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No. 62476-8-I

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

HELIODORO LARA, a single man,
Plaintiff/RCW 4.24.005 Petitioner/Appellant,

v.

CITY OF SEATTLE, et al.,

Defendant,

THE SHERIDAN LAW FIRM, P.S.

RCW 4.24.005 Respondent/Respondent.

REPLY OF PETITIONER

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I. INTRODUCTION TO REPLY

This case involves the terms of a fee agreement and a lawyer's breach of his fiduciary duty to his client, as detailed in Lara's Opening Brief. *Pro se* attorney Sheridan's appellate briefing represents a concerted effort to obfuscate the actual issues on appeal, while disparaging his former client¹ for making a legitimate inquiry into how Sheridan charged his client attorney's fees.

Lara retained attorney Caryl because Sheridan did not give Lara an accounting of the fees he paid himself, nor account for cost monies advanced by Lara.² Lara is still in the dark on these issues. Sheridan admittedly paid himself some \$450,000.00 in attorney fees from Lara alone (CP 600)³, compared with Lara's recovery of \$278,837.78. CP 52.

Sheridan didn't tell this Court that he recovered more in fees than his client. According to Washington State Bar Association (WSBA) former Chief Disciplinary Counsel Lee Ripley, a lawyer does not meet his

¹ In the first paragraph of Sheridan's brief, he implies his client is a tax dodger, an issue irrelevant to the appeal. One could argue that Sheridan's reference to the tax issue also overlooks his responsibility to explain the basic tax consequences, which are substantial, of a recovery of damages in an employment discrimination case.

² RPC 1.5(c)(1) and RPC 1.5(c)(3) (effective September 1, 2006) both state that when a contingent fee matter is concluded, a lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination. In violation of RPC 1.5, Sheridan instructed defendant Seattle City Light to make the Lara fee payments by check payable directly to him and then deposited those funds into his firm's general account. CP 346. Thus, Sheridan improperly took client funds before he was entitled to them and without specific client consent. CP 346.

³ This admission was made in open court in response to the trial court's direct question.

duty of utmost honesty and good faith when the attorney receives more money than the client. “[s]uch a result makes a mockery of the idea that the lawyer as a fiduciary may receive only a reasonable fee.” CP 341.

Sheridan would have this Court believe that the fee he took was determined by the trial court, not his fee agreement. Under R.C.W. 49.60.030(2), a reasonable attorney’s fee is awarded to “*any person...injured*” by any act in violation of the statute,” not the lawyer. Thus, the trial court awarded the attorney’s fee to Lara, not Sheridan. *Luna v. Gillingham*, 57 Wn. App. 574, 581,789 P.2d 801 (1990); Third Restatement of the Law Governing Lawyers, §38; cf. See Willard v. City of Los Angeles, 803 F.2d 526, 527 (9 Cir. 1986) and *Evans v. Jeff D.*, 475 U.S. 717, 106 S. Ct. 1531, 89 L. Ed. 2d 747, (1986)

Any client would wonder about how his lawyer ends up with more money than the client, particularly when the client was confused by the fee agreement. Lara thought the term “election” meant that Sheridan could choose between “the contingency fees or one-third” (CP 199: Lara dep. p. 29, ll. 15-17), a clear contradiction and proof positive that Sheridan did not adequately explain the fee agreement to Lara at the outset as required by RPC 1.5(a).

Like most unsophisticated plaintiffs in contingency fee cases (CP 294), Lara thought that “all of the recovery would be divided between the

three of them (Lara, Pham and Sheridan). CP 200: Lara dep. p. 30, ll. 16-18. But that is not what happened. Instead of taking a percentage of the total recovery, Sheridan, while representing two plaintiffs, decided to take the court-awarded fees in one case (Lara) and a contingency fee on the gross recovery in the other (Pham). CP 49-50. Sheridan did this to maximize the amount of *his* fee recovery to the fullest, including taking the award of interest even though Sheridan's fee agreements did not give him this right. CP 346.

In sum, Sheridan's arguments ignore the fact that he is a lawyer who owes a fiduciary duty to his client.

II. LARA'S REPLY TO SHERIDAN'S FACTUAL ASSERTIONS

Sheridan *Statement of the Case (Statement)* contains mostly irrelevant and unsubstantiated claims. Sheridan's Section A is labeled "The Firm Loyal Represented Lara..." There is no dispute that Sheridan was successful in his pursuit of Lara's discrimination claim; however, Sheridan's success before the jury does not foreclose a client's legitimate inquiry into the attorney's fee taken without advance notice and a lawyer's ethical obligations to the client – the ultimate issue in this appeal.⁴

⁴ Sheridan also seeks sympathy from the court by claiming that Caryl was "insulting;" however, there is no factual support for this claim. Caryl was seeking documentation to answer the client's questions – something any lawyer should understand.

Sheridan's *Statement*, Section B, misleads the Court regarding Lara's sophistication as a client. While Lara may not be an uneducated immigrant,⁵ it is undisputed that Lara had no prior experience with contingency fee agreements.⁶ Sheridan's focus on Lara's tax problems resulting from this employment lawsuit is likewise irrelevant.

Sheridan again misleads with Section D of his *Statement*, "*Lara Understood The Terms Of The Contract With The Firm.*" Here, Sheridan takes discrete portions of Lara's deposition and uses it to his benefit while ignoring the contrary portions. The entire transcript is at CP 192-201. (See attached **Appendix A.**) Sheridan claims that Lara "repeatedly said that Sheridan discussed the contingent fee provision and the election provision in their early meetings." This is simply not true. The deposition makes clear that Lara didn't understand the "election clause." Lara stated that there was no discussion of the meaning of the fee "election." See Argument B, *infra*, at p.16. Clearly, Lara was confused since he said he thought it meant Sheridan could choose between the contingency fee *or* one third. CP 199: Lara dep. p. 29, ll. 15-17. Lara's counsel pointed out to

⁵ While it is true that Lara's counsel did erroneously once refer to Lara as an unsophisticated immigrant, Lara's counsel conceded this error in open court well before the summary judgment decision. This point is irrelevant to this appeal.

⁶ Sheridan's reference to Lara's involvement in an estate matter and a divorce does not establish that Lara had any familiarity with a contingency fee agreement, let alone a sophisticated one that gave the lawyer the right to elect the most favorable method of calculating his fee.

Lara that these two options were one and the same thing. Lara responded, “I didn’t quite understand that too well.” *Id.* In addition, Sheridan claims that “[o]n direct questioning, Lara never once mentioned the money going into a pot as stated in his ‘verified petition.’” (Sheridan Brief, 11.) But, Sheridan carefully avoided questioning Lara on that in the deposition. Even so, Sheridan fails to mention that on redirect Lara did state, “[i]t would all be thrown in the pot and divided up.” CP 200: Lara dep. p. 30, ll. 16-18. The transcript, taken as a whole, shows that Lara was confused as to the contract terms. Clearly, the facts are disputed, thus underscoring the error in the trial court’s summary judgment ruling.

Sheridan’s *Statement*, Section E, “*The 2002 Contract Is Not A Modification Of The 1997 Contract*,” is a legal argument and does not belong in the *Statement*.

Sheridan’s *Statement*, Sections F, G, and H, purport to show that his office kept good client records. Sheridan then faults Lara for not having an exact record of the costs he advanced; however, it was Sheridan who incurred the costs and it was he who billed Lara and Pham for reimbursement. Sheridan’s inability to document these costs and their payment by his clients in a professional manner provides one reason why Lara had to retain Caryl.

Sheridan's *Statement*, Section H, sets forth various excuses why he does not have the costs properly documented: a fire, a "computer crash," and his associations with other lawyers. Nonetheless, Sheridan baldly asserts as fact that Lara did not advance \$43,000 in costs, based on his own self-serving declaration and that of his hired accountant, admittedly based on incomplete records. It was the early Lara payments to Sheridan, which are conveniently missing, and were unavailable for Sheridan's accountant to review. Sheridan then goes further and claims that his client owes him \$20,000 – that Sheridan overpaid him for reimbursed costs, yet again with incomplete records to support his position. Sheridan's actions are unprofessional and ethically dubious.

In Sheridan's *Statement*, Section I, he falsely claims that he was forthcoming to Lara with requested documents. Yet Sheridan ignored Caryl's repeated requests for documentation from Sheridan – information that should have been provided immediately in response to the client's request. CP 54-55. As late as July 2008, while the summary judgment motions were pending, Sheridan continued to withhold documentation that would have shown what he had been paid in Lara's case. CP 608.⁷

⁷ It is critical for the court to note that at most times when Lara, through attorney Caryl, was repeatedly requesting fee/cost documentation from Sheridan, Sheridan was still acting as Lara's lawyer in the underlying case and owed fiduciary duties to Lara.

