No. 23-7463

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
APR 19 2024
OFFICE OF THE CLERK

Maria Meeker & Daniel Blasco — PRO SE PETITIONER(S)

vs.

Marrison Family Law, LLC — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

Colorado Supreme Court for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

Maria Meeker

Daniel Blasco

5575 County Road 51

DIVIDE, CO 80814

719-459-7993

Questions Presented for Review

1. Does a court's requirement for a Certificate of Review defeat a citizen's Seventh Amendment, Fifth Amendment, and Fourteenth Amendment rights?

2. Does a court's requirement for a Certificate of Review supersede or nullify the Fair Debt Collection Practices Act?

3. Does a court have a duty to ensure substantially-verbatim transcripts are available to litigants?

4. Does a court have the authority to negate rulings from the Supreme Court of the United States, or is the Supreme Court of the United States the final authority on all questions of American law?

5. If an attorney's standard Fee Agreement is far outside community standards and guidelines, is it legally binding?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix_____ to the petition and is

[ ] reported at_____; or, [ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the United States district court appears at Appendix_____ to the petition and is

[ ] reported at_____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

[ ] reported at_____ ; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

The opinion of the **District Court** court appears at

Appendix **B** to the petition and is

[ ] reported at _____ ; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

The opinion of the **County Court** court appears at

Appendix **A** to the petition and is

[ ] reported at _____ ; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case

was _____.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date:_____ , and a copy of the order denying rehearing appears at Appendix_____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including_____ (date) on_____ (date) in Application No._____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was **January 22, 20204** . A copy of that decision appears at Appendix **C**.

[ ] A timely petition for rehearing was thereafter denied on the following date:_____, and a copy of the order denying rehearing appears at Appendix_____ .

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including_____ (date) on_____ (date) in Application No._____ .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment 5.6.1 Due Process Clause

Fourteenth Amendment, Clause 1, 42 U.S.C. § 1983

Seventh Amendment

Fair Debt Collection Act, 15 U.S.C. § 1692a(6)

Fair Debt Collection Act, 15 U.S.C. § 1692g 809(b)

(Title V Federal Rules of Civil Procedure U.S.C. 26(a)(1)(A)(i)(ii)(iii)

Corporate Disclosure Statement

1. Petitioners Maria Meeker and F. Daniel Blasco have no known relationship to any institution involved in this Petition.

2. To the best of Petitioners' knowledge, Respondents have no known relationships to institutions involved in this Petition.

STATEMENT OF THE CASE

In August 2021, Maria Meeker and her psychological father, Daniel Blasco, were sued in a collections action brought by local law firm, Marrison Family Law. Marrison claimed Meeker owed nearly $25,000 in past legal fees; Meeker and Blasco vehemently disputed the alleged fees and demanded that Marrison produce evidence of the alleged debt according to the Fair Debt Collection Practices Act. Marrison sent copies of invoices but refused to review or discuss disputed charges or the alleged debt with the alleged debtors at all. She simply stated through her attorney that, You will pay me $25,000 or you will go to court. With the alleged debtholder refusing to validate the alleged debt, Meeker and Blasco had no choice but to go to court.

I. Respondent Marrison Entered Into a Verbal Agreement with Petitioners Meeker and Blasco.

On October 21, 2019, Attorney Mary Patricia Marrison of Marrison Family Law entered into a verbal agreement with Maria Meeker and Meeker's psychological father, Daniel Blasco, to represent Maria Meeker in an ongoing divorce case.

During the introductory consultation, Petitioners apprised Respondent of the facts; that Petitioner Blasco had initially hired a firm from Denver but was now seeking a local firm to substitute in; that the case was ongoing about

six months; that Petitioner Meeker was a brand new mother, newly single, had limited means, and was seeking favorable payment terms that, frankly, several other law firms had already rejected.

Respondent agreed to accept a $4,000 retainer from Petitioner Blasco, and timely, monthly payments of $400 thereafter from Petitioner Meeker until resolution of the case. This was the first verbal agreement that was made separate and apart from the signed Fee Agreement. Meeker and Blasco made their respective payments according to the verbal agreement, and Respondent accepted all payments per the verbal agreement.

In furtherance of the verbal agreement, to keep the Respondent's costs down, Marrison directed Blasco to pay legal service providers directly, and he did. Blasco paid nearly $10,000 to service providers and experts directly: Parental responsibility evaluators, domestic violence assessors, doctors, mediator, expert testimony fees. Whatever legal service provider Marrison directed Blasco to pay, he paid, even for the opposition.

In March 2020, a second verbal financial agreement was entered into, this time instigated by the Respondent. Marrison offered Blasco a $6,000 credit for a $6,000 payment. Blasco countered with $5,000, and Marrison agreed. On March 20, 2020, per the second verbal agreement, Blasco sent Marrison a check for $5,000. This payment-for-credit offer brought Meeker's balance down to $1628. This credit-for-payment was not asked for by

Petitioners, but it was offered by Respondent, and Petitioners accepted. Who would not accept a $5,000 discount on their bill?

