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DIVISION II

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STATE OF WASHINGTON

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No. 38956-8-II

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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NATTALIA SHARINGER,

Appellant,

vs.

CAROL KOPANSKY AND JOHN DOE KOPANSKY, and the marital  
community composed thereof.

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**APPEAL FROM CLALLAM COUNTY SUPERIOR COURT**  
Honorable George L. Wood, Judge

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**BRIEF OF RESPONDENT**

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## I. INTRODUCTION

This appeal arises out of Nattalia Sharinger's and her now-husband Daniel Gellert's continued and unfounded distrust of her former attorney, Karen K. Koehler, Esq. Due to this distrust, the attorney/client relationship between Ms. Koehler and Ms. Sharinger deteriorated to the point that Ms. Koehler had no alternative but to justifiably withdraw as Ms. Sharinger's counsel.

Although their attorney/client relationship started out well, it quickly devolved as a result of Ms. Sharinger's and Mr. Gellert's unreasonable demands and abusive treatment of Ms. Koehler. Ms. Sharinger and Mr. Gellert fought tooth and nail every attempt to obtain routine discovery from them as well as Ms. Koehler's efforts to explain why they needed to provide that discovery. They also constantly attempted to take control of the legal handling of their case. In the process, they repeatedly instructed Ms. Koehler to act in a way Ms. Koehler knew to be legal malpractice and degraded her when she refused to do so. They accused Ms. Koehler of lying to them and conspiring with the defense attorney despite Ms. Koehler's zealous representation of Ms. Sharinger's interests.

Even though Ms. Koehler made numerous attempts to repair their ailing relationship, those efforts ultimately failed. As a result, Ms.

Koehler's withdrawal as Ms. Sharinger's counsel was justified, and the trial court's award of attorney fees to Ms. Koehler was appropriate. We thus request that this court affirm the trial court's award of attorney fees and furthermore award costs and fees associated with this appeal.

## **II. RESTATEMENT OF THE ISSUES**

Did the trial court properly exercise its discretion by finding that counsel had good cause to withdraw when she, through no fault of her own, encountered significant and persistent difficulties in maintaining the attorney/client relationship?

Should respondent be awarded attorney fees on appeal?

## **III. STATEMENT OF THE CASE**

### **A. The underlying case.**

On September 1, 2005, Ms. Sharinger retained Ms. Koehler to represent her regarding injuries she sustained in a motor vehicle collision earlier that year. Report of Proceedings (RP) at 85-86. Ms. Sharinger's now-husband Daniel Gellert was not a party to this claim because they were not married at the time of the accident. RP at 13; 3 Clerk's Papers (CP) at 690.

The initial year of representation passed relatively uneventfully. RP at 14-19. Ms. Sharinger continued to heal and receive medical care while Ms. Koehler collected documentation, managed Ms. Sharinger's

medical bills, evaluated the case, and submitted a settlement demand. RP at 14-19. Settlement negotiations ended and suit was filed in the spring of 2007. RP at 18-19; 3 CP at 690-93.

In August of 2007, defendant Carol Kopansky contested liability, asserting that the collision occurred because she experienced a sudden and unforeseen loss of consciousness. 3 CP at 686-88. This defense concerned Ms. Koehler because it would likely succeed as a complete defense without evidence that the defendant had a history of loss of consciousness or a medical condition known to cause loss of consciousness. RP at 12, 22. It also concerned her because the defendant's insurance company—Travelers—had previously said they would admit to liability but were now retracting that offer. RP at 13. Based on her prior experience with this defense, Ms. Koehler aggressively pursued various avenues to combat it, including requesting the defendant's deposition and medical records. RP at 12, 20-22.

