

Timothy P. Chinaris - August 16, 2013

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1 Q. And I also have responsibilities to the
2 system as a whole?

3 A. Right. To the system, the justice, to
4 the public, to others that are in the
5 system as well.

6 Q. Okay. Again, the law in terms of
7 setting a reasonable attorney's fee
8 being a judicial function as opposed to
9 an executive function or legislative
10 function, do you know if the
11 underpinnings or the rationale of why a
12 reasonable -- setting a reasonable
13 attorney's fee is a, quote, judicial,
14 unquote, function?

15 A. Well, I think it goes back to the fact
16 that it's really based on the
17 regulatory system for lawyers and for
18 the admission to practice law. Most
19 other professions are regulated by the
20 legislature; in fact, I guess all other
21 professions. The legal profession is
22 different. Under the Florida Supreme
23 Court, as I mentioned earlier, I think

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1 the Florida -- under the Florida
2 constitution, the Florida Supreme Court
3 has the exclusive jurisdiction to
4 regulate admission and conduct of
5 lawyers that are admitted. And so
6 historically how lawyers charge for
7 their service is part of their ethical
8 responsibilities and so it falls within
9 the realm of the judiciary to regulate
10 that.

11 Q. Do you have an opinion as to whether
12 the statutory limitations on attorney's
13 fees in this particular case -- and
14 when I refer to that, I am referring to
15 a judge of compensation claims who is a
16 member of the executive branch of
17 government -- not having any discretion
18 in terms of setting a reasonable
19 attorney's fee but instead having to,
20 in essence, perform administerial
21 perfunctory duty of determining what
22 benefits are obtained and then slapping
23 on a ten percent attorney -- ten

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1 percent plus \$750 attorney's fee. Do
2 you have an opinion as to whether that
3 scheme as applies to this instant case
4 impedes or relates or violates or
5 affects the ethical responsibilities of
6 an attorney licensed to practice law in
7 the state of Florida?

8 MR. NOVOA: I'm going to object
9 to form. And my other objection is
10 going to be if the witness is going to
11 give any sort of opinion regarding a
12 reasonable fee in this matter, in this
13 Ruth Zygmund, on the attorney fee
14 hearing, I'm going to object as far as
15 it wasn't an expert that was listed on
16 the -- wasn't an expert for that
17 hearing on fees.

18 MR. PFEFFER: Frank, let me
19 cure any concerns of yours. Professor
20 Chinaris is not going to give any
21 opinions as to what a reasonable
22 attorney's fee is in this particular
23 matter, has not been retained to give

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1 any opinions in that -- in that light
2 or on that topic.

3 MR. NOVOA: Okay. Thank you.

4 MR. PFEFFER: Okay.

5 A. Okay. So the question was do I have an
6 opinion on whether the statutory scheme
7 impedes a lawyer's professional
8 responsibility?

9 Q. Does it involve -- does it -- in terms
10 of the scheme as it exists in this
11 particular -- as it applies to this
12 matter, does it affect or involve my
13 ethical duties as an attorney in the
14 state of Florida?

15 A. Yes, I think it does. And I think the
16 real -- I mean, just to cut to the
17 chase, I think the real concern is the
18 fact that the judge of compensation
19 claims has no discretion under the
20 statute to take into account the
21 particular circumstances of the
22 particular case in determining the fee
23 that the lawyer will get.

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1 Q. Does the statute -- statutory scheme
2 create any type of conflict of interest
3 that impermissibly restricts a lawyer,
4 such as myself, ability to represent an
5 injured worker such as Ruth Zygmund?

6 A. Yes, I think it does. The ethics
7 rules, particularly 4-1.7, the
8 conflict-of-interest rule, points out
9 that a lawyer is not supposed to
10 represent a client if there's a
11 substantial risk that the lawyer's
12 representation of the client might be
13 materially limited by any number of
14 things, including the lawyer's own
15 personal interest. And the lawyer
16 obviously has a personal interest in
17 making a fee that is at least enough to
18 break even in a case. And so below a
19 certain level, a lawyer is just going
20 to feel that the lawyer is not going to
21 be compensated enough to be able to put
22 in proper representation and,
23 therefore, under the conflict rule

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1 really should decline to take the case.
2 That creates an impermissible conflict
3 of interest. This has been recognized
4 really in several areas, I think, that
5 are instructive here. The Florida
6 Supreme Court, for example, has
7 addressed issues in the criminal arena
8 where statutes would provide caps on
9 fees that could be paid to court-
10 appointed counsel in cases and has
11 recognized that if there is no
12 provision for going above that cap in
13 exceptional or unusual cases, it
14 creates the risk that the lawyer will
15 be tempted to provide less than
16 adequate representation because the
17 lawyer won't be reasonably compensated
18 for the work that's being done.

19 The supreme court has recognized
20 that in other areas, too. For example,
21 just a few years ago there was a
22 constitutional amendment passed in
23 Florida that would effectively cap the

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1 fees that lawyers could charge in
2 contingent-fee medical malpractice
3 cases, and the supreme court recognized
4 that lawyers would not be inclined to
5 take those cases both for ethical and
6 maybe practical reasons because the
7 fees would not warrant it and so
8 adopted a procedure which is now part
9 of Rule 4-1.5 that allows lawyers to
10 have clients waive that constitutional
11 right. And, really, the -- I think the
12 the basic reason for that is so that
13 the clients will be able to hire
14 competent counsel and competent counsel
15 will be inclined to take those cases.

16 So we see a couple areas there
17 where lawyers -- it is recognized that
18 lawyers have an interest in a
19 reasonable fee and then clients have an
20 interest in a reasonable fee so that
21 they are able to hire competent counsel
22 of their choice. There's also in the
23 Rule 4-1.5 a cap on ordinary negligence.

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1 cases, contingent fees in those cases,
2 and the procedure -- there is a
3 procedure set forth in the rule for
4 getting court approval to go above that
5 maximum cap in cases where it's
6 necessary in order to attract competent
7 counsel. And then another area that
8 this has been addressed is by the
9 Florida Bar Professional Ethics
10 Committee. There's an ethics opinion,
11 98-2, that addressed an inquiry from a
12 lawyer who had been asked by an
13 insurance company to accept
14 representation of all the third-party
15 defense work by the company for a set
16 fee per case, and the ethics committee
17 said, Well, there's no problem
18 necessarily taking a fee that's set in
19 advance per case as long as it's
20 reasonable. And they recognize
21 specifically that if it was
22 unreasonably low, it could create a
23 conflict of interest for the lawyer

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1 where the lawyer will be faced with a
2 conflict between the obligation to
3 provide competent representation and
4 the reality that the lawyer has a
5 personal interest in being paid a fee
6 that is high enough to pay the bills.

7 So those are all areas in which
8 this issue of the amount of a fee as it
9 relates to a client's ability to get
10 representation has been addressed.

11 Q. Okay. Professor, I want you to assume
12 that the Florida legislature, by the
13 changes to Florida Statute 440.34, has
14 allowed an attorney to represent an
15 injured worker only on a contingency-
16 fee basis. And I want you to assume
17 that as in this particular case, in
18 terms of representing Ruth Zygmund,
19 that I did take on Ms. Zygmund as a
20 client, that I took it on a
21 contingency-fee basis, that in excess
22 of 180 hours were expended in a
23 contingent-fee case. I want you to

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1 assume that the attorney's fee in this
2 particular matter would be less than
3 \$11,000. Do you have an opinion as to
4 whether an attorney's fee of less than
5 \$60 an hour in a highly-contingent fee
6 case, if that is the maximum fee that
7 can be rendered, whether that fee would
8 pose any issues of ethics as a Florida
9 lawyer licensed to practice law in the
10 state of Florida?

11 A. Well, as Rule 4-1.5 indicates, whether
12 a fee is contingent or fixed is one
13 area or one aspect of setting a
14 reasonable fee. And normally the idea
15 is a contingent fee is maybe higher
16 than an hourly fee because of the risk
17 factor. And here, if you're talking
18 \$60 an hour for a contingent matter
19 that is highly contested, my experience
20 in dealing with lawyers is you'd
21 probably have a hard time finding a
22 lawyer that would want to take it at
23 that rate and, therefore, create a

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1 problem with the client being able to
2 find a lawyer.