This second verbal financial agreement is also not memorialized in any formal writing, but it is memorialized in a "Credit Memo" and reflected in the Respondent's invoices.

II. A Demand For Payment Is Made In Violation Of Both The Verbal And Written Fee Agreements

On April 1, 2020, the relationship between Respondent Marrison and Petitioners Meeker and Blasco took a dramatic and unexpected turn for the worse. Meeker received an emailed invoice for $10,591, plus a request for an additional $2,000 for the retainer account. Meeker was alarmed and emailed Marrison, citing back to the verbal agreement. Marrison communicated to Meeker through her employees that Meeker must pay the invoice and the retainer replenishment in full on or before April 10, 2020, or Marrison is dropping Meeker's case.

Petitioners were astonished. Blasco had just paid thousands of dollars to Marrison's service providers specifically so Marrison didn't have to bear the cost. Blasco's check to Marrison had just cleared the bank. Meeker's payments were on time, all according to the verbal agreement. The balance was only $1,628 before this emailed demand. Petitioners questioned: How

did this invoice reach $10,591 in three weeks' time without benefit of a single hearing, deposition, or appearance in court?

Petitioners tried to call Respondent to question the invoice, to no avail. Respondent cut off all further communication with her client. Meeker tried to inquire of Marrison Family Law Attorney JAD Ditlow, who was directly assigned to Meeker's case, but Ditlow redirected all of Meeker's inquiries back to Marrison, who was refusing to speak to her client at all. Between April 1 and April 15, there is almost no communication between Counsel and Client whatsoever. Petitioners were left in limbo: We cannot move forward until Marrison does, and Marrison is not talking to anyone.

On April 16, 2020, Attorney Ditlow emailed Meeker and told her that if Meeker paid Marrison, Marrison would allow Ditlow to re-enter the case. Three days prior, Meeker and her psychological mother, Rebecca Blasco, had a brief telephone conversation with Ditlow in which Ditlow told Meeker and Mrs. Blasco that Marrison had dropped Meeker's case and was also not going to enforce the court's Forthwith Orders to Compel.

Petitioners were in a quandary: The invoice is in dispute, but if we don't pay it, Marrison will not resume the case. Final Orders hearing is 12 weeks away. If Meeker has to hire new counsel, does that mean the Forthwith Orders to Compel that were just signed will be vacated? All the work we have just accomplished will be lost. What were Petitioners supposed

to do? Blasco directed Meeker to email Marrison and offer her $25,000 to finish Meeker's case.

Marrison never responded to Meeker's offer. Instead, she filed a Motion to Withdraw citing lack of payment, which was granted a month later. The Forthwith Orders to Compel were completely abandoned by the Respondent and Petitioner was forced to hire new counsel. Petitioners requested that the Respondent forward the client file back to the client per Code, and Marrison refused (CRPC 1.16A(a)(1), (2); (b), (d)).

III. Assertion of Debt is not Validation of Debt

About a year after the demise of the relationship, sometime in 2021, Respondent Marrison filed a collections lawsuit against Meeker and Blasco seeking "the principal amount of $22,987.55," plus accrued interest, plus attorneys fees, et cetera. Marrison was claiming a principal amount more than double that of the invoice that terminated the relationship a year prior and Petitioners could not understand why. The Petitioners partially relied on the protections of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692a(6); 1692g 809(b), when it asked Marrison to "produce the note."

Marrison sent copies of invoices and the Fee Agreement, but no other Spegonsupporting documentation (Spegon v. Catholic Bishop of Chicago, 175 F.3d 544, 550 (7th Cir. 1999); 15 U.S.C. § 1692a(6); 809(b)). Meeker and her psychological mother, Rebecca Blasco, began inspecting the invoices line by line and

discovered that the invoices had at least one duplicative line item, line items for work that was allegedly performed after Respondent was released as attorney of record, and exorbitant paralegal hourly rates charged for even the most mundane of clerical tasks, greatly inflating the bills. (Missouri v Jenkins, 491 U.S. 274 (1989); Kaylor-Trent v. Bonewicz, 916 F. Supp. 2d 878, 886 (C.D. Ill. 2013); Barnes v. Jeffreys, 20 C 2137, 4-5 (N.D. Ill. Mar. 20, 2023).

Petitioners had reasonable questions concerning Marrison's invoices and had a right to question Marrison about them, but the Respondent refused to answer. Petitioners had a right to dispute charges that were questionable, exorbitant, duplicative, and in some instances, completely devoid of explanation. Petitioners were being told to pay nearly $25,000 on Respondent Marrison's say-so alone (transcript pp 60:1-61:6) (Spegon v. The Catholic Bishop of Chicago, 175 F.3d 544, 556 (7th Cir. 1999); Fair Debt Collection Practices Act, 15 U.S.C. § 1692g 809(b); C.R.S. § 5-16-109 1 (a), (c), (d), 2 (1)(c), 3.

