

**BEFORE THE BOARD OF COMMISSIONERS  
ON  
GRIEVANCES AND DISCIPLINE  
OF  
THE SUPREME COURT OF OHIO**

**In Re:** : **11-0464**

**Complaint against** : **Case No. 10-037**

**William Lawrence Summers** : **Findings of Fact,**  
**Attorney Reg. No. 0013007** : **Conclusions of Law and**  
**Respondent** : **Recommendation of the**  
**Disciplinary Counsel** : **Board of Commissioners on**  
**Relator** : **Grievances and Discipline of**  
**the Supreme Court of Ohio**

**FILED**  
**MAR 21 2011**  
**CLERK OF COURT**  
**SUPREME COURT OF OHIO**

¶1. This matter was heard on September 30 and October 1, 2010, on a complaint filed by Disciplinary Counsel on April 12, 2010. Appearing at the hearing on behalf of Relator was attorney Joseph M. Caligiuri. Respondent appeared represented by attorneys Michael L. Close and Jennifer B. Croghan. The case was heard by a panel consisting of Judge H.J. Bressler, Judge Arlene Singer and Stephen C. Rodeheffer, chair. None of the panel members resides in the appellate district from which the complaint originated or served on the probable cause committee that certified the complaint. Judge Bressler resigned from the Board of Commissioners subsequent to the date of the hearing but prior to the panel’s deliberations and recommendation in this case, consequently he did not participate in the findings and recommendations made in the panel’s report.

¶2. Respondent was admitted to practice of law Ohio in 1969. He was admitted to the practice of law in Kentucky in 1988. Respondent’s practice deals almost exclusively with criminal defense. Respondent has been involved in many high profile criminal cases during his

career including the nationally publicized case of Larry Mahoney who drove left of center on a Kentucky highway and struck a school bus full of children, and the defense of a number of Native Americans who were charged following a confrontation with law enforcement at Wounded Knee. Respondent has been given many national awards in the area of criminal defense including the Robert C. Heeney Memorial Award. He is also a member of multiple state and national criminal defense organizations. Respondent has been admitted to practice in several federal courts, the Supreme Court of the United States and the U.S. Tax Court.

¶3. Notwithstanding these outstanding professional accomplishments and the apparent high esteem with which he is held by his colleagues, the panel found Respondent to be a difficult man whose testimony was evasive, combative and in some instances inaccurate or false.

¶4. Respondent is charged with the following violations of the Ohio Rules of Professional Conduct:

- a. Prof. Cond. R. 1.5(a) – a lawyer shall not make an agreement for, charge or collect an illegal or clearly excessive fee;
- b. Prof. Cond. R. 1.5(d)(3) – a lawyer shall not enter into an agreement for, charge or collect a fee denominated as “earned upon receipt” or “non-refundable,” or any similar terms unless the client is advised in writing that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation;

c. Prof. Cond. R. 1.16(e) – a lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned; and

d. Prof. Cond. R. 8.4(h) –conduct that adversely reflects on the lawyer’s fitness to practice law.

¶5. The factual basis for Relator's allegations against Respondent as it relates to Prof. Cond. R. 1.5(a),1.16(e) and 8.4(h) is that Respondent was paid \$17,726.01 in attorney fees to represent Anthony Bell in a criminal matter, \$15,000 of which was paid pursuant to a written fee agreement wherein Respondent agreed to represent the client "through the trial, and if necessary, sentencing, or other disposition of the case." Respondent terminated his representation of the client before the case was finished and retained all client monies paid to him.

¶6. The factual basis for Relator's allegations against Respondent as it relates to Prof. Cond. R. 1.5(d)(3) and 8.4(h) is that the aforementioned fee agreement provided that the flat fee was "non-refundable" without adding the language required by Prof. Cond. R. 1.5(d)(3) that the client may be entitled to a refund if the representation is not completed.

### **FINDINGS OF FACT**

¶7. The charges against Respondent stem from his representation in 2008 of a then nineteen-year old by the name of Anthony (Tony) Bell. On June 3, 2008, Bell was indicted on multiple felony offenses involving an assault on a police officer during a Cleveland Indians baseball game on April 26, 2008. The evidence provided at the hearing indicated that one of Bell’s friends, with whom he was attending the Indians-Yankees game on this date, got into a verbal spat with another fan. An altercation occurred in which Bell became involved. During the altercation a police officer was hurt and Bell was arrested. Bell spent a weekend in jail and

was ultimately released after his family posted a \$35,000 bond through a local bondsman. The bondsman recommended Respondent to the Bells.

¶8. Mr. Summer's representation of Bell commenced on April 29, 2008, when the Bell family consisting of Tony Bell, Lorraine Bell (mother), and Dwayne Bell (father) signed a written fee agreement which, in its material parts, called for the payment of a \$2,500 retainer plus an additional \$1,000 to be used for expenses. The Bells were to be billed for Respondent's services at the rate of \$250 an hour. Respondent contends that the hourly rate was \$100 less than his normal rate, and that he agreed to this reduced rate because he felt sorry for the family. The Bells paid both the retainer and the deposit for the expenses in the case.

¶9. Of critical importance to this case is an understanding of the fact that, from the beginning, Tony Bell and his family insisted on Tony's innocence in the whole affair and made it clear to Respondent that they were prepared to go to trial and were not interested in a plea agreement. Respondent acknowledged in his testimony that he was well aware of the family's position from the inception of the attorney-client relationship. (9/30/10 Tr. 83)

¶10. During the succeeding nine months that Respondent represented Tony Bell, he had an associate by the name of Aaron Baker who had been licensed to practice law for approximately five months.<sup>1</sup> Baker assisted Respondent in the case and, according to the billing records, (Ex. 11 and 35) did a large portion of the work on behalf of Bell.