It was around this same time that Mr. Gellert began interfering with the attorney/client relationship between Ms. Koehler and Ms. Sharinger. He attempted to direct Ms. Koehler's legal handling of the case, such as telling her how to serve the defendant and what discovery to request. 2 CP at 259-63. He railed against routine discovery requests from defense counsel, saying, "I HATE when the defense becomes the

prosecutor!” and demanded that Ms. Koehler’s paralegal obtain admissions from the defendant. 2 CP at 264-65. Ms. Koehler explained to Mr. Gellert that his behavior was inappropriate and disruptive to the case. 2 CP at 266-69.

In October of 2007, defense counsel agreed to concede liability. RP at 22. Rather than enjoy this good news, Ms. Sharinger and Mr. Gellert resisted it. RP at 23. Ms. Sharinger wrote, “NOT a good idea. The interrogatory clearly documents falsehoods and therefore we should demand the medical and all other records.”<sup>1</sup> 2 CP at 270. Ms. Koehler’s tried to assure them that accepting the admission would be beneficial and rejecting it would be “tantamount to committing malpractice.” 2 CP at 272.

Although they ultimately went along with Ms. Koehler decision to accept the admission, Ms. Sharinger and Mr. Gellert continued to complain about it and pressed Ms. Koehler to pursue defendant’s deposition and medical records in case she tried to “play the violin that she passed out.” RP at 25; 2 CP at 275-78. However, Ms. Koehler refused to seek defendant’s medical records because they were irrelevant after

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<sup>1</sup> It is likely that Mr. Gellert wrote this email given Ms. Sharinger’s later admission that he wrote emails to counsel and signed her name, all without her knowledge. RP at 31. However, this email was signed “Nattalia,” so for simplicity, we describe emails signed “Nattalia” as written by her and emails signed “Dan” as written by him.

defendant conceded liability and Ms. Koehler considered such a request to be frivolous. RP at 28-29.

The friction continued in November of 2007 when Ms. Sharinger refused to allow her deposition unless the defendant was deposed regarding her medical condition. 2 CP at 281-82. Ms. Koehler sought the advice of her partners at Stritmatter Kessler regarding how to handle the situation. 2 CP at 284. She then wrote an email to Ms. Sharinger and Mr. Gellert expressing her concerns and suggesting various ways of resolving the friction, including having a meeting and possibly bringing another Stritmatter Kessler attorney into the case. 2 CP at 285.

On December 5, 2007, Ms. Sharinger met with Ms. Koehler at the Stritmatter Kessler office; she came alone. RP at 30. She informed Ms. Koehler that without her knowledge, Mr. Gellert had sent emails to Stritmatter Kessler employees pretending to be Ms. Sharinger. RP at 31. During this meeting Ms. Sharinger also revealed that she had—on Mr. Gellert’s advice— withheld information from her answers to interrogatories regarding prior accidents. RP at 31. Ms. Sharinger resisted the suggestion that another attorney assist on the case but wanted to remain Ms. Koehler’s client. RP at 31.

Despite these concerning revelations, Ms. Koehler felt encouraged by this meeting and decided to give Ms. Sharinger another chance. RP at

31. They agreed that Ms. Koehler would stop communicating with Mr. Gellert and instead communicate only with Ms. Sharinger through a different email address. RP at 31. Ms. Koehler notified her staff of this development. 2 CP at 287-88. She also prepared supplemental answers to interrogatories that included the previously omitted information. 2 CP at 289-91.

Ms. Sharinger was eventually deposed in February of 2008. RP at 26, 32. Shortly after, defense counsel Michael Morgan made a \$200,000 settlement offer. RP at 26-27. Mr. Morgan also informed Ms. Koehler that the defendant had settled with another victim of the collision for \$65,000. 2 CP at 297. At this time, Ms. Koehler believed that the defendant's policy limits were \$300,000 based on defendant's answers to interrogatories.<sup>2</sup> 2 CP at 297; 3 CP at 667. For this reason, Ms. Koehler consulted the partners at Stritmatter Kessler regarding whether she should settle \$35,000 short of the policy limits and then pursue Ms. Sharinger's UIM policy. 2 CP at 297.