Marrison refused to discuss her invoices at all, saying in sum and substance, You will pay me $25,000 or you will go to court. Presented with no other alternatives, Petitioners became civil defendants and went to court.

IV. Pretrial Hearing to Set Discovery and Trial

In truth, Petitioners are not certain of what the first hearing was called, only that several things happened during that hearing that bring Petitioners' questions before this Honorable Court.

The Petitioners motioned the district court for discovery, and the district court denied Petitioners' motion stating that any attempt to challenge the Respondent's invoices was a thinly-veiled attempt to bring a fraud claim against the Respondent, and because the Petitioners did not bring a Certificate of Review, Petitioners were not allowed to question the invoices (transcript pp. 72:1-3); Fifth Amendment 5.6.1; Fourteenth Amendment, Clause 1, 42 U.S.C. § 1983).

The Petitioners had originally filed a counterclaim against Respondent, and the district court ordered a Certificate of Review (C.R.S. § 13-20-602). Petitioners chose not to pursue a Certificate of Review for myriad reasons, but ultimately, because Petitioners had no interest in pursuing a fraud claim and believed the errors on the invoices were facially observable so the Certificate was not required (Martinez v. Badis, 842 P.2d 245 (Colo. 1992)). Petitioners were not questioning the hours one might have spent *reading* the documents, only why we were being charged $150 an hour to *print* the documents. It seemed that the district court was wholly unable to bifurcate the issues and refused to permit any form of discovery.

Petitioners' countersuit was dismissed for lack of a Certificate of Review (C.R.S. § 13-20-602(4)). Petitioners did not object; Petitioners were expecting our countersuit to be dismissed because of the lack of the Certificate of Review. But Petitioners were still defendants in a civil lawsuit. Petitioners had a right to defend themselves, to act as their own counsel with the same duties and responsibilities as hired counsel, and with right to conduct discovery just as if Petitioners had hired

counsel and counsel had motioned for discovery (Title V Federal Rules of Civil Procedure U.S.C. 26(a)(1)(A)(i)(ii)(iii)).

V. Petitioners Meeker and Blasco Appear In Court As In Pro Per Civil Defendants Without Benefit of Their Due Process Rights

On or about December 1, 2021, Meeker and Blasco appeared in the local Fourth District Court in Colorado Springs, Colorado to defend themselves against Respondent Attorney Mary Patricia Marrison of Marrison Family Law. Respondent Marrison was sworn in as a witness (transcript pp 4:19-22) and testified under oath that she was unaware of any verbal agreement that Meeker thought she might have had (transcript pp 32:20 - 35:12-21).

Respondent also testified that she engaged the paralegals to perform clerical tasks at a **reduced** rate of $100 an hour (transcript pp 23:10 - 24:10), and that she had already destroyed the client's client file by the time she had requested it (transcript pp 45:16-17); CRPC Rule 1.16A (a)(1), (2), and (b).

Petitioners had come to court with whatever records could be found from the client's side of the client file. The records were emails created in the ordinary course of business, authored by Respondent Marrison, copied to Marrison's legal staff by Marrison, electronically transmitted to Petitioners Meeker and Blasco from Marrison's IP address, date and time stamped by Marrison's computer system, and Marrison had already testified that she could discuss "invoices, emails, things of that nature" (transcript pp 22:24 - 23:1).

Petitioners believed that these emails were self-authenticating business records exempt from the hearsay rule. But even if they were not, the author of the emails was still duly sworn, on the witness stand, and testified that she could discuss "invoices, emails, things of that nature." Petitioners moved to have the business records admitted into evidence. Without looking at a single piece of paper, the district court ruled that these emails that were created in the ordinary course of business and transmitted electronically through the Respondent's IP address were hearsay and would not be admitted into evidence (transcript pp 39:1-22); (Federal Rules of Evidence Rules 803(6) and 902(11)).

After Respondent Marrison is excused from the witness stand, Witness Rebecca Blasco, the Petitioners' wife and psychological mother respectively, was placed under oath (transcript pp 54:9-13) and called to testify about her research into the dubious nature of the invoices and the discrepancies found within (transcript pp 58:22 - 59:10).

Witness Blasco testified about invoices that were created for alleged legal work performed after Respondents were no longer attorneys of record. Witness Blasco also testified about a particular invoice that had been sent to Petitioners that contained no identifying information or descriptions of work detail whatsoever (transcript pp 60:3-61:6).

The district court admonished Witness Blasco about straying too near the boundary of "Certificate of Review," which further demonstrates the difficulty and entwined nature of the Certificate of Review with the Fair Debt Collection Practices

Act. Witness Blasco states, "They're asking me to pay this, and I have no idea why." The district court commiserated with the witness; the court seemed completely unable to bifurcate the issues; negligence versus negligence per se versus validating a debt as prescribed by the FDCPA.

