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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

FREDRICK PETERSON, Appellant, v. DAVIS WRIGHT TREMAINE LLP, Respondent.	No. 94839-9 RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This appeal arises out of a garden-variety dispute over the payment of legal fees. Appellant Fredrick Peterson ("Mr. Peterson") tried to avoid his obligation to pay the fees of his former attorneys, respondent Davis Wright Tremaine, LLP ("DWT"). Mr. Peterson argued, among other things, that there was no valid written fee contract; that he was not personally obligated to pay DWT's fees; and that DWT breached the RPCs, requiring disgorgement of fees already paid.

The trial court rejected all of Mr. Peterson's arguments, first on summary judgment, and then following a three day bench trial before Superior Court Judge Carol Schapira. Judge Schapira entered judgment in favor for DWT on the chief claim in the case—for breach of the written fee contract—and awarded DWT damages pursuant to a detailed lodestar review. Because DWT wholly prevailed on its claim, it was also awarded prevailing party attorneys' fees under the contract. [1]

Significant deference is given to the results of a bench trial, and to a trial court's lodestar determination. These nearly insurmountable hurdles have led Mr. Peterson to try new arguments on appeal, but they

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[1] DWT was awarded $83,860.40 of the $122,415.90 it claimed, the entire amount of which was put in dispute by Mr. Peterson. *See* CP 13 (seeking disgorgement of sums already paid). Therefore, the recovery was well in excess of the approximately 50% figure claimed by Mr. Peterson. *See, e.g.,* Petition at 4.

have little relationship to the facts and issues that were actually litigated. In particular, Mr. Peterson tries to twist the trial court's unremarkable lodestar reduction into a pejorative assertion that DWT "charged an unreasonable fee." Petition at 10-11. As explained *infra*, and in the extensive briefing filed in the Court of Appeals, the argument is factually untrue, and legally unsound.

Notwithstanding Mr. Peterson's attempts to leverage the "unreasonable" terminology in the lodestar test to his benefit, the facts presented below were clear and straightforward, and well-settled law was correctly applied to the facts of the case. Here, it is not the courts below who have departed from settled law; it is Mr. Peterson who would have had them do so.

Indeed, Mr. Peterson would have this Court entirely rewrite the lodestar test that trial courts apply to attorney fee awards in the State of Washington. To prevail, Mr. Peterson must convince this Court to hold that a trial court's routine lodestar reduction of a lawyer's fee, and the attendant finding of "unreasonableness," constitutes a *per se* violation of the RPCs. As the Court of Appeals recognized, the argument has no support in law or logic. Also without merit is Mr. Peterson's invitation to rewrite "prevailing party" law. This case does not involve any conflict with existing law. DWT obtained judgment on its core claim in the case

(for breach of contract), while Mr. Peterson did not prevail on a single issue, claim, or defense. Moreover, following the trial court's lodestar review, DWT was awarded the vast majority of the fees requested.

Review is therefore not warranted under RAP 13.4(b)(1) or (2). Nor is there a public interest crisis that would make the case susceptible to review under RAP 13.4(b)(4). The Court should decline Mr. Peterson's invitation to make a sharp turn from existing precedent, and deny the Petition.

II. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether this Court should deny Mr. Peterson's Petition for Review where:

1. Mr. Peterson fails to establish any basis for review under RAP 13.4 (b);

2. Mr. Peterson's arguments conflict with settled Washington lodestar and prevailing party law;

3. The trial court and Court of Appeals properly declined to find that an award of less than 100 percent of the fees claimed constitutes a violation of the RPCs;

4. The trial court and the Court of Appeals properly declined to award remedies (including disgorgement of fees and reformation of the fee contract) to Mr. Peterson based on the unproved RPC violations;

5. Mr. Peterson's arguments conflict with the trial court's factual findings, which findings are subject to a substantial evidence standard on review that was properly applied by the Court of Appeals; and