Sheridan claims that he wanted to withdraw from the case, but Lara's counsel urged him not to. (Sheridan Brief, p. 17.) Sheridan's threatened withdrawal in response to his client's inquiries about fees and costs was highly improper. RPC 1.16(b)(1). Further, he ignores that he took Lara's case on a contingency fee basis, and the work was not done, although he had already pocketed his fee. CP 67. When Caryl counseled Sheridan that "withdrawal would be a very serious mistake," it was to protect the interests of their mutual client Lara and to explain that Sheridan risked forfeiture of his fee if he withdrew before the case was complete. CP 365.

In Sheridan's *Statement*, Section K, he asserts that he saw no potential or actual conflict, ignoring the fact that he ultimately acknowledged in his Response to Lara's Motion for Partial Summary Judgment and the trial court found there was an actual conflict (RP 15).

III. ARGUMENT

A. The Trial Court Erred in Allowing Sheridan to Retain Court-Awarded Interest on Attorney's Fees.

Sheridan asked Lara to sign two fee agreements, one at the start of his discrimination lawsuit against Seattle City Light, and a second fee agreement five years later to cover an appeal he had already started. Sheridan neglected to address interest in either fee agreement he asked

Lara to sign (CP 67, 87), nor was it ever discussed. CP 199: Lara Dep. p. 28, ll. 9-14. Upon receiving the award of interest on attorney's fees following the appeal, Sheridan admittedly pocketed the interest, in the estimated amount of \$46,000.00 (CP 602-3), without accounting to his client CP 53. He arranged for the attorney's fees and interest to be paid to him by separate check; he cashed the check before giving Lara notice (CP 346), thus preventing a knowledgeable objection from Lara. Offering no authority to support his claim to interest, Sheridan does not even address the question of interest until page 40 of his 41 page brief.

A court cannot imply a term in a contract that the parties themselves did not include, particularly in the case of a lawyer's fee agreement. (Lara Brief p. 27.) The leading case in Washington on point is this Court's opinion in *Luna v. Gillingham*, 57 Wn. App. 574, 789 P.2d 801 (1990), where this court held that the term "gross recovery" was ambiguous because it could mean either the judgment for damages alone or the judgment plus court-awarded attorneys' fees. *Luna* at 580. Here, neither fee agreement Sheridan drafted addresses the issue of interest on attorney's fees. Sheridan's fee agreement is ambiguous because it left unresolved how interest would be distributed in the event it was awarded by the court. Similarly, the fee agreement's reference to the "sum of the

attorneys fees awarded” is ambiguous because it does not indicate whether this includes interest on the attorney fee award.

Public policy considerations expressed in *Luna* by this Court and the rules of contract construction dictate that an ambiguous contract be construed against Sheridan, as the attorney drafter of the fee agreement. This is particularly true where a substantial disparity of bargaining power and knowledge/sophistication between the parties exists, or where a standard form is supplied by the drafting party under circumstances where the terms of the proffered agreement were not negotiable.

Sheridan’s brief does not even mention *Luna*, electing instead to quote from a federal trial court decision, *Jacobsen v. Oliver*, 555 F. Supp. 2d 72 (D.D.C. 2008) that “no reasonable trier of fact could conclude that defendants’ fee was so excessive as to violate RPC 1.5(a) – let alone defendants’ fiduciary duty of loyalty.” (Sheridan Brief, 40.) Sheridan’s response completely misses the issue in *Jacobsen*, which was whether there was an enforceable agreement and whether the fee was so excessive as to violate RPC 1.5(a). *Jacobsen* does not even mention, let alone address, the entitlement to interest on fees when the fee agreement is silent. The trial court here never reached the ultimate issue of reasonableness of the fees appropriated by Sheridan.

Here, the issue is whether the fee agreement gives Sheridan the

right to take the award of interest on court-awarded fees⁸ or whether Sheridan ever told Lara, under RPC 1.5(b), that his billing practices included taking interest on court awarded fees. Without benefit of any citation to authority, Sheridan asks this Court to give *him* the interest rather than his client, because “equity so dictates.” (This is particularly egregious given the total fees Sheridan appropriated in Lara’s case, (\$450,000.) CP 600.⁹

The trial court erred in awarding Sheridan interest based on “intuition.” The award of interest on attorney’s fees should have operated to the benefit of Lara because interest is awarded on *judgments*, R.C.W. 4.56.110, not to the plaintiff’s attorney; and here the judgment was entered in the name of the client, Lara, not Sheridan. Sheridan would have this court re-write his fee agreement to award him interest because he worked hard and got a good result in the underlying jury trial. The same could be said of the lawyers in *Luna*, but *Luna* holds that if the right to claim interest isn’t in the fee agreement, Sheridan doesn’t get it.

A court may not create a contract for the parties which they did not make for themselves. *Agnew v. Lacey Co-Ply*, 33 Wn. App 283, 288, 654 P2d 712 (1983). Sheridan, with his greater legal knowledge, could have avoided this situation through proper drafting of his fee agreement and full

⁸ Recall, court awarded fees are awarded to the client, not the lawyer. See p. 2, *supra*.

⁹ This admission was made in open court in response to the trial court’s direct question.

disclosure under RPC 1.5(b). It is a clear violation of RPC 1.5(b) for Sheridan to enforce a contract term upon a client that was not present in the fee agreement Sheridan drafted, or even orally discussed. Under RPC 1.5(8) (8) (in effect in 1997 and 2002), a fee which is not fully disclosed may be determined to be unreasonable. Clearly, the trial court erred when it let Sheridan to keep the interest.

B. This Court Should Void the 1997 Agreement Due to Sheridan's Failure to Fully Disclose and Explain the Fee.

Lara asks the Court to void the 1997 Lara-Sheridan fee agreement for the reasons outlined in his Opening Brief. Curiously, Sheridan responds to this issue only obliquely at pp. 36-40 of his brief. Sheridan does not deny that he never conducted the required RPC 1.5(b) disclosure discussion with Lara; he simply sent Lara home to read them without explanation. Both contracts include multiple unethical/unenforceable provisions in them. CP 333-341. The terms of both fee agreements were confusing and irreconcilable with Sheridan's acknowledgment of Lara's understanding that "all sums recovered would go into the pot and be divided," CP 200: Lara dep. p. 30, ll. 16-18. Even Sheridan now admits to obvious conflicts of interest between his two clients as found by the trial court (RP15), conflicts which became actual during the course of the underlying case. See e.g. CP 47. Sheridan never discussed his billing

practices, such as exercising the “court-awarded fees option” to maximize his fees or that he routinely took interest on such fees. He never explained to Lara his decision to divide the court-awarded fees equally between Lara and Pham, despite the fact that Pham’s damages were considerably greater.¹⁰ All of these ethical failings are discussed in detail by former WSBA Chief Disciplinary Counsel Ripley, whose opinions Sheridan would have stricken.

In his Opening Brief, Lara elucidated the lawyer’s special duties towards the client regarding fees and the client’s special rights. (Brief at 19-21). Lara then laid out Sheridan’s obligations as a lawyer to fully disclose all aspects of the fee arrangements and the lawyer’s billing practices. Sheridan excuses the numerous, unethical provisions in his fee agreements as mere “technical violations” and claims his actions should be forgiven because the misconduct was not “intentional.”¹¹ (Sheridan’s Brief at 36-37.)

¹⁰ There was a large disparity in the jury awards to Lara (\$172,912) and Pham (\$579,644) (CP 685). Sheridan failed to apportion fees between the two clients (CP 47), and he made Lara pay more than his share of the costs when Pham refused to pay (CP 47) – all potential conflicts of interest ignored by Sheridan and all legitimate questions for Lara to raise.

¹¹ For instance, Sheridan argues, “. . . the contract clauses here that may violate the RPC *are not essential terms*, and that the Sheridan Law Firm did not engage in misconduct, . . . or act in bad faith.” (Sheridan Brief pp. 40.) However, these failings cannot be deemed innocent mistakes because: (1) Ripley identified eighteen unethical and unenforceable provisions in the fee agreements, (2) Sheridan failed to explain both the fee arrangements and Sheridan’s billing practices, not once but twice, and (3) Sheridan failed to provide a

In his *Statement*, Sheridan dismisses Ripley as a “purported expert” with “bizarre” opinions. What is bizarre is that Sheridan ignores fiduciary duties to his client, including the lawyer’s duty of honesty and good faith. Again, this Court cannot suspend judgment simply because Sheridan obtained a favorable jury verdict for Lara, particularly when Sheridan rewarded himself so handsomely, to the tune of \$450,000.00, through his self-serving fee election. CP 600.

The primary thrust of Ripley’s expert testimony did not focus on inconsequential issues, such as first class air fare, but rather on the “large number of serious unethical, unlawful and unenforceable provisions” in Sheridan’s fee agreement. CP 333-341. Ripley described Sheridan’s fee agreement as a “clear example of serious overreaching” in disregard of Sheridan’s duty of utmost honesty and good faith. According to Ripley,

[a] disinterested lawyer would not advise a client to accept this fee arrangement. First, it improperly provides that upon settlement the lawyer may keep *the entire settlement amount*. (Emphasis Added.) Second, it improperly restricts, in the lawyer’s favor, the client’s ability to enter into a structured settlement. Third, it misstates the law regarding the client’s ability to terminate the lawyer-client relationship. CP 344.