Witness Blasco also testified that Petitioners discovered that Respondent was charging paralegal rates of $100 to $150 an hour for purely clerical tasks that require no skill or training to perform, and that such charges were unconstitutional as the Supreme Court of the United States has held since the 1980s that lawyers cannot charge paralegal rates for tasks that require no training or skill to complete, such as photocopying, printing, filling out forms (Missouri v Jenkins, 491 U.S. 274 (1989)).

The district court made an objection from the bench that rulings from the Supreme Court of the United States are legal opinions and have no business in the courtroom. This colloquy is omitted from the defective transcript, but then Respondent's counsel, Kenneth Davidson, makes an objection for "legal opinion," and the court sustains his objection. The district court agreed that the rulings of the Supreme Court of the United States are "legal opinions" and are therefore not admissible in court (transcript pp 65:10-22).

Shortly after the above exchange, the court begins to shut down the Petitioners' case stating that she has been more than lenient with Petitioners but essentially this is accomplishing nothing. Petitioner Blasco rests his case and engages in discussion with the district court in which she confirms that she denied

discovery because of lack of a Certificate of Review (transcript pp 72:1-4), the case is closed and the parties are excused.

VI. The Court Rules Partially for the Respondent (Plaintiff) and Partially for the Petitioners (Defendants).

The court found for the Respondent in the amount of $15,325.03 plus court costs, attorneys' fees, and interest. The court ruled that, "Plaintiff also invoiced Defendant for $7662.52, which plaintiff testified was a 'finance charge,' that reflects one-third of the amount due on the unpaid invoices. This one-third amount is set forth in the Fee Agreement under 'Withdrawal and Termination.'"

The court denied the Respondent's (plaintiff's) claim of $7662.52 stating:

> "The court will not enforce the provision of the fee agreement which provided for such a charge to be added to the amount due and owing. This type of charge is a formula **outside that permitted by law.** Collections costs are very specific: attorney's fees, service of process fees, court costs, etc. A flat one-third penalty is beyond any Lodestar calculation."

The court further stated that: "Defendants testified that there was some unwritten agreement that Plaintiff would accept $400 per month, however, this court Finds [sic] that the Fee Agreement was not vague or ambiguous in its terms and reflected the complete agreement between the parties."

VII. Petitioners filed a Formal Complaint Against Respondent Mary Patricia Marrison with the Colorado Supreme Court Office of Attorney Regulation Counsel

On January 16, 2023, Petitioners filed a complaint with the Colorado Supreme Court Office of Attorney Regulation Counsel and requested a formal investigation into Respondent Marrison's billing practices. The investigation is ongoing.

Reasons for Granting the Writ

VIII. The district court denied Petitioners' Motion for Discovery, severely prejudicing Petitioners' right to defend themselves in court.

During a pretrial hearing, Petitioner Blasco motioned the district court for Petitioners' constitutionally-protected right to discovery. Petitioners were appearing in court acting as counsel on their own behalf with all the same duties and responsibilities as retained counsel would have (Fifth Amendment 5.6.1; Fourteenth Amendment, Clause 1, 42 U.S.C. § 1983).

Shockingly, the district court denied the Petitioners' request. The district court surmised that any request for discovery was a thinly-veiled attempt at bringing a fraud claim into court through the back door. Petitioner Blasco and the district court discussed the court's refusal to grant discovery at the close of evidence on the day of trial (transcript pp 72:1-4). The electronic court recording is not available for transcription from the pretrial hearing date.

Discovery is a basic, fundamental right of Due Process afforded to both civil and criminal litigants dating all the way back to English Common Law. Petitioners

had a right to a copy of all the documents that the Respondent relied on when she filed suit against us, not just the Respondent's invoices and Fee Agreement (Title V Federal Rules of Civil Procedure U.S.C. 26(a)(1)(A)(i)(ii)(iii).

The Respondent is required to preserve for trial any documents that were relied upon in bringing suit against a citizen once the decision to sue has been made. Respondent's own Fee Agreement states under the "Withdrawal and Termination" clause that, "...we customarily file suit or turn your case over to a collection attorney," outlining in writing the Respondent's predetermination to sue. The same documents that Respondent relied on in bringing suit are the same documents that Petitioners had a constitutional right to rely on in defending themselves from the lawsuit, but Petitioners were denied discovery.

When the district court denied Petitioners' right to discovery, the district court essentially shifted the burden of proof from the Respondent to the Petitioners, telling the Petitioners that they were required to rely on Respondent's invoices and Fee Agreement for their defense but were not allowed to challenge the invoices in any way because there was no Certificate of Review (C.R.S. § 13-20-602(4).

The district court cited as a reason for her ruling against Petitioners that, "the Fee Agreement was not vague or ambiguous in its terms and **reflected the complete agreement between the parties**..."