To his credit, Mr. Gellert wanted to see the policy, which confirmed the policy limits were in fact \$500,000. 1 CP at 122. When confronted by this discrepancy, Mr. Morgan apologized, saying that the

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<sup>2</sup> Travelers had informed Ms. Koehler by letter dated September 7, 2005 that the defendant's policy limits were \$500,000, but this information was not noted on Ms. Sharinger's client data sheet. 1 CP at 120; 2 CP at 299.

interrogatory answer was a typographical error. 2 CP at 249. However, he stood by his offer of \$200,000, saying that it was a great offer and that it was being extended in large part because of Ms. Koehler's participation in the case. 2 CP at 249. Shortly after, Mr. Morgan filed an offer of judgment for \$200,000. RP at 35; 2 CP at 326.

Although Ms. Koehler had on previous occasions estimated the value of the case to be in the range of \$300,000, she felt that at the time of Mr. Morgan's offer the case's value had dropped because Ms. Sharinger had stopped seeing her physiatrist, contrary to Ms. Koehler's advice. 2 CP at 299; RP at 34. Ms. Koehler was also concerned that Mr. Gellert would make a poor witness. RP at 34-35. Given those circumstances, Ms. Koehler felt that \$200,000 was a good offer. RP at 33. Ms. Koehler informed Ms. Sharinger of the correct policy limits and conveyed the offer of \$200,000. 2 CP at 299.

Mr. Gellert reacted poorly to the offer and suggested that Ms. Koehler only recommended it because Mr. Morgan was her "close personal friend." 2 CP at 300. He called the offer a "backroom sweetheart deal[]." 2 CP at 302. In response, Ms. Koehler contacted Ms. Sharinger and suggested that she should take the settlement offer because Mr. Gellert would likely make a poor witness should this case go to trial

and that as a result, it would be difficult to get a jury verdict higher than \$200,000. 2 CP at 303. Ms. Sharinger never responded to this email.

Although the situation quieted briefly, tempers flared again in the spring of 2008 when Ms. Sharinger resumed her efforts to direct Ms. Koehler's handling of the case. 2 CP at 305. She insisted that the 2005 collision damaged her thyroid and that she should receive compensation for her thyroid medication, but when Ms. Koehler asked for the name of the doctor who told her this, Ms. Sharinger responded, "perhaps I made a mistake by telling you about my medical problems and opinions of my doctors." 2 CP at 306. She also insisted that the defendant was covered by a \$1,000,000 insurance policy at the time of the accident despite the lack of any evidence supporting this claim and defense counsel's prior assurances that no such policy existed. 2 CP at 296, 305.

Ms. Koehler informed Ms. Sharinger that if she did not agree to settle that they would go to trial. 2 CP at 305. Ms. Koehler knew that the defendant was willing to "go a little higher" on their offer, so she suggested that if Ms. Sharinger were interested, she could probably get the defendant to agree to \$225,000 or \$250,000. RP at 55; 2 CP at 305. Ms. Sharinger informed her that she would take nothing less than \$200,000 net to her, a figure that necessitated a total settlement of over \$300,000. 2 CP at 305-06; RP at 55.

Around this time, defense counsel notified Ms. Koehler that he intended to conduct a perpetuation deposition of the defendant given her advanced age and poor medical condition. 2 CP at 325. Mr. Morgan also requested that the deposition occur in New Mexico, where the defendant lived, because she was too ill to fly. 2 CP at 301. This request angered Ms. Sharinger. RP at 39. On Ms. Sharinger's behalf, Ms. Koehler resisted this deposition and refused to consider holding it in New Mexico until the defendant produce proof that her medical condition prevented her from flying. 2 CP at 301.