¶11. Respondent represented Bell from May 1, 2008 until he filed a motion to withdraw on January 13, 2009. During this period of time his fees were paid pursuant to two fee contracts. The first was executed by the family on April 29, 2008, (¶8, supra) and the second

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<sup>1</sup> Although Baker had been licensed to practice this short period of time, he graduated from law school in 2006, but did not take the bar until the fall of 2007. According to Respondent, Baker had been with him for five years.

was executed on September 9, 2008. The former called for Respondent to be paid on an hourly basis, and the latter called for the payment of a flat fee of \$15,000.

¶12. Because the principal issue in this case is whether Respondent charged a clearly excessive fee, a summary of Respondent's efforts on behalf of his client is critical to a determination of the issues presented.

¶13. From day one of Respondent's representation of Bell, the primary focus of his activity was to obtain a surveillance video of the incident that was in the possession of the Cleveland Indians organization. Respondent often characterized this video as the "silver bullet" in the defense's case. On May 1, 2008, Respondent wrote a letter to the Cleveland Indians demanding that the organization do nothing to destroy the video until it could be reviewed. He obtained copies of the video from the prosecution at a July 21, 2008 pretrial, however, the poor quality of the video prevented it from shedding any light on what occurred at the game. Efforts were made to have experts look at the copies to see if the quality could be improved. The type of video prevented enhancement and apparently the Cleveland Indians, as a matter of routine, destroy the original of all surveillance videos after a copy is made.

¶14. On June 17, 2008, Respondent filed a document that he entitled "Omnibus-Initial Pretrial Discovery Motion." This document is 34 pages in length and consists of discovery requests, motions to suppress, motion for bill of particulars, and requests for the disclosure of evidence favorable to the defendant. The "Motion" also contains an abundance of case authority relating to the various sections of the motion. At first glance one cannot help but be impressed by the scope of this pleading, with its extensive arguments and citation of case authority. The evidence revealed, however, that this document is essentially a form utilized by Respondent in all his criminal cases that is "tweaked" to fit the particular defendant that Respondent is

representing at the time. It should be further noted that the prosecutor in this case never formally responded to this pleading during Respondent's tenure in the case, including the request for discovery and bill of particulars.<sup>2</sup>

¶15. Pretrials were conducted in the case on the following dates: July 21, 2008; August 8, 2008; September 9, 2008; October 8, 2008; and December 2, 2008. According to the Bells, the only time Respondent ever met with them was at the courthouse following these conferences. Respondent contends otherwise, but admits to not having a specific recollection of other conferences.

¶16. On June 30, 2008, Respondent's office sent the Bells the first of two bills issued during the course of Respondent's representation of Tony. This bill was calculated on an hourly basis for time spent on the case consistent with the parties' then agreement and covered the period through June 30, 2008. When they received the bill, the Bells were surprised to find that despite the fact that they believed very little progress had been made in the case, Respondent's activity on behalf of Tony had not only exhausted the initial retainer but there was now \$2,461.49 due and owing. Furthermore, the bill calculated Respondent's charges at \$350 an hour rather than the agreed upon \$250. Though taken aback by the amount of the bill, the Bells complained only about the hourly rate. Through an exchange of emails with Baker, the Bells received an assurance that a corrected bill would be sent out. In his final communication Baker told them to "... expect the corrected invoice soon, but in the meantime, if you could pay the corrected amount, it would be appreciated." (Ex. 12) Respondent's office never sent a corrected bill and the Bells never paid anything further over the next two months. Mrs. Bell told the panel that she did not follow Baker's directive because she did not know what the "corrected" amount

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<sup>2</sup> The prosecution eventually responded to the discovery request on January 27, 2009, two weeks after Respondent filed a motion to withdraw from the case.

was and felt that it was Respondent's responsibility to provide that amount. Despite having not received a payment for this invoice, Respondent met with the family at two additional pretrials without registering a complaint. (Ex. 14, 19, 38)

¶17. On September 3, 2008, Respondent sent an email to Tony's father insisting that they have a phone conversation that day. That conversation in fact took place and Respondent testified that at that time he told Dwayne Bell that the family was in breach of the fee agreement and demanded payment of a \$15,000 retainer or he would withdraw from the case. In response to this demand, the Bells sent Respondent an email. (Ex. 15) In this email the family agrees to pay the retainer, but also asks questions typical of clients who are novices to the financial aspect of the attorney client relationship: Are we still operating under the initial contract? Will we get a receipt for the \$15,000 if we pay it? What will this money be used for? Will we get any of the money back if the case is closed? If the case goes to trial will we owe more money? When can we expect to start getting monthly bills? The email ended with a request that Respondent not take offense to these questions noting that they only wanted him to be "up front and honest" regarding the money being paid.

¶18. Respondent apparently did take offense. He sent back a scathing response via email accusing the Bells of not abiding by the original contract, telling them that they will have a cancelled check for a receipt, accusing them of getting advice from "third parties" and losing sight of the fact that Tony was facing "serious, non-probationable allegations." Of importance is the fact that Respondent told the Bells the following:

The fee will be a final flat full and total fee from August 1, 2008 on and that will cover all of the Attorney fees for the matter to the end, regardless of what time we have to spend which is a benefit to you. If you discharge us,

you will however owe us for all of our time spent thus far, less the initial retainer. You will also owe us for bringing the new Lawyer up to speed.

(Ex. 16) [Emphasis, grammatical errors and punctuation from the original document.]