It did not. In a separate but related matter, the Respondent produced an email in her own defense dated October 29, 2019. The email was written by Respondent and electronically transferred to Trisha Badger, Respondent's

bookkeeper. In it, the Respondent writes, **"I called Maria's dad. The agreement was for 4K not due until the 20 of Nov because that's when they get the funds. He thinks we discussed $400 a month from Maria thereafter. I didn't approve that, but we will see what happens."**

Respondent testified that she had no knowledge of a verbal agreement (transcript pp 32:20; 35:12-21). But this email memorializes the verbal payment arrangement that Petitioners had made with Respondent point by point. The email states an amount, $400; a timeline, per month; and a duration, until the end of the case. Marrison claims in her email that she "didn't approve that," but she also correctly states Blasco's belief that Meeker has a $400 monthly payment arrangement with the Respondent until resolution of the case.

The district court stated in her ruling that she relied on the fact that there was no evidence of a verbal agreement to make her ruling. If the Petitioners had been given discovery, this document would have been among the documents propounded by the Respondent and the Petitioners would likely have prevailed.

The Petitioners had a right to rely on the verbal representations of the Respondent, especially because the Respondent was a duly sworn Officer of the Court.

This was a collection suit, not a fraud suit. The court denied discovery due to lack of a Certificate of Review. The Petitioners had no duty to bring a Certificate of Review because it was the Respondent who had the burden of proving that a debt was owed and that her rates fell within industry standards. It was not the

Petitioners' burden to try to prove otherwise (Spegon v. Catholic Bishop of Chicago, 175 F.3d 544, 550, 556 (7th Cir. 1999); Blum v. Stenson, 465 U.S. 886, 895, 104 S.Ct. 1541, 1547, 79 L.Ed.2d 891 (1984).

As the court denied discovery, she also barred Petitioners from challenging the Respondent's invoices for lack of a Certificate of Review. If the Petitioners are barred from challenging the invoices, how can the Petitioners defend themselves against the alleged debt? Petitioners were civil defendants being sued in a collections suit for fees that Petitioners vehemently disputed. Petitioners had a right to dispute the debt, and to require the Respondent "produce the note."

IX. A Certificate of Review is Obstreperous, Burdensome, Prejudicial, Duplicative, Creates Separate Classes of Citizens, and deprives the Citizen of his Seventh, Fifth, and Fourteenth Amendment Rights.

The Seventh Amendment states:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury ***shall be preserved***, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

The Fifth Amendment states in part that a citizen shall not "be deprived of life, liberty, or property, without due process of law."

The Fourteenth Amendment states that:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Seventh Amendment does not require a citizen to hire the opinion of a favorable expert to agree that he has a right to bring his controversy before a jury. It simply states that a citizen has a right to have his controversy decided by a jury.

The Fifth Amendment holds that the citizen shall not, "be deprived of life, liberty or property without due process of law," and the Fourteenth Amendment does not allow States to make or enforce laws that abridge the privileges or immunities of citizens, nor deprive citizens of the due process of law, nor deny to any person the equal protection of the law.

The Certificate of Review defeats all three.

In cases where a Certificate of Review is required, the Certificate is required ***before*** the citizen can proceed to the next stage of trial. The Certificate of Review acts as a sort of permission slip that a citizen is required to give to the court, which in turn allows the court to now grant the citizen their Seventh, Fifth, and Fourteenth Amendment rights. If a Certificate of Review is not obtained, the citizen's case is summarily dismissed (C.R.S. § 13-20-602(4)), depriving the citizen of his Seventh, Fifth, and Fourteenth Amendment rights.

Certificates of Review are unduly prejudicial. Citizens who are required to obtain a Certificate of Review before they are allowed to proceed to trial are required to obtain the Certificate ***without*** the benefit of discovery. This tilts the burden of proof backwards, forcing the citizen to meet his burden of proof before he is granted his Fifth and Fourteenth Amendment rights of Due Process. If the

citizen cannot meet his burden of proof to the court without the benefit of Due Process, the citizen is deprived of his Seventh Amendment rights.

Certificates of Review are not required in all cases, only in certain kinds of cases involving certain kinds of white-collar professionals. This creates a separate, protected class of citizen who enjoys an added layer of protection from scrutiny from the law. If certain types of professionals are carved out from the equal application of the law, with special requirements that must be met before they can be sued, this is a type of qualified immunity for the protected class who now cannot be scrutinized without the express written permission of a hired pretrial expert, placing a bar before the courtroom door.

The requirement for a Certificate of Review places an unreasonable financial burden on the citizen that must be overcome before he is able to enjoy his Seventh, Fifth, and Fourteenth Amendment rights, disproportionately affecting the poor and indigent. If a citizen is unable to obtain a Certificate of Review, it is ***assumed*** that the citizen's case had no merit and the case is dismissed, barring the citizen from the courtroom door.