3 Q. Okay. That's all I have. Thank you.

4 A. Thank you.

5 MR. NOVOA: I have no
6 questions.

7 (Plaintiff's Exhibit 1 was
8 marked for identification.)

9
10
11 (The deposition of Timothy P.
12 Chinaris concluded at 3:00 p.m.
13 on August 16, 2013.)

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TIMOTHY P. CHINARIS

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 Montgomery, Alabama 36121
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 tchinaris@gmail.com

EDUCATION

M.S. in Library and Information Studies, Florida State University, 1996

J.D. With Honors, University of Texas at Austin, 1984

B.S. Cum Laude in Business Administration, Florida State University, 1977

EMPLOYMENT

**Associate Dean for Academic Affairs (2011-Present) and Professor of Law (2005-Present),
 Faulkner University, Jones School of Law Montgomery, Alabama**

Assist law school dean with administration of the academic program, including: planning and scheduling course offerings; hiring adjunct instructors; overseeing administration of exams and reporting of grades; administering student academic counseling, dismissals, leave of absences, and transfers; planning and directing new student orientation and new faculty orientation; preparing submissions to accrediting organizations; presiding over faculty meetings. Additional responsibilities include teaching courses (legal ethics and professional responsibility, insurance law, antitrust), committee service, publishing, and speaking.

**Associate Dean for Information Resources (2005-2012) and Professor of Law (2005-Present),
 Faulkner University, Jones School of Law Montgomery, Alabama**

Directed law school information resources operations. Taught courses in legal ethics and professional responsibility, insurance law, antitrust, and other subjects.

**Assistant Dean of Information Resources and Associate Professor of Law,
 Appalachian School of Law Grundy, Virginia 2000-2005**

Directed law school library and information resources operations. Taught courses in legal ethics and professional responsibility, criminal procedure, law office practice, and legal process. Faculty responsibilities included chairing and serving on various committees.

**Associate Dean, Information Resources and Technology and Associate Professor of Law,
 Florida Coastal School of Law Jacksonville, Florida 1998-2000**

Directed all law school computing, instructional technology, telecommunications, and library operations. Taught courses in legal ethics and professional responsibility. Faculty responsibilities included committee service and advising the school's law review.

**Director of Library and Technology Center and Assistant Professor of Law,
Florida Coastal School of Law Jacksonville, Florida 1997-1998**

Directed library operations. Taught courses in legal ethics and professional responsibility.

Ethics Director, The Florida Bar Tallahassee, Florida 1989-1997

Director of program that provided advisory opinions to Florida lawyers on legal ethics and advertising issues. Duties included: hiring, training, and supervising staff attorneys; speaking to local, state, and national groups on professional responsibility issues; advising the Bar's Board of Governors and Bar committees; and writing for legal publications.

Assistant Ethics Counsel, The Florida Bar Tallahassee, Florida 1986-1989

Duties included providing written and oral advisory opinions to Florida lawyers on legal ethics, professional responsibility, and lawyer advertising issues, speaking to various groups, and writing articles on professional responsibility topics.

Godwin & Carlton, P.C. Dallas, Texas 1986

Associate in commercial litigation section of civil practice law firm.

Texas Court of Appeals Dallas, Texas 1985

Research Attorney for Justices Annette Stewart and Ted M. Akin, Fifth Judicial District Court of Appeals. The 13-justice court was the largest appellate court in Texas.

Texas Court of Appeals Dallas, Texas 1984

Briefing Attorney for Justice Ted M. Akin, Fifth Judicial District Court of Appeals.

Unisys Corporation Tallahassee, Florida and Dallas, Texas 1978-81

Branch Financial Manager for worldwide computer equipment and software company.

PUBLICATIONS

Author of legal ethics web site *sunEthics.com* (www.sunethics.com).

"We Are Who We Admit: The Need to Harmonize Law School Admission and Professionalism Processes with Bar Admission Standards," 31 *Mississippi College Law Review* 43 (2012).

"New Directions in Professionalism," report prepared for the Florida Bar Center for Professionalism, August 2009.

Florida Ethics Guide for Legal Assistants and Attorneys Who Utilize Legal Assistants (4th ed., Fla. Bar Continuing Legal Education, 2006).

"Even Judges Don't Know Everything: A Call for a Presumption of Admissibility for Expert Witness Testimony in Lawyer Disciplinary Proceedings," 36 *St. Mary's Law Journal* 825 (2005).

"More Than the Camel's Nose: The Sarbanes-Oxley Act as Bad News for Lawyers, Clients, and the Public," 31 *Ohio Northern University Law Review* 359 (2005).

Chapter on "Ethics, Professionalism, and Discovery" in *Virginia Discovery*, primarily authored by Jeffrey Kinsler (West Publishing 2005).

Primary drafter, Florida Bar lawyer advertising rules (1999 revision).

"Florida Professional Responsibility in 1999: The Rules of the Game," 24 *Nova Law Review* 199 (Fall 1999), co-authored with Elizabeth Clark Tarbert.

"Professional Responsibility: 1998 Survey of Florida Law," 23 *Nova Law Review* 161 (Fall 1998), co-authored with Elizabeth Clark Tarbert.

"The Ethics of Ethics Consultation: The Consulted Lawyer's Perspective," *The Professional Lawyer*, 1997 Symposium Issue.

"Florida Professional Responsibility Law in 1997," 22 *Nova Law Review* 215 (Fall 1997), co-authored with Elizabeth Clark Tarbert.

"Professional Responsibility: 1996 Survey of Florida Law," 21 *Nova Law Review* 231 (Fall 1996).

"Professional Responsibility in Florida: The Year in Review, 1995" 20 *Nova Law Review* 223 (Fall 1995).

"Ethics As Law: High-Impact Teaching of Legal Ethics," featured on the front page of *law.com*, March 6, 2001.

"The New Advertising Rules in a Nutshell," *The Florida Bar News*, January 15, 2000, p. 4.

"Answers to Frequently-Asked Ethics Questions," 65 *Florida Bar Journal* 49 (January 1991).

Contributing Author, *Florida Legal Ethics* (1992), and periodic supplements.

PROFESSIONAL ACTIVITIES

Admitted to Practice Law in Texas (1984), Florida (1986), and Alabama (2009)

Admitted to the Bar of the United States Supreme Court (2011)

Florida Bar Professional Ethics Committee (1997-2003; 2006-2012) (Chair, 2002-2003)

Florida Bar Professionalism Committee (1999-2000; 2013-Present)

Florida Bar Vision 2016 Commission (2013-Present)

Trustee, Florida Bar Supreme Court Historical Society (2013-Present)

Florida Bar Out of State Division (President, 2007-2008) (Executive Council, 2002-Present)
 Florida Bar Law Office Mgmt. Assistance Service Adv. Bd. (2007-2013) (Chair, 2011-2013)
 Special Consultant to Florida Bar Center for Professionalism (2008-2009)
 Florida Bar Attorney-Client Privilege Task Force (2006-2009) (Chair, Ethics Subcommittee)
 Florida Bar Continuing Legal Education Committee (2002-2003; 2006-2009)
 Florida Bar Special Committee on Website Advertising Rules (2005-2007)
 Florida Bar Special Committee to Review ABA Ethics 2000 Model Rules (2002-2005)
 Florida Bar Unlicensed Practice of Law Committee (2003-2006) (Vice-chair, 2005-2006)
 Florida Bar Prepaid Legal Services Committee (2004-2007)
 Florida Bar Law Related Education Committee (2001-2004)
 Commissioner, Alabama Ethics Commission (2013-Present)
 Alabama State Bar Disciplinary Rules and Enforcement Committee (2011-Present) (Vice-chair)
 Alabama State Bar Unauthorized Practice of Law Committee (2007-Present)
 Virginia State Bar Unauthorized Practice of Law Committee (2003-2005)
 Virginia State Bar Multi-Jurisdictional Practice of Law Task Force (2004-2005)
 Association of Professional Responsibility Lawyers (1991-Present)
 Theodore Roosevelt Association, National Advisory Board Member (2012-Present)

PRESENTATIONS

Presented "Florida Ethics Law Update 2013" at the Florida Bar Annual Meeting in Boca Raton, Florida in June 2013.

