

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STEVEN A. AVERY,

Plaintiff,

v.

04-C-00986

MANITOWOC COUNTY,
THOMAS H. KOCOUREK and
DENIS R. VOGEL,

Defendants.

**BRIEF OF GINGRAS, CATES & LUEBKE, S.C.
IN SUPPORT OF ORDER TO SHOW CAUSE FOR
ATTORNEY'S LIEN PURSUANT TO § 757.36, WIS. STATS.**

NOW COMES the law firm of Gingras, Cates & Luebke, S.C., by Robert J. Gingras, and hereby submits the following Brief in Support of Order to Show Cause for Attorney's Lien Pursuant to Sec. 757.36, Wis. Stats.

INTRODUCTION

The current dispute that is presently before this Court revolves around Steven Avery's signing two fee contracts with two separate law firms. The law in Wisconsin is clear, since Avery did not discharge Gingras, Cates & Luebke, S.C. for cause, the law firm has a continuing lien in the proceeds of this case.

FACTUAL BACKGROUND

On October 30, 2003, Steven Avery signed a fee contract with the law firm of Gingras, Cates & Luebke, S.C. (Affidavit of Robert J. Gingras, ¶ xx; Exhibit A). The fee contract was signed during a meeting at the offices of Gingras, Cates & Luebke, S.C., and Attorneys Robert J.

Gingras and Paul A. Kinne were present, along with Steven Avery and his parents. (Affidavit of Robert J. Gingras, ¶ xx; Affidavit of Paul A. Kinne, ¶ xx). During the meeting when the fee contract was signed, the contract was explained to Avery, he was allowed to ask questions about the contract and he was not pressured or induced to sign it. (Affidavit of Robert J. Gingras, ¶ xx; Affidavit of Paul A. Kinne, ¶ xx; Exhibit G). Based on the observations of Attorneys Gingras and Kinne, Avery understood the contract and signed it of his own free will. (Affidavit of Robert J. Gingras, ¶ xx; Affidavit of Paul A. Kinne, ¶ xx).

During the course of the meeting, Avery told Attorneys Gingras and Kinne that he was going to meet with the Innocence Project lawyers later that same day. (Affidavit of Robert J. Gingras, ¶ xx; Affidavit of Paul A. Kinne, ¶ xx). Avery never told Attorneys Gingras or Kinne that he was going to meet with Attorney Walt Kelly or any other civil rights attorney that same day. (Affidavit of Robert J. Gingras, ¶ xx; Affidavit of Paul A. Kinne, ¶ xx). Neither attorney Gingras nor Kinne ever told Avery that he could just sign the fee contract in order to save him from having to travel back to Gingras' office in the future. (Affidavit of Robert J. Gingras, ¶ xx; Affidavit of Paul A. Kinne, ¶ xx). At the conclusion of the meeting, Attorneys Gingras and Kinne were ready willing and able to prosecute Avery's case on his behalf and were both of the belief that they were Avery's attorneys without any qualification or condition. (Affidavit of Robert J. Gingras, ¶ xx; Affidavit of Paul A. Kinne, ¶ xx; Exhibit G). And, in the days following Avery's signing the fee contract, he did not call Attorneys Gingras or Kinne to tell them that he had signed a fee contract with Attorney Kelly. (Affidavit of Robert J. Gingras, ¶ xx; Affidavit of Paul A. Kinne, ¶ xx).

On November 3, 2003, Attorney Kinne wrote a letter to Attorney Tracey Wood, who practices criminal defense, inquiring if she wanted to be involved in the representation of Avery. (Affidavit of Paul A. Kinne, ¶ xx; Exhibit B). This letter was written because Gingras, Kinne and Avery discussed Wood's potential involvement at the meeting on October 30, 2003. (Exhibit B).

