

Leading Ethics Expert Not Allowed to Opine on Attorney's Fees

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Wiener, Weiss & Madison v. Fox, No. 16-0850, 2019 U.S. Dist. LEXIS 82376 (W.D. La. May 14, 2019)

A dispute between a group of attorneys and their former client has a complex procedural history, but it is most noteworthy in terms of Louisiana law for its ruling on the admissibility of expert testimony. The case originated from a divorce between Harold Rosbottom, Jr. and his wife, Leslie B. Fox, in Texas state court. After the Texas state court appointed a receiver to assume control of the couple's community property, Rosbottom filed for bankruptcy in the U.S. Bankruptcy Court for the Western District of Louisiana. Two law firms (the "Firms") agreed to represent Fox in the bankruptcy case. Although the Firms were initially compensated on an hourly fee basis, they agreed during the representation to convert their fee agreement to a contingency fee agreement.

After successfully concluding years of litigation, and with significant funds finally available for Fox and her counsel, the Firms made a proposal to Fox for how to implement their fee agreement. Fox and the Firms (who had collectively worked almost 4,000 hours) failed to reach an agreement, and the Firms sued Fox. The parties filed cross-motions for summary judgment on the enforceability of the contingency fee agreement.

A key issue on the cross-motions was whether the contingency fee agreement (which provided for a 40% contingency fee) was "fair and reasonable." The issue was governed by Louisiana law. Both sides hired experts to opine on the fee agreement's reasonableness, and each side sought to exclude the opinion of the other side's expert. Fox had two experts, including a preeminent legal ethics scholar. Unfortunately for Fox, however, Louisiana follows a "locality" standard for attorneys, which requires them to "exercise at least that degree of care, skill, and diligence which is exercised by prudent practicing attorneys in his locality." Fox's experts, who were not licensed to practice law in Louisiana and not otherwise qualified to opine as to the applicable standard of care, were held unqualified to opine on whether the agreement was reasonable. The opinion of the Firms' expert, a longtime Louisiana practitioner, that the agreement was reasonable was admissible and deemed "unrebutted." Thus, the court found the fee agreement was enforceable and did not result in a "clearly excessive" fee.

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