Presented "Florida Ethics Law Update 2012" at the Florida Bar Annual Meeting in Orlando, Florida in June 2012.

Presented "Ethics for Everyone: Avoiding Ethical Pitfalls" at the 2012 Faulkner Law Alumni Seminar in Montgomery, Alabama in May 2012.

Spoke on "New Issues in Lawyer Advertising and Marketing" at the ABA National Conference on Professional Responsibility in Memphis, Tennessee in June 2011.

Presented "Florida Ethics Law Update 2011" at the Florida Bar Annual Meeting in Orlando, Florida in June 2011.

Spoke on "Ethics Essentials" at the ALL-ABA Course of Study, "Eminent Domain and Land Valuation Litigation," in Coral Gables, Florida in February 2011.

Presented "Ethics Issues 2011" at the Alabama Banking Law Seminar in Birmingham, Alabama in February 2011.

Presented "Hidden Snares for the Ethical Lawyer" at a seminar sponsored by Jones School of Law in Bufaula, Alabama, in February 2011.

Presented "Hidden Snares for the Ethical Lawyer" at a seminar sponsored by Jones School of Law in Montgomery, Alabama, in October 2010.

Presented "Florida Ethics Law Update 2010" at the Florida Bar Annual Meeting in Boca Raton, Florida in June 2010.

Featured speaker on "The Florida Bar Website Advertising Rules: A Deeper Dive," at a webinar broadcast by the Legal Marketing Association's Southeastern Chapter in May 2010.

Presented "New Directions in Professionalism" to the Florida Bar Supreme Court Commission on Professionalism at Tallahassee, Florida in November 2009.

Presented "Lawyer Advertising: Where Are We, and Where Are We Going?" at the Legal Marketing Association's Southeastern Chapter in Charlotte, North Carolina in September 2009.

Presented "Florida Ethics Law Update 2009" at the Florida Bar Annual Meeting in Orlando, Florida in June 2009.

Presented "Florida Ethics Update 2008" at the Florida Bar Annual Meeting in Boca Raton, Florida in June 2008.

Presented "The Ethics of the Law Business" at the Jones School of Law Annual Alumni Seminar in Montgomery, Alabama in May 2008.

Presented "New Dimensions in Legal Ethics: Getting, Keeping, and Satisfying Clients Ethically" at the Florida Bar Out-of-State Division seminar in New York in February 2008.

Presented "Florida Ethics Law Update 2007" at the Florida Bar Annual Meeting in Orlando, Florida in June 2007.

Spoke on "Ethics Essentials for Alabama Lawyers" at a continuing legal education seminar in Eufaula, Alabama in March 2007.

Presented "Pioneering with Professionalism: The Journey Begins with Ethics" at the Annual Meeting of the American Association of Law Libraries (AALL) in St. Louis, Missouri in July 2006.

Presented "Recent Developments in Legal Ethics" at the Florida Bar Annual Meeting in Boca Raton, Florida in June 2006.

Spoke on "Legal Ethics and the Voting Rights Act of 1965" at a symposium sponsored by Faulkner University, Jones School of Law, Montgomery, Alabama in September 2005.

Presented "Ethics for Prepaid Legal Services Lawyers" at the Florida Bar Annual Meeting in Orlando, Florida in June 2005.

Presented "What's New in Florida Legal Ethics" at the Florida Law Update Seminar, sponsored by Florida Bar General Practice Section, in Orlando, Florida in June 2005.

Presented "Professionalism Begins with Ethics" at the Annual Meeting of the Southeastern Association of Law Libraries (SEAALL) in Montgomery, Alabama, Virginia in April 2005.

Spoke on "Lawyer Advertising: Positive or Negative?" at the Pikeville, Kentucky College Conference on Ethics in April 2005.

Presented "The Sarbanes-Oxley as Bad News for Lawyers, Clients, and the Public" at the Ohio Northern University Law Review Symposium in Ada, Ohio in March 2005.

Presented "The Use of Expert Witness Testimony in Lawyer Disciplinary Proceedings" at the St. Mary's University College of Law Symposium on Legal Malpractice and Professional Responsibility in San Antonio, Texas in February 2005.

Spoke on "The Attorney Discipline Process: Is It Working and Does It Shape Public Opinion Regarding Lawyers?" at the Southeastern Association of Law Schools (SEALS) Annual Meeting at Kiawah Island, South Carolina in August 2004.

Presented "The Sarbanes-Oxley Act and Related Ethical Developments" at the Florida Bar Annual Meeting in Boca Raton, Florida in June 2004.

As keynote speaker, presented "Does an Anormative Approach to Legal Ethics Really Serve the Public?" at the Pikeville, Kentucky College Conference on Ethics in Criminal Justice in April 2004.

Spoke on "Minimize the Risks of Providing Advice to Your Clients" at the Florida Association of Professional Employer Organizations Annual Meeting in Tampa, Florida in April 2004.

Presented "MJP, the ABA, and Recent Developments in Florida Ethics" at the Florida Bar Out of State Practitioners Division seminar in New York in December 2003.

Presented "Ethics and Professionalism in Today's Libraries" at the Virginia Library Association (VLA) Annual Meeting in Hot Springs, Virginia in November 2003.

Presented "MJP and Other Recent Developments in Florida Legal Ethics" at the Florida Bar Out of State Practitioners Division Fall seminar in Chicago, Illinois in October 2003.

Presented "Hot Ethical Topics for Business Lawyers" at the Florida Bar Business Law Section Annual Retreat in Palm Beach, Florida in August 2003.

Presented "Ethical Issues in Online Legal Research" at the Virginia State Bar Annual Meeting in Virginia Beach, Virginia in June 2003.

Spoke on "Insurance Defense Ethics" at the Florida Bar Annual Meeting in Orlando, Florida in June 2003.

Presented "Ready or Not: Changes on the Ethical Horizon" to the St. Andrews Bay Inns of Court in Panama City, Florida in March 2003.

Presented "Ethics and Professionalism in Law Libraries" at the Annual Meeting of the Virginia Association of Law Libraries (VALL) in Richmond, Virginia in November 2002.

Spoke on "Ethics for Trial Lawyers" at a Virginia Trial Lawyers Association (VTLA) seminar in Roanoke, Virginia in November 2002.

Discussed "Trust Accounting and Succession Planning for Virginia Lawyers" at an American Liability Protection Society seminar in Grundy, Virginia in September 2002.

Spoke on "Spotting Conflicts of Interest" at the Florida Bar Masters Seminar on Ethics in Boca Raton, Florida in June 2002.

Presented "Hot Topics in Legal Ethics" at the Florida Law Update Seminar, sponsored by Florida Bar General Practice Section, in Boca Raton, Florida in June 2002.

Discussed "Preventing Legal Malpractice Claims and Ethics Complaints in Business Transactions and General Practice" at a risk management conference sponsored by American National Lawyers Insurance Reciprocal in Grundy, Virginia in May 2002.

Spoke on "Ethics for Corporate Counsel" at the Spring Seminar of the Florida Chapter of the American Corporate Counsel Association (ACCA) in Fort Lauderdale, Florida in May 2002.

Spoke on "Law Librarians and the Unauthorized Practice of Law" at the Southeastern Association of Law Librarians (SEAALL) Annual Meeting in Fort Lauderdale, Florida in April 2002.

Presented "Unethical Conduct: Next Stop, Malpractice Liability" to the Kingsport, Tennessee Bar Association in January 2002.

Spoke on "The Ethical Practice of Criminal Defense" to the Virginia College of Criminal Defense Attorneys in Roanoke, Virginia, in October 2001.

Spoke on "The Intersection of Ethics, Professionalism, and Malpractice Liability" at the Florida Bar Masters Seminar on Ethics in Orlando, Florida in June 2001.

Presented "The Top Ten Ethics Issues of the Year" at the Florida Law Update Seminar, sponsored by Florida Bar General Practice Section, in Orlando in June 2001.

Co-presenter with John Berry, Chair of the ABA Professionalism Commission, on "The Future of the Legal Profession," at Appalachian School of Law in November 2000.

Spoke on "Ethical Issues in the Taking and Use of Depositions" at a Jacksonville, Florida continuing legal education seminar in July 2000.

