IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR, Plaintiff, v. SOUTHEASTERN OKLAHOMA STATE UNIVERSITY, and THE REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA, Defendants.	)	Case No. 5:15-CV-00324-C

REPLY TO DEFENDANTS' AND PLAINTIFF'S OBEJCTIONS TO FEES AND COSTS SOUGHT BY MR. EZRA YOUNG AND MS. BRITTANY NOVOTNY

This Reply brings to light misrepresentations and misstatements of fact raised by Dr. Tudor (ECF No. 369, 370, 372),[1] filed in opposition to our Second Motion for Attorneys' Fees (ECF No. 363).

[1] Weiss purports to have filed documents ex parte and under seal in support of Tudor's opposition to our Second Motion for Attorneys' Fees. However, we note that to date Weiss has not sought leave of Court to file documents under seal, as is required by this Court's rules. ECF Policies & Procedures Manual, § III-A ("Leave of Court is required to file a document under seal, which shall be requested by filing a motion and submitting a proposed order granting the relief.").

As discussed in further detail below, former counsel have a right to seek fees and costs in Tudor's name in this proceeding, other patently false allegations raised by Tudor are not properly before this Court and, in fact, were otherwise dismissed by the appropriate governing authorities. Lastly, filings by former counsel were not premature, and even if they were, the appropriate remedy is to stay our filings.

I. TUDOR HAS WAIVED CONFIDENTIALITY

When our attorney-client relationships with Tudor became irrevocably broken, we did everything in our power to protect Tudor's interests in this litigation. Unfortunately, Tudor's Response behooves us to set aside confidentiality to the extent necessary to defend ourselves. Such measured disclosures are well within the bounds of the rules that govern our profession.[2]

[2] *See, e.g.*, NY Rules of Professional Conduct 1.6 (b)(5)(ii) ("lawyer may reveal or use confidential information to the extent that the lawyer reasonably believes necessary . . . to establish or collect a fee"); *id.* cmmt 10 (clarifying that lawyer may set aside confidentiality where she is accused of misconduct "to the extent the lawyer reasonably believes necessary to establish a defense"); *id.* cmmt 14 ("a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose"); Okla. Stat. title 12, § 12-2502(D) (no privilege applies to communications "relevant to a breach of duty by the attorney to the client or by the client to the attorney"); Okla. Stat. title V, § 5.7 (authorizing respondent to publicly disclose final disposition of a grievance).

In an attempt to limit disclosures of otherwise confidential matters, we are choosing at this time to provide only cursory discussion of and release only a small fraction of documents that in good faith we think sufficiently correct the record before this Court. If further disclosures are deemed necessary, we are ready and willing to comply.

II. TUDOR ASSIGNED RIGHT TO FORMER COUNSEL TO SEEK FEES AND COSTS IN HER NAME

Tudor is mistaken as to former counsel's right to seek fees and costs directly. While it is relatively common for lawyers to seek fees and costs through their client in their client's name, the Tenth Circuit has long recognized that where the client has assigned counsel the right to file the application directly, fees and costs are in fact properly requested by counsel in the client's name, not the client herself. *See, e.g.*, *United Transp. Union Local 1745 v City of Albuquerque*, 352 Fed.Appx. 227, 230 (10th Cir. 2009) (recognizing that where client assigns right to counsel to collect fee and costs via contract, counsel acquires cognizable interest in collecting the proceeds); *Manning v. Astrue*, 510 F.3d 1246, 1252 (10th Cir. 2007) (citing *Gilbrook v. City of Westminister*, 177 F.3d 839, 875 (9th Cir. 1999) for the proposition that §1988 requires that attorney fee awards be made directly by the prevailing

party *except* where there is a contractual assignment of the fee award to counsel)).

Because Tudor assigned the right to the Young Firm to apply directly for fees and costs in this matter, Tudor's concerns that former counsel are the wrong persons to file for recoupment of their contractually assigned fees and costs lack merit. In 2018, as a condition of her representation by the Young Firm, Tudor expressly assigned former counsel the right to directly apply for fees and costs. This assignment is memorialized in Tudor's retainer with the Young Firm. *See* Exhibit 1 ¶ 11. (Novotny, as a cooperating attorney under that same retainer, has the same right to directly apply for fees and costs.). Troublingly, Tudor's new counsel misrepresented the existence of this term of representation mere hours after Young emailed Weiss reminding her of the assignment and attaching a copy of Tudor's retainer. *See* Exhibit 2.

III. BILLING ENTRIES ARE TRUE AND ACCURATE ACCOUNTINGS OF NECESSARY TIME BILLED

Tudor complains in part that a subset of Novotny and Young's billing entries are fraudulent or otherwise inappropriate (ECF No. 369 at 3–7). Those allegations are also meritless.

Ultimately, it is for the Court to assess what time should be compensable and whether application of a multiplier is appropriate. *Cf. Robinson v. City of Edmond*, 160 F3d 1275, 1284 (10th Cir. 1998) (representations made by other attorneys regarding the value of fees sought "is not an immutable yardstick of

reasonableness"). Tellingly, Tudor cites no authority supporting the notion that a former client has a right to ask this Court to limit payment to former counsel. Additionally, Tudor's present position is particularly curious in light of her obligation under her retainer with the Young Firm to cooperate in efforts to seek fees and costs for this matter. *See* Exhibit 1 ¶ 11.

Tudor also urges this Court to discount former counsels' work claiming it does not warrant full payment. Once again, Tudor fails to explain what grounds she has to complain former counsel's representation was substantively deficient. Moreover, this is a patently absurd position to take in light of the extraordinary success we achieved for Tudor at each and every stage of this litigation.