If a citizen has no financial constraints, a citizen is free to hire as many pretrial experts as necessary until he finds one who is willing to provide a Certificate of Review, which further demonstrates the obstreperous, burdensome, even prejudicial nature of the Certificate of Review. The wealthy, either themselves or through their counsel, can afford to hire experts until an agreeable one is found. The indigent have their cases dismissed for lack of standing. If a

citizen cannot afford to expert-shop, a citizen is deprived of his Fifth, Fourteenth, and Seventh Amendment rights, barring the citizen from the courtroom door.

The requirement for a Certificate of Review is duplicative. Experts are already hired in nearly all cases to establish standards of care and breaches to the standards of care, and retaining more than one expert to testify on a same topic is duplicative, so what does a Certificate of Review actually accomplish pretrial that regular expert testimony will not also accomplish during trial? Is the Certificate of Review admissible? Can a plaintiff testify to the jury about how he had to hire a pretrial expert to establish injury before the courtroom door was unbarred? What happens when the Certificate of Review and the jury's verdict contradict each other? If the jury verdict defeats the Certificate of Review no matter what, then the Certificate of Review is wholly unnecessary, no matter what.

If a Certificate of Review is not admissible because it would be prejudicial to defendants, what is its purpose but to act as a deterrent to citizens filing lawsuits against white-collar professionals? If the Certificate of Review does not aid the jury in its fact-finding, who does it aid? If its only purpose is to give permission to proceed, and without it a citizen's case is dismissed, then its only purpose is to deprive citizens of their Seventh, Fifth, and Fourteenth Amendment rights.

How does a Certificate of Review help guard against frivolous lawsuits when courts have discretion to dismiss lawsuits for lack of standing at certain intervals throughout the course of the case? Many lawsuits are dismissed for lack of standing right from the outset, from children suing their parents for lack of birthday presents

to drivers suing the Department of Transportation because "the speed limit is archaic and inane." Judges have discretion to dismiss cases with or without prejudice, with or without Certificates of Review, and do so every single day. So why is a Certificate of Review necessary?

There are numerous steps between the courtroom door and a jury verdict, and even more between receiving a verdict and collecting an award. The plaintiff's case remains imperiled all along the way. After expert depositions, defense counsel motions the court for Summary Judgment. If the plaintiff is demonstrably incapable of meeting his burden of proof, the court grants Summary Judgment to the defendant and the plaintiff's case is dismissed. Summary Judgments are granted in American courtrooms every single day, without benefit of a Certificate of Review.

When the plaintiff rests his case, defense counsel motions the court for a directed verdict. If the court agrees that the plaintiff has not met his burden of proof at the close of plaintiff's case in chief, the court grants a directed verdict to the defense and sends the jury home with the court's appreciation and thanks. Directed Verdicts are granted in American courtrooms every single day, without benefit of a Certificate of Review.

The Certificate of Review is an expensive pretrial burden that bars citizens from enjoying their constitutional rights and protects white-collar professionals from being sued.

Courts also have discretion to waive the Certificate of Review "if the negligence per se is facially observable" (Martinez v Badis, 842 P.2d 245 (1992)). Who determines if the negligence per se is facially observable? When the plaintiff and defense disagree on whether the "negligence per se is facially observable," the defendant is provided "with a means to obtain early judicial resolution of the question."

If a court has discretion to order the Certificate or waive the Certificate based upon facially-observable negligence per se, and the defendant is provided "with a means to obtain early judicial resolution of the question," does not the court then have a duty to examine the evidence of the citizen to determine whether the negligence per se is facially observable before ordering the citizen to obtain a Certificate of Review?

If a court has discretion to waive the Certificate of Review based upon the court's review of the citizen's evidence, then the court has stepped into the role of the trier of fact, determining without benefit of discovery, exhibits, or sworn expert testimony if the citizen has enough evidence to bring a suit against a member of this new protected white-collar class. If the citizen cannot meet the requirements of a Certificate of Review without his Fifth and Fourteenth Amendment rights, then the citizen is deprived of his Fifth, Fourteenth, and Seventh Amendment rights.

The Seventh Amendment does not require a citizen to submit his case to a jury of one before he submits his case to a jury of 12. A Citizen is not required to

meet his burden of proof before he is given his Due Process rights, unless he is first required to provide a Certificate of Review.