Presented "The Internet and Attorney Ethics" at the annual Amelia Island resort seminar sponsored by the Jacksonville Bar Association in June 2000.

Discussed "Electronic Ethics Issues" at the American Bar Association General Practice Section Spring Meeting in May 2000.

Spoke on "Practical Legal Research and Analysis" at a Jacksonville seminar for paralegals in November 1999.

Presented "Lawyers Online: Do Ethics and Image Mix?" at the Williams Inns of Court in Orlando in October 1999.

Featured luncheon speaker on the topic of "Professionalism in the Information Age" at the annual Amelia Island resort seminar sponsored by the Jacksonville Bar Association in June 1999.

Presented "Recent Ethical Developments" at the "Hot Topics in Commercial Litigation" seminar sponsored by the Florida Bar Business Law Section in April 1999.

Spoke on "Ethics in the Attorney-Client Relationship" and "Substance Abuse in the Practice of Law" at The Florida Bar's "Practicing With Professionalism" program in November 1998.

Presented "Why Don't More People Like Us, and What Should We Do About It? Another View of Professional Ethics and Professionalism," at the Jacksonville Inns of Court in September 1998.

Spoke on "Ethics for Business Litigators" at the 1998 Florida Bar Business Litigation Certification Examination Review Course in Orlando, Florida.

Participated in a panel discussion on "Ethical Considerations in Bankruptcy Practice" at the December 1997 meeting of the Tampa Bay Bankruptcy Bar Association.

Spoke on "The Ethics of Ethics Consultation" at the 1997 ABA National Conference on Professional Responsibility, held in Naples, Florida.

At the invitation of the Supreme Court of Kentucky, addressed the 1996 Kentucky Bar Association Annual Convention on "Lawyer Advertising Law and Regulation."

Participated in a panel discussion on "The Ethics and Expenses of Undue Influence" at the 1996 Attorney Trust Officer Liaison Conference in Palm Beach, Florida.

Addressed the 1994 ABA National Conference on Professional Responsibility on the practical aspects of "Operating a State Bar Ethics Opinion and Information Service."

Spoke to the 1993 Florida Conference of County Court Judges on "What You Can Do About Attorneys' Professional Conduct."

Addressed the 1992 Annual Meeting of the Association of Professional Responsibility Lawyers on the subject of "New and Controversial Advisory Opinions."

Presented "10 Common Sense Rules to Guide You Through the Ethical Minefields of the 1990's" during a 1991 ethics seminar sponsored by Stetson University College of Law.

Spoke on "Nonlawyer Involvement in the Practice of Law" at the 1989 ABA National Conference on Professional Responsibility in Chicago.

APPENDIX ITEM 3

1 do folks?

2 MR. PFEFFER: Other than --

3 MR. SILVER: The only thing is do we want to
4 figure out the total amounts so that way --

5 THE JUDGE: Yes.

6 MR. SILVER: -- it's -- it's agreed to. Do
7 you --

8 MR. PFEFFER: You want to do that right now --

9 MR. SILVER: Sure.

10 MR. PFEFFER: -- or do you want to -- before I
11 -- raise I my hand and -- and testify?

12 MR. SILVER: Oh. Um.

13 MR. PFEFFER: And I -- because I would like to
14 testify --

15 THE JUDGE: Okay.

16 MR. PFEFFER: -- on the matter, Your Honor.

17 THE JUDGE: All right. Uh, Mr. Pfeffer, please
18 raise your right hand.

19 WHEREUPON,

20 Louis Pfeffer, Esquire,

21 was called as a witness, having first been duly
22 sworn to tell the truth, the whole truth, and nothing but
23 the truth, was examined and testified as follows:

24 THE JUDGE: Okay. Please proceed.

25 WHEREUPON,

1 DIRECT EXAMINATION

2 MR. PFEFFER: Your Honor. I apologize. Um, in
3 the advance, and I will try to keep this both focused, as
4 well as testimony as -- and -- as opposed to legal
5 argument, but one of the -- one of the dangers in -- and
6 when you get into -- uh, when the appellate courts start
7 issuing orders on cases including workers' compensation
8 cases is that it's really hard for them to see the --
9 what an individual injured employee goes through when
10 they are part of the workers' compensation system.

11 Um, and I -- I would like to try and -- and
12 demonstrate what this case is -- is -- is about, because
13 it's not just about three argue -- three attorneys now
14 arguing about attorneys' fees.

15 Again -- um, my name's Lou Pfeffer. I'm a
16 licensed attorney, having been licensed -- uh, to
17 practice law in the state of Florida since 1984. Um,
18 I've had that privilege -- uh, since actually October of
19 1984. I'm a AV rated lawyer by Martindale Hubble,
20 frequent lecturer for legal trade groups on employment
21 and workers' compensation law. And I've continued to
22 invest my time and money to -- to maintain and improve my
23 competency and skills and my -- in the area of expertise,
24 which is workers' compensation law, representing
25 primarily employees and claimants, and employees in

1 employment matters.

2 I continue with Bar sponsored and independent
3 legal education programs and courses focusing on changes
4 in substantive law, trial practice, and ethics and -- um,
5 have -- have done so in -- in the past 28 years.

6 Ruth Zygmund came to me -- um, in October of
7 2009 having unfortunately been injured, having
8 unfortunately been injured in Florida, and unfortunately
9 been injured in Florida after 2003, having sustained an
10 accident on July 30th, 2009.

11 Ms. Zygmund had a history of -- uh, of prior
12 problems, disabling depression and anxiety for which she
13 was receiving Social Security Disability benefits and had
14 been receiving Social Security Disability benefits
15 because of her emotional condition for many years. She
16 was attempting to return into the work force and had
17 secured a job as -- uh, Labor Ready Southeast and -- uh,
18 was working basically as a cleaning lady, cleaning
19 bathrooms. And at the time of this accident, it was out
20 at the Moroso Speedway -- uh, dep (Phonetic) in West Palm
21 Beach.

22 Uh, Ms. -- um, Zygmund also had a number of
23 severe preexisting knee problems. The -- in fact the
24 knee which she injured in this particular accident,
25 having undergone two prior surgeries and having her

1 patella wired together.

2 Ms. Zygmund, in this accident of July 30th,
3 slipped and fell on some grease at the -- not the
4 Employer's premises, but Moroso's premises. And, after
5 that she -- uh, sought workers' compensation benefits.
6 She was originally treated at a -- again a -- uh, comp
7 authorized provider -- uh, Concentra Medical -- uh, Cares
8 (Phonetic) which -- Concentra Medical Care -- uh, Center
9 for which Labor Ready had a standing agreement to provide
10 treatment for the -- uh, for all of its employees injured
11 on the job.

12 A physician at Concentra -- uh -- uh, examined
13 her, did some x-rays, and ah -- after an exam diagnosed
14 her with a contusion of her right knee, instructed her to
15 return to work that day with restrictions of no prolonged
16 standing or walking, and instructed her to use crutches a
17 100 percent of the time. She should be sitting 100
18 percent of the time. Uh, Ms. -- uh, Zygmund, continued
19 with knee problems, knee complaints, continued with the
20 diagnosis of a knee contue (Phonetic) -- tusion and these
21 same restrictions applied.

22 Uh, on August 12th, 2009 -- um, Ms. Zygmund --
23 uh -- uh, went back to the Concentra -- uh, Center and
24 she was released to return to work regular duty with
25 recomm (Phonetic) --

1 THE JUDGE: Can I interrupt you a moment, Mr.
2 Pfeffer?

3 MR. PFEFFER: Yes.

4 THE JUDGE: Because the history you're
5 outlining, I think, has been outlined in detail in a
6 prior order. I believe we had --

7 MR. PFEFFER: Okay.

8 THE JUDGE: In this case.

9 MR. PFEFFER: If -- if that's -- if that's in
10 order, then I'll try to -- I'll try to short sir
11 (Phonetic) -- sir (Phonetic) --

12 THE JUDGE: Try to get to the heart of the
13 matter which is --

14 MR. PFEFFER: In short--

15 THE JUDGE: -- your fee entitlement owe -- your
16 fee amount.

17 MR. PFEFFER: Well, again, I -- I -- I think
18 it's important, because in this particular case when I
19 began representing Ms. -- uh -- uh, Ms. Zygmund, she came
20 to me. She had been diagnosed as a knee contusion.