Also around this time, defense counsel sent second discovery requests directed to Ms. Sharinger, most of which concerned Ms. Sharinger's travel plans to Europe that she had discussed during her February 2008 deposition. 2 CP at 252. In response, Ms. Sharinger accused Ms. Koehler of breaching their attorney/client relationship: "Under the client attorney privilege I informed you that I would be out of the jurisdiction. I am extremely concerned that you informed Travelers of this. . . . I request that you file an objection and for a protective order so that I can live in peace." 2 CP at 307.

Ms. Koehler pointed out that Ms. Sharinger had disclosed her travel plans during her deposition, after which Ms. Sharinger extended her "humble apology." 2 CP at 307, 309. However, she continued to resist

answering the second interrogatories, saying, “I am not a criminal neither am I on probation therefore I cannot see how Traveler’s is entitled to these demands. . . . You have to convince me that they have the right under the law of the State of Washington to these privacy questions.” 2 CP at 309. Ms. Sharinger also refused to submit to a CR 35 examination. RP at 36.

At this point, Ms. Koehler was at her wits end. However, she offered Ms. Sharinger one last chance to repair their ailing attorney/client relationship by holding a telephonic conference involving Ms. Sharinger, Ms. Koehler, and one other Stritmatter Kessler partner. 2 CP at 309. Ms. Sharinger refused to participate if the conference involved any other attorneys. 2 CP at 310. She further demanded that any perpetuation deposition of the defendant occur in Washington State despite the possibility that the defendant could not fly and that Ms. Koehler protect her against “invasion of my privacy,” i.e. protect her from the second set of interrogatories and the CR 35 examination. 2 CP at 310.

The following day, Ms. Koehler withdrew as counsel. 2 CP at 312. Ms. Sharinger did not object to the withdrawal. Upon withdrawal Ms. Koehler filed a lien against any judgment Ms. Sharinger may obtain. 2 CP at 314.

Afterward, Mr. Gellert negotiated directly with the insurer and Ms. Sharinger settled the claim for \$225,000 a few months after the

withdrawal was effective. 3 CP at 439-42. Mr. Gellert and Ms. Sharinger took the position that counsel should not receive any compensation for services rendered. 2 CP at 343-48. The fee dispute made its way to a full hearing in the Clallam County Superior Court.

**B. The attorney fees lien hearing.**

Judge George L. Wood heard the matter and found that although Ms. Koehler's withdrawal did not constitute constructive firing, Ms. Koehler had good and reasonable cause to withdraw due to the breakdown of the relationship caused in significant part by Mr. Gellert. 1 CP at 15-19. The trial court noted a "general lack of trust in the judgment of Ms. Koehler by Ms. Sharinger and Mr. Gellert," as evidenced by their resistance to accepting the defendant's stipulation to liability, their initial refusal to allow defense counsel to take Ms. Sharinger's deposition, their charge that Ms. Koehler violated Ms. Sharinger's attorney/client confidence, and their accusation that Ms. Koehler was "friends" with defense counsel. 1 CP at 65-67. Ms. Sharinger also exhibited this lack of trust at the attorney fees hearing when she recounted why she refused to conference with Ms. Koehler and another partner at Stritmatter Kessler during the height of their attorney/client troubles, saying that she saw the conference as "two against one." 1 CP at 67-68.

The trial court further recognized that Ms. Sharinger and Mr. Gellert “were consistently resistive to legal advice, often openly critical, and demanded courses of action which Ms. Koehler believed to be both frivolous and unprofessional.” 1 CP at 16. The trial court found that “a severe breakdown in communication” occurred between Ms. Sharinger and Ms. Koehler, and that this breakdown made a continued attorney/client relationship “impossible.” 1 CP at 16-17. For all these reasons, the trial court held that Ms. Koehler had good and reasonable cause to withdraw from the case and was entitled to receive attorney fees in an *in quantum meruit* basis. 1 CP at 18.