6. Mr. Peterson waived several of his arguments by not raising them earlier.

III. RESTATEMENT OF THE CASE[2]

A. The Meilinger Lawsuit

DWT represented Mr. Peterson in a case styled *Meilinger, et al. v. Mr. Peterson, et al.*, King County Superior Court, No. 10-2-27584-3 SEA (the "Meilinger Lawsuit"). CP 2 ¶ 4. The Meilinger Lawsuit was a complex lawsuit, and as Mr. Peterson later admitted, DWT told him up front: "Well, the nature of the discussion was, you could spend a million dollars in this." CP 359 at 33:16-17.

DWT represented Mr. Peterson under the terms described in a letter emailed to Mr. Peterson on October 14, 2010 (the "Engagement Letter"), and DWT's Standard Terms of Engagement for Legal Services (the "Terms of Service"). CP 201-210. The Terms of Service explained how the fees DWT charged would be set, and included specific reference to the RPC 1.5 factors. CP 205. For his part, Mr. Peterson agreed to pay the invoices, along with any expenses DWT incurred in collecting any

[2] The following is an abbreviated recitation of the facts set forth in DWT's Response Brief. Resp'ts' Br. at 5-13.

unpaid debt from him, including court costs, filing fees, and a reasonable attorney's fee. CP 205, 208. In the event of a fee dispute, Mr. Peterson also had the right to arbitrate with the state or county bar. *Id.*

DWT routinely sent Mr. Peterson detailed invoices for the Meilinger Lawsuit. CP 486 ¶ 14. From October 2010 through September 2012, these invoices amounted to a total of $122,415.90, consisting of $119,779 in fees and $2,636.90 in costs and other expenses for work relating to the Meilinger Lawsuit. Exs. 106-120. However, Mr. Peterson paid DWT only $40,817.27, and stopped making any payments to DWT after February 27, 2012. CP 178 ¶ 14. DWT was eventually forced to withdraw its representation due to Mr. Peterson's failure to pay his bills.

B. DWT Makes Repeated Efforts to Resolve the Fee Dispute on Reasonable Terms.

Mr. Peterson characterizes DWT's actions in this case as "an attempt to collect an unreasonable fee from [Mr. Peterson]." Appellant's Opening Br. at 22; *see also* Petition at 3-4. However, Mr. Peterson fails to tell the Court about DWT's extraordinary efforts to settle the case. He also overlooks the positive result that DWT achieved at trial.

In April, 2013, DWT suggested settling the fee dispute for $41,000—i.e., just less than the net amount awarded by the Court after trial. CP 682 ¶ 4, 689; CP 492 (awarding $43,043.13). Mr. Peterson rejected this proposal and countered with something in the vicinity of

$5,000. CP 682 ¶ 4. A few months later DWT brought suit. CP 1-7. DWT's Complaint alleged that Mr. Peterson owed a total of $122,415.90 ($119,779 in fees and $2,636.90 in costs), and sought recovery of the unpaid balance of $81,630.97, along with related relief (including prevailing party attorneys' fees). *Id.* Mr. Peterson denied liability, while also seeking prevailing party attorneys' fees. *See* CP 13-14.

On March 5, 2015, Superior Court Judge Marianne Spearman held a hearing on Mr. Peterson's motion for summary judgment. CP 399, 400. Judge Spearman denied Mr. Peterson's motion with respect to DWT's breach of contract claim against Mr. Peterson. CP 400. At this point, DWT offered to settle the entire case for $65,000. CP 512 ¶ 17, 630-32. DWT received no response to the offer. CP 513.

The case proceeded to trial before Judge Schapira. Judge Schapira heard testimony from several witnesses, including the DWT lawyers who performed substantially all the legal work in the Meilinger Lawsuit. RP 111:20-289:6. Mr. Peterson presented three witnesses, including attorney David Nold, who testified as an expert. RP 370:15-452:7; CP 133. Fifty-five exhibits were admitted into evidence, including the invoices DWT presented to Mr. Peterson. Sub No. 57; Exs. 106-120; RP 65:19-67:14. The testimony on the charges contained in those invoices was extensive.

