



## Alerts

### Discharged Firm May Still Collect Contingency Fee

February 4, 2010

*Lawyers for the Profession® Alert*

*DeLapaz v. Selectbuild Construction, Inc.*, 917 N.E.2d 93, 334 Ill.Dec. 496 (Ill. App. 1st Dist. 2009)

#### Brief Summary

A lawyer did much of the work on a contingency fee matter prior to his employment being terminated by his law firm, and the lawyer took the client's matter with him and settled it shortly thereafter. It is within the trial court's discretion to award the original law firm the contingency fee, less the amount of a *quantum meruit* payment to the lawyer for the value of the work after the discharge.

#### Complete Summary

Plaintiff Rafael DeLapaz hired law firm Touhy & Touhy, Ltd. ("Touhy") on a contingency fee basis to bring a negligence action. DeLapaz was referred to Touhy lawyer James Zouras. Zouras performed essentially all of the attorney work on the DeLapaz matter. Touhy then terminated Zouras' employment.

Zouras started a new firm and took the DeLapaz matter with him. Shortly thereafter, the matter settled and Touhy and Zouras both sought the right to be paid the contingency fee.

The trial court awarded Touhy its contingency fee and allocated a small portion of the fee to Zouras' new firm on a *quantum meruit* basis. Zouras appealed, arguing that the trial court's award was an abuse of its discretion.

The Illinois Appellate Court, First District, affirmed, noting that the trial court's award was supported by Illinois case law and thus was not an abuse of discretion. The appellate court first cited the general rule that a discharged attorney (i.e., Touhy) normally is not entitled to the original contract contingency fee, which terminates upon discharge, but is entitled to be paid on a *quantum meruit* basis for services rendered prior to the discharge. The appellate court, however, relied on an established exception recognized by the Illinois appellate courts, which holds that a discharged firm is entitled to its contract fee and the successor counsel merely entitled to a fee based on *quantum meruit* in cases generally like this one in which the case settled before most of the work normally required was done, and the overwhelming majority of that work was done at the original firm.

Also significant to the court was the fact that Zouras' new firm did not have a

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written fee agreement with DeLapaz.

### **Significance of Opinion**

This opinion reflects the broad discretion Illinois courts have in allocating fees between former and successor counsel, and recognizes that the relative contributions of the original and successor attorneys does matter. The opinion suggests that it would be best practice for the successor attorney to have a new written fee agreement with the client. Not only would such an agreement presumably strengthen the successor attorney's position vis-a-vis prior counsel, but it also ideally should include client consent to a shared fee as required under the ethics rules in many jurisdictions.

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