Moreover, Ripley states that there is an inherent conflict of interest in the fee election provision, which purports to permit the lawyer to “elect” whether the lawyer’s fee award is divided as part of the gross

timely RPC 1.5(c) disbursement accounting. These actions are part of a concerted effort to abuse a client financially. CP 333-341.

recovery or the lawyer keeps the entire fee award. Ripley notes that this was never explained to Lara, nor did Sheridan explain that the lawyer's election could result in a fee higher than 33 1/3% or that it could result in the lawyer receiving compensation greater than the client's recovery – the exact circumstances present in Lara's case. Lara's own deposition testimony, contrary to the Sheridan spin on it, clearly demonstrates that Lara did not understand how Sheridan would calculate his fee; taking the court awarded fees in Lara's case and a straight contingency in Pham – a far cry from a three-way division of "the pot." CP 200: Lara dep. p. 30, ll. 16-18. Sheridan obviously understood that Lara would be surprised and unhappy with his intended actions – why else would he arrange to have the fees and interest paid directly to him, and cash the check before informing Lara? This is hardly putting the client's interests ahead of his own – the definition of his fiduciary duty.

Clearly, Sheridan failed to provide Lara with all the relevant information or to explain, in full, how the election would operate to the lawyer's advantage. As such, Sheridan failed to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. RPC 1.5 (a) (8). This failure to do so should render a fee charged under such agreement "unreasonable."

Sheridan's reliance on contract cases that limit a party's ability to renounce a signed agreement do not take precedence in this case, which is based on the lawyer's enhanced ethical responsibilities under the RPCs. "A lawyer's fee shall be reasonable." RPC 1.5(a). Sheridan's contract ratification argument, likewise, must fail, given Lara's absolute right to challenge the reasonableness of Sheridan's fee. This is especially true given the fact that Sheridan arranged to have the fee paid directly to him even before he even disclosed his fees to the client. If Sheridan's arguments were to prevail, no client could ever challenge the reasonableness of a fee or the unethical actions of an attorney in charging and collecting attorney's fees.

Furthermore, it was unethical and improper for Sheridan to threaten to withdraw from representing Lara after the remand in retaliation for Lara's entirely reasonable questions about how Sheridan calculated his fee, or reimbursement of costs Lara advanced. This is especially true given Sheridan's failure to follow RPC 1.5(c) regarding the requirement for a formal accounting to the client regarding compensation and disbursements to the lawyer. CP 346.

With this appeal from a summary judgment ruling, Sheridan asks this Court to affirm the trial court's weighing of facts in his favor, contrary to the applicable standard of review. Sheridan's claims: "Lara also

admitted that Sheridan read the 1997 contract provisions to him (Sheridan Brief, p. 12). However, Lara's unrebutted testimony was that Lara never even received the fee agreement until the second meeting with Sheridan. CP 196-7: Lara dep. p.16, l. 15, p. 18, l. 6. There was little or no discussion Lara recalled except the contingency fee and another clause that Sheridan could "elect." *Id.* Lara denied any recollection of reading the 1997 agreement in front of Sheridan. CP 197: Lara dep. p. 18, ll.17-18. He asked no questions because "he was not familiar with contracts" CP 197: Lara dep. p. 19, ll. 3-5. Lara denied that Sheridan ever discussed the election provision and its impact, only that he "read it to us." CP 199: Lara dep. p. 28, l. 2, p. 29, l. 17. Even when Lara mentioned the election, he misunderstood that to mean "Sheridan could choose between the contingency fee and one-third." CP 199: Lara dep. p. 29, ll.15-17. When pointed out to Lara that they were one and the same, Lara stated, "I didn't quite understand that too well." *Id.* The whole point of RCP 1.5(b)'s required discussion is to make these things clear. There is no evidence to suggest that Lara ever understood the fee arrangement until after Sheridan paid himself. The overall evidence, contrary to the Sheridan spin, is that Sheridan wholly failed in his duties to clearly disclose and explain the fee arrangement, electing instead to keep the client in the dark about the costs,

disbursements and Sheridan's total fee recovery. The court should void the 1997 fee agreement.

C. The Trial Court Erred in Holding that the 2002 Agreement was not a Modification of the 1997 Agreement and was not a Breach of Fiduciary Duty.

Lara maintains that the 2002 fee agreement constituted a modification of the original fee 1997 fee agreement, that it benefited Sheridan, was "*prima facie* fraudulent," and thus was voidable when Sheridan failed to advise Lara of his right to independent counsel. The trial court erred in ruling that the 2002 Fee Agreement did not modify the original 1997 Fee Agreement. Sheridan misled the trial court and this court to the extent he argues that the 2002 agreement only covered the fees on appeal. In fact, the 2002 Fee Agreement modified the 1997 agreement (CP 67, 87) in the following important respects:

- (1) The contingency fee was increased from 33 1/3% to 40% of the gross recovery;
- (2) Under the 2002 agreement, as soon as he signed it, Lara obligated himself to pay Sheridan nearly 7% more on a damage award that had been already been made, so it was not limited to future damages; and
- (3) The 2002 agreement introduces a new term – "option" to spell out Sheridan's right to choose the fee agreement most favorable to him, as opposed to the client. (The 1997 agreement did not include the term "option.")

Any subsequent change in a fee agreement 5 ½ years after the fiduciary relationship began is presumptively fraudulent and must comply

with RPC 1.5 and Washington case law, including *Ward v. Richards and Rossano*, 51 Wn. App 423, 754 P.2d 120 (1988). In *Ward*, this Court reversed the trial court's grant of summary judgment in a fee agreement modification case, noting that the trier of fact could infer that the lawyers did not fully disclose to their client the law governing fee agreement modifications and the consequences if the lawyer refused to handle the client's appeal. Sheridan makes no pretense to having done so.

The trial court ruled that since the 2002 agreement "was for appeal work" only, it was not a modification, relying on the 1997 agreement's statement, "This agreement does not contemplate an appeal." This Court in *Ward* recognized that any contingent fee arrangement must contemplate the "ever-present possibility that an appeal may be taken from the judgment. *Ward*, 51 Wn. App at 430. Had Lara refused to pay Sheridan more under the 2002 fee agreement, Sheridan's options were only two: (1) handle the entire case, including the appeal, for the one-third fee in the 1997 fee agreement, or (2) withdraw and walk away from any fee. Had Sheridan refused to handle the appeal without additional compensation, he would have forfeited his fee under this Court's decision in *Ausler v. Ramsay*, 73 Wn. App. 231; 868 P.2d 877 (1994) This Court in *Ward* further concluded that one could infer undue influence from the lawyer's conduct. In the words of the Court, the lawyers "had a duty to advise

Ward that she need not fear abandonment on appeal.” 51 Wn. App at 432.

Sheridan owed Lara that duty but breached it.

Sheridan failed to advise Lara to seek independent counsel before signing the 2002 Fee Agreement and undue influence can be inferred, given the fact that Sheridan had already filed the Notice of Appeal before securing Lara’s signature on the modified fee agreement.¹² Based on the testimony from expert Ripley, the trier of fact could well conclude that “a disinterested lawyer would not advise a client to accept [Sheridan’s] [2002] fee agreement,” particularly when it was never explained to Lara that Sheridan stood to recover more from the client pursuant to the “election” and “option” provisions in the two fee agreements. CP 344.

The trial judge also erred when he found that Sheridan did not acquire a pecuniary interest by entering into the 2002 agreement in violation of RPC 1.8(a). The trial court’s reasoning for this determination of law as set forth in its order was that entering into a new fee agreement five years later did not violate RPC 1.8(a) (requiring objective fairness in the new agreement, a full and understandable disclosure and the opportunity for independent counsel), was that RPC 1.8(a) did not apply to

¹² This court can take judicial notice of its own clerk’s records. Attached hereto at **Appendix B** is a true copy of the Court’s docket for the underlying Lara/Pham appeal of the judgment against Seattle City Light. The notice of appeal was filed on June 21, 2002. The second Sheridan/Lara fee agreement was not signed until July 9, 2002, some nineteen days later. CP 87.

contingent fees, citing official comment 16 to the Rule. The trial court order referenced not the RPC 1.8(a) that existed when the 2002 fee agreement was executed, but the September 2006 amendment. Official comments were never even published until the 2006 amendments took place, four years after Sheridan's 2002 modification. Even had the 2006 amendment been in effect in 2002, the trial court's interpretation of the rule is in error. While contingency fees are in fact governed by RPC 1.5(c), *modifications* after the fiduciary relationship takes effect implicate RPC 1.8(a). The trial court erred; the 2002 agreement should be voided.

D. Ripley's Testimony should not be Stricken.

Sheridan asks the Court to strike the testimony of expert Lee Ripley contending that ethical obligations are matters of law and the "opinions are not helpful." Sheridan mocks the substance of the Ripley opinions, obviously displeased at the extent of his own ethical wrongs identified by Ripley. Where the trial court considered the opinions of expert Ripley, and cited the Ripley declaration as something the trial court relied upon in determining the summary judgment motions, this Court can hardly "strike the declaration." Appellate courts do not strike evidence considered by trial courts. Sheridan waived any such argument when he failed to object to the trial court.