The trial court further determined that Ms. Koehler should receive compensation at a rate of \$400 per hour for an estimated 144 hours of work. 1 CP at 18. The trial court found this rate to be reasonable given the unusual sudden loss of consciousness defense and given that Ms. Koehler’s efforts procured a settlement offer of \$200,000, with the possibility of \$25,000 to \$50,000 more. 1 CP at 17-18. Although the Contract to Hire between Ms. Koehler and Ms. Sharinger mentioned a figure of \$250 per hour, the trial court found that this figure applied only to an award of sanctions, did not apply to the contract as a whole, and did not constitute a “reasonable hourly rate.” 1 CP at 17.

Ms. Sharinger filed a motion for reconsideration, which the trial court denied. 1 CP at 24-27. Ms. Sharinger appealed.

**C. The appeal.**

Ms. Sharinger and Mr. Gellert have had the same problem with their attorney on appeal as they had with Ms. Koehler. On June 26, 2009—the same day appellant’s brief was due—appellant’s counsel W. Jeff Davis filed a Notice of Withdrawal. In his reply to Ms. Sharinger’s objection to his withdrawal, Mr. Davis states:

Appellant allowed her husband, Daniel Gellert, to take total control of the appeal process. Mr. Gellert put the undersigned in an extremely awkward situation. Mr. Gellert stripped the undersigned of any decision-making authority as to the appeal. He made major decisions regarding the appeal process. Mr. Gellert chose to write the Appellant’s brief himself.

Reply to Objection to Withdrawal, filed in this court by Mr. Davis on June 30, 2009, at 2. As a result, Mr. Davis said that he “could not and will not, in good conscience, sign a Brief as his own when he had no authority to write the arguments.” Reply to Objection to Withdrawal at 3.

**IV. ARGUMENT**

**A. Standard of review.**

The determination of attorney fees is within the sound discretion of the trial judge. *Ausler v. Ramsey*, 73 Wn. App. 231, 235, 868 P.2d 877 (1994). A reviewing court will not disturb such a decision by a trial court

except upon a clear showing that the trial court abused its discretion. *Miller v. Campbell*, 164 Wn.2d 529, 536, 192 P.3d 352 (2008). A trial court abuses its discretion when its decision is manifestly unreasonable, based on untenable grounds, or exercised for untenable reasons. *Miller*, 164 Wn.2d at 536.

Credibility determinations are within the sole discretion of the fact finder and are not reviewable on appeal. *Morse v. Antonellis*, 149 Wn.2d 572, 574, 70 P.3d 125 (2003).

**B. Ms. Koehler is entitled to recover reasonable attorney fees *in quantum meruit* because she had good cause to withdrawal as counsel for Ms. Sharinger.<sup>3</sup>**

When an attorney hired on contingency withdraws from a case prior to settlement or judgment, she may recover fees for work already performed on an *in quantum meruit* basis if her withdrawal was “justified” or for “good cause.” *Ryan v. State*, 112 Wn. App. 896, 900, 61 P.3d 175 (2002); *Ausler*, 73 Wn. App. at 236. The *Ausler* court listed various circumstances under which an attorney has good cause to withdraw, including 1) the client fails to cooperate with the attorney, 2) the attorney

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<sup>3</sup> As an initial matter, the undersigned notes that Ms. Sharinger failed to properly assign error. Under RAP 10.3(g), the appellant must assign error separately “for each finding of fact a party contends was improperly made.” RAP 10.3(g). Here, Ms. Sharinger assigned error to the court’s finding that “Koehler’s withdrawal was justified or for good cause” without assigning error to each of the trial court’s factual findings supporting that decision. See Appellant’s Br. at 4. As such, those other factual findings, which amply support a finding of good cause, should be taken as verities on appeal. *Moreman v. Butcher*, 126 Wn.2d 36, 39, 891 P.2d 725 (1995).

and client suffer a breakdown in communication, 3) the client degrades the attorney, e.g., accuses of the attorney of dishonesty, and 4) the ethical rules require the attorney to withdraw. *Ausler*, 73 Wn. App. at 236 n.4. The *Ausler* court further noted that an attorney can withdraw where the attorney/client relationship has suffered a deterioration of trust. *Ausler*, 73 Wn. App. at 239 n.9.