On November 4, 2003, Attorney Kinne wrote a letter to Avery regarding a phone conversation that Avery and Kinne had that same day. (Affidavit of Paul A. Kinne, ¶ xx; Exhibit C). During that conversation, Avery asked Attorney Kinne to hold off filing a complaint in federal court, but gave Kinne permission to speak with Attorney Keith Findley from the Innocence Project. (Exhibit C). Attorney Kinne spoke with Attorney Findley in the afternoon of November 4, 2003, in an effort to secure copies of the documents that the Innocence Project had relative to Avery's criminal case and subsequent release. (Affidavit of Paul A. Kinne, ¶ xx). During that conversation, Attorney Findley told Attorney Kinne that he thought that Avery had also signed a fee contract with the law firm of Attorney Walt Kelly. (Affidavit of Paul A. Kinne, ¶ xx). Gingras, Cates & Luebke, S.C. has never been provided a copy of that fee contract. (Affidavit of Robert J. Gingras, ¶ xx).

On November 10, 2003, Attorneys Gingras and Kelly spoke about the representation of Avery. (Affidavit of Robert J. Gingras, ¶ xx). During that conversation, Attorney Kelly told Attorney Gingras that Avery had fired Gingras, Cates & Luebke, S.C. (Affidavit of Robert J. Gingras, ¶ xx). Attorney Kelly also told Attorney Gingras that prior to Avery's signing the second fee contract with Kelly's firm, Attorney Kelly knew that Avery had already signed a fee contract with Gingras, Cates & Luebke, S.C. (Affidavit of Robert J. Gingras, ¶ xx; Exhibit H).

Attorney Kelly further told Attorney Gingras that he thought that Avery could shop around for other lawyers even though he had signed a fee contract with Gingras, Cates & Luebke, S.C. (Affidavit of Robert J. Gingras, ¶ xx; Exhibit H). Attorney Gingras disagreed with Attorney Kelly, and further told him that he would seek enforcement of his lien. (Affidavit of Robert J. Gingras, ¶ xx). In addition, during that conversation, Attorney Gingras offered to co-counsel the case with Attorney Kelly. (Affidavit of Robert J. Gingras, ¶ xx; Exhibit H). Attorney Kelly refused the offer. (Affidavit of Robert J. Gingras, ¶ xx; Exhibit H).

Thereafter, on May 3, 2004, Attorney Richard Cayo (who was apparently hired by Attorney Kelly relative to the fee contract issue) wrote Attorney Gingras a letter, indicating that Avery did not fire Gingras, Cates & Luebke, S.C. for cause, but that the firm was never hired as Avery's attorney in the first place. (Exhibit D).

On January 18, 2005, Avery sent a letter to Attorney Gingras telling him that he was discharged as his attorney, and attempted to recount what Avery did in signing two fee contracts. (Exhibit E). Attorney Gingras responded with a letter dated February 24, 2005, disagreeing with Avery's recollection of the events surrounding the signing of the fee contracts, and reiterating the firm's lien interest in any recovery in the case. (Exhibit F).

The fee contract that was signed by Avery and accepted by Attorney Gingras states in pertinent part:

4. Attorney-Lien Agreement: My attorneys, GINGRAS, CATES & LUEBKE, S.C., are hereby given a continuing lien in my claim and the proceeds thereof for the amount of the contingent fee, pursuant to [sic] Wis. Stats. § 757.36.

(Exhibit A).

ARGUMENT

I. This Court may lack jurisdiction to determine what amount of attorney's fees should be awarded to Gingras, Cates & Luebke, S.C.

The dispute about attorney's fees in this case resides in the area of contract law.

Specifically, Avery signed a fee contract with Gingras, Cates & Luebke, S.C. to represent him in his case against Manitowoc County, et al. There is no question of federal law. There is no diversity of citizenship between the two law firms. The issue is about a fee contract, and fee contracts only involve issues of state law. *Hill v. Baxter Health*, 405 F.3d 572 (7th Cir. 2005).

In addition, Gingras, Cates & Luebke, S.C. has a potential claim against Attorney Kelly's law firm for intentional interference with contract. That, too, is a state law claim that, if brought, would have to be in state court.

Therefore, it appears that this Court may lack jurisdiction to resolve the fee dispute. Consequently, the fee dispute should be handled by Avery and the two law firms. However, if an agreement cannot be reached, Gingras, Cates & Luebke, S.C. would have to file claims in state court to include breach of contract and intentional interference with contract.