It should be noted that Respondent mentions nothing in this document regarding what happens to this fee if he discharges the client by withdrawing from representation.

¶19. At this point it is necessary to digress from the narrative summary of Respondent's work on behalf of Tony Bell to describe Respondent's attitude toward the Bell family. The aforementioned email is but a glimpse of the generally negative and impatient attitude Respondent seems to have maintained toward the family during most of the time he represented Tony. Even during the disciplinary hearing Respondent took every opportunity to vilify and demonize this family with little supporting corroboration that his complaints against them had any foundation. Because Respondent uses these complaints as a basis for his ultimately discharging the Bells as clients, they need to be discussed here.

¶20. **Repeated and Unnecessary Communications.** Respondent complained that he found himself constantly taking phone calls from the Bells or answering their emails requiring him to explain the same topics or questions over and over again. However, his billing records do not really bear this out. In the first bill to the clients referenced above, his entries show only ten contacts with the client and/or the family over a 60 day period of time. And in his final bill his records indicate that from April 29, 2008 through the end of that year approximately 40 contacts (email, phone calls or conferences) with the clients. (Ex. 11, 35) On average this is less than ten contacts per month with a family whose nineteen-year old son is facing mandatory penitentiary time. Furthermore, after the \$15,000 retainer was paid to Respondent on September 8, 2008, his

billing records only document ten contacts with the Bells. And while it is true Respondent testified that he could not possibly have documented all of the contacts, this testimony does not ring true given the fact that he testified that he kept accurate billing records,<sup>3</sup> and the fact that he had every incentive to document these contacts in the final bill since it was produced to justify his keeping all of the money that had been paid to him.

¶21. **The Client's Unrealistic Attitude.** Respondent accused the Bells of not being realistic about Tony's chances for winning at trial and not listening to his advice. Yet Respondent testified that he knew going into this case that this family was adamant that his client had done nothing wrong and wanted a trial. And to whatever extent this fact was not clear to Summers during the first few months of the attorney-client relationship, he was certainly well aware of this attitude when he took a \$15,000 fee from the family in September 2008.

¶22. **Client Dishonesty.** Respondent accused the Bells of lying to him about whether Tony could be reached via cell phone. The actual facts appear to be that an email dated January 4, 2009, authored by Tony's mother but signed "Anthony Bell," was sent to Respondent reminding him that he had not responded to a prior request by the family for a meeting with him. (Ex. 28A) In that same email Respondent was asked to respond to the family's communication by emailing Tony's father, Dwayne, "as my cell phone is temporarily out of order." Respondent testified that upon receiving this email he immediately called Tony on his cell and Tony answered, thus disproving the claim that the phone was out of order. The Bells explained during the hearing that they made this statement because Tony's cell phone was often out of service because he worked in the basement of his employer's building beyond the service provider's signal. While the email may be an intentional mischaracterization of the true facts of Tony's cell phone problems, in reality it was probably nothing more than an awkward attempt by an anxious

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<sup>3</sup> Respondent testified that his time was "copiously kept." (9/30/10 Tr. 104)

and concerned mother to funnel communications from Respondent to her son through the parents so they could stay informed of the progress on their son's case. Regardless, this small prevarication could not have possibly caused the irreparable damage to Respondent's relationship with the family that he attempted to portray to the hearing panel.

¶23. **Perjury.** Finally, and more seriously, Respondent accused the Bells of directing him to suborn perjury. He told the panel that the Bells insisted on his using a witness that he knew was going to lie under oath.

¶24. Unfortunately this charge by Respondent is the weakest of all of his allegations for a number of reasons. First, in Respondent's initial written response to Disciplinary Counsel regarding the Bells' grievance, Respondent gave Relator a detailed explanation as to why he discharged Tony as a client. His primary reason as set forth in this letter was that the Bells were difficult to deal with and were unrealistic about Tony's prospects for exoneration. Nowhere in this initial communication does Respondent even hint of the Bells asking him to use a witness who was going to commit perjury.

¶25. The first time Respondent makes any allegation of impropriety on the part of the Bells regarding false witnesses is during his discovery deposition in this proceeding. At that time he testified that the Bells told him that they "... had a brand new witness that is not in the video, never identified, never discussed" that would exonerate Tony. Later in the deposition Respondent admits that he never interviewed this witness explaining in a rather vague way that what was going on "was obvious" and he was "not even going to get involved in something like that." (Summer's Depo. 78)

¶26. Respondent's description of the Bells' "witness" changes between his deposition testimony and the hearing. At the hearing Respondent told the panel not that the witness was someone that had seen the altercation, but rather was a witness who was going to testify that the Cleveland Indians had destroyed or tainted the video. He testified that he was suspicious about this witness because the Bells would not give him a name or any other information about the individual, only telling him that they would bring the person to him when it was time. When asked why he thought this conduct was illegal, Respondent responded as follows:

He's telling me he has a witness who is going to testify the opposite of everything that has been produced and everything that has been verified by a nationally-renowned expert to be true. He's going to say – Nothing's been documented. (10/1/10 Tr. 250)

¶27. At the hearing the Bells denied ever suggesting the use of any witness let alone one that was going to commit perjury.

¶28. Respondent took great pains during the hearing to portray the Bells as difficult people whose conduct made continued involvement with them impossible. However, the panel simply does not believe Respondent's allegations and concludes that his complaints regarding the Bells' conduct are nothing more than a fabrication designed to convince the panel that he had an acceptable basis for his eventual discharge of the Bells as clients.

