

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

LISA EDMONDS AND LARRY EDMONDS

APPELLANTS

V.

NO. 2007-CA-00751

**EDWARD A. WILLIAMSON, INDIVIDUALLY,
EDWARD A. WILLIAMSON, P.A., GEORGE W. HEALY, IV,
INDIVIDUALLY, AND GEORGE W. HEALY, IV
& ASSOCIATES**

APPELLEES

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualifications or recusal.

1. Lisa and Larry Edmonds- Appellants;
2. George W. Healy, IV, Healy & Associates- Appellee;
3. Edward A. Williamson, Individually and Edward A. Williamson, P.A., Defendant-Appellee
4. William B. Carter, Esquire, Follett Carter, Attorneys, Post Office Box 406, Meridian, Mississippi 39302-0406; Counsel for Appellee; George W. Healy, IV
5. John J. Mueller, Esquire, The Provident Building, Suite 800, 632 Vine St., Cincinnati, OH 45202-2441 and Joseph W. Hutchinson, III, 405 Young St., Butler, AL 36904-2832, both of Counsel for Appellant; and
6. Honorable Lester Williamson, Circuit Court Judge, Trial judge.
7. John B. Clark, Brandi N. Smith, Daniel Coker Horton & Bell, 4400 Old Canton Road, Suite 400, P.O. Box 1084, Jackson, MS 38215-1084, of counsel for Appellee, Edward A. Williamson
8. William T. May, 205 East Church St., P.O. Box 217, Newton, MS 39345, of counsel

for Appellee, Michael Miller.

This the 10th day of January, 2008.

A handwritten signature in black ink, appearing to read "William B. Carter", written over a horizontal line.

WILLIAM B. CARTER, ESQ.
ATTORNEY FOR GEORGE W. HEALY,
APPELLEE

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STATEMENT OF THE CASE

Appellants, Lisa and Larry Edmonds, (hereinafter, the Edmonds) employed Appellee Attorney George W. Healy IV, (hereinafter, Attorney Healy), to pursue a claim for legal malpractice against the Edmonds' former attorney, Edward A. Williamson. Attorney Healy ultimately filed four parallel lawsuits against Attorney Williamson and others on behalf of the Edmonds and other clients.¹ Discovery in the four cases was consolidated. The various clients shared the cost of discovery, resulting in a single unified file in Attorney Healy's office which included thousands of documents pertaining to the claims of all of Attorney Healy's clients. The Edmonds took a very active interest in their case, regularly visited Attorney Healy's office, and routinely obtained copies of depositions, exhibits, pleadings and other key documents.

Attorney Healy eventually asked to and was allowed by the Court to withdraw as counsel for the Edmonds as a result of differences with them concerning litigation strategy and communication. After a certain amount of time, the Edmonds retained a new lawyer. During this transition process, Attorney Healy, at the Edmonds' request, and at no charge to them, sent copies of documents to their new attorney and spoke to him about the merits of their case.

Ultimately, however, the Edmonds' new attorney demanded that Attorney Healy either deliver the entire case file to him or, alternatively, that Attorney Healy pay for a complete duplicate set of all documents in the case file. Attorney Healy resisted this request. The dispute was resolved in favor of Attorney Healy by the Order of the Court below of July 31, 2006, discussed below, which resulted

¹The four lawsuits are:

- Edmonds v. Williamson and Edmonds v. Miller (the sub judice case)
- Williams v. Williamson (docket number 4:03cv88 on the docket of the US District Court for the Southern District of Mississippi)
- Haynes v. Williamson (docket number 3:05cv186 on the docket of the US District Court for the Southern District of Mississippi)
- Washington v. Williamson (docket number 251-05-112CIV on the docket of the Circuit Court of Hinds County, Mississippi)

in this appeal.

The Ruling of the Court Below

The Circuit Court of Kemper County, relying on Mississippi Rule of Professional Conduct 1.16(d)², ruled that; "The client file in this case involves many documents which have been generated in similar cases involving many other clients. It also involves another client who filed suit against Mr. Williamson in Federal Court. The Court does not believe that [Rule 1.16(d)] requires the former attorney to copy the file for the client, nor does it require the attorney to totally turn over the file in which other clients have an interest. Therefore, this Court finds that the entire client file shall be made available to the Edmonds for inspection. Thereafter, the Edmonds or their representative may copy as much or as little of the file as they wish at their expense. Further, the Edmonds are entitled to the return of any original papers and property they delivered to Attorney Healy and he may copy those items at his expense if he wishes to retain a copy."