II. Gingras, Cates & Luebke, S.C. is entitled to attorney's fees in this case.

Assuming, *arguendo*, that this Court does have jurisdiction to resolve this dispute, then it is the position of this firm that it is entitled to attorney's fees in this case, pursuant to sec. 757.36, Wis. Stats. and based on the fee contract entered into between Avery and the firm.

A. Avery signed an enforceable fee contract with Gingras, Cates & Luebke, S.C.

It is undisputed that Avery signed a fee contract with Gingras, Cates & Luebke, S.C. It also cannot be disputed that Avery discharged Gingras, Cates & Luebke, S.C. without cause

before allowing the firm to complete its representation of Avery. Moreover, Avery was not induced or otherwise forced to sign the fee contract.

While there may be differing versions of certain facts related to Avery's signing the fee contract, and what he thought it meant, since the contract is clear on its face and was signed by Avery without inducement, the contract stands. The contract must be definite in its terms, and, in this case, it was.

First, no technical "meeting of the minds" is required in Wisconsin.

Courts often describe the definiteness requirement as mutual assent, or "meeting of the minds." ... Yet, this does not mean that parties must subjectively agree to the same interpretation at the time of contracting. Instead, mutual assent is judged by an objective standard, looking to the express words the parties used in the contract. *See Marion v. Orson's Camera Ctrs., Inc.*, 29 Wis.2d 339, 345, 138 N.W.2d 733 (1966) (indicating that the key is "not necessarily what [the parties] intended to agree to, but what, in a legal sense, they did agree to, as evidenced by the language they saw fit to use.")

Management Computer Services, Inc. v. Hawkins, Ash, Baptie & Co., 206 Wis.2d 158, 178-79, 557 N.W.2d 67 (1996).

In this case, Avery claims that he was told that his signing the fee contract was for nothing more than to save him a return trip to Madison and that he was going to meet with another civil rights attorney for possible representation. While Attorneys Gingras and Kinne vehemently deny this account, the plain words of the contract do not include any mention of that. Even assuming that such statements were made, they are nothing more than parol evidence and must be disregarded in the determination of this fee contract dispute.

The parol evidence rule can be stated as follows: "When the parties to a contract embody their agreement in writing and intend the

writing to be the final expression of their agreement, the terms of the writing may not be varied or contradicted by evidence of any prior written or oral agreement in the absence of fraud, duress, or mutual mistake.” ... “Therefore, even if, without objection, parol evidence of the intention of the parties to a written contract, which conflicts with the express provisions of such contract, gets in the record, the court must disregard it.”

Spring Valley Meats, Inc. v. Bohlen, 94 Wis.2d 600, 606-07, 288 N.W.2d 852 (1980); citations omitted. In this case, the plain words of the fee contract signed by Avery state in pertinent part:

4. Attorney-Lien Agreement: My attorneys, GINGRAS, CATES & LUEBKE, S.C., are hereby given a continuing lien in my claim and the proceeds thereof for the amount of the contingent fee, pursuant to [sic] Wis. Stats. § 757.36.

(Exhibit A).

Avery signed the fee contract and its terms are definite and should not be contradicted by extraneous disputed facts.

B. Avery breached the fee contract and Gingras, Cates & Luebke, S.C. is entitled to attorney’s fees.

Since Avery did sign an enforceable and clear fee contract with Gingras, Cates & Luebke, S.C., the law in Wisconsin is clear that the firm is entitled to a remedy.

[W]here the attorney has been employed to perform specific legal services, his discharge, without cause or fault on his part before he has fully performed the work he was employed to do, constitutes a breach of his contract of employment and makes the client liable to respond in damages.

Tonn v. Reuter, 6 Wis.2d 498, 503, 95 N.W.2d 261 (1959); *Knoll v. Klatt*, 43 Wis.2d 265, 269, 168 N.W.2d 555 (1969). Clearly, Avery breached the fee contract that he signed with Gingras, Cates & Luebke, S.C.