21 THE JUDGE: Uh-huh.

22 MR. PFEFFER: Ultimately, the -- uh, Concentra,
23 they ordered a CT scan, read it as a knee contusion.
24 They were referred -- she was referred to Dr. Chalal, an
25 orthopedic. Dr. Chalal basically diagnosed the same knee

1 contusion. And when she came to me, she was having a lot
2 of problems, pain, couldn't barely walk, was on crutches,
3 and she was not getting any temporary disability
4 benefits.

5 She was back to work with -- um, Labor Ready in
6 a reeduh (Phonetic) -- uh, -- a return to work program.
7 And she was actually sitting outside in the rain with an
8 umbrella on the road holding a sign. That was in lieu of
9 receiving wages, in lieu of receiving temporary benefits.

10 The Court -- again, and I -- I thank you, Your
11 Honor because the Court does have the prior merits
12 order --

13 THE JUDGE: Uh-huh.

14 MR. PFEFFER: -- whereby it was shown that --
15 uh, the Concentra and Dr. Chalal just simply misdiagnosed
16 her injuries. That was the state when she came to me.

17 Ultimately, the Carrier authorized Dr. Lambe.
18 Dr. Lambe -- uh, found that she had a fractured patella,
19 but couldn't offer her any treatment. Said she didn't
20 need surgery.

21 When I got involved I got her to -- uh, and I
22 quote, unquote, her valued IME doctor, Dr. Weiner, who
23 called me up and said, huh, this lady's screwed. She's
24 just basically had -- uh, she's been misdiagnosed. She
25 needs immediate surgery. If she doesn't have immediate

1 surgery, the chances of -- of success in her prognosis is
2 poor.

3 When I originally got involved in this case, we
4 went to a mediation. The Carrier, like in most cases
5 today -- and I'm, again, not throwing any dirt towards
6 this particular Carrier. And I'm not -- and -- take my
7 comments as not any -- um, throwing dirt on Mr. Silver.
8 Mr. Silver is a -- an experienced, ethical, highly
9 ethical attorney who served his client -- uh, well.

10 But in this particular case the system as -- as
11 it -- as it stands is these cases, the whole workers'
12 comp system has become to the point where basically it's
13 a settle system. It used to be, before 1994, you
14 couldn't settle your workers' compensation case. 1994
15 the changes saying you could settle the medicals, opened
16 up the floodgate where after 2003 carriers don't simply
17 want you, they expect you to settle the case.

18 Uh, and then that's exactly what -- in this
19 particular happened. The Carrier wanted Ms. Zygmund to
20 settle this particular case after the initial mediator.
21 The mediator in this case, pulled me aside and said, what
22 are you doing in this case? Why would you even take this
23 case? She's got a ton of preexisting medical problems
24 with her knee. You got a major contributing cause
25 standard. She just entered the for (Phonetic) --

1 workforce. She's got psychiatric problems. Why would
2 you take this case?

3 Well, I took this case. And I invested 185
4 hours in this case. I -- uh, put my own money in this
5 case. And quite frankly, Your Honor, if I wasn't going
6 to get a reasonable attorney's fee as I agreed to with
7 Ms. Zygmund in my contract, I would've never taken this
8 particular case.

9 I have learned my lesson and in this post-2003
10 world, or rather post July 1st, 2009 world. An -- an
11 attorney cannot perform his ethical duties of vigorously,
12 zealously representing his client in these matters.

13 Why do I say this? Is it simply -- uh, empty
14 words? It's not empty words. It's from experience.
15 I've had a number of cases, especially the cases where
16 there's not a lot of, quote, unquote -- uh, value to
17 them. And I'm talking about the cases that are -- most
18 of these workers' comp cases, because of the reduced
19 amount of indemnity exposure, 104 weeks, i.e. now we have
20 the Westphal which is a -- challenging that. You combine
21 that with a medical system whereby the carrier has almost
22 absolute control over the medicals. You have that where
23 the medical -- uh, doctor authorized by the carrier
24 basically is god. They dictate what the -- whether the
25 -- um, injured worker needs treatment, whether they can

1 return to work, whether they're at MMI, so forth and so
2 on.

3 You combine those two factors, most of these
4 cases the total amount of benefits are -- are 50,
5 \$100,000. That automatically puts a cap on a claimant's
6 attorney's -- uh -- um, attorney, a contingent cap, what
7 they can earn in attorney's fees, \$10,000 for a \$100,000
8 case. Whereas a -- uh, the -- the defense attorney again
9 is not capped. Whatever the market will -- will bear.

10 And in this particular case, again the -- the
11 matter, the whole purpose of this workers' comp case, is
12 -- to an attorney the only way you can survive as a
13 claimant's attorney is by settling the cases, click,
14 click, click. And it's become more of a volume-type of
15 prah (Phonetic) -- practice, because in these particular
16 cases -- and I learned my lesson really in a hard way in
17 a recent case, Police (Phonetic).

18 I expended in a totally controverted case, 200
19 hours, 6,000 of my own money. And at the ultimate, my
20 client wanted to settle the case. Settled the case for
21 \$25,000. My attorney's fee was \$3,250. You know what?
22 I could've made more money working a double shift at 7-11
23 than in that case where I had risked 200 hours and 6,000
24 of my own money.

25 I told this to other attorneys who don't do

1 workers comp, and they went, are you kidding me?
2 Serious? You're really an attorney? Why would you even
3 take these cases? Why would you take the case -- and
4 that Susan Police (Phonetic) case is not the only case.
5 I can -- if -- I can clear a -- clog up the record with
6 other cases.

7 Doinges (Phonetic), the statutory fee, getting
8 her compensable accident, getting her neck surgery, total
9 amount of benefits. She was out of work for six weeks.
10 Total amount of benefits in addition to the
11 compensability and life-long treatment. But the
12 statutory fee in that particular case, before Emma
13 Murray, was like \$2,500. Ultimately after Murray came
14 down, and that was a 2005 case -- uh, I went before the
15 -- in front of a judge -- uh, when the -- um, Murray
16 court said, no it's a reasonable attorney's fee, and I
17 got paid I believe \$29,000.

18 So, these cases again are legion. And -- and
19 this particular case, with Ruth Zygmund, if I am not
20 going to be -- looking at reason -- being paid a
21 reasonable attorney's fee, I just won't take these cases.
22 It gets into a real big ethical conflict when you -- when
23 you -- are you going to pursue, are you going to put your
24 own time at stake? Are you going to put your own money
25 at stake?

1 But no. I felt sorry for Ms. -- Ms. Zygmund.
2 I thought she had a compensable accident. I thought she
3 needed treatment, and I thought she was not getting the
4 treatment. It was a gut reaction, and that was borne out
5 by Dr. Weiner when he said, no, they just misdiagnosed
6 her.

7 So, let's get back to the facts of -- of this
8 particular case and my representation. Ultimately, as
9 the Court knows from the order -- uh, the past litigation
10 in this particular case, an EMA was appointed -- uh, Dr.
11 Mikolack (Phonetic) -- Mikolajczak, who said, yes, she
12 needed surgery.

13 Ultimately the -- um, the Court -- uh, entered
14 an order -- uh, awarding surgery, but then at that point,
15 we couldn't find a -- a doctor to do -- do the surgery.
16 We go -- it wasn't going to be a little simple
17 arthroscopy or a simple -- it was going to be a complex
18 surgery. The only doctor that I know of, until Mr.
19 Cerino got involved, was Dr. Wiener would do it, but he
20 couldn't do it. The Carrier wouldn't authorize Dr.
21 Weiner because he was her IME physician.

22 The Carrier sent her to Dr. Golden. Dr.
23 Golden, an orthopod (Phonetic), wouldn't do the surgery.
24 He referred her down to Jackson. So, although the
25 Carrier agreed -- um -- uh, to provide the surgery -- uh,

1 and that was at the end of -- uh, 2010, surgery, before I
2 got discharged, was never authorized.