IV. The Appellate Court Was Provided with a Complete Record.

Sheridan claims Lara should have designated the documents Sheridan wanted to rely upon in his appellate brief. In so doing, he misinterprets RAP 9.12 and ignores RAP 6.9. RAP 9.12, *Special Rule for Order on Summary Judgment*, relates to the contents of the *trial court's* order on summary judgment, not the appellant's duty to designate the clerk's papers for review by the Court of Appeals under RAP 9.6.

RAP 9.6 governs the parties' respective duties to designate clerk's papers for review by the appellate court. Lara designated the documents necessary for the appellate court to rule on the issues that are the subject of his appeal. If there were other documents Sheridan wanted to designate, he was obligated to comply with RAP 9.2 and 9.6. It was improper for Sheridan to attach a large number of documents as an appendix to his appellate brief. These are the documents that should be stricken.

Neither RAP 9.6 nor RAP 9.12 require that the Lara, as the appellant, designate all the documents called to the attention of the trial court on summary judgment, particularly when the documents are not relevant to the issues on appeal. Indeed, RAP 9.6(a) specifically states: "Each party is encouraged to designate only clerk's papers and exhibits needed to review the issues presented to the appellate court. Lara properly identified the clerk's papers pertinent to the issues on appeal.

IV. Sheridan's Jurisdiction Argument should be Rejected.

Judge Erlick orally ruled on the motions for summary judgment on August 28, 2008. RP 1. He signed the written summary judgment order on September 19, 2008. CP 722. He earlier signed an Order Granting Voluntary Dismissal Under CR 41(a) on September 16, 2008 (CP 724), although it was not officially entered on the court docket until September 23, 2008.

The CR 41(a) order by its express terms dismissed without prejudice "all claims of Lara left for trial, following the Court's oral decision on the cross motions for summary judgment." CP 724. This order ended the RCW 4.24.005 petition, as Lara was statutorily barred from re-filing it. "Where a dismissal without prejudice has the effect of determining the action and preventing a final judgment or discontinuing the action, the dismissal is appealable." *Munden v. Hazelrigg*, 105 Wn.2d 39, 44, 711 P.2d 295 (1985). Because Lara is barred from re-filing, his appeal lies under RAP 2.2(a)(3).

Sheridan relies on a mere technicality to have this appeal dismissed, arguing that the trial court's oral summary judgment ruling was not final until he signed a written order.¹³ However, in this case the same

¹³ Sheridan argues that the oral order was not final because the parties disagreed as to the wording of the final order. Sheridan attempts to apply *DGHI Enterprises v. Pacific Cities, Inc.*, 137 Wn.2d 933, 977 P.2d 1231 (1999) to the facts of this case, but in *DGHI*,

trial court did, in fact, enter an order in accordance with his oral decision. It was mere fortuity that the trial court signed the CR41(a) dismissal without prejudice before he signed the previously presented order on summary judgment. However, the CR 41 dismissal order signed by the trial court makes express reference to the claims “left for trial following the trial court’s oral decision” on summary judgment.

Sheridan attempts to reshape CR 41 for his argument, contending that CR 41(a) is for dismissal of “actions” and CR 41(b) is for dismissal of “claims.” But CR 41(a) is limited to voluntary dismissals and CR 41(b) addresses only involuntary dismissals. Sheridan cites *Orsi v. Aetna Ins. Co.*, 41 Wn. App. 233, 703 P.2d 1053 (1985), contending that a dismissal under CR 41(a) is a dismissal of the “action,” meaning all claims.

Orsi involved a dispute between three insurers following a fire. The plaintiff insurer voluntarily dismissed one *Consumer Protection Act* claim under CR 41(a). On appeal, this insurer challenged the trial court’s dismissal of its separate insurance *bad faith claims*. The Court of Appeals held that the bad faith claims were separate and distinct from the Consumer Protection Act claim dismissed pursuant to CR 41(a). *Orsi* did say that CR 41(a) should have been drafted better to differentiate between

the judge giving the oral order died before signing the written order. A successor judge entered the orders and the Supreme Court held that the successor lacked authority. That is not the case here. The trial court here went on to enter the written summary judgment order just as he had orally ruled almost a month earlier.

“actions” and “claims” like CR 41(b) does. However, the Court refused to disturb the trial court’s determination that certain “claims” had been dismissed under CR 41(a), but other “claims” remained for the court to rule upon, noting:

[T]he basic premise that every motion must specify the grounds for relief sought, “with particularity”, CR 7(b)(1); 5 C. Wright & A. Miller, *Federal Practice & Procedure* § 1192 (1969 & Supp. 1985), and courts may not consider grounds not stated in the motion. 56 Am.Jur.2d *Motions* § 11 (1971 & Supp.1984).

Id. at 246. Since, the plaintiff’s motion only sought dismissal of one claim under CR 41(a), the other claims remained for the court to rule upon.

Overlooking the court’s holding in *Orsi*, Sheridan goes on to say that there is no authority in our state on the issue and then relies on federal authority stating that CR 41(a) can only be used to dismiss “actions” not “claims.” Although *Orsi* does state that a more technically proper procedure would have been amendment under CR 15(a), that court chose not to overturn the trial court’s holding that there were remaining “claims” after the CR 41(a) dismissal based on the reasoning set forth above.

This Court through its commissioner declined to dismiss this appeal after raising the issue by letter dated November 5, 2008. (See Court’s Order, Appendix G to Lara’s Opening Brief.) The court requested certification of finality under CR 54(b) and RAP 2.2(d). Lara responded and demonstrated that under the circumstances, no certification of finality

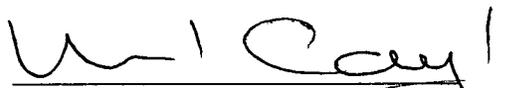
under CR 54(b) was necessary. Under RAP 1.2(c) it is appropriate for the court to rule on this appeal in the interests of justice rather than to deny the appeal on the basis of a technicality. See also *Wachovia SBA Lending, Inc. v. Kraft*, 165 Wn2d 481, 200 P 3d 683 (2009).

VI. CONCLUSIONS

This Court has jurisdiction to hear this appeal. Lara complied with RAP 9.6(a) regarding the designation of clerk's papers. The trial court erred in (1) awarding interest on attorney's fees to Sheridan; (2) enforcing the 1997 fee agreement, given Sheridan's total failure to comply with RPC 1.5(a) and (b); and (3) determining that the 2002 fee agreement following the appeal was not a renegotiation of the 1997 fee arrangement. With the modification of the fee agreement, Sheridan should have afforded Lara independent counsel. The Court should remand to the trial court with instructions consistent with Lara's Opening Brief at pp. 47.

RESPECTFULLY SUBMITTED this 21st day of September, 2009.

MICHAEL R. CARYL, P.S.


Michael R. Caryl (WSBA# 7321)
18 W. Mercer St., Suite 400
Seattle, WA 98119
206-378-4125

DECLARATION OF SERVICE

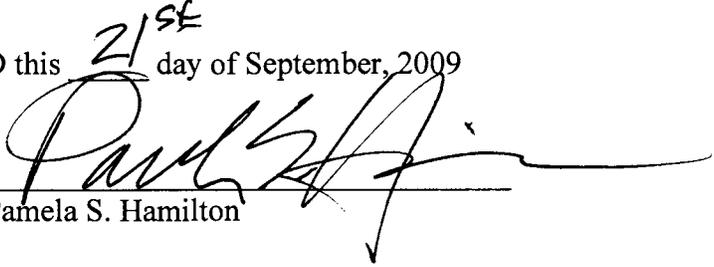
I, Pamela Hamilton, under penalties of perjury under the laws of the State of Washington, declare and certify as follows:

1. I am over the age of 18 years, and I am competent to make this declaration. I am employed as a legal assistant in the law offices of Michael R. Caryl, P.S.

2. On Monday, September 21, 2009, I caused to be delivered by legal messenger a copy of Appellant Lara's Reply Brief to:

Jack Sheridan
Attorney at law
The Sheridan Law Firm, P.S.
Suite 1200, Hoge Bldg.
705 Second Avenue
Seattle, WA 9804
206-381-5949

DATED AND SIGNED this 21st day of September, 2009


Pamela S. Hamilton

APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

CHUONG VAN PHAM, an individual,)	
and HELIODORO LARA, an individual,)	
)	
)	
Plaintiffs,)	No. 97-2-11669-4 SEA
)	
vs.)	
)	
CITY OF SEATTLE, SEATTLE CITY LIGHT,)	
)	
Defendant.)	

DEPOSITION UPON ORAL EXAMINATION OF
HELIODORO LARA

April 2, 2008

9:00 a.m.

