

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Raymond L. Eichenberger,	:	
Plaintiff-Appellant,	:	No. 14AP-813
	:	(C.P.C. No. 14CV-003847)
v.	:	
	:	(REGULAR CALENDAR)
Cynthia Chilton Clark et al.,	:	
Defendants-Appellees.	:	

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D E C I S I O N

Rendered on July 2, 2015

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*Raymond L. Eichenberger, pro se.*

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APPEAL from the Franklin County Court of Common Pleas

LUPER SCHUSTER, J.

{¶ 1} Plaintiff-appellant, Raymond L. Eichenberger, appeals from a decision of the Franklin County Court of Common Pleas granting the motion of defendant-appellee Cynthia Chilton Clark to stay litigation and ordering the referral of the matter to arbitration. For the following reasons, we reverse and remand.

**I. Facts and Procedural History**

{¶ 2} On April 8, 2014, Eichenberger initiated an action in the trial court against Clark, seeking to collect attorney fees.<sup>1</sup> According to the complaint, Clark retained Eichenberger to represent her in a foreclosure action and malpractice action against an accountant. Eichenberger alleged Clark owed him attorney fees in connection with those actions. In May 2014, Clark filed a motion requesting the dismissal of the claims against her for improper venue or a stay pending arbitration. The trial court held a status

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<sup>1</sup> Eichenberger's complaint included a claim against attorney David A. Tawney alleging intentional interference with contractual relationships. However, the stay and referral to arbitration did not involve Eichenberger's claim against Tawney. Thus, Tawney is not a party in this appeal.

conference on Clark's motion. At the conference, Clark produced a copy of a Columbus Bar Association ("CBA") form, signed and dated April 14, 2014, requesting arbitration of the fee dispute. In September 2014, the trial court issued a decision denying Clark's request to dismiss for lack of venue and granting Clark's request for a stay. The trial court also referred Eichenberger's claims against Clark to the CBA's fee arbitration program. Approximately one week after the trial court filed its decision, Eichenberger filed a motion for reconsideration with the trial court. Subsequently, Eichenberger filed his notice of appeal.<sup>2</sup> The day after the filing of the notice of appeal, the trial court issued a decision denying Eichenberger's motion for reconsideration.

## **II. Assignments of Error**

{¶ 3} Eichenberger assigns the following errors for our review:

[1.] The trial court erred as a matter of law and abused its discretion in ruling that [Eichenberger] could be forced and compelled to mediate or arbitrate his attorney's fee dispute with his client, defendant Cynthia Chilton Clark, in that no rules governing the bar compel arbitration or mediation, and that litigation is an accepted alternative under the rules governing the bar in Ohio to collect unpaid attorney's fees.

[2.] The trial court erred as a matter of law and abused its discretion in ruling that [Eichenberger] must arbitrate or mediate his fee dispute with defendant Cynthia Chilton Clark, in that mandatory binding arbitration or mediation violates the United States Constitution, the Ohio Constitution and other Ohio laws.

## **III. Discussion**

{¶ 4} In his first assignment of error, Eichenberger alleges the trial court erred in compelling him to arbitrate his attorney fees dispute because the rules governing the bar do not require the arbitration of his fees dispute. In his second assignment of error, Eichenberger alleges the trial court's decision to compel him to arbitrate his attorney fees violates the United States and Ohio Constitutions. Disposition of Eichenberger's first

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<sup>2</sup> The trial court's granting of the motion to stay pending arbitration is a final appealable order. See R.C. 2711.02(C) ("an order \* \* \* that grants or denies a stay of a trial of any action pending arbitration \* \* \* is a final order and may be reviewed, affirmed, modified, or reversed on appeal"); *Griffith v. Linton*, 130 Ohio App.3d 746, 750 (10th Dist.1998) (finding denial of motion to stay proceedings pursuant to R.C. 2711.02 is a final appealable order even without the "no just reason for delay" language required in Civ.R. 54(B)), citing R.C. 2711.02 and *Stewart v. Shearson Lehman Bros., Inc.*, 71 Ohio App.3d 305 (6th Dist.1992).

assignment of error resolves this appeal, rendering Eichenberger's second assignment of error moot.