This begs the question: what is Gingras, Cates & Luebke's measure of damages, since it was employed on a contingent fee contract to undertake a specific task and was discharged without cause?

This firm is aware of the holding in *Tonn* relative to the measure of damages. But this firm is also aware of how the *Tonn* court reached its conclusion. In essence, the *Tonn* court adopted a hybrid approach that had not been adopted in any other state at that time. In fact, at the time of the decision, many states (including California, Kansas, Ohio, Oregon, Pennsylvania, Texas and Missouri) allowed an attorney who was discharged without cause to recover the full amount of the contingent fee contracted for. *Tonn v. Reuter*, 6 Wis.2d at 504-05.

The rationale for adopting that measure of damages is threefold: (1) the full contract price is the most logical measure of damages as it reflects the value placed on the services at the time of the contract's formation; (2) awarding damages prohibits a client from profiting from his own breach of contract; and, (3) it lessens the difficult task of valuing a lawyer's partially completed work.

Instead of following the traditional contract rule in determining the measure of damages in this scenario, the *Tonn* court looked to Arkansas for guidance. At the time of the *Tonn* decision, Arkansas allowed for the recovery of the full contingent fee less what expenses the discharged law firm would have reasonably expended in prosecuting the case. *Bockman v. Rorex*, 212 Ark. 948, 208 S.W.2d 991 (1948).

However, the *Tonn* court chose not to follow Arkansas either. It created a hybrid rule that was not founded on any contract principle, any primary authority nor any secondary authority.

[T]he proper measure of damages to apply in a case like the present is the amount of the contingent fee based upon the amount of the settlement or judgment ultimately realized by the client, less a fair allowance for the services and expenses which would necessarily have been expended by the discharged attorney in performing the balance of the contract. However, any deduction for services yet to be performed in order to earn the contingent fee should not be made on the basis of deducting such fraction of the contingent fee as equals the fraction of the total work not performed at the time of discharge.

Tonn, 6 Wis.2d at 505; *Knoll*, 43 Wis.2d at 269-70.

In this case, Avery signed a fee contract that was plain on its face and definite on its terms. Then, in a complete disregard for his own signature, he signed another fee contract with Attorney Kelly's firm. Moreover, Attorney Kelly knew that Avery had already signed a fee contract with this firm, but, as evidenced by his comments to Attorney Gingras, he felt that Avery could continue to shop around. What good, then, was the fee contract that was bargained for in good faith by this law firm and accepted by Avery?

To follow the *Tonn* court's interpretation of the remedy that should be afforded to Gingras, Cates & Luebke, S.C. would mean that people could simply ignore contracts that they sign without any consequence. Avery should not be allowed to breach a contract without penalty, and Attorney Kelly should not be able to interfere with a contractual relationship without penalty.

Moreover, by signing two fee contracts, Avery may have obligated himself to pay more than a 40% contingent fee. *Id.* at 506.¹

By all accounts, Gingras, Cates & Luebke, S.C. should be entitled to the full 40% contingent fee (40% of \$400,000 equals \$160,000) plus its costs that it contracted for with Avery on October 30, 2003.

s/ Robert J. Gingras
Robert J. Gingras State Bar No. 1002909
Gingras, Cates & Luebke, S.C.
8150 Excelsior Drive
P.O. Box 1808
Madison, WI 53701-1808
Telephone: 608-833-2632
Fax: (608) 833-2874
E-mail: gingras@gcllawyers.com

¹It is unclear from this Court's Order whether the entire amount of the settlement, \$400,000, or only 40% thereof has been placed in the trust account of Attorney Kelly. If it is only 40%, \$160,000, then an additional 40% should be re-placed into the trust account pending resolution of this dispute.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STEVEN A. AVERY,

Plaintiff,

v.

04-C-00986

MANITOWOC COUNTY,
THOMAS H. KOCOUREK and
DENIS R. VOGEL,

Defendants.