705 Second Avenue, Suite 1100

Seattle, Washington

Reported By: Marcella Wing Maddex, CSR, RPR
CSR# WING*MP456BE

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Deposition of Heliodoro Lara, 4/2/2008

APPEARANCES

For Heliodoro Lara: MICHAEL R. CARYL
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Court Reporter: MARCELLA WING MADDEX, CSR, RPR

EXAMINATION INDEX

PAGES

BY MR. SHERIDAN 4
 BY MR. CARYL 25

(Exhibit Nos. 1 through 4 were marked.)

Heliodoro Lara, Sworn by the Notary,
 testified as follows:

EXAMINATION

BY MR. SHERIDAN:

Q Please state your full name for the record.
 A Heliodoro Lara.
 Q Do you go by AI?
 A Yes.
 Q What's your address, AI?
 A 23403 66th Avenue West, Montlake Terrace,
 Washington 98043.
 Q Are you currently retired?
 A Yes.
 Q You retired from Seattle City Light?
 A Yes.
 Q Take a look at Exhibit 1.
 MR. CARYL: Can you tell us which one is which?
 MR. SHERIDAN: They're all marked. It's the one
 with the checks.
 MR. CARYL: Okay.

HELIODORO LARA EXHIBIT INDEX

No.	Description	Page
1	Copies of checks and deposit slips	4
2	Retainer Agreement, dated January 23, 1997	4
3	Retainer Agreement, dated July 9, 2002	4
4	Plaintiff Lara's Petition for Relief under RCW 4.24.005	4

Q You've already been shown these exhibits before
 the deposition was started, is that right?
 A I handed them in.
 Q Pardon me?
 A I handed them to you.
 Q Okay. Let me ask the question first. Do you
 recognize these checks that are in Exhibit 1?
 A Yes.
 Q Are these checks that you used to pay costs in the
 litigation that you had against the City of Seattle?
 A Yes.
 Q And this includes, I think the first page includes
 a check dated the 25th of January 1997, for \$5,000, do you
 see that?
 A Um-hum.
 Q Is that a "yes"?
 A Yes.
 Q Basically was that the first payment, as far as
 you recall, to Sheridan & Associates as part of your advance
 payment of costs?
 A I believe so.
 Q Can you tell me, other than these checks that you
 see here, are there any other payments that you made to
 Sheridan & Associates to advance costs?
 A Yes.

2 (Pages 2 to 5)

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1 MR. CARYL: I'm going to object. Before you can
2 even begin to answer that question you need to look at every
3 page.
4 Q You've already looked at them, haven't you, before
5 the deposition started, Mr. Lara?
6 MR. CARYL: We were just shooting the breeze.
7 MR. SHERIDAN: Let the witness answer.
8 Q Have you looked at them before, Mr. Lara?
9 A I glanced at these. I handed these to you, so I
10 know.
11 Q I know you know. What I'd like you to do now is
12 tell me what checks did you give me that are missing from
13 that package?
14 A I have a list on your own letterhead, a list of
15 checks, all but a couple.
16 Q Okay.
17 A I believe you have them in your own files. You
18 have to look them up.
19 Q So you think there are checks in addition to these
20 checks that you gave me, is that true?
21 A Oh, yes.
22 Q Do you have your own record of those checks?
23 A I have your record of those checks.
24 Q So you have in your possession a record of the
25 checks you gave me, that you're saying my firm gave to you?

Page 7

1 A Yes.
2 Q And so we could ask for that and you could produce
3 that, right, you didn't destroy it or anything?
4 A Yes, I can give it to you.
5 Q Do you have any memory of what additional checks
6 are missing from this package?
7 A No.
8 Q But it's fair to say that the checks that you say
9 we gave you back, I guess copies of the canceled checks, is
10 that right, copies of canceled checks?
11 A No, you didn't give them back. First Interstate
12 Bank merged with Wells Fargo, they lost the photocopies.
13 Q Okay.
14 A But I found the list of them on a page from you
15 that you sent back where you listed them.
16 Q And you still have that in your possession?
17 A Um-hum.
18 Q That's a "yes."
19 A Yes.
20 MR. CARYL: Remember, you always have to answer
21 yes, for the reporter.
22 Q Besides the checks that are on that list that you
23 say you have in your possession, are there any additional
24 payments you claim you made to my firm for costs?
25 A Just the 42,000.

Page 8

1 Q That's not what I asked. We established now that
2 there's a body of checks that are Exhibit I, right?
3 A Um-hum, yes.
4 Q And there's also, you say there's additional
5 checks that are on a list that I gave you at some point in
6 the litigation, right?
7 A As part of it.
8 Q Is it included in Exhibit I?
9 A No, it's not entered, those are the missing checks
10 that I could not find.
11 Q Oh. Oh, okay, I have a copy.
12 I'm going to just show you the document to see if
13 it's the same document. I won't mark it as an exhibit yet.
14 Take a look at that and tell me if that's the document
15 you're referring to.
16 A No, I don't believe so.
17 Q All right. In any case we can ask for it.
18 Would you agree with me that the checks, if we
19 were to add up the checks that are in Exhibit I with the
20 checked that are on this list that you say you have at home,
21 that would be the total of the amount of costs you say you
22 advanced?
23 A No.
24 Q There are additional costs?
25 A No, it comes under -- that total comes to 40,000.

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1 Q I'm not asking for what it comes to. Right now
2 we're talking about individual deposits, okay.
3 We have the checks that are in Exhibit I, and you
4 say that there's also additional checks listed on some
5 document that you have at home that I gave you, right?
6 A Um-hum.
7 MR. CARYL: Again --
8 A Yes.
9 Q So now what I want to know is: In addition to
10 those items what additional deposits do you claim you gave
11 me, if any?
12 A The 1500 for Scott's fees.
13 Q And for record purposes, Scott who?
14 A Minick.
15 Q Minick, okay. Anything else?
16 A There were a couple specialists that we gave money
17 to, that we contributed to, that you asked us to see.
18 Q Like experts, you mean?
19 A Yes, experts.
20 Q Do you claim there are additional checks for those
21 experts that are not on the list?
22 A Yes.
23 Q Anything else?
24 A No. But those experts, it was understood that I
25 would pay for out of my own pocket, which I did.

3 (Pages 6 to 9)

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Deposition of Heliodoro Lara, 4/2/2008

1 Q And that's it, though?
 2 A Yes.
 3 Q Basically it's your understanding that if we were
 4 to take the checks that are Exhibit 1, add that to the
 5 checks listed in the sheet you say you have at home --
 6 A Right.
 7 Q -- and then add that to the payments you say you
 8 made for the expert, that would come out to what figure?
 9 A The expert's check isn't figured in that. I paid
 10 that out of my own pocket. It was understood.
 11 Q Do you have a total that would add up to, in your
 12 mind?
 13 A It comes to over 40,000.
 14 Q Over \$40,000. Is it fair to say you don't have an
 15 exact number at this time?
 16 A No, because there are two checks we couldn't
 17 account for that would have brought it up to about 43,000.
 18 Q What two checks are those?
 19 A I don't know. It's too far back.
 20 Q How do you know there are two checks?
 21 A I have a list. I was running a little list at
 22 home of every time I sent you some money in, I would add it
 23 to the total, and it came to about 43,000.
 24 Q Have you ever presented that list to us?
 25 A I don't have it now. It somewhere got lost.

1 Q How do you recall that it has a certain total on
 2 it?
 3 A Because I told you when I reached 43,000 that you
 4 didn't have enough money, that you'd have to ask more to
 5 cover the costs.
 6 Q What year was that?
 7 A I don't recall.
 8 Q Was it before or after the trial verdict, the
 9 verdict at trial?
 10 A I imagine it's before because that's when we were
 11 paying for it, or somewhere around that time.
 12 Q You think it was probably before the injury made
 13 its ruling?
 14 A Probably. I can't say for sure.
 15 Q But it wasn't like last year or anything like
 16 that?
 17 A No.
 18 Q Okay, fair enough.
 19 I'm going to ask you to take a look at Exhibit 2,
 20 if you would. You have it right in front of you. This one.
 21 Would you agree with me, on the last page of this
 22 exhibit is your signature?
 23 A Yes.
 24 Q And this is the contract that you entered into
 25 with Sheridan & Associates on or about January 23, 1997?