3 I don't know if the Court recalls, but we had a
4 status conference on August 29th, 2011 before Ms. -- uh
5 -- um, Zygmund -- uh, terminated my services because she
6 was so frustrated that I couldn't get her the surgery.
7 Uh, she per (Phonetic) -- appeared and prepared a
8 statement to -- uh, you telling about her pain, her
9 frustration and being in a state of limbo. She was in a
10 state of limbo from the date of this accident, July of
11 2009, and ultimately I don't -- I think she just got so
12 fed up with the system she settled her case.

13 I don't know that. Mr. Cerino might be able to
14 do that. Mr. Cerino did get her -- um, Dr. Paley, who
15 was -- uh, my understanding, was going to -- uh, do the
16 surgery before this case settled.

17 So, Your Honor it was not simply trying to get
18 her the medical care -- uh, in this pay (Phonetic) case,
19 but it was also a -- getting her the indemnity benefits
20 for which she so needed.

21 Most of the -- and we ultimately went to a
22 merits hearing as the -- if the Court will recall,
23 because at that point the Carrier was taking it -- the
24 position that her average weekly wage was less than \$20 a
25 week. She had not worked a -- substantially the whole of

1 13 weeks in this particular case.

2 We went to a merits hearing. We -- uh, had her
3 -- um, AWW adjusted upwards to -- um, I think it was 269.
4 And the Court ordered her -- um, the Carrier to pay her
5 those benefits. During that period of time, if I had a
6 nickel for each time that Ms. -- uh, I spent with Ms. --
7 uh, Zygmund and her husband in terms of their financial
8 situation, being -- uh, almost thrown out on the street
9 on a number of -- of cases, dealing with the landlords,
10 trying to get her private loans -- uh, through -- uh,
11 funding companies -- um, going through motions for
12 advances. I mean this is the real world stuff that
13 judges on the appellate court may not see and they don't
14 experience on an everyday basis.

15 The 185 hours that I expended in this case,
16 were -- uh, were well spent not only in terms of -- and
17 I've outlined the legal work in my verified petition that
18 was performed in this particular -- um -- uh, case --
19 uh, was gained towards getting benefits for -- uh, Ms.
20 Zygmund.

21 Um, Your Honor, if I -- very -- and again, I
22 know the Court doesn't have the ability to go through the
23 -- uh, all the factors of the professional code of
24 responsibility -- uh, but, briefly, if I may address
25 those -- those simple factors. Again, the -- the work

1 performed in this particular case -- uh, is as I've
2 indicated.

3 Uh, contingency, although this case was
4 accepted as compensable in this case early on, Dr. Chalal
5 said Ms. Zygmund had a zero percent impairment rating,
6 that everything was preexisting. Dr. Lambe, actually, if
7 you can -- well, he -- he also was -- uh, had a --
8 similar opinion that everything was preexisting. She
9 didn't need any surgery from this date of -- from this
10 accident. Bottom line, Ms. Zygmund would've been as
11 helpless as a turtle on her back.

12 I'm not going to talk about what other
13 attorneys may have done, but I can assure you that if I
14 had not zealously, aggressively represented Ms. Zygmund,
15 she would've been in the position of just her financial
16 circumstances, of settling this case for five, ten
17 thousand dollars.

18 Workers' compensation cases today are not like
19 they were back when I began practicing in 1984. Today's
20 workers' compensation world is full of mines, pitfalls.
21 You have limited comp. You have costs imposed upon you
22 if you lose. Those costs, when a claimant is -- is hit
23 with costs, those suddenly become grievances and the
24 furor gets directed at the claimant's attorney. You have
25 to deal with fraud issues. You have to deal with major

1 contributing cause issues. You have to deal with the
2 uncertainty of the EMA process. You have to deal with
3 apportionment -- um, the list goes on and on.

4 This case was highly contingent in terms of a
5 successful outcome. Uh, this was a one-shot deal that I
6 represented -- represented Ms. Zygmund. I can tell you
7 -- and I can tell you at least five circumstances where I
8 got calls from Ms. Zygmund on the weekend, at night, all
9 hours of the day. And I -- again I took pity on her
10 because of her circumstances, not getting care, being on
11 pain, having the inability to walk, not having any money
12 coming in, having been getting threatened to be thrown
13 out on the street and it was just a nightmare case for
14 her.

15 Um, the -- if the one thing that the Court --
16 um, the Court teaches us -- and I -- I alluded to this
17 before and I'll -- I'll keep these remarks short, Your
18 Honor. Um, but the -- it would be well worth reading
19 this for -- I think all -- all attorneys, but there is an
20 interesting article by -- written by Professor Carol Rice
21 Andrews, and it's ref (Phonetic) -- actually referred --
22 uh, on the Florida Bar website.

23 A -- uh, young lawyer named Roy Costner wrote
24 an article in the *Florida Bar News*, September 15th, 2006.
25 The title was A Profession or Just Another Job. He was

1 the winner of the essay, and he cited this, this
2 particular article.

3 Ms. -- uh, Professor Andrews did an analysis,
4 and she was analyzing the oath that all lawyers take as
5 part of being sworn in as a member of the Florida Bar and
6 becoming an officer of the court. The -- the theory is
7 that the practice of law is -- is so intimately connected
8 and bound up with the power of the administration of
9 justice, and that is a right and that is the hallmark for
10 which we are all guided.

11 The -- out of that oath that we take -- the
12 genesis of that oath goes back to Roman times, goes back
13 to the -- even the Middle England, and there's six
14 duties, six themes in all of the oaths that we take.
15 They are fairness in litigation, competence, loyalty,
16 confidentiality, public service, and you know what the
17 last one is? Reasonableness of fees. Fees can't be too
18 low that the administration of justice suffers, and they
19 can't be too high or excessive that the public confidence
20 is -- is shunted.

21 Uh, in this particular case Your Honor -- uh --
22 um, considering all the factors set forth in the Code of
23 Professional Responsibility and the -- the same factors
24 cited in Lee Engineering, I respectfully ree (Phonetic)
25 -- uh, request and -- uh -- uh, under oath state that a

1 reasonable attorney's fee in this case -- uh, case is
2 \$63,000. That is based upon all the factors, including
3 the 185 -- uh, hours that were expended.

4 And -- uh, and the last thing I would say is I
5 commented early on -- uh, on -- um, Scott Silver who
6 represented the attorney [sic] zealously, and -- and
7 diligently in this particular case. I don't know what
8 Mr. -- um, Smith's [sic] fee arrangement was, but I -- I
9 can presume it -- it is an hourly fee. I know that
10 according to the payout sheets that were introduced into
11 evidence, Mr. -- uh -- uh, Scott Silver received
12 approximately \$50,000 for defending the Carrier. And you
13 know what? He was worth every penny that the Carrier
14 paid for him in this particular case.

15 That's all I have. Thank you.

16 THE JUDGE: Thank you.

17 Any inquiry?

18 MR. SILVER: No, Your Honor.

19 THE JUDGE: Any -- um, additional testimony to
20 be offered?

21 MR. CERINO: Judge, I would just state I -- and
22 I don't need to be sworn in -- that I -- I support what
23 Mr. Pfeffer says and I can testih (Phonetic) -- you know,
24 testify or -- or give support to the fact that he did
25 some fantastic lawyering in getting Ms. Zygmund the

APPENDIX ITEM 4

Only () Admitted ()
Employers/Carriers ()
Claimants () Judges ()
Joint () Composite ()

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
DISTRICT - PBC

JUL 18 2013

Exhibit No. 1
SHELLEY M. PUNANCY
09-021393SHP
Employee Compensation Claims

Ruth Zygmund

OJCC NO.:

09-021393SHP

Employee/Claimant,

D/A:

7/30/2009

vs.

VENUE:

West Palm Beach

Labor Ready Southeast, Inc. and ESIS

Honorable Shelley H. Punancy

Employer/Carrier.