Tudor's concerns regarding the substantive descriptions of time entries are also baseless. Counsel intentionally used vague but accurate descriptions in time entries where more detail risked breaking privilege or otherwise embarrassing Tudor. Additionally, in exercise of our billing judgment, we declined to bill for all research, drafting, and meetings concerned with terminating our representation of Tudor. We also elected to not bill for conversations instigated by third parties with us wherein they described Tudor's unsuccessful attempts to secure new counsel or our failed attempts to find new counsel to take over the case. We made that choice because we desired and attempted to make clear in all public fora that we supported Tudor's merit case.

Tudor's charge that she is prejudiced by time entries that leave out specific details about the breakdown of the attorney-client relationships is, ironically enough, undercut by her Response and accompanying declaration. In raising specious and otherwise false allegations against former counsel,

Tudor has waived privilege, thus we are now ethically permitted to disclose facts and documents to defend ourselves. See authorities cited *supra* Part I.

There are other oddities in Tudor's Response, including assertions that Young fraudulently billed for work. Again, those representations totally lack merit. As one example, Young did in fact correspond with and have phone calls with John Knight and other ACLU attorneys about Tudor's case throughout the representation. As one example, see Exhibit 3, email correspondence between Young and Knight in November 2018 discussing Tudor's case in connection with *Harris Funeral Homes*.

Lastly, Tudor's argument that counsel should not be compensated for time spent drafting necessary documents in this litigation not only lacks merit, but also turns on a misrepresentation of fact. Tudor misrepresents the purpose of the draft motions to withdraw which were shared with her in October 2019. At that time, it was entirely necessary for a set of motions to be created that would facilitate the expedient withdrawal of counsel. *See* Exhibit 4. The only reason former counsel did not file in October 2019 was our determination that Tudor was not in a place mentally to handle the matter pro se and her case was so sensitive while in abatement that we preferred to try to give Tudor additional time to locate alternative counsel. Indeed, we communicated as much to Tudor directly. *See, e.g.*, Exhibit 5, Exhibit 6. Additionally, a version of those same draft withdrawal motions was filed when counsel sought to withdraw from representation before this Court in January 2020. *See* ECF No. 350.

IV. OTHER (FALSE) ALLEGATIONS AGAINST FORMER COUNSEL ARE NOT PROPERLY RAISED IN THIS FORUM

At the threshold, ethics complaints brought by former clients against counsel are properly heard by the Chief Judge of the Western District or state bar disciplinary committees, not this Court in its capacity presiding over Tudor's merits civil rights litigation. *See* Local Rule 83.6(c).

Not only are Tudor's allegations of wrongdoing not properly before this Court, but Tudor's counsel, Weiss, violated her duty of candor insofar as she knowingly withheld information pertinent to assessing the veracity of Tudor's allegations. Among other things, Weiss failed to disclose emails between former counsel and Tudor that evidence our true rationales for and notice of our request to end our attorney-client relationships months before Tudor purported to terminate us for cause. *See, e.g.*, Exhibit 7. We admit that Tudor filed ethics grievances against us in 2020, the sum and substance of which were the allegations made in Tudor's January 2020 letters to counsel. However, Weiss failed to inform this Court that after lengthy merits investigations, Tudor's complaint against Young was dismissed with a finding of no violation. *See* Exhibit 8. By a similar token, Tudor's allegations against Novotny were substantively dismissed in whole, though Novotny was issued a private admonition about her use of cannabis outside of work hours. *See* Exhibit 9.

If this Court deems it necessary that former counsel provide additional documentation pertaining to the particulars of Tudor's grievances, we are ready and willing to comply. However, we note that our substantive responses are, between both actions, dozens of pages long and there are hundreds of pages of exhibits.

V. IF PREMATURE, THE COURT SHOULD STAY OUR MOTIONS FOR ATTORNEYS' FEES UNTIL THE APPROPRAITE TIME

Tudor insists that former counsel's Second Motion for Attorneys' Fees is premature and should thus be stayed. We disagree with that reading of this Court's previous orders and the governing rules. This Court previously directed counsel to give notice within ten days of the appellate process terminating. *See* Order, ECF No. 345 at 2. There is no carve out in this Court's deadline extending the filing period for notice let alone timely application for attorneys' fees while Defendants consider pursuing a writ of certiorari.

Moreover, former counsel sought to follow the default deadlines set for filing costs and fees.[3] The default deadline for filing for appellate attorneys' fees and taxed costs, as measured by the Tenth Circuit's own rules, required that our petitions for costs and fees be filed within fourteen days of the appellate judgment's issue. *See* 10th Cir. Local Rule 39.2(A) (establishing default deadline as 14 days after the time to file petition for rehearing or *en banc* rehearing expires); Fed. R. App. P. 39(d)(1) (itemized bill and verified bill of costs must be filed with clerk within 14 days after entry of judgment).

[3] The Tenth Circuit's opinion declared Tudor the prevailing party on appeal and before this Court, and went on to direct application for all attorneys' fees to this Court. *See* Order, ECF No. 357 at 55. Final judgment was entered on September 13, 2021. *See* Judgment, ECF No. 358.

Nonetheless, if this Court deems our petitions premature, we ask that those petitions be stayed and considered at the appropriate time.