**A. Arbitration Requirement Relating to Fee Disputes**

{¶ 5} The Supreme Court of Ohio has held that it has the authority to require the arbitration of fee disputes between lawyers who are not in the same firm. In *Shimko v. Lobe*, 103 Ohio St.3d 59, 2004-Ohio-4202, the Supreme Court considered the constitutionality of DR 2-107(B), which required the arbitration of fee disputes between lawyers who are not in the same firm in accordance with mediation or arbitration proceedings provided by a local bar association or, when necessary, by the Ohio State Bar Association. *Id.* at ¶ 1. The Supreme Court upheld the constitutionality of DR 2-107(B). *See id.*

{¶ 6} In reaching its holding in *Shimko*, the Supreme Court noted its inherent, original, and exclusive "power and responsibility to admit and discipline persons admitted to the practice of law, to promulgate and enforce professional standards and rules of conduct, and to otherwise broadly regulate, control, and define the procedure and practice of law in Ohio." *Id.* at ¶ 15. "[N]o person has a right to practice law, \* \* \* the practice of law is an extraordinary privilege bestowed by [the Supreme Court of Ohio] upon one who meets the qualifications for admission and continues to maintain the standard of ethical conduct as prescribed by the rules of the court." *Id.* at ¶ 54. "[C]ompensation for advocacy has never been treated as an ordinary debt or contractual right, but has since antiquity been regulated by the prevailing governmental authority possessing the power to control the practice of law." *Id.* at ¶ 47. Thus, the rules governing lawyers contain "a broad range of rules that limit the attorney's pursuit of legal fees." *Id.* at ¶ 16.

{¶ 7} DR 2-107(B) authorized local bar associations to provide "the arbitral machinery for determining a fee dispute between attorneys from different firms." *Id.* at ¶ 63. The substance of DR 2-107(B) is now embodied in Prof.Cond.R. 1.5(f).<sup>3</sup> Prof.Cond.R. 1.5(f) states as follows: "In cases of a dispute between lawyers arising under this rule, fees shall be divided in accordance with the mediation or arbitration provided by a local bar association. When a local bar association is not available or does not have

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<sup>3</sup> On February 1, 2007, the Rules of Professional Conduct became effective, replacing the Code of Professional Responsibility in Ohio.

procedures to resolve fee disputes between lawyers, the dispute shall be referred to the Ohio State Bar Association for mediation or arbitration."

**B. Basis of Trial Court's Decision to Refer Matter to Arbitration**

{¶ 8} In support of its decision to stay Eichenberger's action against Clark and refer the matter to arbitration, the trial court cited provisions of the Supreme Court Rules for the Government of the Bar of Ohio, and the CBA's Fee Arbitration Program. Specifically, the trial court cited the Rules for the Government of the Bar establishing certified grievance committees, permitting the certified grievance committees to handle matters of client dissatisfaction by alternative dispute resolution methods, and requiring lawyers to assist or testify in an investigation or hearing conducted pursuant to the Rules for the Government of the Bar. The trial court also cited the CBA's policy that an attorney must cooperate with a fee arbitration process. We find the cited rules and policies do not support the trial court's decision.

{¶ 9} Gov.Bar R. V(5)(A),<sup>4</sup> authorizes bar associations to establish certified grievance committees. Pursuant to Gov.Bar R. V(9),<sup>5</sup> certified grievance committees are charged with investigating allegations of lawyer misconduct. Certified grievance committees are also permitted to handle allegations of client dissatisfaction not constituting disciplinary violations. Gov.Bar R. V(5)(G),<sup>6</sup> provides as follows:

A certified grievance committee may adopt and utilize written procedures for handling allegations of client dissatisfaction that do not constitute disciplinary violations, to include mediation, office practice monitoring, and other alternative dispute resolution methods. Only alternative dispute resolution procedures developed by the Board shall be used by certified grievance committees. The procedures shall provide that mediators and facilitators shall not be members of or subject to the jurisdiction of the certified grievance committee.

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<sup>4</sup> Formerly Gov.Bar R. V(3)(C). Effective January 1, 2015, the Supreme Court of Ohio amended Gov.Bar R. V, resulting in the renumbering of the provisions at issue here. However, the substance of these provisions was not changed by the reorganization of Gov.Bar R. V.

<sup>5</sup> Formerly Gov.Bar R. V(4).

<sup>6</sup> Formerly Gov.Bar R. V(3)(C).

Regarding a lawyer's obligation to cooperate with a certified grievance committee, Gov.Bar R. V(9)(G),<sup>7</sup> provides as follows:

Duty to cooperate. The Board, Disciplinary Counsel, and president, secretary, or chair of a certified grievance committee may call upon any judicial officer or attorney to assist in an investigation or testify in a hearing before the Board or a panel for which provision is made in this rule, including mediation and alternative dispute resolution procedures, as to any matter that he or she would not be bound to claim privilege as an attorney at law. No attorney, and no judicial officer, except as provided in Rule 3.3 of the Code of Judicial Conduct, shall neglect or refuse to assist or testify in an investigation or hearing.

{¶ 10} The trial court reasoned that, based on these provisions of the Rules for the Government of the Bar, the CBA established a fee-arbitration committee to act as a certified grievance committee, and the CBA enacted the Fee Arbitration Committee's rules and bylaws.

