

# **SUPREME COURT OF LOUISIANA**

**No. 95-C-3054**

**INTERVENTION IN**

**SHANNON O'ROURKE, wife of/and GEORGE O'ROURKE**

**Versus**

**MARK CAIRNS, D.D.S.**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
FIFTH CIRCUIT, STATE OF LOUISIANA**

**CALOGERO, C.J., concurring.**

I agree with the majority opinion's ultimate conclusion that Belsome's fee should be reduced because he was dismissed with cause, and I further agree that \$61,800 is fair compensation. My only disagreement is at what stage this fee reduction occurs. I disagree with the majority's approach of reducing the fee **after** the Saucier analysis has been completed because this approach allows the successor attorney of an attorney discharged with cause seemingly to receive a "windfall" where he performed work no differently than if his predecessor had been dismissed without cause. This also violates the basic tenet that an attorney must "earn" his fee because the successor attorney did not "earn" the portion of the first attorney's fee that was reduced and is now credited to the successor attorney. Further, the majority's approach results in a redundant reduction because the district judge should consider the nature of the attorney's dismissal in performing the Saucier analysis.

We affirmed several important principles in Saucier; namely, an attorney's fee cannot be excessive, a client is only liable for one fee even if there are two or more

attorneys involved, and a client is only liable to pay the highest ethical contingency fee for which the parties have contracted. This one fee is to be apportioned between the first and successor attorneys under the Saucier factors.

Both lawyers, the first fired with cause and the successor attorney, are entitled to share the highest ethical contingency fee that has been earned. In this case, in determining what each attorney has earned (what percentage of the highest permissible contingency fee contract signed by the client), the gross fee would first be determined. Then, in apportioning such fee, the district court should apply the factors set forth in the Rules of Professional Conduct as explained in Saucier, taking into account the fact that the first attorney was discharged with cause. Factor 5 of Rule 1.5(a) of the Rules of Professional Conduct is "the nature and length of the professional relationship with the client". This factor inherently includes a consideration of the relationship between the client and attorney, **including how the relationship terminated**. When considering the "nature" of the relationship, the district court will be considering many of the same exact factors it considers in determining whether dismissal with cause was justified, e.g., history of communications between client and attorney, client's satisfaction with attorney's efforts, the reasons underlying the attorney's dismissal, etc. In apportioning the contingency fee between the two attorneys when applying this factor, the district court would award the first attorney a percentage commensurate with the fact that his relationship with his client terminated at client's request and that such dismissal was with cause. The district court would also consider that the successor attorney's good relationship with the client warranted a higher percentage than that afforded to the first attorney. Thus, in performing the Saucier analysis, the district court is reducing the first attorney's fee to account for his justified dismissal.