Here, the trial court found more than adequate cause under *Ausler* for Ms. Koehler's withdrawal. As discussed above, the trial court noted a "general lack of trust in the judgment of Ms. Koehler by Ms. Sharinger and Mr. Gellert." 1 CP at 65. The trial court further recognized that Ms. Sharinger and Mr. Gellert "were consistently resistive to legal advice, often openly critical, and demanded courses of action which Ms. Koehler believed to be both frivolous and unprofessional." 1 CP at 16. The trial court found that "a severe breakdown in communication" occurred between Ms. Sharinger and Ms. Koehler, and that this breakdown made a continued attorney/client relationship "impossible." 1 CP at 16-17. All of these reasons qualify as good cause under *Ausler* for Ms. Koehler to withdraw as counsel. *See Ausler*, 73 Wn. App. at 236 n.4, 239 n.9.

The trial court's above findings are amply supported by the record. Ms. Sharinger repeatedly refused to cooperate with Ms. Koehler despite all of Ms. Koehler's best efforts. For example, Ms. Sharinger initially

refused to allow defense counsel to depose her despite the fact that her refusal could result in the dismissal of her case. 2 CP 281-83. She also resisted defendant's stipulation of liability even after Ms. Koehler insisted that the stipulation would benefit her case. 2 CP at 270-72. After Ms. Koehler insisted on accepting defendant's stipulation, Ms. Sharinger persisted in demanding the defendant's medical records despite their irrelevance to the only remaining open issue, i.e. Ms. Sharinger's damages. RP at 25, 36. Ms. Sharinger also stopped receiving medical treatment for her injuries even though Ms. Koehler warned her that doing so would adversely affect the value of her case. RP at 34. Finally, Ms. Sharinger refused to undergo a CR 35 examination. RP at 36. Although Ms. Sharinger willingly initiated the case and sought compensation for her injuries, she fought tooth and nail every attempt to gain information regarding her medical condition—asserting her “right to privacy”—as well as every attempt by Ms. Koehler to maximize the value of her case.<sup>4</sup>

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<sup>4</sup> Ms. Sharinger continued to assert that she had a “right to privacy” regarding her medical condition even though under statutory law she waived this right by filing her personal injury action:

Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

RCW 5.60.060(4)(b).

This refusal to cooperate stemmed largely from advice she received from her now husband Mr. Gellert. Despite the fact that Mr. Gellert was not the client, Mr. Gellert constantly told Ms. Koehler and her staff what to do and how to do it. RP at 29. He complained when defense counsel served routine discovery requests. 2 CP at 264-65. He sent emails impersonating Ms. Sharinger and advised her to withhold information about prior accidents from her answers to interrogatories. RP at 31. This meddling continued even after Ms. Sharinger instructed Ms. Koehler not to communicate with Mr. Gellert regarding the case. 2 CP at 300, 302-03. Mr. Gellert soured Ms. Sharinger against Ms. Koehler from the beginning and prevented them from forming a healthy attorney/client relationship.

Ms. Sharinger and Mr. Gellert also repeatedly degraded Ms. Koehler and accused her of professional dishonesty. For example, Mr. Gellert accused Ms. Koehler of being “close personal friends” with defense counsel and of giving him “backroom sweetheart deals” despite the lack of any evidence to support those accusations. 2 CP at 300, 302. Ms. Sharinger also accused Ms. Koehler of breaching her attorney/client confidences by revealing to the defense that she traveled to Europe when in fact Ms. Sharinger revealed this information during her deposition. 2

CP at 307. Their repeated degradation of Ms. Koehler was both offensive and unfounded.