RP 70:6-21, 81:1-86:18, 113:20-121:1, 121:12-20, 140:4-147:23, 175:11-176:2, 245:3-266:13.

C. DWT Prevails at Trial and is Awarded Prevailing Party Attorneys' Fees.

After hearing all the evidence, Judge Schapira ruled in favor of DWT. CP 482-93. On August 25, 2015, Judge Schapira entered Findings of Fact, Conclusions of Law, and Judgment ("Findings and Conclusions") in which she found that Mr. Peterson's failure to pay DWT constituted a breach of contract. CP 489. The Court conducted a detailed lodestar analysis and determined that DWT was entitled to $83,860.40 in reasonable fees and costs in the Meilinger Lawsuit. CP 489-92.[3] Judge Schapira also found that DWT was the prevailing party, and therefore entitled to its contractual attorney's fees. CP 493. DWT was awarded an additional $90,000 as a reasonable fee. CP 693.

D. DWT Prevails on Appeal.

Mr. Peterson appealed. As in the instant Petition for Review, his opening brief attempted to pervert Judge Schapira's award of damages pursuant to a lodestar calculus into an argument that DWT was guilty of an ethical violation because it charged an "unreasonable fee." Opening Br. at 1. In an unpublished Opinion dated May 1, 2017, Division One

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[3] After the payments Mr. Peterson had previously made were subtracted, DWT received a net award of $43,043.13. CP 492.

rejected this argument, and upheld the trial court. Opinion at 13 n.2. Mr. Peterson also filed a Motion for Reconsideration in the Court of Appeals, which was denied in an order dated June 14, 2017.

IV. REASONS WHY REVIEW SHOULD BE DENIED

Mr. Peterson Petition for Review should be denied because it fails to satisfy any basis for Supreme Court review under RAP 13.4. He is not entitled to review by this Court simply because he disagrees with the trial court's finding of breach of contract and dislikes the consequences flowing from his breach.

Faced with the uphill task of trying to convince this Court to accept review of a straightforward fee dispute, Mr. Peterson attempts to "shock." *See* Petition at 6. He does so by mischaracterizing the award of less than 100 percent of the fees claimed as a *per se* violation of the ethical rules. *See id.* at 1 (alleging violations of RPC 1.5 and 8.4). But Mr. Peterson's assumption that a lodestar fee reduction automatically results in an ethical violation simply does not follow, and indeed no authority is presented. This is hardly surprising. Such a rule would mean that any time a court exercises discretion to reduce a fee request, the request itself would be unethical, and subject the lawyer to disgorgement of the "reasonable" portion of the award, or—as Mr. Peterson seeks here—avoidance or reformation of the underlying fee contract. Such a rule would not further

public policy. It would merely punish a lawyer who has already seen her fees reduced. It is important to note that in this case, Judge Schapira *repeatedly* explained that her lodestar fee reduction should *not* be conflated with an argument that DWT had done something unethical.[4] *See* RP 625:11-22, 637:4-638:7, 638:21-639:7, 640:8-14; 644:7-19.

Such a rule would be at odds with the public policy behind prevailing party terms in contracts, which "discourage weak cases, encourage settlements, and restore a wronged party to its original position." *Marassi v. Lau*, 71 Wn. App. 912, 918, 859 P.2d 605 (1993), *abrogated on other grounds by Wachovia SBA Lending, Inc. v. Kraft*, 165 Wn.2d 481, 200 P.3d 683 (2009). The existing procedure accomplishes both finality and fairness. In contrast, the legal regime proposed by Mr. Peterson would sow confusion, uncertainty, and could even discourage trial courts from making lodestar reductions in order to avoid unintentionally exposing lawyers to claims of unethical conduct on appeal. Lawyers are of course obligated to comply with RPC 1.5 and 8.4, and must act in good faith when evaluating whether a charge is reasonable under the ethical rules. And there are situations where sanctions and/or

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[4] The reduction was largely based on Judge Schapira's belief that a junior DWT attorney—Carly Summers—had spent too much time working on certain tasks. CP 491-92.

attorney discipline are warranted.[5] But as seen by the record below, this is simply not such a situation. The Court of Appeals got it right.