Dated: October 22, 2021

/s/ Ezra Young
Ezra Young (NY Bar No. 5283114)
LAW OFFICE OF EZRA YOUNG
210 North Sunset Drive
Ithaca, NY 14850
P: (949) 291-3185
ezra@ezrayoung.com

/s/ Brittany M. Novotny
Brittany M. Novotny (OK Bar No. 20796)
NATIONAL LITIGATION LAW GROUP, PLLC
2401 NW 23rd St., Ste. 42
Oklahoma City, OK 73107
P: (405) 896-7805
bnovotny@nationlit.com

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2020, I electronically filed a copy of the foregoing with the Clerk of Court by using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Ezra Young
Ezra Young (NY Bar No. 5283114)

LAW OFFICE OF EZRA YOUNG
30 Devoe, Apt. 1a
(949) 291-3185
fax: (917) 398-1849
ezraiyoung@gmail.com

RETAINER AGREEMENT

1. I, Rachel Tudor, hereby retain the Law Office of Ezra Young, (the "firm") admitted as an attorney in the States of New York only, to represent me in the following matter:

> With regard to *United States and Tudor v. Southeastern Oklahoma State University and Regional University System of Oklahoma*, 5:15-cv-324 (W.D.Okla. filed Mar. 30, 2015).

2. I understand that the firm's representation is limited to proceedings in the District Court listed in the matter described in paragraph 1, above. The firm may elect to participate in further trial or appellate processes in this matter, under the terms and conditions of this Agreement, but has no obligation to represent me. The firm also has no obligation to find a lawyer to represent me in any legal matter I may have. Any future representation will be determined as needed and will also be subject to this written agreement.

3. I authorize the firm to take whatever action it deems necessary in representing me in the matter described in paragraph 1, above.

4. I understand that the firm may involve other lawyers, law firms or public interest legal organizations ("Cooperating Attorneys") in this matter, and may assign a lawyer to represent me. I have no right to a particular attorney under this agreement.

5. Ezra Young, the principal of the Law Office of Ezra Young, is admitted to practice law

in New York only, and any statements in reference to laws or legal requirements outside of those states are not intended as legal advice unless and until representation by this firm is accepted by a court, tribunal or government agency operating in the appropriate state. I understand that I will need to consult an attorney admitted to practice in the appropriate state for qualified legal advice.

CLIENT COOPERATION AND COMMUNICATION

6. I agree to cooperate fully with the firm in this matter. I will notify it of any changes in my address or telephone number immediately. I will promptly return phone calls and emails within a reasonable time. I will assist in the preparation of my case and will not contact attorneys representing opposing parties.

7. I am aware that I am required to attempt to mitigate the damages from loss of my job by attempting to find another job in the same and similar field, at about the same or similar level, that it is my responsibility to keep records of my attempts to find a job, including copies of emails, letters and web pages showing my application, and to provide those to the firm. Failure to attempt to find such a new job, and failure to preserve evidence of such attempts, may result in my recovering nothing or a reduced amount for back pay. Amounts that I earn from other jobs will be deducted from the calculation of back pay.

8. I will not delete any electronic data of any kind relating to this case, including emails, texts or social media, or accounts for same containing such information, without written

permission from my attorney. I will not discard or give away any electronic device, including computers, phones, iPads, etc., for any reason, including but not limited to a need to return them to the company for warranty purposes or device upgrades, without written permission of my attorney. I understand this applies to devices that no longer function, as non-functioning devices can still be forensically examined to retrieve the information on them.

9. I understand that during the course of litigation I may be offered the option of mediating with my former employer. If the firm requests, I agree to attend and participate in mediation proceedings.

10. The firm uses email for my convenience, but I am aware that email is inherently insecure, with significant risk of third-party interception. If I prefer not to take the risk, I am aware that I must let the firm know in writing, which will then use fax or mail for all communications. I am aware that email, including personal email accessed via the web, created or viewed through employer-provided systems, including smartphones, can be viewed by the employer. See ABA Opinion No. 11-459.

FEES, COSTS, AND OTHER CHARGES

11. The legal fee for this representation will be on the following basis: a one-third (33-1/3%) share of any amounts collected by me or on my behalf as compensation or damages shall be due.

12. I will be responsible for all litigation expenses, including but not limited to filing fees,

travel and lodging fees, and stenographer fees, to be collected upon termination of this litigation. This is in addition to the attorney fee listed in the previous paragraph. The attorney fee shall be calculated before deduction of expenses.

13. I authorize the firm, and its Cooperating Attorneys to apply in my name for any attorneys' fees, costs, reimbursements or any other amounts I may be entitled to in connection with this matter and agree that all such fees and such costs and disbursements advanced by the firm will belong to the firm. I will cooperate with the firm to help it recover any such fees and costs.

14. I understand that any amounts received as compensation or damages are subject to tax. I understand that the Law Office of Ezra Young is not expert in tax matters, and I will consult my own accountant or tax attorney to address amounts owed in tax after recovery of compensation or damages.

15. I understand that I alone am responsible for paying any fines, penalties, attorneys' fees, costs or damages assessed against me personally. I understand that if my former employers are the prevailing party in federal court, my former employer may apply for reimbursement of court costs, deposition transcripts and related costs.

16. I understand that my health insurance company may have a right to recoup amounts it paid for medical care on my behalf for physical or mental injury that is a subject of this lawsuit.

CONFIDENTIALITY AND PUBLICITY

17. I will not make statements to media without first requesting written approval of any statement during the pendency of the matter listed in paragraph 1.

18. I will not speak to or provide written information about my case to media, including but not limited to newspapers, television or radio shows, or blogs, without written permission of my attorney. All requests for comment will otherwise be directed to my attorney.

19. I will not make any comments about pending lawsuits in emails, texts or social media to anyone, including friends and family members, without written permission from my attorney. However, to the extent I have already made such comments, I will not delete them.

20. I understand that the lawyer(s) assigned to my case may discuss the matter with attorneys and others in an effort to give me the best representation. To this end, I authorize my lawyer(s) to reveal confidential information to such others, who will be asked to maintain the confidence of such information.