¶29. We return to our findings of fact regarding the representation of the Bells. Notwithstanding the Respondent's caustic communication with the Bells after they asked about the specifics of the \$15,000 payment (¶18, supra), the parties ultimately reached an agreement for Respondent's continued representation that was reduced to a written contract on September 9, 2008. Respondent presented this contract to the Bells just prior to a pretrial conference on that

day and he testified that he went over the agreement with the family line by line. The agreement calls for the payment of a \$15,000 flat fee that was to be considered "non-refundable." The agreement also stated that Respondent would represent Tony Bell through all phases "and, if necessary, through the trial, and if necessary, sentencing, or other disposition of the case." The contract further states that the \$15,000 "is all that you will owe, regardless of the time that we will spend on your behalf." (Ex. 18) However, despite characterizing this fee as non-refundable, the agreement did not have the language required by Prof. Cond. R. 1.5(d)(3) to the effect that if Respondent failed to complete his representation of Bell, the client may be entitled to a refund of all or part of the fee.

¶30. Although the Bells signed the fee agreement and paid the \$15,000, they contend that the agreement was not explained to them and that they did not read the document. Indeed, Mrs. Bell testified that she, even to this date, has never read the document.

¶31. Respondent's explanation for his failure to include language regarding a possible refund as required by Prof. Cond. R. 1.5(d)(3) is less than credible. He contends that because he practices in both Kentucky and Ohio that he has form fee agreements for each state. He told the panel that he accidentally pulled up his Kentucky template from his word processing software when preparing the Bell agreement. Apparently Kentucky permits the use of non-refundable fee agreements without advising the client of his or her right to a refund. However, a review of the agreement reveals multiple references in the document to Ohio law, repeated (and mistaken) references to the Code of Professional Responsibility, and even a reference to the Ohio Supreme Court and its rules regarding trust accounts. Furthermore, in his testimony Respondent repeatedly contradicted the Bells contention that they did not read the document by testifying that he went over this document "word by word" with the family, leading to the inescapable

conclusion that Respondent was at least on notice that his agreement was not in compliance with the Ohio Rules of Professional Conduct.

¶32. The panel concludes that Respondent was well aware that the agreement presented to the Bells on September 9, 2008, did not have the language required by Prof. Cond. R. 1.5(d)(3). Though not germane to the violation, the fact that the document references the Code of Professional Responsibility instead of the Rules of Professional Conduct would indicate that this deficiency was the result of either Respondent's ignorance of the requirement or his failure to update his agreements after the current rules went into effect.<sup>4</sup>

¶33. During the ensuing five months (September 2008 though January 2009) that Respondent was involved in Bell's case, his efforts as documented in his final bill were almost exclusively devoted to obtaining access to the Cleveland Indians video equipment and the original recording of the April 26, 2008 brawl. At the September 9, 2008 pretrial, Respondent obtained a court order from the trial judge permitting inspection of the video and the equipment. On October 1, 2008, Respondent filed a contempt motion against the Cleveland Indians for denying access. He held conferences with his expert, Mark Eppler, and though not itemized in his bill, he claims that he or his associate, Aaron Baker, made at least two trips to Progressive Field to look at the equipment and video. He claims, though again it is not documented, that he made contact with a national expert on video enhancement by the name of Steve Cain in Wisconsin who confirmed that the video recording could not be improved, as Eppler had stated. (10/1/10 Tr. 190-191; 195)

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<sup>4</sup> The Code of Professional Responsibility does not have a similar requirement regarding advising the client that a flat fee may be refundable.

¶34. It should be noted that Respondent's billing records for this time period indicate little or no contact with the clients other than an occasional email and phone call. Mrs. Bell testified that the family decided after paying the \$15,000 on September 9, 2008, that they would give Respondent space and let him proceed without bothering him for updates. Because of this it came as a complete shock to the Bells when Summers informed them on January 6, 2009, that he was leaving the case.

¶35. The panel finds the circumstances of Respondent's withdrawal particularly distressing. The Bell family borrowed the retainer from Tony Bell's employer. These funds are all that they had to pay for their son's legal defense against serious criminal charges and they paid these monies to Respondent under the reasonable assumption that he was now paid and that Tony would be represented by competent legal counsel through the conclusion of the case. When Respondent abruptly terminated his representation, they had no money for substitute counsel and Tony ultimately was forced to use court-appointed counsel.<sup>5</sup>

¶36. When Mrs. Bell requested an accounting for the money received, Respondent presented her with an itemized bill that not only showed that the funds the family had paid were totally exhausted, but that if his services were calculated on an hourly basis the family owed him \$2,586.49, despite the fact that the fee agreement provided for a flat fee for representation to the conclusion of the case.

¶37. The bill, itself, has many interesting and suspicious features. First, the hourly rate is not calculated at \$250 per hour as was set forth in the parties' original arrangement, but \$400 an hour. Second, this final bill adds up Respondent's time back to the beginning of the attorney-client relationship on April 29, 2008. Consequently the bill in part covers the period that was

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<sup>5</sup> The family did talk to another lawyer about the case, but when they were told how much they would need to pay to engage his services they gave up the idea of hiring another lawyer.

covered in the first bill sent June 30, 2008. This second bill adds an additional 7.65 hours of work for this time period that was not itemized in the first bill. And finally, adding insult to injury, Respondent included the following entries in this bill:

2:00	copying bill and preparing file for transfer to Attorney Dixon
1:00	drafting motion to withdraw
:15	reviewing motion to withdraw
1:00	drafting email to investigator
1:30	research and drafting complaint against Susan Daniels <sup>6</sup>
2:00	attendance at motion to withdraw (Summers)
2:00	attendance at motion to withdraw (Baker)