AFFIDAVIT OF ROBERT J. GINGRAS

STATE OF WISCONSIN)
)§
COUNTY OF DANE)

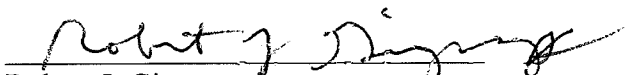
Robert J. Gingras, being first duly sworn, hereby testifies and avers as follows:

1. I am an attorney with the firm of Gingras, Cates & Luebke, S.C.
2. On October 30, 2003, Steven Avery signed a fee contract with the law firm of Gingras, Cates & Luebke, S.C.
3. Attached hereto as Exhibit A is a true and correct copy of the fee contract signed by myself and Steven Avery.
4. The fee contract was signed during a meeting at the offices of Gingras, Cates & Luebke, S.C., and Attorney Paul A. Kinne and me were present, along with Steven Avery and his parents.
5. During the meeting when the fee contract was signed, the contract was explained to Avery, he was allowed to ask questions about the contract and he was not pressured or induced to sign it.
6. Based on my observations, Avery understood the contract and signed it of his own free will.

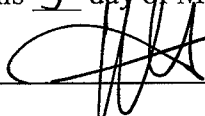
7. During the course of the meeting, Avery told Attorney Kinne and me that he was going to meet with the Innocence Project lawyers later that same day.
8. Avery never told me that he was going to meet with Attorney Walt Kelly or any other civil rights attorney that same day.
9. I never told Avery that he could just sign the fee contract in order to save him from having to travel back to my office in the future.
10. At the conclusion of the meeting, Attorney Kinne and I were ready willing and able to prosecute Avery's case on his behalf and we were both of the belief that they we were Avery's attorneys without any qualification or condition.
11. In the days following Avery's signing the fee contract, he did not call me to tell me that he had signed a fee contract with Attorney Kelly.
12. Gingras, Cates & Luebke, S.C. has never been provided a copy of that fee contract that Avery signed with Attorney Kelly.
13. On November 10, 2003, I spoke to Attorney Kelly about the representation of Avery.
14. During that conversation, Attorney Kelly told me that Avery had fired Gingras, Cates & Luebke, S.C.
15. Attorney Kelly also told me that prior to Avery's signing the second fee contract with Kelly's firm, Attorney Kelly knew that Avery had already signed a fee contract with my firm.
16. Attorney Kelly further told me that he thought that Avery could shop around for other lawyers even though he had signed a fee contract with Gingras, Cates & Luebke, S.C. I disagreed with Attorney Kelly, and further told him that he would seek enforcement of his lien. In addition, during that conversation, I offered to co-counsel the case with Attorney Kelly. Attorney Kelly refused the offer.
17. Attached hereto as Exhibit D is a true and correct copy of a letter dated May 3, 2004, that I received from Attorney Richard Cayo.
18. Attached hereto as Exhibit E is a true and correct copy of a letter dated January 18, 2004 (but was actually 2005) that I received from Steven Avery.
19. Attached hereto as Exhibit F is a true and correct copy of a letter dated February 24, 2005, that I sent to Steven Avery.

20. Attached hereto as Exhibit G is a true and correct copy of a letter dated May 25, 2004 that I sent to Attorney Richard Cayo.
21. Attached hereto as Exhibit H is a true and correct copy of a letter dated December 17, 2003, that I sent to Attorney Walt Kelly.

The above statements are true and accurate to the best of my recollection.


Robert J. Gingras

Subscribed and sworn to before me
this 3rd day of March, 2006.



Heath P. Straka, Notary Public
State of Wisconsin

My commission is permanent

Initials SA.

CONTINGENT FEE AGREEMENT

The undersigned, Steven Avery, hereinafter referred to as the "Client," hereby retains GINGRAS, CATES & LUEBKE, S.C., hereinafter referred to as the "attorney," for the purpose of legal representation against Thomas Kazarak (exact spelling unknown, former Sheriff of Manitowoc County) and possibly others, in connection with claims arising out of Mr. Avery's wrongful arrest and imprisonment in 1986 with said imprisonment continuing until 2003, hereinafter referred to as the "case," on the following terms.