1 A Yes.
 2 Q Where did you sign this contract, where were you
 3 sitting, home, office, someplace else?
 4 A I can't say for sure, but I would think it would
 5 be at home. That's where I read it.
 6 Q Do you recall that you were presented with this
 7 contract at the offices of Sheridan & Associates?
 8 A Yes.
 9 Q And you were told to bring it home and read it, is
 10 that right?
 11 A Correct.
 12 Q At the time of the meeting, what else was
 13 discussed in the meeting? And this is the meeting before
 14 you brought the contract home.
 15 A I don't recall. I believe it was something about
 16 the trial, something pertinent coming up, scheduled at
 17 trial.
 18 Q Had the trial been filed yet?
 19 MR. CARYL: You mean the lawsuit?
 20 Q Yes. Had the lawsuit been filed yet?
 21 A I can't say for sure. It's too many years back.
 22 Q What's your best recollection?
 23 A I would think it would have. No, I'm not sure
 24 now. It's been so many years back.
 25 Q You think the lawsuit might have been filed or

1 might not, you just can't recall?
 2 A I can't recall.
 3 Q Who was in the room when you were handed the
 4 contract that's Exhibit 2?
 5 A I believe me and Chuong were there.
 6 Q You think you were there with Chuong together?
 7 A Yes.
 8 Q And did you have any meetings with anyone from my
 9 firm, including me, before that particular meeting?
 10 A I believe there was one meeting when Chuong
 11 brought me up to introduce me to go into the suit. That's
 12 all I remember.
 13 Q It's your recollection that Chuong, this is Chuong
 14 Van Pham, had met me before you had met me?
 15 A Yes.
 16 Q And then you came up to meet me, and it's your
 17 recollection that Mr. Pham was present at the time?
 18 A Yes, he brought me up.
 19 Q How many times did we meet before you were
 20 presented with this contract?
 21 A My recollection, just once.
 22 Q And during that meeting, the first meeting, what
 23 was discussed?
 24 A I believe it was that each would be responsible
 25 for 50 percent of the costs and so forth.

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Deposition of Heliodoro Lara, 4/2/2008

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1 Q So you think -- so at the first meeting that you
2 and I had Mr. Pham was present, right?
3 A Yes.
4 Q And at that first meeting it's your recollection
5 that I discussed with you that there would be a 50 percent
6 split of costs, is that right?
7 A I believe so.
8 Q Do you have any recollection of us discussing your
9 case at all?
10 A Yes, I do.
11 Q How long was the meeting?
12 A Probably an hour. I don't think any of our
13 meetings were over an hour.
14 Q So you think in that hour we discussed your case,
15 is that right?
16 A Yes.
17 Q What did you tell me about your case?
18 A That they were not following their own rules.
19 Q Who was not following their own rules?
20 A City Light.
21 Q What is it you felt City Light did that caused you
22 to come see me?
23 A They told us if we passed the exams we were in.
24 Q Who told you that?
25 A One of the directors.

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1 Q Was it Dana Backiel?
2 A Yes.
3 Q Did she tell you in a face-to-face meeting?
4 A Yes, she told us I believe in the safety meeting,
5 or something like that.
6 Q So you weren't alone one-on-one with her?
7 A No.
8 Q When you say in a safety meeting, who was at the
9 meeting besides yourself?
10 A Pretty much the whole north end.
11 Q Did anyone besides Ms. Backiel tell you that if
12 you passed the test you're in?
13 A No, just mainly her.
14 Q And basically -- and it was just that one time at
15 that one meeting, right?
16 A Yes. That I heard her, yes.
17 Q Other than that, isn't it fair to say that the
18 City took the position for the rest of the time that that
19 was not the case, that if you passed the test you're in?
20 A Pretty much.
21 Q You have a pretty good recollection of Ms. Backiel
22 telling you that at the safety meeting?
23 A Yes.
24 Q Can you sort of picture what building it was in?
25 A I believe it was the auditorium.

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1 Q Auditorium, so how many people would you say were
2 present at the safety meeting?
3 A I wouldn't know. It was everybody generally went
4 to them that was in the network and the overhead.
5 Q Fair enough. And then at this meeting, this first
6 meeting, is it your recollection that I had any discussion
7 with you about the terms of the contract? This is the first
8 meeting now.
9 A I believe you touched on -- the two points I
10 remember you touching on was you were entitled to a
11 third, and then there was the other clause about you could
12 elect to take either one.
13 Q And that was at the first meeting?
14 A I believe so.
15 Q Then at the second meeting, that's where the
16 contract got handed to you is your testimony, right?
17 A Yes, I believe so.
18 Q And at the second meeting that's where you -- now,
19 is it your recollection that at the second meeting this
20 contract was discussed with you before you took it home,
21 this is Exhibit 2?
22 A That's the first contract?
23 Q Yes. So at the second meeting now?
24 MR. CARYL: He's asking, did he discuss it with
25 you?

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1 THE WITNESS: Yes. I am trying to think.
2 A What I just told you was the parts I remember you
3 discussing. That's all I pretty much remember about it, is
4 other than take it home and read it.
5 Q So at the second meeting who was present?
6 A Chuong and you.
7 Q How long did that meeting last?
8 A 35, 40 minutes.
9 Q When in your recollection did I tell you I would
10 represent you, at the first, second or another meeting?
11 A I believe it's at the first.
12 Q So basically it's your recollection that after
13 talking to you for an hour -- did I tell you at the
14 beginning of the meeting before we even talked?
15 A No, I don't remember when you told me.
16 Q So I might actually have not told you at the first
17 meeting?
18 A I can't say for sure, but I think it was pretty
19 much agreed to on the first meeting.
20 Q And did you bring any documents for me to look at
21 at the first meeting, or in advance?
22 A I don't believe so, no.
23 Q At the second meeting did you bring any documents?
24 A The contract.
25 Q The contract you received at the second meeting,

5 (Pages 14 to 17)

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1 right?
 2 A Second, yes.
 3 Q So at the second meeting you received the
 4 contract. Is it your recollection that I didn't talk to you
 5 about the content of the contract at the second meeting?
 6 A Other than what I just told you, that I remember
 7 you saying that the two clauses about the contingency fee
 8 and the elected.
 9 Q The election?
 10 A The election clause.
 11 Q And that was at the second meeting, too?
 12 A Yes, that's where it stands out. I could be wrong
 13 on some of these dates.
 14 Q You took this document home, which is Exhibit 2,
 15 the contract, and you read it? Right?
 16 A Right.
 17 Q Did you read it in my presence, with me?
 18 A I don't recall that. I recall I handed it in, and
 19 I don't recall anything else, other than that.
 20 Q You say you read it at home at least?
 21 A Yes.
 22 Q You remember that, right?
 23 A Yes.
 24 Q Isn't it true you might have read it with me
 25 during the meeting when you first received it, you just

1 and Exhibit 3 is the next contract, the appeal contract.
 2 Let's turn to the last page. Let me ask you if you
 3 recognize the signature on the last page of what's been
 4 marked Exhibit 3?
 5 A Yes.
 6 Q Is this a contract you entered on or about July
 7 9th, 2002, is that right?
 8 A Correct.
 9 Q And this is after you won the lawsuit?
 10 A Yes.
 11 Q After you won the lawsuit how did you decide to
 12 retain my law firm to represent you on appeal?
 13 A It was a continuation of the trial, as far as I
 14 understood.
 15 Q Why did you come in to sign another contract then?
 16 A Because the trial wasn't over for us, it was
 17 ongoing.
 18 Q Were you satisfied with the representation you had
 19 received up to that point?
 20 A I didn't really know, because it wasn't quite over
 21 so I didn't have any question. As far as your doing it, I
 22 just understood that it was ongoing and it wouldn't be over
 23 until it was over.
 24 MR. SHERIDAN: Motion to strike. Nonresponsive.
 25 Q My question is: Were you satisfied with the

1 don't recall?
 2 A I don't recall.
 3 Q Is it true after you read it you had no questions?
 4 A No, I didn't -- I'm not familiar with contracts so
 5 I didn't --
 6 Q That's not what I asked. Is it true that after
 7 you read the contract you had no questions?
 8 A Not to my knowledge.
 9 Q I'm sorry?
 10 A Not to my knowledge. I can't recall.
 11 Q You don't recall if you had any questions?
 12 A Right.
 13 Q Did you see me again after that?
 14 A Yes. We had meetings all through the year after
 15 that.
 16 Q Is it fair to say that you brought the contract
 17 back and gave it to me?
 18 A Correct.
 19 Q Is it also, is it your recollection you didn't ask
 20 me any questions after you brought the contract back?
 21 A I don't believe so.
 22 Q And that's because, is it true you didn't have any
 23 questions at that point?
 24 A Yes.
 25 Q And then let's take a look at Exhibit 3 if we can,

1 representation you had received up to that point?
 2 MR. CARYL: Up to the point of Exhibit 3?
 3 MR. SHERIDAN: Yes.
 4 A As far as I was aware we had won the trial, so as
 5 far as I was aware at that time that you were still pursuing
 6 it, that you hadn't got everything we needed.
 7 Q Again, that's not what I asked. Were you
 8 satisfied with the quality of representation up to that
 9 point? Did you think I did a good job?
 10 A Yes. I had no problem with you winning the trial.
 11 You did what you were hired to do to win the trial.
 12 Q Were you present when Judge Erlick read his
 13 opinion as a result of the motion for a new trial, were you
 14 present in the courtroom?
 15 A Yes, I'm sure I was.
 16 Q Do you recall Judge Erlick saying it was a real
 17 close call?
 18 A I believe so.
 19 Q And he basically let you keep your verdict at that
 20 point, right?
 21 A Yes, I think so.
 22 Q Is it fair to say that you wanted the Sheridan &
 23 Baker Law Firm to represent you on appeal because you were
 24 pleased with the job we had done through trial?
 25 MR. CARYL: Counsel, objection. Can you just ask

Deposition of Heliodoro Lara, 4/2/2008

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1 open-ended questions and not lead him.
2 MR. SHERIDAN: Please just make an objection for
3 the record.
4 MR. CARYL: Objection, leading.
5 MR. SHERIDAN: You can read that back.
6 (Reporter read requested question.)
7 A Yes, but I didn't think of it in that manner. I
8 just thought of it as a continuation of it because it was
9 not done.
10 Q Because the representation was not done?
11 A Yes.
12 Q So why did you sign this second contract?
13 A Because there was still taxes outstanding and
14 everything else that had we -- it was not finished. As far
15 as I was concerned, it was still part of the same trial, and
16 you were representing us.
17 Q Why didn't you hire somebody else?
18 A Too costly.
19 Q You didn't seek to hire somebody else on a
20 contingent fee basis?
21 A No. We couldn't afford to pay somebody else, to
22 bring them up to speed. You were the ones doing the trial.
23 Q So why did you sign this agreement, which is
24 Exhibit 3, if you understood that there was an ongoing
25 relationship?