Throughout all of these dealings exists pervasive thread of unfounded distrust directed at Ms. Koehler. The record shows that Ms. Koehler zealously represented Ms. Sharinger's interests, as indicated by her success at obtaining a stipulation to liability and a \$200,000 settlement offer with the possibility of \$25,000 or \$50,000 more. Yet Ms. Sharinger and Mr. Gellert micromanaged Ms. Koehler since the start of litigation, questioned all of Ms. Koehler's advice, and accused Ms. Koehler of professional dishonesty. This distrust is most evident in Ms. Sharinger's comments to the trial court when she said that she refused to teleconference with Ms. Koehler and another Stritmatter Kessler attorney because she considered it "two against one" and wondered if she should hire a lawyer to "be on my side." RP at 90.

Ms. Sharinger argues that her distrust was justified given that Ms. Koehler supposedly hid Travelers' policy limits from them, colluded with the defense attorney, and failed to depose the defendant or obtain her medical records. Appellant's Br. at 12-14. However, the record does not in any way support Ms. Sharinger's perception of these events. Instead, the record shows that Ms. Koehler made an honest mistake regarding the policy limits and informed Ms. Sharinger of that mistake as soon as she

discovered it. The record further shows that rather than colluding with the defense, Ms. Koehler negotiated with them in a professional manner and obtained a reasonable settlement offer given Ms. Sharinger's circumstances. Finally, the record shows that Ms. Koehler rightly refused to bludgeon the defendant with unnecessary requests for medical records or a discovery deposition given the fact that the defendant stipulated to liability, thus making such discovery irrelevant. Ms. Sharinger's and Mr. Gellert's distrust of Ms. Koehler was a self-fulfilling prophecy: no matter how well Ms. Koehler served their interests, Ms. Sharinger and Mr. Gellert were bound and determined to be disappointed.

Most of appellant's remaining arguments boil down to calling Ms. Koehler a liar. This court should disregard those arguments because credibility determinations are within the sole discretion of the fact finder—in this case, the Clallam County Superior Court judge—and are not reviewable on appeal. *Morse*, 149 Wn.2d at 574.

However, to the extent that appellant raises any appealable issues, she fails to show that her perception of the record makes logical sense, let alone shows that the trial court manifestly abused its discretion. This fact is most evident in appellant's claim that "based upon all the evidence submitted, Koehler had no intention in going to trial in Clallam County, and built a complete record to withdraw if appellant rejected the

settlement offer.” Appellant’s Br. at 19. This accusation is absurd, to say the least. Such a scheme would require Ms. Koehler to work for three years on a case, all the while knowing that a) she would obtain a settlement offer, b) if the client rejected that offer and she withdrew from the case, the client would likely obtain a judgment anyway, and c) a trial court would likely find that she had good cause to withdraw. Otherwise, Ms. Koehler would have wasted those three years of work for nothing and would furthermore put her reputation as a stellar trial attorney at risk.

Beyond that, this accusation completely ignores the weight of the record, a record that contains email after email after email documenting that Ms. Sharinger and Mr. Gellert—not Ms. Koehler—caused the breakdown of the attorney/client relationship. And the fact that Ms. Sharinger had the exact same problems with her attorney on appeal—as evidenced by that attorney’s withdrawal from her case, citing Mr. Gellert’s effective takeover of the brief writing process—further goes to support this extensive record. *See Reply to Objection to Withdrawal at 2.* Although Ms. Sharinger’s conspiracy theories make for good soap opera material, they do not come close to showing that the trial court abused its discretion.

Finally, Ms. Sharinger argues that the trial court abused its discretion by over-valuing Ms. Koehler’s experience as a personal injury

attorney. Appellant's Br. at 27. This court should decline to consider this argument given that Ms. Sharinger failed to assign error to any of the trial court's findings of fact related to Ms. Koehler's experience. *See* RAP 10.3(g). However, even if this court does entertain this argument, it is without merit because it mischaracterizes the trial court's opinion. Although the trial court did note Ms. Koehler's impressive credentials and found that her "mere presence in the case played a part in the offer of settlement," this finding was one of many that the trial court used to make its ultimate decision. 1 CP at 15-19. Furthermore, the trial court used this finding only when determining a reasonable fee for Ms. Koehler's services, a part of the decision that appellant does not challenge. *See* 1 CP at 15-19; Appellant's Br. at 4.