21. I hereby authorize the firm and Cooperating Attorneys to publicize the case in any manner that it believes in good faith will advance my interests.

TERMINATION

22. The firm may terminate its involvement in this matter if:

a)it becomes clearly frivolous, unreasonable or groundless; or

b)the facts are found to be significantly different from those I have stated; or

c)I fail to comply with the terms of this Retainer Agreement; or

d)some other compelling reason makes it necessary to withdraw from the matter.

23. I understand the firm will not settle my case without my express permission. However, if a reasonable settlement offer is made and I decline it I understand that the firm may elect to withdraw. If the firm withdraws I understand that I will be responsible for finding new counsel if I wish to continue with the matter. I further understand that I will be responsible for ensuring that the firm is compensated for the reasonable value of services from any recovery, that I must notify the firm within 14 days of any settlement or judgment, and that I must include the firm's services in any fee application to applicable tribunals or courts.

24. I also understand that I am free at any time to discharge the firm. If I do, however, the firm is not required to find another attorney for me, and I will be responsible for finding new counsel if I wish to continue with the matter. In such case, I agree to be responsible for the reasonable value of services from any recovery, to notify the firm of any settlement or judgment within 14 days, and to include the firm's services in any fee application to applicable tribunals or courts.

25. If the application of this firm to appear in a court of appropriate jurisdiction is denied, and reasonable attempts to reverse the decision are unsuccessful, then this Agreement is terminated.

SOLE AGREEMENT

26. This Agreement is the sole and entire agreement between the parties, and supersedes any prior understandings or agreements. Any future agreements modifying the terms of this retainer must be in writing and signed by the party to be charged.

Rachel Tudor
Dr. Rachel Tudor

Date: 5/18/17

4595 W. Spring Creek Pkwy, 2612 Plano, TX 75024
Address and Telephone

Ezra Young

Date: 5/18/17

From: **Ezra Young** ezra@ezrayoung.com
Subject: Follow up on Tudor Retainer--re Authorization to Apply for Fees and Costs
Date: October 18, 2021 at 4:38 PM
To: jweiss@jtweisslaw.com, jerry@colclazier.com
Cc: Brittany Novotny-Stewart BMNStewart@nationlit.com, Brittany Stewart brittany.novotny@gmail.com

Jill and Jerry,

I'm writing to remind Dr. Tudor that her retainer with my firm (and the one that Brittany was operating under for the period for which she has sought fees) expressly grants me permission to apply for attorneys' fees and costs in Dr. Tudor's name for costs expended and fees billed in this matter.

Warmly,

Ezra

PDF

WD Okla Retain...-17.pdf

Begin forwarded message:

From: okwd_ecf_notice@okwd.uscourts.gov
Subject: **Activity in Case 5:15-cv-00324-C United States of America v. Southeastern Oklahoma State University et al Objections**
Date: October 18, 2021 at 3:57:47 PM EDT
To: okwdecf@okwd.uscourts.gov

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

Western District of Oklahoma[LIVE]

Notice of Electronic Filing

The following transaction was entered by Coffey, Dixie on 10/18/2021 at 2:57 PM CDT and filed on 10/18/2021

Case Name: United States of America v. Southeastern Oklahoma State University et al
Case Number: 5:15-cv-00324-C
Filer: Regional University System of Oklahoma
Southeastern Oklahoma State University
WARNING: CASE CLOSED on 06/06/2018
Document Number: 367

Docket Text:
OBJECTIONS re [361] SECOND MOTION for Costs *by Ezra Young* filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie)

5:15-cv-00324-C Notice has been electronically mailed to:

Allan K Townsend Allan.Townsend@usdoj.gov, Adriene.Colbert@usdoj.gov, Meredith.Burrell@usdoj.gov

Brittany M Novotny (Terminated) brittany.novotny@gmail.com

Charles J Watts (Terminated) cjwattslaw@yahoo.com

Delora L Kennebrew delora.kennebrew@usdoj.gov

Dixie L Coffey dixie.coffey@oag.ok.gov, docket@oag.ok.gov, leesa.thompson@oag.ok.gov, lori.cornell@oag.ok.gov, riskdocket@omes.ok.gov

Ezra I Young (Terminated) ezra@ezrayoung.com

J Blake Patton bpatton@waldingpatton.com

Jeb E Joseph jeb.joseph@oag.ok.gov, docket@oag.ok.gov, jebjosephlaw@gmail.com, leesa.thompson@oag.ok.gov, lori.cornell@oag.ok.gov, riskdocket@omes.ok.gov

Jennifer L Arendes jennifer.arendes@eeoc.gov

Jillian T Weiss jweiss@jtweisslaw.com, admin@jtweisslaw.com, jwilliams@jtweisslaw.com

Kindanne C Jones kindanne.jones@oag.ok.gov, docket@oag.ok.gov, leesa.thompson@oag.ok.gov, lori.cornell@oag.ok.gov, riskdocket@omes.ok.gov

Marie E Galindo megalindo@thegalindolawfirm.com, legalassistant@thegalindolawfirm.com, office@thegalindolawfirm.com

Meredith L Burrell meredith.burrell@usdoj.gov

Mithun S Mansinghani Mithun.Mansinghani@oag.ok.gov, andy.ferguson@oag.ok.gov, docket@oag.ok.gov

Shayna M Bloom shayna.bloom@usdoj.gov

Timothy M Bunson tbunson@piercecouch.com, TTurner@piercecouch.com

Valerie L Meyer valerie.meyer@usdoj.gov

Zachary P West zach.west@oag.ok.gov, andy.ferguson@oag.ok.gov, docket@oag.ok.gov

5:15-cv-00324-C Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1041971380 [Date=10/18/2021] [FileNumber=4621105-0] [0a6bbdb0cb7d527495bc141d8fd6fc2342bda3bc60b0b7fbc5b857e65c25b36ee9a4c32b6c8e353b75b3425f630ca119083bf02fe73c902a154376de9de0ac3c]]

From: **John Knight** jknight@aclu-il.org
Subject: RE: SCOTUS Calendaring
Date: November 27, 2018 at 3:25 PM
To: Ezra Young ezra@ezrayoung.com

I'm happy to try to help, if I can. However, I am currently hoping to be on vacation starting 12/13. I still may be able to read the brief and offer comments, but it is harder for me to be sure of my availability. Please let me know if the State of OK asks for more time. Good luck!