1. Contingency Fee: In the event that there is recovered in the case a single sum of money, either by settlement or by litigation, the attorneys' fees shall be:

A. A contingency fee, which shall be defined as:

Forty percent (40%) of the recovery if it is recovered before any appeal is taken;

Forty-six percent (46%) of the recovery if it is recovered after an appeal is taken.

B. A reasonable attorney's fee in a contingent case, which shall be defined as the attorneys' fees computed at their regular hourly rates, plus accrued interest at their regular rate.

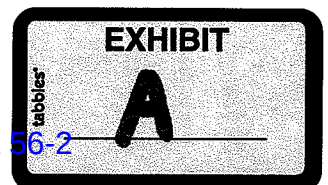
Any settlement offer of a fixed sum which includes a division proposed by the offer or between damages and attorneys' fees shall be treated by the client and the attorneys as an offer of a single sum of money and if accepted, shall be treated as the recovery of a single sum of money to be apportioned between the client and the attorneys according to this section. Any division of such an offer into damages and attorneys' fees shall be completely disregarded by the client and the attorneys.

2. Costs and Disbursements. Gingras, Cates & Luebke, S.C. will pay for the costs of said lawsuit and said costs will be deducted from the proceeds of any recovery.

3. I UNDERSTAND THAT I COULD RETAIN THE ATTORNEYS TO REPRESENT ME IN THIS ACTION AND COMPENSATE THEM ON AN HOURLY BASIS, BUT I EXPRESSLY DECLINE TO DO SO, SUBJECT TO PARAGRAPH 4 HEREIN.

4. Attorney-Lien Agreement: My attorneys, GINGRAS, CATES & LUEBKE, S.C., are hereby given a continuing lien in my claim and the proceeds thereof for the amount of the contingent fee, pursuant to Wis. Stats. §757.36.

5. Withdrawal: GINGRAS, CATES & LUEBKE, S.C. will maintain the right to withdraw from representation in this matter at any time if it deems the case lacks merit or presents an unreasonable risk of no recovery. In the event of withdrawal, the clients will be



entitled to a refund of any unused portion of the retainer, calculated based upon the attorneys' hourly rates for work performed up to the time of withdrawal.

6. Taxability: GINGRAS, CATES, & LUEBKE, S.C., is not a tax firm and can make no guarantees as to the potential tax consequences of any recovery that may be obtained in this matter, whether through settlement, verdict, or judgment. The clients agree to assume any and all tax liability that may be associated with any recovery to the clients.

Dated this 30 day of October, 2003.

Steven Avery Sr.
Client Name: Steven Avery

ACCEPTED: Gingras, Cates & Luebke, S.C.

BY: *[Signature]*

DATED: 10/30/03

HALLING & CAYO, S.C.
ATTORNEYS AT LAW

GREGORY J. BANCHY
SCOTT N. BURNS
ROLAND C. CAFARO
RICHARD J. CAYO
PATRICIA L. GROVE
COURT COMMISSIONER
DAVID B. HALLING
CHRISTOPHER T. KOLB
CATHERINE A. LA FLEUR
JULIE A. NEUHAUS
MARK E. SANDERS
SEAN M. SPENCER
ROBERTA STEINER

320 EAST BUFFALO STREET
SUITE 700
MILWAUKEE, WISCONSIN 53202

TELEPHONE 414 271-3400

FACSIMILE 414 271-3841

May 3, 2004

Atty. Robert A Gingras
Gingras, Cates & Luebke, S.C.
131 West Wilson Street
Suite 610
P.O. Box 1808
Madison, WI 53701-1808

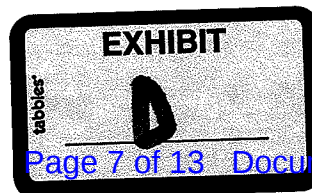
Re: Steven Avery
Your file 5781

Dear Mr. Gingras:

I have been retained by Attys. Walt Kelly and Steve Glynn to help clear up the issues relating to representation of Steven Avery. To that end, I have met personally with the Averys and interviewed Steven and his mom and dad. The enclosed affidavits recount what they told me about the contracts signed with Gingras, Cates & Luebke, S.C. and Walter F. Kelly, S.C. Professor Findley has pointed out that reference to September 10, 2003 as Steven's *release* date (as opposed to the date he was *ordered* released) is an error in the affidavits of Allan and Delores. Notwithstanding this detail, the affidavits are useful with respect to the relevant question – why did Mr. Avery sign agreements with two firms?