A. RAP 13.4(b)(1)—This Case Does not Conflict with Decisions of this Court.

1. DWT was the Prevailing Party.

DWT is the prevailing party in this case under existing Washington law because DWT obtained judgment in its favor on its claim for breach of written contract. *See* CP 489, 493; Opinion at 10-11. Mr. Peterson, in contrast, did not prevail on a single issue in the case. He failed in his efforts to avoid the written fee contract; he failed to prove that he was not personally bound by the fee contract (as distinguished from Retaining Walls Northwest, Inc.); he failed to prove that DWT violated the RPCs; and he otherwise failed to prevail—substantially or otherwise—on a single claim, issue, or affirmative defense. CP 488, 489 (Findings and Conclusions); CP 16-17 (Mr. Peterson's SJ Motion).

At best Mr. Peterson helped persuade the trial court to make a lodestar award that was less than the full amount DWT requested. But it is also true that DWT *always* accepted that, if it prevailed on its breach of written contract claim, its recovery would be subject to the trial court's

[5] *See* Resp'ts' Br. at 18-22.

lodestar assessment.[6] DWT therefore received exactly what it asked for in the lawsuit: a judgment for breach of contract, in the amount invoiced, subject however to the trial court's lodestar analysis.[7] In contrast, Mr. Peterson sought to avoid the fee contract altogether—but failed.

Mr. Peterson's argument that DWT was not the "wholly" prevailing party rests on a demonstrable falsehood. Mr. Peterson did **not**, as he claims, "prevail[] on his Affirmative Defense No. 8 ..." (alleging that DWT breached RPC 1.5(a)). Petition at 3. An affirmative defense is defined as the "defendant's assertion raising new facts and evidence that, if true, will *defeat* the plaintiff's or prosecution's claim ..." Black's Law Dictionary (7th ed. 1999) (emphasis added). Here, Mr. Peterson did not prove that DWT had acted unethically, and his affirmative defense failed. DWT's breach of written contract claim was certainly not "defeated." CP 489.

As a rule, under RCW 4.84.330, the prevailing party is one who receives an affirmative judgment in its favor. *Am. Fed. Savs. & Loan Ass'n v. McCaffrey*, 107 Wn.2d 181, 194-95, 728 P.2d 155 (1986) ("[t]he 'prevailing party' means the party in whose favor a final judgment is

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[6] *See, e.g.*, CP 167-170 (arguing reasonableness of invoiced fees under lodestar rules).

[7] Of course DWT believed (and believes) that the entire amount invoiced was reasonable, but in light of the deference given to a trial court's factual determinations (especially in the lodestar context), it chose not to appeal the point.

rendered for purposes of awarding attorneys' fees in an action on contract"); *see also Schmidt v. Cornerstone Invs., Inc.*, 115 Wn.2d 148, 164, 795 P.2d 1143 (1990); *Riss v. Angel*, 131 Wn.2d 612, 633-34, 934 P.2d 669 (1997); *Scoccolo Constr., Inc. v. City of Renton*, 158 Wn.2d 506, 521, 145 P.3d 371 (2006). Here, under *McCaffrey* and other controlling precedent of this Court, DWT is the prevailing party because it received an affirmative judgment in its favor on a contract that provided for an award of attorneys' fees. No exegesis is required on the question of whether DWT "substantially" prevailed. Moreover, "[t]he amount of attorney fees awarded is discretionary and will only be overturned for manifest abuse." *Am. Nursery Prods., Inc. v. Indian Wells Orchards*, 115 Wn.2d 217, 234, 797 P.2d 477 (1990).