VERIFIED PETITION FOR ATTORNEY'S FEES AND COSTS

COMES NOW, former attorney for Employee/Claimant, Ruth Zygmund's attorney Louis P. Pfeffer and, pursuant to the Employer/Carrier's Motion to Compel Claimant's Attorneys to File a Verified Motion for Attorney's Fees and Costs in this Court's March 18, 2013 and April 2013 Order granting such motions compelling the undersigned to file a Verified Motion for Attorney's Fees and Costs, the undersigned states as follows:

1. That Louis P. Pfeffer, Esquire has been a duly licensed attorney in the State of Florida since 1984, practicing primarily in the field of workers' compensation and employment law. That the undersigned and represented the claimant Ruth Zygmund from October 28, 2009 through up until being discharged by Ruth Zygmund receiving a Notice of Termination of Services on September 8, 2011.

2. That the undersigned undertook the representation of Zygmund pursuant to a Contract of Representation dated October 28, 2009, a copy of which is attached hereto and incorporated herein as Exhibit A.

3. That during the approximate two years that the undersigned represented Ruth Zygmund, the undersigned expended in excess of 180 hours and filed and/or prosecuted Petitions

For Benefits dated August 17, 2009, March 3, 2010, February 1, 2011 and August 23, 2011 which included; claims for determination of the Claimant's correct average weekly wage and corresponding compensation rate; payment of temporary total and/or temporary partial disability benefits from date of accident to present and continuing; authorization and payment for the knee surgery as recommended by Dr. Weiner (claimant's IME physician); payment of ongoing temporary partial disability benefits from January 20, 2011 to the present and continuing which the Employer/Carrier failed to pay despite a January 5, 2011 Merits Order; and, authorization for evaluation and treatment by board-certified knee reconstruction specialist in a University setting as recommended by Dr. Mark Golden an authorized treating physician. That the undersigned also expended his time and used his education, training and experience and performed other valuable legal services to Zygmund including explaining her rights remedies and obligations under the workers compensation law, her rights and remedies under Florida Employment law, her rights to benefits under the Medicare system, and her options regarding continued litigation and/or settlement of her claims for workers compensation including a release of the Employer/Carrier.

4. That the Employer/Carrier, although accepting Ruth Zygmund's July 27, 2009 accident as "compensable" and ostensibly providing Ruth Zygmund medical benefits "medical treatment", for a "knee contusion" from a Employer/Carrier medical clinic and an Employer/Carrier orthopedic doctor continuously and consistently throughout the course of the undersigned's representation denied Zygmund the supposed "quick and efficient delivery of disability and medical benefits to an injured worker" supposedly intended by Florida Statute 440.015. But for the undersigned's involvement in aggressively representing Zygmund and in the undersigned using his skills, experience, training, patience and money, Ruth Zygmund would have been as "helpless as a turtle on her back". Davis v. Keeto, 463 So2d. 368, 371 (Fla. 1st DCA 1985), and would have been forced by both the current Workers Compensation law which provides limited wage replacement benefits and limited, second class medical care, and an insurance carrier with relatively limitless

resources to defend claims, to accept a nominal "settlement" of her claims for less than \$5,000.

5. That in the almost two years of representation of Ruth Zygmund, the undersigned attended at least four mediations, five depositions, prepared for and prosecuted claims at one merits' hearing, attended five status conferences, attended one Motion for Emergency Medical Conference, conducted one medical conference, conducted multiple telephone and office conferences with Ruth Zygmund and/or her husband, and filed and/or defended numerous trial and discovery motions which necessitated hearings on same, including a Employer/Carrier Motion for Expert Medical Advisor. The undersigned also filed two motions seeking an advance for Ruth Zygmund.

6. As a result of the undersigned's efforts, and the attorney time and costs expended in the representation of Ruth Zygmund and prosecution for Petitions for Benefits on behalf of Ruth Zygmund, the Employer/Carrier was forced to admit, provide or pay:

- A. The compensability of Ruth Zygmund's fractured patella as a covered work-related injury caused by the July 27, 2009 industrial accident. The Employer/Carrier contended that Zygmund had sustained a simple knee contusion, had reached MMI with a 0 percent impairment rating and was not in need of any further treatment;
- B. Medical care and future medical care for Ruth Zygmund's fractured knee cap including recommended surgery (not performed as of the date of the termination of the undersigned representation; total amount unknown as of the date of filing this Petition);
- C. Temporary partial disability benefits from July 30, 2009 through the date of statutory MMI and permanent impairment benefits (total amount unknown as of the date of filing this Petition);
- D. Determination of Claimant's average weekly wage and corresponding compensation rate to a figure of 253.75/169.25; and,

E. Ultimate washout settlement \$87,500.00 (negotiated through subsequent counsel Frank Cerino).

7. That undersigned counsel is entitled to a "reasonable" attorney's fee for representing Ruth Zygmund from the Employer/Carrier and/or from Ruth Zygmund as agreed to by Ruth Zygmund in the Contract of Representation which she executed. Such fee must be "reasonable" as required by determined and calculated by the factors spelled out in Rule 4-1.5(b) of the Rules Regulating the Florida Bar and the factors enunciated in Lee Engineering v. Fellows, 209 So.2d 454(Fla. 1968); Murray v. Mariner Health, 994 So.2d 1051(Fla. 2008). That the undersigned seeks an award of "reasonable" attorney's fees and costs against the Employer/Carrier herein and/or the Employee/Claimant, Ruth Zygmund. That a "reasonable" attorney's fee, taking into account all of the factors set forth in Rule 4-1.5(b) of the Rules Regulating the Florida Bar and the factors enunciated in Lee Engineering v. Fellows, 209 So.2d 454(Fla. 1968); Murray v. Mariner Health, 994 So.2d 1051(Fla. 2008), is in the amount of \$63,000. The undersigned also seeks an award of costs for securing the above-referenced benefits in the amount of \$1,957.54. A copy of such costs is attached hereto and incorporated herein as Exhibit B. Such an award of costs is sought against the Employer/Carrier and/or the Employee/Claimant, Ruth Zygmund herein. All costs were reasonable or necessary to the prosecution of the multiple claims including attorney fees in this case.

8. That the attorney's fee provision of Florida Statute 440.34 (1)-(3) for post-July 1, 2009 accidents, Chapter 2009-94, Laws of Fla., which divests the Judge of Compensation Claims from any discretion to award an attorney's fee, and which sets forth a 20 percent, 15 percent, 10 percent of the benefits formula as the exclusive method for determining an injured worker's attorney's fees is, in addition to violating Rule 1.-5(b) of the Florida Rules Regulating the Florida Bar, facially and, as applied, unconstitutional in that Chapter 2009-94, Laws of Fla., violates the Florida Constitution:

- Article V, § 15 (Separation of Powers);

- Article I, § 2 Basic rights (To be rewarded for Industry);
- Article I, § 9 Due Process (Procedural and Substantive; Freedom to Contract; the 20 percent, 15 percent, 10 percent of the benefits formula is a conclusive presumption); and
- Article I, § 21 Access to Courts (for every wrong there is a remedy).

Chapter 2009-94, Laws of Fla. is facially and as applied unconstitutional in that it violates the U.S. Constitution, Article XIV, § 1, Due Process of Law and Equal Protection of the law.

I HEREBY CERTIFY that the foregoing was electronically filed with the DOAH and a true and correct copy was furnished via electronic mail to Scott Silver, Esq., ssilver@FLLitigation.com, Frank Cerino, Esq. fcirino@moralesdolan.com and Andrew Neuwelt, Esq. aneuwelt@franksandkoenig.com on April 30, 2013.

By: 

Louis P. Pfeffer, Esquire
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 Jupiter, FL 33458
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lpfeffer@pfefferlaw.com
 Bar # 438707

APPENDIX ITEM 5

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
WEST PALM BEACH DISTRICT OFFICE

Ruth Y. Zygmund,

Employee/Claimant,

-vs-

Labor Ready Southeast, Inc. and
ESIS,

Employer/Carrier,

OJCC No.: 09-021393 SHP

D/Accident: 7/27/2009 Only () Admitted (x)

Employers/Carrier's ()

Claimants (x) Judges ()

Joint () Composite (x)

JUL 18 2013

Exhibit No. _____
SHELLEY M. PUNANCY
Judge of Compensation Claims

VERIFIED PETITION FOR ATTORNEY'S FEES AND COSTS

Frank Cerino, as attorney for Claimant, Ruth Y. Zygmund, petitions the Judge of Compensation Claims for attorney's fees and costs in the above-entitled claim, and in support thereof states:

1. Frank Cerino, Esquire, has been a duly licensed attorney in the State of Florida since 1994, practicing primarily in the field of workers' compensation during the last 19 years, and represented Claimant from 9/2/2011 until present.

