

IN THE SUPREME COURT OF FLORIDA

Case No. _____

Fourth DCA Case No. 88-0436

IN RE: ESTATE OF

LESTER PLATT,

Deceased.

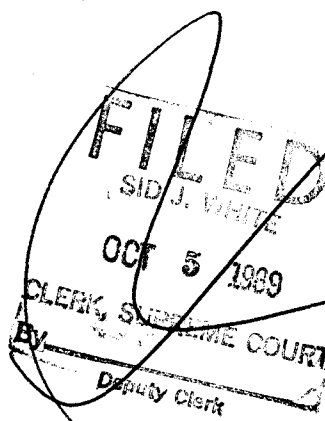
PATRICIA PLATT FAULKNER and
BARBARA PLATT SWANSON,

Petitioners,

-vs-

GEORGE A. PATTERSON and
NCNB NATIONAL BANK OF FLORIDA,

Respondents.



PETITIONERS' BRIEF
ON JURISDICTION

On Review from the District Court
of Appeal, Fourth District
State of Florida

✓
SAMUEL S. SMITH, ESQUIRE

RUDEN, BARNETT, McCLOSKY,
SMITH, SCHUSTER & RUSSELL, P.A.
Counsel for Petitioners
701 Brickell Avenue, Suite 1900
Miami, FL 33131
(305) 789-2700

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS.....	ii
STATEMENT OF THE CASE AND FACTS.....	1
SUMMARY OF THE ARGUMENT.....	3
JURISDICTIONAL STATEMENT.....	4
ARGUMENT	
I. THE DECISION OF THE DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN FLORIDA <u>PATIENT'S COMPENSATION FUND v. ROWE,</u> 470 So.2d 1145 (Fla. 1985).....	5
II. THE DECISION OF THE DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THE SECOND DISTRICT COURT OF APPEAL IN <u>De LOACH v. WESTMAN</u> , 506 So.2d 1142 (Fla. 2d DCA 1987) and <u>BRADY V. WILLIAMS</u> , 491 So.2d 1160 (Fla. 2d DCA 1986).....	8
CONCLUSION.....	9
CERTIFICATE OF SERVICE.....	10

TABLE OF CITATIONS

<u>Cases</u>	<u>Page</u>
<u>Brady v. Williams,</u> 491 So.2d 1160 (Fla. 2d DCA 1986).....	3,8
<u>De Loach v. Westman,</u> 506 So.2d 1142 (Fla. 2d DCA 1987).....	3,8
<u>Florida Patient's Compensation Fund v. Rowe,</u> 472 So.2d 1145 (Fla. 1985).....	1-3, 5-8
<u>In re Estate of Warwick,</u> 14 F.L.W. 1280 (Fla. 4th DCA May 29, 1989).....	2
 <u>Other Authorities</u>	
Art. V, §3(b)(3) Fla. Const. (1980).....	4
Rule 2-106, Disciplinary Rule [now Rule 4.15 of the Code of Professional Responsibility].....	5
Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure.....	4
§733.617, <u>Florida Statutes</u>	2,3, 5,7

STATEMENT OF THE CASE AND FACTS

Petitioners, Patricia Platt Faulkner and Barbara Platt Swanson, are beneficiaries of the Estate of Lester Platt. Respondents were appointed co-personal representatives of the estate. Shortly after Mr. Platt's death, the co-personal representatives advised the beneficiaries that the personal representative fees and attorney's fees charged would be calculated as 4.5% of the gross value of the estate. Petitioner, Patricia Platt Faulkner, objected to the demanded percentage fees.

Two years later Respondents petitioned for reasonable attorney's fees and co-personal representative fees. A trial was conducted before the Honorable William Clayton Johnson on December 7 and 8, 1987. At the trial, Patterson testified that he had expended 274 total hours as an attorney for the estate. His office staff spent 155 hours. Patterson candidly testified that he based his requested fee on a percentage of the estate rather than upon the hours expended at a reasonable hourly rate. Patterson's personal representative fee was calculated as a percentage of NCNB's scheduled fee. The fees sought were calculated as a percentage of the gross value of the estate.

At trial Petitioners contended that the fees should be calculated by utilizing the lodestar methodology set forth in Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985). On January 20, 1988, the trial court entered an

Order that explicitly refused to apply the lodestar methodology in the computation of the fees. The Order awarded a fee to co-personal representative, NCNB, based upon its fee schedule. The court awarded Patterson a co-personal representative fee equal to 1/3 of NCNB's fee, that is \$65,692. The court awarded Patterson an attorney fee equal to 2% of the estate, that is \$144,300. A Notice of Appeal was timely filed on February 18, 1988.

The trial court's determination that the lodestar methodology adopted in Florida Patient's Compensation Fund v. Rowe was not applicable to the determination of reasonable attorney's fees pursuant to §733.617 was affirmed by the Fourth District Court of Appeal. The court relied upon In re Estate of Warwick, 14 F.L.W. 1280 (Fla. 4th DCA, May 29, 1989). Jurisdictional briefs have been filed seeking review of that decision in this Court in Case No. 74-349.

