quantum Merit applies; and, C) the applicability of DR 2 107.** The Appellee timely submitted his requested brief, the Appellant did not.

After a series of delays, the parties arbitrated their dispute on September 18, 2007. At the arbitration hearing, Appellee submitted what he determined his co-counsel fee/compensation should have been, per the parties' arrangement. The arbitrators also wished to see a "time expended" statement of Appellee, although said sheet is not an actual reflection of time as Appellee expected to receive and still expects to receive per the Arbitration award.

After a **full** arbitration hearing, and after the arbitrators considered all of the evidence, and arguments of counsel submitted regarding the division of fees for lawyers of different firms, the arbitrators awarded Appellee the sum of \$18,000 "binding arbitration" award rendered by the Cuyahoga County Bar Association was September 18, 2007. (October 4, 2007).

Appellant filed with the Court of Common Pleas of Cuyahoga County, an award. Appellee filed with said court an "Application to Confirm" same. The Court "confirmed" the award pursuant to the holding in *Shimko v. Lobe, supra*. Appellant then filed an appeal, although unjustified.

LAW AND ARGUMENT

APPELLANT'S PROPOSITIONS OF LAW ONE TWO, AND THREE

- 1 PROPOSITION OF LAW NO: 1: A FEE GRIEVANCE ARBITRATION PANEL MUST FOLLOW THE REQUIREMENTS OF DR2-107(A) IN DIVIDING FEES OF LAWYERS OF DIFFERENT FIRMS

- 2 PROPOSITION OF LAW NO: 2: IF A FEE GRIEVANCE ARBITRATION PANEL FAILS TO FOLLOW THE REQUIREMENTS OF DR2-107(A), A MOTION TO MODIFY PURSUANT TO R.C. 2711.11(A) IS AVAILABLE

- 3 PROPOSITION OF LAW NO: 3: A FEE GRIEVANCE ARBITRATION PANEL MAY NOT AWARD AN EXCESSIVE FEE IN AN TO AN ATTORNEY IN VIOLATION OF DR2-106

APPELLEE'S STATEMENT OF ISSUES PRESENTED

- A) Whether or not the confirmation of the binding Arbitration award rendered by the Cuyahoga County Bar Association pursuant to *Shimko v. Lobe*, 103 Ohio St.3d 59, 2004 Ohio-4202 was proper

Shimko v. Lobe, 103 Ohio St.3d 59, 2004 Ohio-4202, after reviewing DR 2-107(A)

and (B) the Ohio Supreme Court held as follows”

Attorneys-Mandatory arbitration of fee disputes between attorneys-Right to jury trial not violated-Award is final, binding, and unappealable. Emphasis added

As the “dispute” existed between members of the bar, said attorneys are subject to the provisions of *Shimko v. Lobe*, 103 Ohio St.3d 59, 2004-Ohio-4202], which was pointed out in Appellant’s Docketing Statement that this case was to turn on, which case **mandates** attorneys of different to submit their dispute to the local bar association the .for **“binding arbitration.”**

Shimko, supra, is not limited in its application, as argued by Appellant and perhaps Usurps DR 2-107(A). Simply stated if a fee dispute exists between lawyers of different firms, the dispute **must** be submitted to **“binding arbitration.”**

It is submitted that the Supreme Court rendered the *Shimko, supra* decision in order to prevent lawsuits/litigation between lawyers of different firms, as in the case at bar, over “division of fees” disputes. The *Shimko*, decision mandates attorneys of different firms, who have such a dispute, to submit their dispute to arbitration per DR 2-107(B),

DR 2-107(B) states as follows

In cases of dispute among lawyers arising under this rule, fees shall be divided in accordance with **mediation or arbitration** provided by a local bar association.

Emphasis added:

The Supreme Court, in *Shimko, supra*, incorporated said rule in the decision and required that said arbitration decision become **“binding”** and **“unappealable.”** *Id.*

The Appellee has fully complied with DR 2-107 (B) and *Shimko, supra*.

It is further submitted that all of the rhetoric and arguments of Appellant and the case law as submitted by Appellant pre-date *Shimko, supra*, and have no applicability in the case at bar. *Shimko, supra* contains “no limiting language in its application.

Appellee filed a grievance with the local bar association; after an investigation, said dispute was referred to arbitration; **BOTH** parties signed the “agreement to arbitrate”; the bar association rendered a fair and impartial award after hearing all evidence.

Said award, per *Shimko, supra* is now “**final and unappealable.**” Hence, Appellant’s appeal should be denied. Any other ruling would “fly in the face” of *Shimko, supra*, the Supreme Court’s intention per *Shimko*, to prevent ongoing and litigation between lawyers of different firms over fee disputes,

In addition hereto, as to proposition of law number:”3”, this is the first time Appellant has raised the argument of an “excessive fee.” It appears that Appellant will stop at nothing, to challenge this award. Appellee attempted to amicably resolve this matter with Appellant to no avail. Appellant forced this matter to be brought before an local bar association per *Shimko, supra*.

The parties agreed to “binding arbitration” per *Shimko*, and after an award, although *Shimko*, indicates the award is unappealable the Appellant has the audacity of filing an appeal, not once but now twice. If *Shimko*, has any shortcomings in its application it is in the fact that there was no result, or relief for the Appellee, for actions of the Appellant.

CONCLUSION

For all the foregoing reasons, this Court should deny Appellant's appeal per the holding that *Shimko, supra* which requires attorneys of different firms that have a fee dispute to submit their dispute to "mandatory" arbitration and that said "Award is final, binding, and unappealable." *Id.*

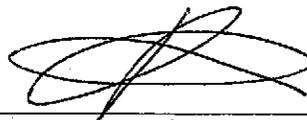
Respectfully Submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing **MEMORANDUM IN OPPOSITION TO JURISDICTION** was sent by regular U.S. mail upon Regular Mail upon **F. Benjamin Riek**, c/o 1370 Ontario Street, Cleveland, Ohio 44113 this 12th day of March, 2009.



Carl C. Monastra
Appellee Pro Se