Thus, the record shows that an intractable breakdown in communication developed as a result of Ms. Sharinger's and Mr. Gellert's uncooperative nature, unfounded distrust of Ms. Koehler, and attacks on Ms. Koehler's character. Based on this record, Ms. Koehler has satisfied *Ausler* and shown that she had good cause to withdraw as Ms. Sharinger's counsel. *See Ausler*, 73 Wn. App. at 236-39. Accordingly, this court should find that the trial court did not abuse its discretion by awarding Ms. Koehler attorney fees.

**C. Ms. Koehler is entitled to attorney fees associated with this appeal.**

A party is entitled to reasonable attorney fees associated with an appeal consistent with the applicable law. RAP 18.1(a). Here, under the terms of the Contract to Hire, Ms. Sharinger agreed to compensate Ms. Koehler at a higher rate in the event of an appeal. 2 CP at 226. Specifically, Ms. Sharinger agreed to pay Ms. Koehler 33 1/3% in the event of a settlement prior to trial, 37% in the event of a trial, and 40% in the event of an appeal. 2 CP at 226. Given this agreement and the trial court's assessment of attorney fees below, Ms. Koehler is entitled to reasonable attorney fees under the Contract to Hire for the time associated with this appeal.

Furthermore, this court may order an appellant to pay attorney fees under RAP 18.9(a) where her appeal is frivolous. RAP 18.9(a); *Malted Mousse, Inc. v. Steinmetz*, 150 Wn.2d 518, 535, 79 P.3d 1154 (2003). A frivolous appeal presents "no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there was no reasonable possibility of reversal." *Malted Mousse*, 150 Wn.2d at 535. Ms. Sharinger's appeal consists entirely of non-reviewable accusations of lying, conspiracy theories, and irrelevant digressions, none of which presents an issue with a reasonable possibility of reversal. Given that, this

court should hold that her appeal is frivolous and award to Ms. Koehler attorney fees associated with the appeal.

V. CONCLUSION

As the record shows and the trial court held, Ms. Koehler had ample cause to withdraw as Ms. Sharinger's counsel. Ms. Sharinger and Mr. Gellert drove an intractable wedge between themselves and Ms. Koehler through their unfounded distrust, obstinate behavior, and disparaging remarks. Under these unusual circumstances, Ms. Koehler had no choice but to withdraw as Ms. Sharinger's counsel. Thus, we ask that this court affirm the trial court's award of attorney fees and in addition award attorney fees associated with the defense of this appeal.

RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of September,  
2009.



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Karen K. Koehler, WSBA #15325  
Brad Moore, WSBA #21802  
STRITMATTER KESSLER WHELAN COLUCCIO  
Co-Counsel for Respondent

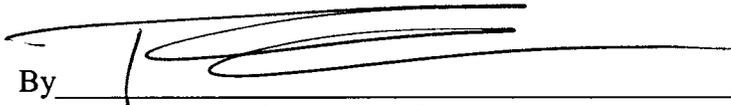
**CERTIFICATE OF SERVICE**

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that the foregoing was delivered to the following persons in the manner indicated:

Nattalia Sharinger  
P.O. Box 2173  
Sequim, WA 98382

VIA REGULAR MAIL

DATED at Seattle, Washington, this 3<sup>rd</sup> day of September, 2009.

By 

Karen K. Koehler, WSBA #15325  
Brad Moore, WSBA #21802  
STRITMATTER KESSLER WHELAN COLUCCIO  
Co-Counsel for Respondent

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