From: Ezra Young <ezra@ezrayoung.com>
Sent: Tuesday, November 27, 2018 7:10 AM
To: John Knight <jknight@aclu-il.org>
Subject: SCOTUS Calendaring

John,

Hope you had a restful weekend.

I see that SCOTUS nixed the 11/30 conference, which appears to indicate none of the Title VII cases on slate will go up this term. Hopefully that bodes well for all.

I wanted to pass on Dr. Tudor's opening brief in the 10th Circuit as well as a brief in support filed by the National Women's Law Center (and signed by 31 others) yesterday. Lambda Legal is filing a brief in the new year keyed to Tudor's response/reply. If you would be amenable, I would very much like to talk to you once Oklahoma has filed their opening brief (tentatively due 12/19, though they appear poised to seek an extension).

Best,

Ezra

Ezra Young, Esq.
Law Office of Ezra Young
30 Devoe Street #1A
Brooklyn, NY 11211
Cell: 949-291-3185
Fax: 917-398-1849
Email: ezra@ezrayoung.com
Web: ezrayoung.com

From: **Brittany Novotny** BNovotny@nationlit.com
Subject: Update: Request for Withdrawal
Date: October 16, 2019 at 2:40 PM
To: rachel.tudor@yahoo.com
Cc: Ezra Young ezra@ezrayoung.com, Brittany Novotny brittany.novotny@gmail.com

Dear Dr. Tudor,

In response to your recent email on October 14, 2019, we would like to provide you a couple of options. As to your question regarding Mr. Young and myself continuing to work together and communicating together, we have made clear in the last few months that we prefer that we both be included on all communications. In spite of that, you have continued to write directly to me without including Mr. Young. I am including him in the response here because we are continuing to work on this case as a team, not as individuals.

As Mr. Young has noted in communications to you via email and by written letter, because our withdrawal would leave you without counsel, we have a high bar to meet for the 10th Circuit to grant our withdrawal. It is just not as simple as filing a short withdrawal motion like Ms. Galindo filed previously, when her withdrawal left you with two (2) attorneys of record on the case.

In order to have our withdrawal motion granted, we will have to provide significant details as to why our communications with you have broken down to the point that we can no longer provide assistance to you. We are willing to request the Court allow that Motion to be filed under seal, but we cannot guarantee that they will grant such a request.

Alternatively, if you would like to sign a Declaration confirming that you are aware our withdrawal will leave you without counsel, then we could try to pursue a Motion for Withdrawal that is less likely to prejudice your case in any way. Our number one concern is withdrawing from the case ethically and in a way that provides you the best opportunity to move forward and find new counsel.

We are providing a draft copy of the Motion for Withdrawal based on not having your Declaration affirming our withdrawal, as well as a template draft of a possible Declaration you could revise to accurately reflect your position toward our withdrawal.

Please consider these options and get back to us as soon as possible. We would like to withdraw as quickly as possible, and no later than October 21. We can file the requested update to the Court on that date as well.

Brittany M. Novotny
Associate Attorney
NLLG
NATIONAL LITIGATION LAW GROUP
National Litigation Law Group, LLP
2401 Northwest Twenty-Third Street, Suite 42
Oklahoma City, Oklahoma
73107
405.896.7805 – direct

651.337.6691 - facsimile
bnovotny@nationlit.com
www.nationlit.com

Licensed in Oklahoma

NLLG National Litigation Law Group, LLP www.nationlit.com

NLLG employs one or more attorneys admitted to practice in the following states

Alabama Arizona Arkansas California Colorado District of Columbia Florida Georgia Illinois
Indiana Iowa Kansas Kentucky Louisiana Maine Maryland Massachusetts Michigan Minnesota
Missouri Montana Nebraska Nevada New Jersey New Mexico New York North Carolina
Ohio Oklahoma Pennsylvania Tennessee Texas Utah Virginia Washington Wisconsin


2019-10-16 EY and BN...w.docx


2019-10-16 Tudor Dec.docx


2019-10-16 Mot to Seal JM.docx

From: **Ezra Young** ezra@ezrayoung.com
Subject: Re: Status Report Filed
Date: October 25, 2019 at 8:01 PM
To: rachel rachel.tudor@yahoo.com
Cc: Rachel Tudor racheltudor3731@gmail.com, Brittany Novotny BNovotny@nationlit.com

Rachel,

Good evening.

I'm writing to follow up on my email, below. Despite having filed the status report this week, we have not received any order from the 10th Circuit setting a new deadline for a status report deadline yet. We will continue to monitor the situation. If and when we receive a new request from the Court we will notify you immediately via email and pass on a copy of the order. If you have any questions about this please let Brittany and I know via email.

With respect to the other question I posed to you about your position on our desire to withdraw I am confirming that neither Brittany nor I have heard from you. Despite that, Brittany and I elected to not file a joint motion to withdraw this week in hopes that you will take it upon yourself to reach out and expressly advise of how you wish to proceed.