Thus, 9.75 hours were billed to the Bells for work performed to conclude his withdrawal from the case with an extra two hours for good measure for attending the hearing itself. (Ex. 35)

¶38. Even the hearing the trial court conducted on February 10, 2009, to rule on the Respondent's motion to withdrawal is fraught with chicanery. Prior to that hearing, Respondent contacted the Bells and suggested that a reconciliation might be possible with his firm staying in the case. This coming from an individual that was insisting that the clients were engaging in behavior that was tantamount to a criminal act. At the hearing the Bells were completely excluded from any participation. Rather, Respondent held an ex parte conference with the trial judge in chambers who then signed the order discharging Respondent. The Bells were never told why Respondent was withdrawing and never given an opportunity testify regarding their side of the controversy.<sup>7</sup>

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<sup>6</sup> Susan Daniels was an investigator hired by the Respondent with whom he had a falling out during the course of his representation of Tony Bell.

<sup>7</sup> On March 5, 2009, Anthony Bell filed a pro se memorandum regarding the withdrawal but, of course, the memorandum came after the withdraw was already allowed.

¶39. It should be noted that when the Bells received Respondent's final bill on March 5, 2009, they did not respond by suggesting a counterproposal or otherwise try to work through the finances. They immediately filed a grievance with Disciplinary Counsel. However, viewed in the context of the circumstances they found themselves in, circumstances that were not of their making, their knee jerk reaction to Respondent's invoice is forgivable. Respondent abandoned his client and kept all his money without justifiable cause at what was, procedurally, an early stage in the criminal proceedings.

¶40. In the end Tony Bell was assigned to the public defender's office and was represented by an attorney by the name of George George. The case was ultimately resolved by Tony Bell pleading guilty to three F-4 offenses on June 29, 2009, and being sentenced to community control. Bell expressed bitterness with the outcome both at the sentencing hearing and at the trial in this disciplinary case.

#### CONCLUSIONS OF LAW

¶41. The Panel finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 1.5(d)(3). The fee agreement (Ex. 18) denotes the \$15,000 as a flat fee and as a non-refundable fee without the client also being told that if the legal work is not completed the client may be entitled to a refund. Prof. Cond. R. 1.5(d)(3) mandates this language in all flat fee contracts. As noted the panel is not impressed with Respondent's protestations that his failure to include the language was an honest mistake.

¶42. Relator's allegations that Respondent violated Prof. Cond. R. 1.5(a) and 1.16(e) are somewhat more problematic. Respondent argues that he was ethically entitled to keep the entire retainer because of the amount of time he had in the case before exiting. Simply stated, he contends that if a lawyer can show that the hours spent on a case multiplied by his hourly rate

equals or exceeds the flat fee paid, that lawyer can keep the fee even though he has not completed the work he was paid to complete. In support of this position, he called attorneys Lawrence A. Riehl and Kort Gatterdam to testify in support of this proposition. Both attorneys are experienced criminal defense attorneys who testified that when an attorney withdraws from a flat fee case, Respondent's approach is the correct approach.

¶43. Relator responds that the a determination of an excessive fees requires more than just an itemization of the time spent by Respondent. Prof. Cond. R. 1.5(a) lists multiple factors that must be considered:

- (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;
- (8) whether the fee is fixed or contingent.

Thus, Relator contends the fee retained by the lawyer must be viewed in the broader context of the attorney-client relationship. All aspects of that relationship must be reviewed as opposed to a simple mathematical calculation of time spent.

¶44. A secondary question must also be addressed: is this case really nothing more than a fee dispute that simply does not rise to the level of an ethical violation? Just because the lawyer and client disagree over the fees retained (or charged) by the attorney and the lawyer is ultimately found to be wrong does not mean that in every such instance such the lawyer has charged "a clearly excessive fee."

¶45. The panel concludes that in the end each case presents unique facts and circumstances that must viewed on their own merit. Unfortunately Prof. Cond. R. 1.5 and comment [6(A)] provide little guidance:

This [the possibility of a refund] does not mean a client will always be entitled to a refund upon early termination of the representation [e.g. factor (a)(2) might justify the entire fee], nor does it determine how any refund should be calculated (e.g. hours worked times a reasonable hourly rate, quantum meruit, percentage of work completed, etc.). . .

The panel agrees with Relator that a simple mathematical calculation of time spent is not determinative to resolving the controversy. The trier of fact must view the time spent by the lawyer in the context of the original agreement between the parties, the benefit that the client derived from the lawyer's efforts, and the stage at which the relationship ended – particularly where, as here, the flat fee was paid to Respondent for completing the case.

¶46. Considering all of these factors and the guidelines set forth in Prof. Cond. R. 1.5(a) the panel concludes that Respondent collected and retained a clearly excessive fee for the following reasons:

¶47. First, Respondent agreed to complete the case through trial. As it happens, other than his misadventures in trying to get the surveillance video enhanced, attending a few pretrials and filing a form motion for discovery, Bell gained very little benefit from Respondent's work. As noted above, no witnesses were interviewed, the prosecutor had yet to turn over his responses to Respondent's discovery requests, no motions to suppress were filed, and no trial date was obtained. It would not be unreasonable to conclude that Respondent completed less than a third of the pretrial work that needed to be done when he terminated the representation of his client.

