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**FILED**

SID J. WHITE

APR 6 1994

IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,383

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

MARY BARNER, individually, and as  
guardian and natural parent of  
JOSEPH BURKES, a minor,

Petitioner,

vs.

SEARCY, DENNEY, SCAROLA, BARNHART  
& SHIPLEY, P.A.,

Respondent.

\_\_\_\_\_ /

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL  
OF FLORIDA, FOURTH DISTRICT

**RESPONDENT'S BRIEF ON JURISDICTION**

SEARCY, DENNEY, SCAROLA, BARNHART  
& SHIPLEY, P.A.

2139 Palm Beach Lakes Blvd.  
West Palm Beach, Florida 33409

-and-

PODHURST, ORSECK, JOSEFSBERG,  
EATON, MEADOW, OLIN & PERWIN, P.A.

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By: JOEL D. EATON  
Fla. Bar No. 203513

TABLE OF CONTENTS

	Page
I. STATEMENT OF THE CASE AND FACTS . . . . .	1
II. SUMMARY OF THE ARGUMENT . . . . .	1
III. ARGUMENT . . . . .	1
IV. CERTIFICATE OF SERVICE . . . . .	3

TABLE OF CASES

	Page
<i>Florida Patient's Compensation Fund v. Rowe,</i> 472 So.2d 1145 (Fla. 1985) . . . . .	1
<i>Paddock v. Chacko,</i> 553 So.2d 168 (Fla. 1989) . . . . .	2
<i>Reaves v. State,</i> 485 So.2d 829 (Fla. 1986) . . . . .	2
<i>Rosenberg v. Levin,</i> 409 So.2d 1016 (Fla. 1982) . . . . .	3
<i>Standard Guaranty Insurance Co. v. Quanstrom,</i> 555 So.2d 828 (Fla. 1990) . . . . .	3

## I. STATEMENT OF THE CASE AND FACTS

We are unable to accept Ms. Barner's statement of the case and facts, because it is constructed almost entirely upon the record proper, rather than upon the face of the decision sought to be reviewed, and upon a lengthy appendix which includes several documents which are totally irrelevant to this proceeding. Most respectfully, this tactic was entirely improper:

This case illustrates a common error made in preparing jurisdictional briefs based on alleged decisional conflict. . . . As we explain in the text above, we are not permitted to base our conflict jurisdiction on a review of the record. . . . Thus, it is pointless and misleading to include a comprehensive recitation of facts not appearing in the decision below, with citations to the record, as petitioner provided here. Similarly, voluminous appendices are normally not relevant.

*Reaves v. State*, 485 So.2d 829, 830 n.3 (Fla. 1986). See *Paddock v. Chacko*, 553 So.2d 168, 168 (Fla. 1989) ("[I]t is neither appropriate nor proper for us to review a record to find conflict or to determine if we agree whether a district court's recitation of facts is correct; the opinion itself must directly and expressly, on its face, conflict with another opinion") (J. McDonald, concurring).

Ms. Barner's statement is also, for the most part, neither accurate nor fair. Indeed, some of it is simply false. Nevertheless, because we intend to concede the conflict upon which Ms. Barner relies for jurisdiction here, we will resist the temptation to set the record straight. Instead, we will trust the Court to make its determination of jurisdiction from the face of the district court's decision alone, and we will present the Court with a proper statement of the case and facts in our brief on the merits.

## II. SUMMARY OF THE ARGUMENT

We concede that the Court has jurisdiction to review the district court's decision.

## III. ARGUMENT

Initially, we disagree with Ms. Barner's contention that the district court's decision is in express and direct conflict with *Florida Patient's Compensation Fund v. Rowe*, 472 So.2d 1145

(Fla. 1985), and *Standard Guaranty Insurance Co. v. Quanstrom*, 555 So.2d 828 (Fla. 1990). These decisions require use of the "lodestar" method in computing "prevailing party" attorney's fees authorized by statute. They do not require use of the "lodestar" method in computing the fees of an attorney discharged without cause under the doctrine of *quantum meruit*. *Rosenberg v. Levin*, 409 So.2d 1016 (Fla. 1982), governs that computation -- and there is no decision of this Court which even remotely suggests that the "lodestar" method is required when computing attorney's fees under the doctrine of *quantum meruit*.

Nevertheless, Ms. Barner is correct that the district courts have split on the question of whether the "lodestar" method is required when computing attorney's fees under the doctrine of *quantum meruit*. The First and Second Districts have held that it is; the Third and Fourth Districts have held that it is not. And because this conflict is acknowledged on the face of the decision sought to be reviewed here, we concede that the Court has jurisdiction to review the decision.

We can also find no basis upon which to suggest that the Court should exercise its discretion to decline review of the conflict -- since the identical conflict is presently before the Court on certifications of conflict in *Faro v. Romani* (Case No. 82,725), and *Searcy, Denney, Scarola, Barnhart & Shipley, P.A. v. Poletz* (Case No. 83,375). We therefore do not oppose Ms. Barner's request that review be granted. In due course, we will demonstrate that the district court's decision is correct.

#### IV. CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 1st day of April, 1994, to: James T. Walker, Esq., Brennan, Hayskar, Jefferson, Gorman, Walker & Schwerer, P.A., P.O. Box 3779, Ft. Pierce, Florida 34948.

Respectfully submitted,

SEARCY, DENNEY, SCAROLA, BARNHART  
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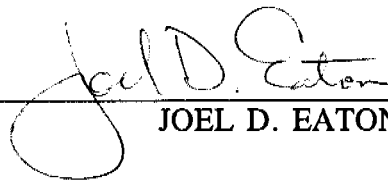
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