Best,

Ezra

On Mon, Oct 21, 2019 at 9:58 AM Ezra Young <ezra@ezrayoung.com> wrote:

> Rachel,
>
> Good morning.
>
> I'm writing to notify you that I filed a status report with the 10th Circuit a few moments ago. Brittany and I have been discussing off and on how to handle the report for a few weeks and came to an agreement, after having consulted with experts on the issues at stake in the Supreme Court cases and having reviewed the transcripts of the October 8 oral arguments, that a report of the kind we filed made most sense for your case at this time. Last week I drafted the report I and ran it by Brittany, whom agreed with its substance. A copy of the status report, as filed, is attached to this email. In all likelihood the 10th Circuit will issue an order today or later this week setting a new deadline for a status report. If and when we receive that order I will pass a copy of it onto you via email. If you have questions about the status report please address them to Brittany and I via email.
>
> Unrelated to the status report, I am writing to remind you that we have yet to receive a response from you in writing about our request to withdraw from your case. Respectfully, I ask that you please apprise of your decision via writing today by the deadline Brittany gave you—12pm central.
>
> On a personal note, as you might imagine, this is not a particularly easy decision for us, indeed for me its quite painful given how long I've worked on the case and how deeply I wish that you get the justice you deserve. I've made tremendous personal, financial, and professional sacrifices to work with you on this case. I do not regret making those sacrifices. Most certainly, they were the right decisions at the time. Unfortunately, as I've pointed out repeatedly for many months now, it seems to me that the stress of this case has gotten the best of you and you are not handling it in the manner you need to to navigate this as required. To be blunt, you have taken out your pain and anger towards the world on us and have repeatedly made me the target of your ire. That is unfortunately not conducive to a healthy relationship, it is not good for you, and it's not something I wish to continue indefinitely.
>
> I do sincerely fear your mental health, coupled with other difficulties in your life, has compromised your capacity to deal with the ups and downs of litigation and clouds your ability to work through tough developments. That is not something I have spoken in depth with anyone save for Brittany, which is appropriate since we are serving as your counsel together. Unfortunately, as I disclosed to your throughout the Summer, some third parties have picked up on your struggles during their interactions with you. While it's alarming for us to see up close, it's a much bigger problem for others to see it on their own—that is why, repeatedly, I've tried to warn you that the problems you are having need to be discreetly and quickly taken care of. Indeed, when problems like those emerge, it's our duty to point them out to our client and advise they take steps as necessary to rectify them. I'm sorry you have such deep reservations about seeking mental health help and fear that that being pointed out to you by counsel is offensive and am sad you think it's done for nefarious purposes. That's not the intent nor is it the purpose.
>
> To the extent you can right now, I suggest you take many steps back and assess whether you are angry at us for what we have actually done, or whether you are actually angry about things you are afraid of and your current predicament. To be frank, we have repeatedly suggested that you settle the case if you cannot stomach many years of protracted litigation. Part of the difficulty with protracted litigation is that it is immensely stressful, you can find yourself, as you do now, in dire financial straits if you can't find employment, and the long legal fight inevitably takes a tremendous emotional toll on the plaintiff. The toughest among us experience it at a certain point, you are no exception. The folks who can ultimately hang on and fight this fight to the very end are the ones that put tremendous effort into taking care of their mental and physical health and invest time and energy in curating healthy relationships with counsel and persons in their immediate support network. This isn't a secret. It's what Brittany and I have tried to tell you repeatedly throughout the years. My sincerest hope is that this lesson finally rings true to you and you begin the work you must to navigate this matter as you desire.
>
> Best

Best,

Ezra

From: **Ezra Young** ezra@ezrayoung.com
Subject: Re: Follow Up
Date: September 6, 2019 at 12:18 PM
To: rachel rachel.tudor@yahoo.com, Rachel Tudor racheltudor3731@gmail.com
Cc: Brittany Novotny BNovotny@nationlit.com

Rachel,

We are writing to follow up on our email, below. See the attached letter.