Page 23

1 A Because with we'd be dead in the water if we
2 didn't.
3 Q You felt like you had to sign?
4 A Yes.
5 Q Did you read this agreement before you signed it?
6 A Yes.
7 Q Did you take it home and read it?
8 A Yes.
9 Q Did you and I go through this agreement and talk
10 about it?
11 A Other than to say it's pretty much the same thing,
12 except you would get 40 percent.
13 Q Who was in the room when that discussion took
14 place?
15 A Me, you, and Chuong.
16 Q For the first contract, which is Exhibit 2, where
17 was the meeting held between you and me and Chuong?
18 A I believe that was your first office.
19 Q Where was that?
20 A Third Avenue.
21 Q And this Exhibit 3, where was this meeting held
22 where you say you, I, and Chuong discussed the contract?
23 A I can't say for sure, but I think it was in your
24 second office.
25 Q Did you sign Exhibit 3 at home?

Page 24

1 A Yes.
2 Q And then did you bring it back in?
3 A Yes.
4 Q Did you hand it to me?
5 A Yes.
6 Q Did you have any questions?
7 A No.
8 Q And you didn't ask any questions?
9 A No.
10 Q Do you recall anything else about the conversation
11 that we had in 1997, besides what you've stated here?
12 MR. CARYL: Counsel, I think we've had two
13 conversations in 1997, at least, so maybe you should be
14 specific.
15 MR. SHERIDAN: I agree. I withdraw that.
16 Q For the first meeting that we had, do you recall
17 any other details of the conversations, other than what
18 you've testified to here today?
19 A No. I really can't say. It's been too long ago.
20 Q For the second meeting that you described, can you
21 recall any details of the conversation at that meeting,
22 other than what you described here today?
23 MR. CARYL: This is the meeting where you handed
24 him the contract?
25 Q The second meeting.

Page 25

1 A No.
2 Q And then now let's jump ahead to the signing of
3 the second contract on July 9, 2002. At that meeting, the
4 meeting before you took the contract home and signed it, can
5 you recall any other words that were said at that meeting,
6 other than what you just described?
7 A Other than you were charging more, 40 percent
8 more, because of more work you would have to be doing.
9 Q You understood at that point there were an
10 election provision in this contract too, is that correct?
11 A Yes.
12 Q And that was discussed with you at that time too,
13 right?
14 A Yes. You said you could take either one.
15 Q And then -- you know what, just give me one second
16 here.
17 I have no further questions. Thanks very much.
18 MR. CARYL: I just have a couple follow up.
19 * * * *
20 EXAMINATION
21 BY MR. CARYL:
22 Q AI, turn to what we've already marked Exhibit 4,
23 which is our petition. Do you have that?
24 A Yes.
25 Q AI, I want you to turn to Exhibit No. 4, which is

7 (Pages 22 to 25)

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Deposition of Heliodoro Lara, 4/2/2008

1 the petition for relief under RCW 4.24.005. First of all,
2 let's turn to the very last page, page 22. Is that your
3 signature?

4 A Yes.

5 Q Now is this a pleading that I prepared for you
6 back in December of last year to file with the court?

7 A Yes, 2007.

8 Q Did you and I discuss the facts that were alleged
9 in that pleading, Exhibit 4, before you signed that?

10 A Correct.

11 Q Did you understand that when you were signing that
12 that you were representing that you believed that the facts
13 and the contents in the petition were true, to the best of
14 your knowledge and belief?

15 A Correct.

16 Q Let's turn to page 2. Look at paragraph 2.2. I'm
17 going to read at line 19.

18 MR. SHERIDAN: Counsel, let me just put in my
19 objection. Objection, leading.

20 Q Paragraph 2.2, at line 19, reads: Sheridan
21 described the fee arrangement to Lara and Pham, stating that
22 at the end of the case, quote, all of the recovery would go
23 into the pot and be divided among the three of them, end
24 quote.

25 Did I read that correctly?

1 A Yes.

2 Q Did Mr. Sheridan ever discuss with you before he
3 send that fee agreement home with you in January of 1997 the
4 paragraphs that said that under no circumstances would the
5 fees be less than court-awarded fees?

6 MR. SHERIDAN: Objection, leading.

7 A No. No, he never discussed. He just read it,
8 read it to us.

9 Q Did Mr. Sheridan at that initial interview, where
10 he sent the contract home with you, did he ever discuss with
11 you who would be entitled to receive any interest on any
12 amounts that was recovered from Seattle City Light on your
13 account?

14 A No.

15 MR. SHERIDAN: Objection, leading.

16 A No, never.

17 MR. SHERIDAN: AI, just let me get my objection
18 in.

19 MR. CARYL: This is lawyer talk. Just let him
20 make his objection, and then you can answer.

21 Q You testified in response to Mr. Sheridan's
22 questions about some understanding about an election, do you
23 recall that?

24 MR. SHERIDAN: Objection, leading.

25 Q Do you recall saying anything earlier in your

1 A Yes.

2 Q Did Mr. Sheridan say those words, or words to that
3 effect, at that second meeting where he told you to take the
4 contract home?

5 MR. SHERIDAN: Objection, leading.

6 A Yes.

7 Q What were the circumstances under which
8 Mr. Sheridan said that to you?

9 A I was just describing, that's as close as we ever
10 got to describing how the fees would be divided up. And it
11 was repeated a good dozen times throughout of the year, and
12 every now and then, we would just divide it up that way. I
13 took that to mean equal, divide them up where we would all
14 get a share of it.

15 Q I direct your attention to line 23 of page 2. I'm
16 going to just read it and ask you a question.

17 The initial fee agreement provided that SLF was
18 entitled to one-third of the gross recovery, but contained a
19 phrase to the effect that in no instance would the fees owed
20 to Sheridan be less than the court-awarded fees.

21 Did I read that correctly?

22 A Correct.

23 Q The next sentence reads: This provision was never
24 discussed with Lara. Do you see that? Did I read that
25 correctly, on line 1 of page 3?

1 testimony about understanding that Mr. Sheridan had some
2 kind of an election?

3 A Yes, I remember saying that. He never really -- I
4 just took it to mean he could take either one.

5 Q Was there a discussion of what the election was
6 that Mr. Sheridan had a right to elect to?

7 A No.

8 Q When you read the contract did you understand --
9 what understanding, if any, did you have with respect to
10 what his rights were in this election?

11 A Only that he could choose to take whatever one he
12 wants, that's all.

13 Q When you say whatever one, tell us what the two
14 options were?

15 A The contingency fees or one-third.

16 Q Isn't the one-third the contingency fee?

17 A Yes. I didn't quite understand that too well.

18 MR. SHERIDAN: Just for record purposes, can we
19 just note that the witness has Exhibit 4 open at page 3 as
20 he's testifying.

21 Q Look at paragraph 2.5. That makes reference to
22 the paragraph in the first fee agreement, which I believe is
23 Exhibit 2 to your deposition. Would you just read this
24 short paragraph, please.

25 MR. SHERIDAN: Just for record purposes, again,

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1 I'm going to object to this process. There's no facts
2 supporting a need to refresh the witness's recollection at
3 this point, based on the questioning.
4 Q Have you read that?
5 A Yes.
6 Q The first sentence of the quote from the fee
7 agreement, the initial fee agreement, Exhibit 2: In the
8 event that the court awards reasonable attorney's fees to be
9 paid by the defendant, said award is to become part of the
10 gross recovery, and to be shared between Sheridan &
11 Associates and me pursuant to the terms of this agreement.
12 Did I read that correctly?
13 A Correct.
14 Q What did you understand, if you did, what that
15 sentence that I just read meant?
16 A Well, that the attorney's fees would become part
17 of the gross recovery and it would all be thrown in the pot
18 and divided up.
19 MR. SHERIDAN: Again, for record purposes I just
20 want to note that the witness is reading down that page as
21 part of the answer.
22 Q The second sentence of that paragraph that I just
23 had you read silently, reads: However, in no event shall
24 Sheridan & Associates P.S. receive less than the court
25 awarded reasonable attorney fees.