X. "Negligence Per Se" Was Facially Observable. No Certificate of Review Was Needed.

Martinez v. Badis, 842 P.2d 245 (Colo. 1992)) states plainly that a Certificate of Review is not necessary if the alleged negligence per se is facially observable:

> 10/25/19 Prepared request for transcript, 1.0 x $150 = $150.00
>
> 10/25/19 Emailed transcript request to court, 0.2 x $150 = $30.00
>
> 01/08/20 Printed off Subpoena documents, 0.8 x $100 = $80.00
>
> 02/07/20 Prepared certified mail receipt for ltr to OP RE: child support 0.3 hours x $150 = $45.00
>
> 02/11/20 E-filed notice of mediation, 0.2 hours x $150 = $30.00
>
> 02/12/20 E-filed notice of mediation, 0.2 hours x $150 = $30.00 **(duplicate entry?)**
>
> 02/11/20 Email notice of mediation to client, 0.1 x $150 = $15.00
>
> 02/25/20 Printed off and formatted interrogatories for discovery notebook, 0.6 x $150 = $90.00
>
> 02/25/20 Printed off discovery documents for notebook, 1.25 x $150 = $187.50
>
> 02/26/20 Continued to print off discovery documents for notebook, 1.5 x 150.00 = $225.00

The question is, do the above excerpts from Respondent's invoices reflect "negligence per se" or "overbilling"? The Respondent was *charging* Petitioners well

outside community standards, from the very beginning of the relationship, and those overcharges are clearly evident on the face of the invoices.

Courts have been narrowing the scope of attorney's fees for decades. In the landmark decision Missouri v. Jenkins, 491 U.S. 274 (1989), this Honorable Court held that it is inappropriate for attorneys to charge clients for clerical or secretarial tasks, stating: "Of course, purely clerical or secretarial tasks ***should not be billed*** at a paralegal rate, regardless of who performs them."

In Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717 (CA5 1974), the court said the work of attorneys is applicable by analogy to paralegals:

> "It is appropriate to distinguish between legal work, in the strict sense, and investigation, clerical work, compilation of facts and statistics and other work which can often be accomplished by nonlawyers but which a lawyer may do because he has no other help available. Such nonlegal work ***may command a lesser rate***. Its dollar value is not enhanced just because a lawyer does it."

Hyland v. Indicator Lites, Inc., 160 F.Supp.2d 981, 986 (N.D.Ill.2001) states that, "The court ***shouldn't allow entries that 'detail clerical tasks*** that need not be performed by attorneys, such as time spent filing motions or photocopying.'"

Kaylor-Trent v. Bonewicz, 916 F. Supp. 2d 878, 886 (C.D. Ill. 2013) is a case that is similarly situated to the Petitioners. In this case, the court ruled that attorneys are not entitled to "***fees for excessive, unnecessary time entries***" or for "***clerical, ministerial, or secretarial tasks***." The defendant in that case, Kaylor-Trent, complained that she was charged paralegal rates for strictly clerical

work: Calls made to hire process servers, mailing documents, and updating calendar deadlines.

Kaylor-Trent also claimed that her attorney charged "excessive, unnecessary time entries" in charging 1.5 hours for filling out form documents and having many in-house conferences, including discussing a Motion with the firm's partner. The court in *Kaylor-Trent v. Bonewicz* agreed that Kaylor-Trent was charged excessive and unnecessary attorney's fees, and also that she was charged paralegal rates for strictly clerical work, and the court ***reduced*** the attorney's fees.

(Pace v. Pottawattomie Country Club Inc., CAUSE NO. 3:07-CV-347 RM, 22 (N.D. Ind. Dec. 11, 2009) is also on point: The court agreed that:

> "Certain tasks performed were of a clerical nature, such as: sending pleadings to client; review of appearances, summons, waiver of service and other similar documents; payment to EEOC; drafting cover sheets; and filing documents with the court. Although some of these tasks were performed by a paralegal, ***they are clerical in nature and cannot be part of the fee award.***"

In Firestine v. Parkview Health System, Inc. (N.D.Ind. 2005), 374 F. Supp. 2d 658, 667 (N.D. Ind. 2005), like Petitioners, the defendant's biggest objection was the sheer number of time entries for clerical work billed at paralegal or attorney's rates: Organizing file folders, document preparation, copying, scheduling matters, and mailing letters. In Firestine, the paralegals were billing at a rate of $75.00 to $85.00. The court found this rate was "***not remotely justifiable.***" The court also found that the above-listed tasks were

> "...administrative and clerical in nature and thus, are not reimbursable fees. For this reason, the court has reviewed the time entries and disallows 25.5 hours in legal assistant time spent on purely clerical or administrative

tasks. In addition, to the extent attorney time was utilized for clerical or administrative tasks, ***those entries shall also be disallowed...***"

Barnes v. Jeffreys, 20 C 2137, 4-5 (N.D. Ill. Mar. 20, 2023) is also similarly situated to the Petitioners. The court in that case stated that it should "***disallow time spent on what are essentially clerical or secretarial tasks.***"

Further, when it comes to attorneys not exercising billing judgment, ACLU v. Barnes, 168 F.3d 423, 428 (11th Cir. 1999) holds that "If fee applicants do not exercise billing judgment, courts are ***obligated*** to do it for them, to ***cut*** the amount of hours for which payment is sought, ***pruning out*** those that are '***excessive, redundant, or otherwise unnecessary.***'"

And in Blum v. Stenson, 465 U.S. 886, 895, 104 S.Ct. 1541, 1547, 79 L.Ed.2d 891 (1984), the Supreme Court stated that in order to help the court determine the appropriate market rate for the services of an attorney: "The burden is on the fee applicant to produce satisfactory evidence — ***in addition to the attorney's own affidavits*** — that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.")