Ezra

> On Aug 20, 2019, at 3:27 PM, Ezra Young <ezra@ezrayoung.com> wrote:
>
> Rachel:
>
> We are writing to follow up on our email below and provide you with updates.
>
> **Your Appeal in the 10th Circuit**: There are no new status updates on your 10th Circuit appeal at this time. Your case is still on pause at the 10th Circuit. As we noted below, the next hard deadline in your case is a status report due to the 10th Circuit in October 2019.
>
> **Withdrawal:** We reiterate our position that our relationship with you has broken down and it is our preference to withdraw as your attorneys. We have conducted research over the last couple weeks to see what legal and ethical rules apply to this situation. This is what we have concluded: We cannot withdraw as your counsel unless you either (1) fire us and elect to represent yourself *pro se* or (2) you obtain new counsel who make an appearance in this case. Last we spoke with you, you advised that you neither wish to fire us nor seek new counsel. If your position has changed please let us know so that we can advise the 10th Circuit.
>
> On the assumption that you neither wish to fire us nor have obtained new counsel, we will continue to serve as your counsel of record. Given our total inability to engage in healthy communication with you right now and the current posture of your case, we think it prudent to limit our work for you to filing required status reports with the 10th Circuit and advising you of any changes to the status to your case. At this juncture, we do not anticipate there being any major status changes until June 2020. If that changes, we will advise you via email promptly. To ensure that you have a means to receive our emails, Brittany will continue to keep the iPhone she sent you activated on her phone plan. If for whatever reason the iPhone stops working please advise us via email immediately and we will work with you to resolve the problem.
>
> **Your Obligation to Mitigate Damages:** We remind you that you have an ongoing obligation to mitigate damages. This means, among other things, that you must continue to seek employment in your field, which is Education broadly (e.g., teaching positions at the college or K–12 level, test prep, tutoring, proofreading, etc.). At minimum you should be applying to 2 to 3 jobs each and every month. You should also keep records of your job applications and any correspondence associated with them (e.g., applications, cover letters, emails confirming receipt, rejection/offer emails, etc.). If you obtain employment, you should keep copies of records that reflect your compensation (e.g., pay stubs) and records of reviews of your work or workplace issues that could speak to your ability to work in a collegial manner with others in the future (e.g., student feedback/evaluations, disciplinary write-ups, workplace complaints filed by you or about you). Ultimately, you are responsible for maintaining and keeping records. To reduce the possibility for unnecessary friction with you right now, we ask that you keep your records on your end in a safe electronic format. If you have questions about your mitigation obligations please address them to us via email.
>
> **Ongoing Advice to Obtain Employment:** We reiterate our prior advice that you make efforts to obtain employment, even if it is not a tenure-track or tenured professor position. In part, we think this is necessary to shore up proof of your efforts to mitigate damages. We also think given your precarious financial position employment would be beneficial. If you have questions about this advice please address them to us via email.
>
> **Ongoing Advice to Seek Mental Health Care:** We also reiterate our prior advice that you make efforts to get mental health care. As we noted in our calls and in our previous emails, we are very sincerely worried about your deteriorating mental state. Your tendencies to isolate yourself, pick fights with us and others, and lash out when you are scared or upset are deeply worrying. We strongly suggest you work with Feleshia Porter or another mental health professional to get to the bottom of whatever it is that is going on with you right now. We have no doubts that the discrimination and retaliation you endured at Southeastern traumatized you and that the ensuing litigation has worsened many aspects of your life. However, we have witnessed first hand that your capacity to cope with those stresses has dramatically waned over time and your memory, judgment, and capacity to communicate and interact with others has significantly diminished and appears to be causing both you and your case problems. Given all of this, we think it prudent for you to look into whether some kind of sustained mental health care might help you. If you have questions about this advice please address them to us via email.
>
> We kindly ask that you confirm receipt of this email.
>
> Respectfully,
>
> Ezra and Brittany
>
> On Tue, Aug 6, 2019 at 11:44 AM Ezra Young <ezra@ezrayoung.com> wrote:
> Rachel

Rachel,

I'm writing to follow up on our phone calls yesterday about the status of your case and next steps.

As Brittany and I discussed with you yesterday, it is not currently viable for us to file a writ of cert before judgment in the Supreme Court in September 2019. It is too risky and, at this point, strategically unwise in our collective judgment. As we discussed at length, the original calculus floated in favor of that avenue in May 2019 no longer holds. Among other reasons, you are not media ready right now and you have repeatedly refused directions of counsel to help us strategically set up the writ over the course of the last few months. Those problems have been compounded by the increasingly unhealthy communications you have had with Brittany and I (separately and together) which, as we very frankly shared with you yesterday, at times make it impossible for us to attempt to give you feedback and help prepare you for next steps. Though we advised you that we would be willing to explore with you the possibility of doing such a writ on a delayed timeline in addition to other strategies that might get your case moving again—perhaps October or November 2019 if it were viable then and you did considerable work on your end including, among other things, obtaining a job, regularly attending therapy, and working with Brittany to get media ready—you've refused that option. As we advised you yesterday, cooperation and healthy communication is key to any attorney client relationship. Also key is ensuring that the client sets and controls her case goals and the lawyers be given the space to execute litigation strategy informed by rules of procedure, a grasp of the litigation landscape, and in light of strategic considerations that nonlawyers simply don't always appreciate. Unfortunately, despite our best efforts, it's our understanding that you no longer wish to mind the limits of that relationship, do your part as our client, or allow us to do our job as your lawyers free from your own interference. That's not sustainable on our end. Nor is it good for you in the long or short run.

This is a true breaking point for us. Though you refused to fire us as your counsel and are refusing to find new counsel, you have made it impossible for us to continue to represent you. We will begin the work of finding a means to withdraw from your case. To be absolutely clear—that is where we will put all of our effort going forward. If there are motions involved you will be given copies in accordance with any applicable rules of court and any ethics rules that govern. I do not have a timeline to share with you right now. However, I can say that we will focus on making this as expedient as practicable under the circumstances. The only hard deadline on the horizon in your case is a status report due to the 10th Circuit this Fall. You were advised of this earlier this year but I'm attaching (again) a copy of the order of the Court setting the deadline.

In the interim, I strongly urge you to reach out to Feleshia Porter and get to work on exploring some of the mental health issues we've discussed. To be very frank, you are—and have been for some time—engaging in some very self-destructive behavior, acting erratically, and frankly acting not like yourself. It started to become noticeable in late 2018, at which point I urged you in person to seek out help. I have reiterated that request repeatedly via phone and again in person in May 2019 and June 2019. Unfortunately, to my eye, things have gotten worse, not better and it's to the point where your judgment is clouded in our professional exchanges. You refuse to take feedback. You do not accept criticism. You bicker with us about legal maneuvers you have no knowledge about. Without rhyme or reason, you repeatedly refuse to cooperate on small things that, in the aggregate, cause problems for us and make it impossible to execute larger strategies. You have a tendency to see us (and virtually everyone else) as your enemies. You get oddly fixated on small things, and blow up bigger things as a result. You misremember key moments of your case, create narratives to justify your anger at particular people involved in those steps, and lash out at us. When we try to remind you about what actually happened, or point out memorializations that contradict your account, you dig in and refuse to accept you were mistaken. You insist that key wins in your case are losses. You belittle us personally and professionally. You repeatedly threaten us. You seem totally unable, in our exchanges, to take personal responsibility for your own actions and mistakes. Indeed, you refuse to acknowledge you've ever made errors or acted out of line and then lecture us on every perceived slight. At times, you seem totally unable to track the substance of our conversations. Increasingly, you lash out when you're scared or surprised by something new, even if it is objectively minor. I imagine some other stuff is going on that I'm not privy to. You didn't used to be like this.

