

0A 10-5-88

IN THE SUPREME COURT OF FLORIDA

JOHN THOR WHITE,
Petitioner,

vs.

Appeal No. 72,170

PINELLAS COUNTY, a political
subdivision of the State of
Florida,

Respondent.

FILED

SEP 28 1988

CLERK OF THE COURT
TALLAHASSEE, FLORIDA

PETITIONER'S BRIEF IN REPLY TO AMICUS ANSWER BRIEF

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Petitioner

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SUMMARY OF ARGUMENTS

Petitioner contends that the limitation of his fee award to the statutory fee schedule cap of \$3,500.00 (\$26.12/hr) is unreasonable and confiscatory.

To support this contention, Petitioner relies upon the authority of Makemsom v. Martin County, 391 So. 2d 1109 (Fla. 1986) which mandated that the lower court should depart from the capital case fee schedule when to do otherwise would constitute a forfeiture of the attorney's time, energy and talents.

Petitioner further contends that bona fides of his position may be illustrated by comparing the underlying stipulated facts as to the labor performed and expertise exhibited by Petitioner at trial to the criteria set forth in Rules Regulating The Florida Bar 4-1.5 (B).

ARGUMENT

I. POINT ONE

Point I of the Amicus Curiae Answer Brief discusses the general power of the courts to do all things necessary to ensure the adequate administration of justice. However, this Amicus argument takes no position as to whether the "inherent judicial power" doctrine was abused in Makemson v. Martin County, 491 So. 2d 1109 (Fla. 1986) or during any stage of this appeal; hence, no issue is raised in this regard for Petitioner to respond to.

II. POINT TWO:

The second argument posed in the Amicus Answer Brief, in contrast to the general thrust of Respondent's Answer Brief, does not assert that the Florida Supreme Court improvidently granted conflict jurisdiction in this case.

Rather, the second argument of the Amicus Answer Brief suggests that if the Court decides this appeal on its merits, then the Court will thereby open its doors to a flood of similar appeals by disgruntled attorneys whereupon the Court will sit as an arbiter of facts in fee petition cases. If the Amicus is correct in this assertion then the Court would be

expanding its role in direct contravention to the acknowledged intent of Article V, Sect. 3 (b)(3) of the Florida Constitution which was amended to restrict the role of the Florida Supreme Court.

The Amicus, however, is incorrect in that assertion primarily because Petitioner does not and has not challenged the trial court's findings of fact; hence, there is no factual dispute for the Florida Supreme Court to arbitrate. The Petitioner has argued and he continues to assert that the trial court misapplied the law of Makemson to an undisputed, stipulated set of facts, and that an injustice thereby resulted which was compounded when the Second District Court affirmed the order appealed from.

III. POINT THREE:

The third argument in the Amicus Answer Brief advances two patently illogical syllogisms involving (1) a reasonable Petitioner and a reasonable Criminal Administrator and (2) an attorney who charges \$100 an hour and an attorney who charges \$200 per hour.

These syllogisms apparently are intended by the Amicus to advance his argument which Petitioner perceives to be as follows:

Payment of \$26.12 per hour for representation of an indigent in a capital case is only unreasonable if the subject case is found to be "extraordinary and unusual" notwithstanding the fact that by local rule appointed attorneys are paid at the rate of \$50 per hour in indigent cases.

It is noteworthy that neither the Respondent nor the Amicus can attack the merits of Petitioner's appeal (as opposed to the issue of jurisdiction) without resorting to the same phraseology of "extraordinary and unusual" which was lifted from the Makemson decision. The whole basis for the trial court's denial of Petitioner's request for "excess" fees was provenly founded upon that aspect of the Makemson decision, and that phraseology was the only basis for the Respondent's argument on the merits, and that expression now serves as the only basis for the Amicus argument on the merits.

Clearly, if the lower tribunal, the second DCA, and my worthy opposition all believe that the legitimacy of payments of "excess" fees is a function of something other than the quality and quantity of the attorney's labor expended, then this Court must clarify Makemson in that regard.

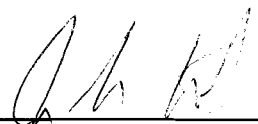
One enlightening way to evaluate whether Petitioner's fee award was fair or confiscatory is to apply the standards set forth in Rules Regulating The Florida Bar 4-1.5 (B) to the stipulated facts of the case at bar. Applying that criteria to the facts sub judice shockingly supports Petitioner's position that he should have been compensated at the standard rate of \$50.00 and not at one-half that rate!

CONCLUSION

The Amicus Curiae Answer Brief suggests that the lower tribunal did not abuse its discretion when it awarded Petitioner a fee in an amount approximately one-half the local standard fee schedule in indigent cases. Petitioner believes that the lower tribunal erred when it misapplied the rules governing this exercise of discretion as set forth in Makemson. Petitioner urges the Court to mandate payment of a fee at the rate of \$50.00 per hour or to remand this case for a redetermination of fees in accordance with the correct rule of law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to John E. Schaefer, Assistant County Attorney and counsel for Respondent, at 315 - Court Street, Clearwater, FL 34616, and to William J. Roberts, General Counsel for the Florida Association of Counties, Inc., by regular US mail on this 27th day of September, 1988.



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