The issues for decision presented by this order appear to be:

- 1) Whether the applicable law requires Attorney Healy to return all or part of the full original case file, and
- 2) Who is to pay for copies of the file, Attorney Healy or the Edmonds?

SUMMARY OF THE ARGUMENT

The Edmonds have requested that their former attorney, George Healy, return the original case file to them following Attorney Healy's withdrawal. Attorney Healy responds that the Edmonds' file is commingled with other clients' files and contains thousands of documents. He offered to allow the Edmonds copy any portions of the file that they wanted. They refused and filed a Motion to Compel.

²Mississippi Rule of Professional Conduct 1.16(d) provides in pertinent part. "Upon termination of representation, a lawyer shall... surrend[er] papers and property to which the client is entitled.... The lawyer may retain papers relating to the client to the extent permitted by law."

The Circuit Court of Kemper County entered an Order as recited above. Although there does not appear to be Mississippi case law on point, certain rules and ethical guidelines do address the issues and support the ruling of the Court below. It should be affirmed.

ARGUMENT

The Edmonds' assert that the Order of the Court below is incorrect and that they are owners of, and therefore entitled to immediate and unconditional possession of the case file.³ However, as explained above and noted by the Court below, the case file in Attorney Healy's office does not pertain to the Edmonds only. It is single unified case file for multiple clients. Under those circumstances, it is not practical nor ethical for Attorney Healy to deliver this unified original file to the Edmonds. The Order of the court below was a reasonable, ethical and practical solution to this problem and it should be upheld.

I. Whether the applicable law requires Attorney Healy to return all of part of the original case file.

Mississippi Ethics Opinion 144 provides that the duty of a withdrawing attorney, in a pending case, to turn over his entire file to the client, is not absolute.⁴ The test is whether the retention of the file by the withdrawing attorney will cause harm or prejudice to the clients or the clients' case.⁵ In the instant case, the Order of the Court below protects the Edmonds from such harm or prejudice by

³ In their brief, the Edmonds have stated that there is no current Mississippi case law which offers guidance on the issues presented. However, Mississippi State Bar Ethics Opinions, cited supra, do offer some guidance, otherwise, this appears to be a case of first impression. The case law recited by the Edmonds to support their position is from other jurisdictions and, as such, is not binding on this Court.

⁴ Ethics Opinion 144, The Mississippi State Bar, March 11, 1988 (www.msbar.org/ethic_opinions) Some portion of the file belong to the lawyer and some to the client.

⁵Id.

making the entire client file available to them for copying and inspection. Second, the Court's Order requires Attorney Healy to return any original papers and property to the Edmonds as required by Ethics Opinion 144⁶. The Order of the Court below is both fair and reasonable to all of the parties and follows the strictures of EO-144.

II. Who is to pay for a copy of the file, Attorney Healy or the Edmonds?

A lawyer who has withdrawn from a pending case may ethically charge his client for the actual cost of duplicating the clients' file⁷. The Order of the Court below requiring the Edmonds to pay for copying costs of the portion of the file that they want, follows ethical guidelines and it is fair to the parties.

CONCLUSION

The Order of the Circuit Court of Kemper County allows the Edmonds to copy any portion of Attorney Healy's multi-client file that they deem appropriate, at their expense, while at the same time, it requires Attorney Healy to return any original documents or property to the Edmonds. This Order follows existing law and should be affirmed.



WILLIAM B. CARTER,
ATTORNEY FOR APPELLEE

⁶ Ethics Rule 144 provides that "to the extent the client has a right to the file, then his file consists of [1] the papers and property delivered by him to the lawyer; [2] the pleadings or other end products developed by the lawyer, [3] the correspondence engaged in by the lawyer for the benefit of the client, and [4] the investigative reports which have been paid for by the client." "Notes and memoranda are usually considered to belong to the lawyer and to be his work product...and [it] is generally not considered the property of the client and the lawyer has no ethical obligation to deliver his work product....[to the client]". *Id.*

⁷ Ethics Opinion 105, The Mississippi State Bar, September 9, 1985. But the release of a copy of the file may not be conditioned upon the prior payment of such copying costs

CERTIFICATE OF SERVICE

I, William B. Carter, do hereby certify that I have this day caused to be mailed, postage prepaid, by United States mail a true and correct copy of the above and foregoing to:

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