To be clear, there is absolutely nothing wrong with having problems, struggling, or needing help. I can't totally fathom the stress and pain you carry given your current situation and the stress of this case over the last decade let alone many of the other challenges you've faced in your life. However, it is incumbent upon you to be proactive about these issues and to get help sooner rather than later. It's my hope that in time, you take steps to get yourself into a better headspace, to get employed, and to rebuild a social and professional life. In all honesty, I imagine it will take you a great deal of work and potentially time to do that. It most certainly won't be easy. I think you're capable of doing it. But you need to get to work and to, at the very least, stop fighting folks who are trying to help you help yourself.

Best,

Ezra

2019-9-6 Ltr to client--...AL.pdf

From: **Ezra Young** ezra@ezrayoung.com
Subject: Follow Up
Date: August 6, 2019 at 11:44 AM
To: rachel rachel.tudor@yahoo.com, Rachel Tudor racheltudor3731@gmail.com
Cc: Brittany Novotny BNovotny@nationlit.com

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Best,

Ezra

2019-4-22
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ANDREA E. BONINA, ESQ.
Chair

State of New York
Grievance Committee for the
Second, Eleventh and
Thirteenth Judicial Districts

Renaissance Plaza
335 Adams Street – Suite 2400
Brooklyn, New York 11201-3745
(718) 923-6300

DIANA MAXFIELD KEARSE
Chief Counsel

MARK F. DEWAN
Deputy Chief Counsel

SUSAN KORENBERG
SUSAN B MASTER
KATHRYN DONNELLY
THOMAS GRAHAM AMON
SASHA N. HOLGUIN
DAVID W. CHANDLER
SARA MUSTAFA
THOMAS J. MURPHY
Staff Counsel

October 6, 2021

CONFIDENTIAL
Ezra I. Young, Esq.
c/o Meredith Kaplan Stoma, Esq.
Lewis Brisbois Bisgaard & Smith LLP
One Riverfront Plaza, Suite 800
Newark, NJ 07102

Re: File No.: K-319-20

Dear Mr. Young:

On September 14, 2021, the Grievance Committee for the Second, Eleventh and Thirteenth Judicial Districts has considered the complaint filed against you by Dr. Rachel Tudor.

After deliberation, the Committee determined that there was no breach of the Rules of Professional Conduct on your part and the complaint was dismissed.

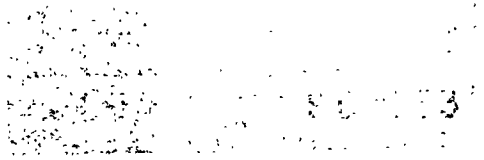
Very truly yours,

Andrea E. Bonina
Chair

AEB/hd

mfd

State of New York
Grievance Committee for the
Second, Eleventh and Thirteenth Judicial Districts
Renaissance Plaza
335 Adams Street, Suite 2400
Brooklyn, New York 11201-3745



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OCT 13 2021

LEWIS BRISBOIS BISGAARD
& SMITH LLP - NEW JERSEY

CONFIDENTIAL
Ezra I. Young, Esq.
C/o Meredith Kaplan Stome, Esq.
Lewis Brisbois Bisgaard & Smith LLP
One Riverfront Plaza, Suite 800
Newark, NJ 07102

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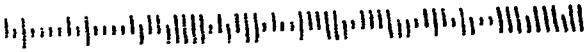

OKLAHOMA BAR ASSOCIATION
Office of the General Counsel

August 9, 2021

Ms. Brittany M. Novotny
Attorney at Law
National Litigation Law Group
2401 N.W. 23rd Street, Suite 42
Oklahoma City, OK 73107

RE: DC-20-116, Grievance by Rachel Tudor

Dear Ms. Novotny:

The Professional Responsibility Commission met on July 16, 2021 and considered the above-referenced grievance. It was the decision of the Commission that this grievance be dismissed with a letter of admonition for your conduct in this matter.

During your representation of Ms. Tudor in a civil matter before the United States District Court for the Western District of Oklahoma, you offered your client marijuana and were observed smoking it one evening after court was in recess. At the time this occurred, possession and/or consumption of marijuana was illegal in the state of Oklahoma. In your response to Ms. Tudor's grievance, you were candid and admitted your conduct was a lapse in judgment and reflected poorly upon the legal profession.

The Commission found your actions constitute a violation of Rule 8.4(b) of the Oklahoma Rules of Professional Conduct, 5 O.S. 2011, ch. 1, app. 3-A and Rule 1.3 of the Rules Governing Disciplinary Proceedings, 5 O.S. 2011, ch. 1, app. 1-A. As a result, **you are hereby admonished and cautioned not to repeat such conduct**. The entire file in this proceeding, including the record of this admonition, will be kept in strict confidence, and is ***not*** considered professional discipline. By such disposition, the Commission expresses its hope that in the future you will observe the high standards of conduct required of our profession.

Sincerely,

Loraine Farabow
First Assistant General Counsel

LDF/mf

1901 North Lincoln Blvd.
P.O. Box 53036
Oklahoma City, OK 73152-3036
office 405.416.7007
fax 405.416.7003
toll free 800.522.8065

www.okbar.org