SUMMARY OF THE ARGUMENT

At issue in this case is whether the lodestar methodology adopted by this Court in Florida Patient's Compensation Fund v. Rowe governs the calculation of a reasonable attorney's fee awarded pursuant to §733.617 Fla. Stat. The decision of the Fourth District Court of Appeal expressly holding that the Rowe methodology does not apply conflicts with this Court's decision in Rowe and the decisions of the Second District Court of Appeal in De Loach v. Westman, 506 So.2d 1142 (Fla. 2d DCA 1987), and Brady v. Williams, 491 So.2d 1160 (Fla. 2d DCA 1986).

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the Supreme Court or another district court of appeal on the same point of law. Art. V §3(b)(3) Fla.Const. (1980); Florida Rules of Appellate Procedure, 9.030(a)(2)(A)(iv).

ARGUMENT

- I. THE DECISION OF THE DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN FLORIDA PATIENT'S COMPENSATION FUND v. ROWE, 472 So.2d 1145 (Fla. 1985)

Patterson petitioned the court to determine and award a reasonable attorney's fee pursuant to §733.617 Fla. Stat. The impact of the entire fee will be borne by the beneficiaries of the Platt Estate, none of whom are clients of the attorney. The attorney's fees should have been determined in accordance with the methodology set forth in Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985).

In Rowe, the Supreme Court adopted a methodology for determining reasonable attorneys' fees based upon the criteria set forth in Disciplinary Rule 2-106 [now Rule 4.15 of the Code of Professional Responsibility]. This methodology was adopted to provide the trial courts with specific guidelines in determining court awarded reasonable fees. These guidelines were necessary because of a perceived lack of objectivity and uniformity in court-determined reasonable fees. The court wrote:

Recently, partially because of the substantial increase in the number of matters in which courts have been directed by statute to set attorney fees, great concern has been focused on a perceived lack of objectivity and uniformity in court-determined reasonable attorney fees. Some time ago, this Court recognized the impact of attorneys' fees on the credibility

of the court system and the legal profession when we stated:

There is but little analogy between the elements that control the determination of a lawyer's fees and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation. Baruch v. Giblin, 122 Fla. 59, 63, 164 So. 831, 833 (1935).

Rowe at 1149-1150.

To meet these important concerns regarding court-determined reasonable fees, the court adopted the lodestar methodology:

In summary, in computing an attorney fee, the trial judge should (1) determine the number of hours reasonably expended on the litigation; (2) determine the reasonable hourly rate for this type of litigation; (3) multiply the result of (1) and (2); and, when appropriate, (4) adjust the fee on the basis of the contingent nature of the litigation or the failure to prevail on a claim or claims. Application of the Disciplinary Rule 2-106 criteria in this manner will provide trial judges with objective guidance in the awarding of reasonable

attorney fees and allow parties a meaningful opportunity for appellate review.

Rowe at 1151-1152.

Notwithstanding this Court's clear mandate that the lodestar methodology be utilized in calculating a reasonable attorney's fee, the District Court of Appeal held that in determining a reasonable attorney's fee pursuant to §733.617, the Rowe methodology is not applicable. Therefore, the court's decision expressly and directly conflicts with Rowe.

II.

II. THE DECISION OF THE DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THE SECOND DISTRICT COURT OF APPEAL IN DE LOACH v. WESTMAN, 506 So.2d 1142 (Fla. 2d DCA 1987) AND BRADY V. WILLIAMS, 491 So.2d 1160 (Fla. 2d DCA 1986)

In Brady v. Williams, 491 So.2d 1160 (Fla. 2d DCA 1986), the Second District Court of Appeal reversed an order awarding fees to the personal representative's attorney and remanded the case for further proceeding. The court expressly held that the methodology adopted in Rowe must be applied in determining an award of attorney's fees to the counsel for the personal representative. Brady is indistinguishable from this case. Similarly, in De Loach v. Westman, 506 So.2d 1142 (Fla. 2d DCA 1987), the Second District Court of Appeal reversed an order awarding attorney's fees in a probate proceeding due to the court's failure to fulfill the requirements of Rowe. The decisions of the Second District Court of Appeal and the Fourth District Court of Appeal expressly and directly conflict on the same point of law. The decisions cannot be reconciled.

CONCLUSION

This Court has discretionary jurisdiction to review the decision below, and the Court should exercise that jurisdiction to consider the merits of the petitioner's argument.

Respectfully submitted,

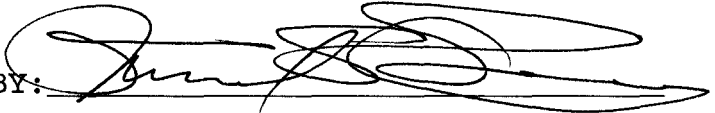
RUDEN, BARNETT, McCLOSKY,
SMITH, SCHUSTER & RUSSELL, P.A.
Counsel for Petitioners
701 Brickell Avenue, Suite 1900
Miami, FL 33131
(305) 789-2700

BY: 

SAMUEL S. SMITH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by U.S. Mail to Harry G. Carratt, Esquire, MORGAN, CARRATT AND O'CONNER, P.A., Attorneys for Respondent, 2601 E. Oakland Park Boulevard, Suite 500, Ft. Lauderdale, FL 33306; ROBERT J. FRIEDMAN, ESQUIRE, P.O. Box 88, Hallandale, Fl 33309 on this 2nd day of October, 1989.

BY: 

PLATT/JURIS.BRIEF
M/1095P/10-2-89