The cases relied on by Mr. Peterson do not hold otherwise. *Riss v. Angel* was a complex case involving lot owners who wanted to build a house, and homeowners and a homeowners association who wanted to stop them. 131 Wn.2d at 615-16. The final result was mixed: the homeowners association prevailed on the validity of the covenants and their right to have a say in the details of construction. *Id.* at 633. The plaintiff lot owners prevailed in their argument that they should be allowed to build the house. *Id.* at 634.

The situation in *American Nursery Products* is also inapposite.[8] Mr. Peterson cites the case for the unremarkable proposition that neither party prevails when each prevail on major issues. 115 Wn.2d. at 234-35; Petition at 3. In *American Nursery Products*, the court of appeals declined to award attorneys' fees on appeal because it upheld *contract* damages that had been awarded to Indian Wells, while overruling the trial court's award of *incidental and consequential* damages. 115 Wn.2d. at 234-35. This is a far cry from the situation here, where all of the damages awarded to DWT flowed from the finding that Mr. Peterson was in breach of contract, and the amount of those damages has not been disturbed on appeal (or even seriously challenged).

2. The Fee Agreement was Valid and Enforceable.

Mr. Peterson's argument that the fee agreement violates the RPCs fails as a threshold matter because the trial court refused to find unethical conduct, and therefore properly declined to rule in favor of Mr. Peterson on his RPC affirmative defense(s). *See infra.* The argument also dashes up against additional settled fact. Judge Schapira's Findings and Conclusions specifically found that "DWT's contract with Peterson … ***was fair***, DWT exerted ***no undue influence*** on Peterson … and the [contract] provided ***full and fair disclosure*** of the contract's terms." CP

[8] Mr. Peterson did not cite or discuss *Am. Nursery Prods.* in his appeal brief.

485 ¶ 10 (emphasis added).[9] Peterson's assertion that the contract terms run afoul of the ethical rules and should be reformed cannot be reconciled with these verities.[10]

B. RAP 13.4(b)(2)—This Case Does not Conflict with other Decisions of the Court of Appeals.

This case does not present a conflict between any appellate decisions for the threshold reason that DWT was the "prevailing party" under Supreme Court precedent. However, for the sake of argument, there also is no question that DWT was the "substantially prevailing party."

The fundamental problem with Mr. Peterson's argument, again, is that he did not prevail on any claim, issue, or defense below. To be sure, DWT's fee request was reduced, but it is settled appellate law that a party's failure to receive 100 percent of the claimed amount of damages does not strip them of prevailing party status. *See Silverdale Hotel Assocs. v. Lomas & Nettleton Co.*, 36 Wn. App. 762, 773-74, 677 P.2d 773 (1984) (holding that plaintiff was prevailing party because "[defendant] did not

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[9] This fact also defeats Mr. Peterson's "good faith" argument, which he now attempts to conflate with an RPC 1.5 analysis. *See* Petition at 11-12.

[10] The balance of the argument presented by Mr. Peterson in this section is without citation to legal authority, and largely repetitive of the arguments made in his Motion for Reconsideration. The Court is respectfully referred to DWT's Answer to Mr. Peterson's Motion for Reconsideration for further analysis. *See* Answer to Mot. for Reconsideration at 11-13 (addressing waiver and allegation that fee agreement violated the RPCs); 13-17 (public policy supports fee recovery provisions like the one in the contract at issue).

prevail on the contract dispute, except in the sense that damages were not as high as prayed for. A party need not recover its entire claim in order to be considered the prevailing party"); *see also Kysar v. Lambert*, 76 Wn. App. 470, 493-95, 887 P.2d 431 (1995) (Division 2) (plaintiffs were prevailing parties when they recovered $28,000 on their original claim of $32,244); *Stott v. Cervantes*, 23 Wn. App. 346, 349, 595 P.2d 563 (1979) (Division 3) (recovery of $3,419 in suit for $10,000 rendered plaintiffs the prevailing party). Under any rubric, DWT would be the "substantially" prevailing party due to its recovery of more than sixty-eight percent of the amount originally claimed.