¶48. Second, Respondent unilaterally and without cause, abandoned Bell knowing full well that the Bells would not be in a position to retain alternate counsel without their receiving a refund. To make matters worse, Respondent has fabricated his reasons for discharging the Bells from the commencement of Relator's investigation through the disciplinary hearing. He said the client's family were constantly making contact with him and wanting answers to the same questions over and over, yet his own meticulous time records simple do not document this fact. He said that the Bells were unreasonable regarding their son's prospects for acquittal, yet he admitted knowing the family's attitude about the case not only from the very beginning of the case, but also four months into the representation when he insisted on payment of the \$15,000 fee. He accused the Bells of being difficult people, yet when the panel observed the Respondent's behavior and attitude during the course of the hearing and contrasted his demeanor with that of the Bell family, clearly it is Respondent who comes across as being the difficult one. He accused the Bells of lying and wanting him to commit unethical acts, yet when cross-

examined on this allegation by Relator's counsel and the panel members during his testimony, Respondent was evasive, vague and totally unpersuasive on this point. Finally, notwithstanding the litany of faults the Bells were alleged to have possessed, Respondent admits that he offered to resume his representation of Bell just prior to the hearing on his withdrawing from the case.

¶49. The third reason why the panel concludes that the fee was excessive in this case is that Respondent's own time records support this conclusion. These time records charge the Bells for drafting the motion to withdraw, reviewing the motion to withdraw, attending the hearing on his motion to withdraw and with drafting Respondent's complaint against an investigator that he hired and fired. Admittedly, even if one subtracts these charges from the final bill of \$21,086.49 the Respondent's billable hours still exceed the \$15,000 that the clients wanted returned. However, the inclusion of these questionable time entries, together with the inclusion of additional hours for the time period covered in the first bill, lead one to the inescapable conclusion that this final statement was "padded" so that Respondent could consume the retainer with these entries.

¶50. Succinctly stated, it is the panel's position that when a lawyer agrees to represent a client through the conclusion of the case and that lawyer withdraws from representation without cause before the work is completed, he cannot retain the entire flat fee by resorting a mathematical calculation of his billable hours. Furthermore, when a lawyer leaves the case with little benefit having been conferred on the client from his work, and then justifies firing the client as Respondent did by making false allegations to justify leaving the case and then padding his billing records, his fee then becomes excessive and in violation of Prof. Cond. R. 1.5(d)(3). To find otherwise would leave clients at the mercy of lawyers that are paid significant flat fees who

later want to pull out of cases they have contracted to complete when the demands of the case become too onerous.

¶51. The panel finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 1.5(a), and as a result of his failure to return any of the fee to the Bells that he is also in violation of Prof. Cond. R. 1.16(e). Further, and as a result of all of the findings made by the panel, it finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 8.4(h).

#### AGGRAVATION AND MITIGATION

¶52. The Panel finds the following mitigating factors under BCGD Proc. Reg. 10(B)(2):

- a. Respondent has not been the subject of any prior discipline; and
- b. Respondent is apparently held in high regard by his peers and the judges before whom he has appeared, as evidenced by the more than fifty letters of commendation. There is no question but that Respondent is a competent, well-respected criminal defense attorney.

¶53. The Panel finds the following aggravating factors under BCGD Proc. Reg. 10(B)(1):

- a. Respondent has acted with a dishonest and selfish motive;
- b. Though Respondent has grudgingly cooperated in the disciplinary process, his attitude toward the process, and especially Disciplinary Counsel, has at best been condescending. He has approached the entire proceeding with an attitude of righteous indignation and his testimony during the hearing was laced with lies and evasiveness;
- c. Respondent not only refuses to acknowledge the wrongfulness of his conduct, he does not even evidence a passing concern for the predicament he placed the Bells in when he

retained their money. He insists without wavering that he had a right to keep all of the Bell retainer even though before receiving it he assured them via an email that:

[t]he fee will be a final flat full and total fee from August 1, 2008 on and that will cover all of the Attorney fees for the matter to the end, regardless of what time we have to spend which is a benefit to you. (Ex. 16)

d. The victims in this case were vulnerable. The Bells were unsophisticated, working class people. They borrowed the \$15,000 to pay Respondent from Tony and Dwayne Bell's employer. There was simply no more money to be had for legal fees and other defense costs. Respondent knowingly left Tony Bell destitute and with no alternative but to turn to an overworked, young public defender for legal representation. Miraculously this second lawyer was able to wrest a plea deal from the prosecutor that resulted in probation for Bell; and

e. Finally, the panel finds that Respondent has not made or offered any restitution.

¶54. A review of the sanctions imposed by the Supreme Court against lawyers found to have charged excessive fees follows little, if any, pattern that is instructive here. Sanctions range from public reprimand to disbarment depending on the interplay of the factors set forth in BCGD Proc. Reg. 10. Given Respondent's conduct toward the Bells and his attitude throughout these disciplinary proceedings, the panel is compelled to recommend an actual suspension from the practice of law. It is, therefore, recommended that William Lawrence Summers be suspended from the practice of law for six months.

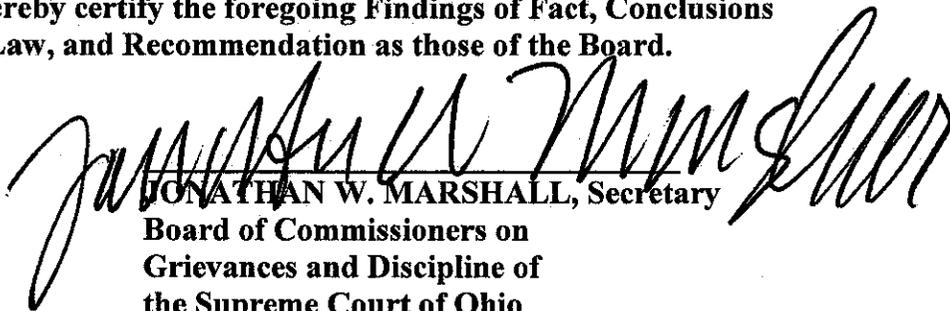
¶55. The panel is not recommending an order of restitution. Though Relator proved to the panel by clear and convincing evidence that an excessive fee was charged in this case, no testimony was presented or argument made regarding the amount that should be refunded. The

panel declines to make this determination on its own and would defer to the outcome of any court proceedings or a fee arbitration proceeding the Bells wish to commence.