Spegon v. The Catholic Bishop of Chicago, 175 F.3d 544, 556 (7th Cir. 1999) also states that, "An attorney's **self-serving affidavit alone** cannot satisfy the plaintiff's burden of establishing the market rate for that attorney's services.

Respondent's Fee Agreement is unique. It shifts almost every fee of overhead to the client. The Respondent charged Petitioners at a premium rate for everything

from photocopying to postage stamps. The Respondent charged Petitioners $150 an ACLUhour for filling out the little green USPS return receipt form that the Post Office gives out for free. Respondent even testified that she "lowers" the rates of her legal assistants to $100 an hour for performing clerical tasks (transcript pp 23:10 - 24:10), admitting that she is charging clients three times the prevailing wage for her legal assistants, a type of forced generosity at others' expense.

If the burden of proof lies with the Plaintiff to prove that her invoices are within community standards (Blum v. Stenson, 465 U.S. 886, 895, 104 S.Ct. 1541, 1547, 79 L.Ed.2d 891 (1984)), and she is obligated to do so by comparison against others attorneys' invoices in the community because her own "self-serving affidavit" cannot satisfy her burden (Spegon v. The Catholic Bishop of Chicago, 175 F.3d 544, 556 (7th Cir. 1999)), and the courts are obligated to "prune out" excessive, redundant, or otherwise unnecessary charges (ACLU v. Barnes, 168 F.3d 423, 428 (11th Cir. 1999)), is this Respondent's Fee Agreement even binding?

XI. The Fair Debt Collection Practices Act Protects Consumers From Unfounded Or Erroneous Debts.

It is not enough to simply assert that a debt is owed. The Fair Debt Collection Practices Act requires that creditors keep records that corroborate their bills, and that corroborating evidence be provided to a consumer when the consumer demands that a creditor validate the alleged debt (Fair Debt Collection Practices Act, 15 U.S.C. § 1692g 809(b)).

The FDCPA was originally passed because there were not adequate laws for protecting consumers from the abusive, deceptive, and unfair collection practices found being used by many debt collectors. The FDCPA also rightly assumes that typos, duplicative line items, misplaced decimal points or commas, even billing code errors, can and do occur. Consumers are regularly advised to review their bills and dispute errors. Even the Respondent advises clients to inspect her invoices and report errors because, "surprise and disappointment can ruin the healthiest attorney-client relationship." But when Respondent's client tried to report errors or discuss questionable charges, Respondent refused to accept that any errors could exist and demanded payment in full.

When a consumer is confronted with a bill that is questionable, a consumer is allowed to question alleged debts, dispute alleged debts, and require the alleged creditor to verify the alleged debt ***before*** the alleged debtor is liable for paying the debt. The Fair Debt Collection Practices Act fairly assigns the burden of proof to the creditor.

The Fair Debt Collection Practices Act also provides protections for consumers who have entered into verbal financial agreements with creditors. The Act provides that consumers are allowed to substantially rely on the verbal representations made by creditors. If an alleged debtor is allowed to substantially rely on the verbal representations and agreements made with a debtholder of common pursuits, how much more should a citizen be able to substantially rely on the representations and agreements made with an Officer of the Court?

XII. The Court's Failure to Ensure Substantially-Verbatim Transcripts Unduly Prejudices Litigants

Petitioners attempted to order transcripts of the first hearing for preparation for trial and appeal. The district court failed to ensure that the electronic court recorder was operational. The court's failure to ensure substantially-verbatim transcripts absolutely prejudiced the defendants' ability to adequately prepare for trial and appeal. "Certain to lose" is not a good enough reason to deny litigants a fundamental right of due process.

Defendants next ordered the official Transcript of Proceedings from the trial. The transcript was rife with formatting errors, spelling errors, grammatical errors, "(inaudible)s," and was no more than a glorified paraphrase. Objections made by the court were omitted from the transcript entirely; exchanges between the court and witnesses were omitted from the transcript entirely.

The defendants next tried to order an amended, substantially-verbatim Transcript of Proceedings prepared per Code. The lay transcriptionist employed by this court responded in writing, "What does 'verbatim' mean?"

Petitioners then tried to obtain an amended, substantially-verbatim transcript prepared by a different transcription company, only to discover that the original tape of the proceedings had already been destroyed, less than a year after the original court date. There is no substantially-verbatim transcript, and now there never will be.

Petitioners pray for relief from the lower court's erroneous and unconstitutional rulings. The errors are too great to remedy. The only fair and reasonable exercise of justice is to vacate the lower court's orders with prejudice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Maria Mello

Date: 4/19/2024