In contrast, the cases where a party who obtained judgment in their favor was deemed to not be the prevailing party involve recoveries so insignificant to hardly be considered a recovery at all. *See, e.g.*, *Marine Enters., Inc. v. Sec. Pac. Trading Corp.*, 50 Wn. App. 768, 772, 750 P.2d 1290 (1988) (concluding that plaintiff was not the substantially prevailing party when it "brought suit for $600,000, lost on all major issues … and was awarded a net judgment of $5,701 for services rendered").

Finally, Mr. Peterson's "proportionality" argument, Petition at 16, is inapposite because Mr. Peterson did not prevail on any claims. *See Marassi*, 71 Wn. App. at 918 (holding that proportionality rule applies

where "several distinct and severable breach of contract claims are at issue....").

C. RAP 13.4(b)(4)—This Case Does Not Present a Matter of Substantial Public Interest in Need of Review.

Mr. Peterson's "public interest" argument rests on a false premise: that review is necessary to vindicate a client's right "to be free from undue pressure to pay an unreasonable fee." Petition at 19. The argument has no force in this case because it is settled fact that DWT did *not* subject Mr. Peterson to "undue pressure." CP 485, ¶ 10. Mr. Peterson is subject to a "substantial evidence" standard (as explained *infra*) under which it is not possible to find that DWT improperly pressured Mr. Peterson.

Mr. Peterson's public interest argument also fails because the fee agreement allowed him to dispute DWT's fees without going to court. Specifically, the fee agreement provided that, in the event of a fee dispute, Mr. Peterson had "the right to request arbitration under supervision of the state or county bar associations ... and we [DWT] agree to participate fully in that process." CP 57. However, Mr. Peterson chose not to invoke that right. As Judge Schapira put it, "Mr. Peterson had his own strategy about how he was going to manage this obligation." RP 624:1-3.

The argument also dashes up against Washington case law approving of fee recovery provisions like the one at issue here. Indeed, such provisions are just as likely to benefit clients as lawyers. *See* RCW

4.84.330; *Bogle & Gates, PLLC v. Holly Mountain Res.*, 108 Wn. App 557, 563-64, 32 P.3d 1002 (2001) (fees awarded to purported former client when law firm failed to prove breach of contract). Mr. Peterson simply does not like that he was not a "successful defendant." Petition at 19.

Finally, Mr. Peterson relies on an Illinois case, *Lustig v. Horn*, that has been eviscerated by a more recent case. *See* Answer to Mot. for Reconsideration at 17; *Timothy Whelan Law Assocs. v. Kruppe*, 409 Ill. App. 3d 359, 362, 947 N.E.2d 366 (2011).

D. Mr. Peterson's Arguments Cannot be Reconciled with the Unchallenged Facts Below.

Mr. Peterson once again elides the fact that this is an appeal from a bench trial, and must overcome a "substantial evidence" scope of review. *See* Opinion at 7 (citing *Ridgeview Props. v. Starbuck*, 96 Wn.2d 716, 719, 638 P.2d 1231 (1982)).[11] Mr. Peterson challenged only one finding as lacking substantial evidence, relating to the date he engaged DWT. *Id.* at 7-8. "The other unchallenged findings of fact are verities on appeal." *Id.*

Mr. Peterson nevertheless attempts to spin a narrative that would require the Court to ignore the trial court's factual findings. *See* Petition at 1 (arguing that DWT violated RPC 1.5(a) and RPC 8.4(a)); *see also* Mot. for Reconsideration at 6, 8. This argument fails because the facts

[11] The trial court entered its Findings of Fact, Conclusions of Law, and Judgment ("Findings and Conclusions") on August 25, 2015. CP 482-493.

necessary to reach such a conclusion directly contradict the facts as determined by the trial court.