2. The undersigned filed 4 Petitions for Benefits. Petitions for Benefits were filed on 9/20/2011, 11/9/2011, 11/15/2011, 12/9/2011 and 3/21/2012, seeking authorize Dr. Richard Weiner to perform surgery, declare claimant PTD as of 7/30/2011 and pay associated benefits, authorize right knee surgery with Dr. Paley at St. Mary's hospital and authorize surgery per Dr. Paley.

3. Subsequent to the above-mentioned demand for benefits made by the undersigned, the Employer/Carrier provided the following workers' compensation benefits for Claimant:

f. See attached exhibit # 1 (Order under section 440.20 (11) (c), (d) & (e))

TOTAL ----- \$87,500.00

4. Undersigned counsel is entitled to an attorney's fee for securing the above-referenced benefits pursuant to Fla. Stat. 440.20. Undersigned counsel respectfully requests the Judge of

Compensation Claims to award attorney's fees in the amount of \$9,500.00. Undersigned spent 67 hours of attorney's time. All attorney's hours were reasonable and necessary to the prosecution of this claim.

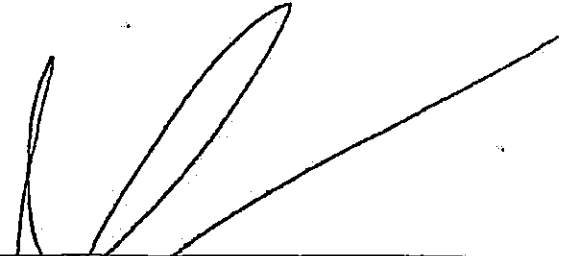
6. Undersigned counsel is entitled costs for securing the above-referenced benefits. Undersigned counsel respectfully requests the Judge of Compensation Claims to award costs in the amount of \$560.00. Attached hereto as Exhibit "B" is an Affidavit of Attorney's Costs by undersigned counsel. All costs were reasonable and necessary to the prosecution of this claim.

WHEREFORE, undersigned counsel respectfully requests this Honorable Court to award the undersigned an attorney's fee in the amount of \$9,500.00 and costs in the amount of \$560.00 for the reasons set forth hereinabove.

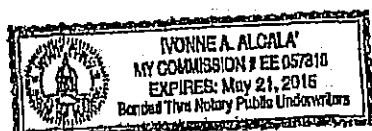
STATE OF FLORIDA)

) SS:

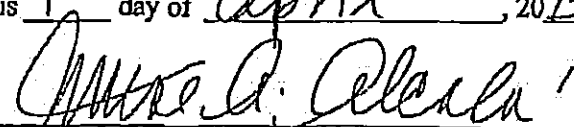
COUNTY OF MIAMI-DADE)


Frank Cerino, Esquire

Sworn to and subscribed before me this 1st day of April, 2013



My Commission Expires;


NOTARY PUBLIC, State of Florida
At Large

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was e-filed and e-mailed this March 28, 2013, to: Scott Andrew Silver, Esquire, msothen@flitigation.com, Silver, Bass & Brams, 500 South Australian Avenue, Suite 800, West Palm Beach, FL, 33401-6237.

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1 fees are too low, lawyers, on the other
2 hand -- I guess if the fee is too high,
3 the client can't afford to pay and
4 won't get representation. If the fee
5 is too low, the lawyer really can't
6 afford to undertake the representation
7 at a loss and represent the client and
8 then client is not represented there
9 either. And our system really is
10 designed, particularly in the area of
11 civil disputes, for people to have
12 legal advice/legal representation on
13 each side, and that's what the judges
14 expect when you go into court. And
15 that administration of justice is
16 tipped or kind of breaks down if one
17 side is unable to be represented.

18 Q. Professor Chinaris, the current
19 Rule 4-1.5 prohibits a clearly
20 excessive fee. The current reading of
21 Rule of 4-1.5 doesn't say a clearly low
22 fee. Are you familiar with any past
23 regulations of the Florida Bar for

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1 which there were minimum fee
2 requirements or fee standards set
3 within the ethical and professional
4 rules of conduct?

5 A. Well, a few decades ago, it was quite
6 common for Bar associations to
7 promulgate fee schedules that were
8 really in the nature of minimum fee
9 schedules that members of the
10 association were expected to follow,
11 and so that kind of provided a
12 guideline for the charging of fees in
13 that area for those services.

14 Q. And what happened to those minimum fee
15 schedules?

16 A. Well, as a result of a case that went
17 up to the U.S. Supreme Court, an
18 antitrust claim -- I think it was
19 called Virginia -- Goldfarb versus
20 Virginia State Bar and a local Bar
21 association. Eventually, there was
22 found to be an antitrust problem with
23 local Bars, anyway, charging minimum

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1 fees, requiring their lawyers to charge
2 minimum fees. And so that was struck
3 down as a restraint of trade, and so
4 since then, Bar associations have been
5 real leery of publishing any kind of
6 recommended fees or certainly any kind
7 of fee schedules on a minimum basis.

8 Q. Okay. In the present case, you are
9 familiar with the decision that was
10 rendered by the Florida Supreme Court
11 in the case of Emma Murray versus
12 Mariner?

13 A. Yes.

14 Q. Okay. Mariner Health 994 So. 2d 1051.
15 And are you also familiar that
16 following the Court's rendition of the
17 opinion in Murray that the Florida
18 legislature went in and took out the
19 word, quote/unquote, reasonable from
20 the -- from the statute as it pertains
21 to the setting of an attorney's fee for
22 an attorney who prevailed in
23 representing an injured worker?

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1 A. Yes.

2 Q. Okay. And are you familiar with the
3 current version of Florida Statute
4 440.34 which sets a limit on the
5 attorney's fee or a statutory formula,
6 namely ten percent of benefits obtained
7 plus \$750, and this applies to not only
8 the fee an attorney representing an
9 injured worker can charge the injured
10 worker but also that same fee schedule
11 is applicable to a carrier or an
12 employer carrier when the injured
13 worker -- injured worker prevails in a
14 claim against the employer carrier in a
15 case where benefits are wrongfully
16 withheld from an injured worker?

17 A. That's my understanding of it, yes.

18 Q. All right. Let me ask you, from the --
19 you indicated earlier that you had
20 reviewed the verified petition for
21 attorney's fees and costs that I filed
22 in this particular claim involving Ruth
23 Zygmund, and you are, in essence, aware

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1 of the efforts, including the time
2 records and the efforts and benefits
3 that I obtained on Ms. Zygmund in her
4 pursuit of workers' comp claim stemming
5 out of her July 30, 2009, accident; is
6 that correct?

7 A. Yes. Yes, I have read that.

8 Q. And you also have reviewed the employer
9 carrier's verified response to the
10 petition for benefits that was filed on
11 or about May 20, 2013; is that
12 accurate?

13 A. Right. That's the one I have.

14 Q. Okay. And in that, the employer
15 carrier's response, you -- did you note
16 that the total amount of benefits
17 resulting to Ruth Zygmund in this
18 matter was \$118,220.46?

19 A. Yeah. I think that's what I saw. Let
20 me make sure I've got it here. Yeah,
21 May 20th.

22 Q. It's page 4.

23 A. Right.

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1 Q. And you will note the employer
2 carrier's response and petition that if
3 we apply the statutory formula of ten
4 percent plus \$750, that comes out to a
5 statutory fee of \$12,572.04?

6 A. Yes, exactly.

7 Q. And that fee has to be shared with --
8 between three attorneys -- Frank
9 Cerino, myself, and attorney Andy
10 Newalt?

11 A. Yes, correct.

12 Q. Okay. Professor Chinaris, let me ask
13 you, the -- there is law that says that
14 setting a reasonable attorney's fee is
15 a judicial function. As an attorney
16 licensed to practice law in the state
17 of Florida, am I a judicial officer?

18 A. Well, you're considered an officer of
19 the court.

20 Q. Okay. And as an officer of the court,
21 I have responsibilities to my client;
22 correct?

23 A. Certainly.