**BOARD RECOMMENDATION**

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on February 11, 2011. The Board adopted the Findings of Fact and Conclusions of Law of the Panel. The Board recommends that Respondent, William Lawrence Summers, be suspended from the practice of law for a period of six months and, based on the record surrounding the imposition of a non-refundable fee, that full restitution of \$15,000 be paid to the Bells. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

**Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.**

  
**JONATHAN W. MARSHALL, Secretary**  
**Board of Commissioners on**  
**Grievances and Discipline of**  
**the Supreme Court of Ohio**

## RULE 1.5: FEES AND EXPENSES

(a) A lawyer shall not make an agreement for, charge, or collect an *illegal* or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a *reasonable* fee. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, 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;
- (8) whether the fee is fixed or contingent.

(b) 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, unless the lawyer will charge a client whom the lawyer has regularly represented on the same basis as previously charged. Any change in the basis or rate of the fee or expenses is subject to division (a) of this rule and shall promptly be communicated to the client, preferably in *writing*.

(c) 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 division (d) of this rule or other law.

(1) Each contingent fee agreement shall be in a *writing* signed by the client and the lawyer and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal; 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. The agreement shall clearly

notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party.

(2) If the lawyer becomes entitled to compensation under the contingent fee agreement and the lawyer will be disbursing funds, the lawyer shall prepare a closing statement and shall provide the client with that statement at the time of or prior to the receipt of compensation under the agreement. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyer's fees with a lawyer not in the same *firm*, as required in division (e)(3) of this rule. The closing statement shall be signed by the client and lawyer.

(d) A lawyer shall not enter into an arrangement for, charge, or collect any of the following:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support, or property settlement in lieu thereof;

(2) a contingent fee for representing a defendant in a criminal case;

(3) a fee denominated as "earned upon receipt," "nonrefundable," or in any similar terms, unless the client is simultaneously advised in *writing* that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to division (a) of this rule.

(e) Lawyers who are not in the same *firm* may divide fees only if all of the following apply:

(1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the client;

(2) the client has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation;

(3) except where court approval of the fee division is obtained, the *written* closing statement in a case involving a contingent fee shall be signed by the client and each lawyer and shall comply with the terms of division (c)(2) of this rule;

(4) the total fee is *reasonable*.

(f) In cases of a dispute between lawyers arising under this rule, fees shall be divided in accordance with the mediation or arbitration provided by a local bar association. When a local bar association is not available or does not have procedures to resolve fee disputes between lawyers, the dispute shall be referred to the Ohio State Bar Association for mediation or arbitration.

VIA FAX TO Dwayne Bell 716.8476264

*William L. Summers Co., L.P.A.*

*Attorneys & Counselors at Law*

*2000 Illuminating Building, 55 Public Square*

*Cleveland, Ohio 44113*

*(216) 591-0727-Phone*

*(216) 591-0740 Fax*

*William L. Summers*

*Annon T. Baker*

September 9, 2008

Anthony Bell and Family  
1307 Peppertree Drive  
Darby, NY 14747

**RE: Fee agreement with regard to continuing representation of Anthony Bell in Case No. CR-08-511396-A**

Dear Bell Family:

This letter will confirm my discussions regarding my ongoing representation of Anthony Bell in the above-referenced matter. The lawyer's Code of Professional Responsibility requires that terms of employment be set forth in writing by the lawyer to his client. The purpose of this contract, therefore, is to resolve between us the matter of fees and expenses.

A portion of our discussion concentrates upon estimating legal fees in this type of matter. Factors which greatly affect the total legal fees include (1) the amount of time spent collecting relevant documents and interviewing relevant witnesses; (2) the time needed to respond to motions made by the opposing party; (3) the complexity of the issues; and (4) whether the case proceeds all the way to trial.

This firm agrees to represent you, through the investigation of the above referenced case, and, if necessary, through the trial, and if necessary, sentencing, or other disposition of the case. The amount of the flat fee agreed upon between us is Fifteen Thousand Dollars (\$15,000), in addition to any and all amounts already paid to us. That is all that you will owe, regardless of the time that we will spend on your behalf.

CLIENTS INITIALS: D.B. D.B. MRS. D.B. [Signature] A.B. A.B.

Exhibit

*VIA FAX TO Dwayne Bell 716.8476264*

It is usual and customary for our office to bill clients on an hourly basis. The normal hourly rate for me, William L. Summers is \$400.00 per hour, billed in minimum increments of one-quarter hour. The normal rate for my associate, Aaron T. Baker, is \$175.00 per hour, also billed in minimum increments of one-quarter hour. Where possible, tasks may be delegated to associate attorneys, law clerks and paralegals, strictly under my supervision. We are aware that this is a flat fee arrangement, so we merely outline the above to emphasize the value you are getting.

Where possible, tasks may be delegated to associate attorneys, law clerks and paralegals, strictly under my supervision. Please be assured, however, that I will be primarily responsible for the course of the representation, due to my experience and expertise in handling such matters and because this representation will require this law office to set aside a considerable block of time to protect your son's interests.