As explained above, it is settled fact the underlying fee contract was fair. CP 485 ¶ 10; *see also* Answer to Mot. for Reconsideration at 4-6. It is therefore not true that Mr. Peterson "prove the fee agreement was unenforceable..." *See* Petition, pg. 7. It is also not possible to find a violation of the RPCs because Judge Schapira did not find that DWT did anything unethical. CP 482-493. Indeed, she repeatedly rejected Mr. Peterson's requests to find unethical conduct. *See, e.g.*, RP 625:11-12 ("I never said they charged an unethical fee."); *see also* Answer to Mot. for Reconsideration at 3-4. There is therefore no factual basis to find the DWT violated of RPC 1.5 or 8.4.[12]

E. Mr. Peterson Tries to Raise New Legal Theories.

Mr. Peterson has also waived many of the arguments he would like this Court to address. "Failure to raise an issue before the trial court generally precludes a party from raising it on appeal. This rule affords the trial court the opportunity to rule correctly upon a matter before it can be presented on appeal." *New Meadows Holding Co. v. Wash. Water Power Co.*, 102 Wn.2d 495, 498, 687 P.2d 212 (1984) (citation omitted).

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[12] Moreover, it would have been improper for the trial court to do so. *See* Resp'ts' Br. at 18-22.

Mr. Peterson's arguments also come too late because he never advised Judge Schapira of her purported "errors." In *Smith v. Shannon*, our Supreme Court explained as follows:

> The same [RAP 2.5] rationale requires parties to inform a court acting as a trier of fact of the rules of law they wish the court to apply. While a party has the right to assume the trial court knows and will properly apply the law, this does not excuse failure to seek correction of an error once the complaining party becomes aware of it. If by no other means, this can be done by a motion for a new trial.

100 Wn.2d 26, 37, 666 P.2d 351 (1983).

Here, Mr. Peterson has previously attempted to shift the blame to Judge Schapira and/or the Court of Appeals for purportedly failing to analyze his affirmative defenses (*see* Petition, pg. 4) and whether the fee agreement was unenforceable (*see* Petition, pg. 10); *see also* Answer to Mot. for Reconsideration at 6-9, 11-13. He now also raises a "burden shifting" argument,[13] and claims that the "Appellate Court 'misunderstood'" his earlier positions. Petition at 11. But the arguments fail because Mr. Peterson did not raise the issues earlier. *See, e.g.*, CP 401-407.

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[13] The argument is also without any factual support. It is settled fact that the trial court did *not* determine the award "merely by reference to the number of hours a law firm bills the client." Petition, pg. 14; CP 489-491 (evaluating all appropriate factors). Moreover, the courts below correctly applied the law. *See Chism v. Tri-State Const., Inc.*, 193 Wn. App. 818, n. 14, 374 P.3d 193 (2016) (Mr. Peterson would have had to prove RPC violation by a "clear preponderance of the evidence.").

V. FEES

The Court may award attorney's fees on appeal if permitted by "applicable law." In this case, the parties' fee agreement provides for attorney's fees incurred in "collecting the debt." CP 57. Therefore, DWT is entitled to an award of its reasonable fees and costs incurred in responding to Mr. Peterson's Petition. *See* RAP 18.1(j).

VI. CONCLUSION

Stripped of Peterson's insinuations of unethical conduct, this is a garden variety fee dispute pursuant to a written contract which was fully litigated and decided in DWT's favor in Superior Court following a bench trial. The fact that Peterson does not like the result does not provide a basis for review.

RESPECTFULLY SUBMITTED this 14th day of August, 2017.

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CERTIFICATE OF SERVICE

I certify that on the 14th day of August, 2017, I caused a true and correct copy of **Respondent's Answer to Petition for Review** to be served on the following in the manner indicated below:

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