{¶ 11} The CBA has published on its website the Rules and Bylaws of the Fee Arbitration Committee, as approved by the CBA board of governors.<sup>8</sup> The rules and bylaws provide that the fee-arbitration committee has jurisdiction over "any disagreement concerning the fee paid, charged, or claimed for legal services rendered or to be rendered" within Franklin County and the counties contiguous to Franklin County or in the state of Ohio by a lawyer who maintains an office in any of those counties. The rules and bylaws further state:

The Committee shall not be required to exercise jurisdiction over any dispute and may decline to exercise jurisdiction over a dispute or disagreement in its discretion, including, but not limited to mediation/arbitration pursuant to DR 2-107(B), those that are pending before a Court, have already been adjudicated, involve legal issues outside the Committee's authority, and/or would be unduly burdensome due to the passage of time, the location of the parties involved, and/or the complexity of the issues involved.

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<sup>7</sup> Formerly Gov.Bar R. V(4)(G).

<sup>8</sup> See [http://www.cbalaw.org/cba\\_prod/files/resources/FeeArbBylaws.pdf](http://www.cbalaw.org/cba_prod/files/resources/FeeArbBylaws.pdf).

The rules and bylaws indicate that if a non-attorney does not consent to the CBA's jurisdiction over the dispute, the matter will not proceed. However, if an attorney party does not consent, the matter is "referred to the Certified Grievance Committee of the Columbus Bar Association."

**C. Ohio Law does not Require Eichenberger to Arbitrate Fee Dispute with Clark**

{¶ 12} The trial court erred in concluding that Eichenberger's claims against Clark must be arbitrated pursuant to the Rules for the Government of the Bar and the CBA's policies. Whether Eichenberger is required to participate in the CBA's fee-arbitration program hinges on the application of the Rules for the Government of the Bar requiring an attorney to cooperate with a certified grievance committee, Gov.Bar R. V(9)(G),<sup>9</sup> and authorizing a certified grievance committee to establish alternative dispute resolution procedures to resolve allegations of client dissatisfaction, Gov.Bar R. V(5)(G).<sup>10</sup>

{¶ 13} Gov.Bar R. V(9)(G), which addresses a lawyer's "duty to cooperate," requires a lawyer "to assist in an investigation" of alleged attorney misconduct, and to "testify in a hearing" held pursuant to the provisions of Gov.Bar R. V, including in mediation and alternative dispute resolution procedures. This rule does not require an attorney to arbitrate his or her fee dispute claims against a client if the client so requests. Moreover, while Gov.Bar R. V(5)(G) generally authorizes a certified grievance committee of a bar association to adopt and use alternative dispute resolution procedures to handle client dissatisfaction issues not constituting disciplinary violations, such as disputes relating to fees, this rule does not contain language demonstrating the Supreme Court's intent to authorize a certified grievance committee of a bar association to require an attorney to arbitrate a fee dispute with a client, at the client's request.

{¶ 14} Our reading of Gov.Bar R. V(5)(G) and V(9)(G) is supported by reference to Prof.Cond.R. 1.5. As set forth above, Prof.Cond.R. 1.5(f) expressly mandates arbitration of fee disputes between lawyers not in the same firm. Prof.Cond.R. 1.5(f) does not, however, contain any language requiring fee disputes between a lawyer and his or her client to be arbitrated, if the client so requests. *See Luper Neidenthal & Logan v. Unifirst Corp.*, 10th

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<sup>9</sup> Formerly Gov.Bar R. V(4)(G).

<sup>10</sup> Formerly Gov.Bar R. V(3)(C).

Dist. No. 14AP-934, 2015-Ohio-2542, ¶ 18 (noting that arbitration of a fee dispute between a lawyer and his or her client is not mandatory under Prof.Cond.R. 1.5). Thus, while the Supreme Court requires arbitration of fee disputes between lawyers in different firms, it has not promulgated any rule requiring a lawyer to arbitrate a fee dispute with a client when the client so requests. Here, because the fee dispute is between Eichenberger and his former client, Clark, Eichenberger is not required to arbitrate the dispute.

{¶ 15} Accordingly, Eichenberger's first assignment of error is sustained. Sustaining Eichenberger's first assignment of error renders moot his second assignment of error, a constitutional challenge to any requirement mandating an attorney to arbitrate a fee dispute with a client.

#### **IV. Conclusion**

{¶ 16} Based on the foregoing, Eichenberger's first assignment of error is sustained, rendering his second assignment of error moot. Having sustained Eichenberger's first assignment of error, we reverse the judgment of the Franklin County Court of Common Pleas and remand this matter to that court for further proceedings in accordance with law and consistent with this decision.

*Judgment reversed; cause remanded.*

TYACK and SADLER, JJ., concur.

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