In determining the attorneys' flat fees, the following items are considered: the time and labor required; the novelty and difficulty of the issues involved; the skill required to perform the legal services properly; the likelihood that accepting this case precludes me from taking other cases; the fee customarily charged in the locality for similar services; the seriousness of the charges; the time and length of the professional relationship with you as a client; and my experience, reputation and ability as the attorney handling this case. These are most of the factors we consider in determining a final fee. However, because each case is unique, I cannot list every item that affects the fee calculation.

In addition to the attorneys' fees, you are also responsible for all expenses of investigation and defense of this case. These are costs for services such as a process server, private investigator, depositions and court reporter time and expert witness fees. Different cases require different cost expenditures. These expenses will not be incurred without us discussing it beforehand. However, these expenses are often a crucial element of defending a criminal case so you should be prepared for some or all of these costs to be incurred.

As we said in our correspondence last week, the expenses will continue to be charged extra, as must be the case under Ohio law. You deposited a \$1,000.00 expense retainer, your retainer and supplemented it with another \$1000.00 September 4<sup>th</sup>. The first \$773.99 went to our independent investigator, Susan Daniels.

We delivered \$1,000.00 to the tape expert and met with him extensively to further plan our strategy with his investigation, enhancement and analysis. Therefore you currently have a positive expense balance of \$226.01. As for Susan Daniels, a copy of her itemized statement was provided on several occasions, including last week. We paid her on approximately May25th from our trust account which is monitored by the Ohio Supreme Court, as an IOLTA Attorney's trust account.[I.O.L.T.A.]

CLIENTS INITIALS: D.B. D.B. MRS. D.B. [Signature] A.B. A.B.

**VIA FAX TO Dwayne Bell 716.8476264**

I am not promising or predicting any specific outcome or result of this case. The fees discussed and agreed to are not contingent upon any particular result. Please acknowledge your understanding of this agreement by signing one copy of this letter and returning it to me.

We will bill our out-of-pocket expenses, separately. Separate billing for these is mandated by the code of Professional Responsibility in Ohio. Those expenses which are commonly included, but not limited to; all telephone charges (long distance, cellular, facsimile, etc.), in-house and contract copying charges, postage, automobile mileage and/or cab fare, meal-lodging-transportation expenses, investigation expenses, court reporters' fees, process server's fees, messenger fees, delivery fees, parking costs, computer legal database charges, and all costs fixed by law or assessed by courts and other agencies. In the event that it becomes necessary to hire expert witnesses, consultants, or investigators; I will not hire such persons unless we mutually agree to incur those expenses.

I assure sure you that we will use our best efforts in representing you. You must be aware, however, that due to the Code of Professional Responsibility, I cannot guarantee and/or promise anything regarding the success of this matter. Any comments regarding the outcome are mere expressions of my opinion. I am unable to address any questions relating to the probability of success of the prosecution. It is both unethical, unprofessional and most of all, illegal, for me to do so.

It is the policy of my office to return all telephone calls promptly and to forward copies of all documents mailed on your behalf or received in my office, to the attention of yourself. They will be marked personal & confidential unless you specify otherwise.

Please indicate your agreement with the terms of this agreement by signing the copy of this letter we have provided for that purpose, and by returning the signed copy, to us. You should retain this original letter for your own records. As you are aware, we have already done extensive work on your matter due to the exigencies of time.

The representation of persons in matters of this nature involves a level of commitment beyond that of most other areas of the practice of law, in that it involves issues of liberty and the potential of a criminal record. While no firm can assure a favorable outcome in handling this type of sensitive matter, we commit ourselves to render our best efforts at your effective representation. The amount of the fee established in your case also reflects this commitment. By your signature on this agreement, you are clearly acknowledging your understanding of the non-refundable nature of the retainer fee paid to the firm.

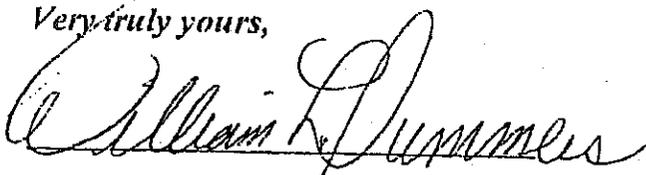
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CLIENTS INITIALS: D.B. D.B. MRS. D.B. [Signature] A.B. A.B.

VIA FAX TO Dwayne Bell 716.8476264

This letter represents the full agreement between the firm and you in this matter. If you have any question or disagreement with this letter, please contact me immediately. Otherwise, please sign the original in the space provided below and return it to me. I have enclosed a copy for your records.

Very truly yours,



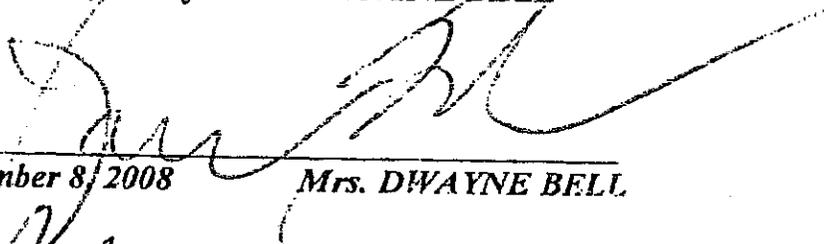
WILLIAM L. SUMMERS

I have read the contents of this engagement letter, as well as initialed each page of it, and I understand it to be the full agreement for fees and expenses in this case. I further agree to all of its terms and conditions.



September 8, 2008

DWAYNE BELL



September 8, 2008

Mrs. DWAYNE BELL



September 8, 2008

ANTHONY BELL

CLIENTS INITIALS: D.B. D.B. MRS. D.B. [initials] A.B. A.B.