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1 Did I read that correctly?
2 A Correct.
3 Q Did Mr. Sheridan at the time he handed you the fee
4 agreement discuss with you what that sentence meant?
5 A No.
6 Q Did you have any understanding of what that meant
7 at the time you read it when you took it home?
8 A Only that he would not get any less than what the
9 court awarded.
10 Q The last sentence of paragraph 2.5 reads: The fee
11 agreement also purported to give SLF an election to take
12 either the court-awarded fees or the contingency fee.
13 Sheridan never discussed this election at any time with
14 Lara.
15 You swore to the truth of that, did you not?
16 A Correct.
17 MR. SHERIDAN: Objection, leading.
18 Q Is that true today?
19 A Yes.
20 MR. SHERIDAN: Objection, leading. AI, let me get
21 my objection in.
22 Q Let's turn briefly to Exhibit No. 3, the second
23 fee agreement. Again, you've answered some of
24 Mr. Sheridan's questions about that. Do you agree that this
25 was signed sometime around July 9th, 2002?

Page 32

1 A Correct.
2 Q How did it come to be that you were in
3 Mr. Sheridan's office discussing a second fee agreement?
4 A We were called, we had a meeting.
5 Q Who called you to the meeting?
6 A Mr. Sheridan would tell us when the meeting would
7 be.
8 Q Did he tell you what the purpose of that meeting
9 was?
10 A (Witness looking through document.)
11 Q It's not in the fee agreement, AI.
12 A Just to sign the fee agreement. I believe --
13 that's about all I can really remember. I can't think of
14 much more of that.
15 Q How long did this meeting about the new fee
16 agreement take, approximately?
17 A We brought it back, the meeting we had when we
18 brought this back to hand it in was a short one, about 15
19 minutes I think.
20 Q Was there a meeting before you brought it back,
21 when the fee agreement was handed to you and you were told
22 to take it home and read it?
23 A Yes.
24 Q That's the one I want to focus on right now, okay?
25 A Um-hum.

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1 Q Yes?
2 A Yes.
3 Q What did Mr. Sheridan say to you about the new fee
4 agreement when you had this first meeting where he handed
5 you the agreement and told you to take it home and read it?
6 A That he would be charging 40 percent more because
7 there was more workload, he had more work to do on it.
8 That's basically all that I really remember.
9 Q Turn to paragraph 2.13 in your petition. Do you
10 see that? Line 10 reads, quote: Sheridan, Lara and Pham
11 met for about 20 minutes in Mr. Sheridan's office, end
12 quote. What's your recollection, is that true --
13 A Yes.
14 Q -- or is that untrue?
15 A Um-hum.
16 Q Again AI, you have to say "yes" or "no".
17 A Yes.
18 Q The next sentence reads: Lara recalls that Pham
19 mostly spoke during the short meeting. Is that true?
20 A True.
21 Q The next sentence reads: Sheridan did not discuss
22 the new fee agreement with Lara, beyond saying this was a
23 new phase of the case with different work required, and so a
24 higher fee would be needed.
25 A Correct.

9 (Pages 30 to 33)

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Deposition of Heliodoro Lara, 4/2/2008

1 MR. SHERIDAN: Objection, leading.
 2 MR. CARYL: I haven't asked a question yet,
 3 counsel.
 4 Q The question is: Is that accurate?
 5 MR. SHERIDAN: Objection, leading.
 6 A Right.
 7 Q If I ask you a question whether it's accurate and
 8 it's not, I want you to tell the truth.
 9 A Right.
 10 Q Did Mr. Sheridan tell you and Pham to take these
 11 agreements home and read them?
 12 A Yes.
 13 Q At the time he handed you this fee agreement and
 14 told to you take it home and read it, did he advise you that
 15 you had the right to have another lawyer review that fee
 16 agreement for reasonableness and to advise you on whether or
 17 not you should enter into it?
 18 A No.
 19 Q Did you have any belief, one way or another, as to
 20 whether you were obligated to sign this fee agreement in
 21 order to keep Mr. Sheridan on your case?
 22 MR. SHERIDAN: Objection, leading.
 23 A No. I just felt that the trial wasn't over yet
 24 and he still needed to finish the work.
 25 Q Did you feel that you had an obligation to sign an

1 CERTIFICATE
 2 STATE OF WASHINGTON)
) ss.
 3 COUNTY OF KING)
 4 I, MARCELLA WING MADDEX, a Notary Public in and for
 5 the State of Washington, do hereby certify:
 6 That the annexed and foregoing deposition was taken
 7 stenographically before me and reduced to typewriting under
 8 my direction;
 9 I further certify that the deposition was submitted
 10 to said witness for examination, reading and signature after
 11 the same was transcribed, unless indicated in the record
 12 that the parties and each witness waive the signing;
 13 I further certify that all objections made at the
 14 time of said examination to my qualifications or the manner
 15 of taking the deposition, or to the conduct of any party,
 16 have been noted by me upon said deposition;
 17 I further certify that I am not a relative or
 18 employee or attorney or counsel of any of the parties to
 19 said action, or a relative or employee of any such attorney
 20 or counsel, and that I am not financially interested in the
 21 said action or the outcome thereof;
 22 I further certify that the witness before
 23 examination was by me duly sworn to testify the truth, the
 24 whole truth and nothing but the truth;
 25 I further certify that the deposition, as

1 agreement that would have provided a larger fee to him in
 2 order to keep him on the case?
 3 MR. SHERIDAN: Objection, leading.
 4 A Yes.
 5 Q Do you recall -- strike that.
 6 MR. CARYL: That's all the questions I have.
 7 MR. SHERIDAN: I have no follow up.
 8 Counsel, based on today's deposition, I would urge
 9 you to withdraw the petition.
 10 I have nothing further. Thanks very much.
 11 (Deposition adjourned at 9:50 a.m.)
 12 (Signature reserved.)

1 transcribed, is a full, true and correct transcript of the
 2 testimony, including questions and answers, and all
 3 objections, motions, and exceptions of counsel made
 4 and taken at the time of the foregoing examination;
 5 I further certify that I am sealing the deposition
 6 in an envelope with the title of the above cause thereon,
 7 and marked "Deposition" with the name of each witness, and
 8 promptly delivering the same to the attorney taking the
 9 deposition.

11 DATED this 9th day of April, 2008.

14 MARCELLA WING MADDEX
 Registered Professional Reporter
 Notary Public in and for the State of
 Washington.
 My Commission Expires: June 13, 2009

1 AFFIDAVIT
2 STATE OF WASHINGTON)
) ss.
3 COUNTY OF _____
4

5 I have read my within deposition taken on April
6 2, 2008 and find it to be accurate, except for the
7 corrections/changes noted on the corrections/changes sheet
8 attached hereto.
9

10 DATED this ____ day of _____, 2008.
11
12
13

14 _____
HELIODORO LARA

15
16 SUBSCRIBED AND SWORN to before me this ____ day
17 of _____, 2008.
18
19

20 _____
Notary Public in and for the State of
Washington.
My Commission Expires: _____
21
22
23
24
25

1 CORRECTIONS/CHANGES SHEET
2 PHAM/LARA V. CITY OF SEATTLE, SEATTLE CITY LIGHT
Witness: HELIODORO LARA - APRIL 2, 2008
3

4 Page Line Correction and Reason
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HELIODORO LARA
25

APPENDIX B

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Washington Appellate Court

WA Appellate - Division I

506498- 01

City of Seattle, Seattle City Light, Appellants v. Choung Van Pham and Helidoro Lara, Respondents

This case was retrieved from the court on Monday, September 21, 2009 Update Now

Header

Case Number: 506498- 01

Date Filed: 06/21/2002

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[Summary] [Names] [Docket] [Disposition]

Summary

Review Type: Notice Of Appeal

Case Number: King County Superior Court

Trial Judge: 972116694

Trial Judgment Date: Civil

App Case Type: Erlick, John

Filing Fee: 05/24/2002
Date Received: 06/27/2002
Internal Case Notes: 06/21/2002
Case Type: Single Case

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Event #/Date

Type Events

Action: Status Changed
 Item: Case Received and Pending
 Date: 07/05/2002

Event 88:

Action: Filed
 Item: Notice of Appeal Comment: Service - filed order - filed fee - Paid
 Date: 07/05/2002

Event 87:

Sealed No
 Comments Rec. 7/18/02 Correct Trial Court Number
 Action Date 07/11/2002
 Filing Type Amended Notice Of Appeal

Event 86

Sealed No
 Comments Appeal 507460 Consolidated To 506498
 Action Date 07/30/2002
 Filing Type Decision Consolidating Appeal

Event 85

Sealed No
 Comments Case Number 50649-8 And 50746-0 Are Ordered Consolidated Under Case Number 50649-8. All Fu
 Action Date 07/30/2002
 Filing Type Decision On Motions

Event 84

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