In short, the Averys met with you and Mr. Kinne on October 30 as part of a process of interviewing several lawyers. You were aware they had a plan to meet with another lawyer immediately following their meeting with you. Mr. Avery understood that he was free to do so and that, if he decided to retain another attorney, he would not be bound to the contract you had him sign. That the meeting with Mr. Kelly ensued is proof of this fact. Why would he have bothered to meet with Professor Findley and Atty. Kelly, if he had understood he was bound irrevocably to your firm?

G:\DOC\11806\105.doc



MAY - 4 2004

I have little doubt you would have been a nice choice for this case. I understand you are an effective litigator. We do not contend you were discharged for cause. We contend you were never hired. Even if signing the agreement with you reflected a misunderstanding on Mr. Avery's part, a meeting of the minds was lacking. Moreover, under SCR 20:1.5 the duty to make fee agreements clear is yours.

In any case, Mr. Avery notified you of his selection of Mr. Kelly shortly after signing your agreement. I assume little work was undertaken in the interim. If I am mistaken, perhaps you could call me to talk about it.

It is my hope that, under these circumstances, you will relent on the lien referred to in your letter dated December 17, 2003 to Mr. Kelly. As you know, these cases are neither simple, easy nor free of risk. Proceeding under the cloud cast by your fee claim is frustrating for Attys. Kelly and Glynn and therefore harmful to Mr. Avery. Mr. Avery has suffered sufficiently from our legal system to be spared unseemly wrangling between lawyers about who will help him in his claim for compensation. It would be gracious of you to send me a short letter indicating your willingness to forego claims in this matter. If you want to talk about it, please phone.

Very truly yours,

HALLING & CAYO, S.C.


Richard J. Cayo

Enclosures

cc: Atty. Walter F Kelly
Atty. Stephen M. Glynn
Prof. Keith A. Findley

January 18, 2004

Atty. Robert J. Gingras
Gingras, Cates & Luebke SC
8010 Excelsior Dr
PO Box 1808
Madison, WI 53701-1808

Dear Mr. Gingras:

I have been told by my lawyers that you are not willing to step aside from my representation.

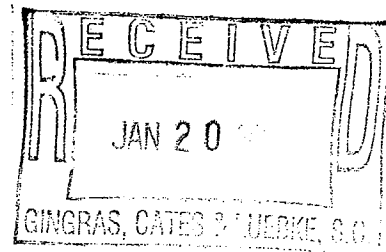
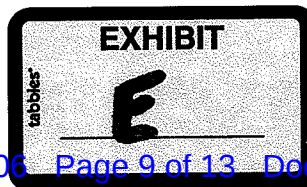
When I was at your firm I told you I was on the way to meet other attorneys. I was then told by you that if I hired other lawyers, I should just let you know. My signing the agreement was just to save me the need to come back to your office if I didn't hire other lawyers. Within a few days after I met with you I let you know that I had retained Walt Kelly and Steve Glynn to represent me. I explained at that time that I did not need you to represent me, and made it clear that I did not want you to take any action to represent me.

Mr. Kelly and Mr. Glynn have filed a law suit on my behalf and are continuing to represent me. While I don't think we ever had an agreement, just so it is clear, I want to state again that I do not want you to do anything on my behalf. I am certain that Mr. Kelly and Mr. Glynn are looking out for my interests.

If you think we had an agreement, then please also understand that you were discharged as my attorneys shortly after our meeting.

Sincerely,


Steven Avery



GINGRAS, CATES & LUEBKE, S.C.

"WE'LL BE WITH YOU EVERY STEP OF THE WAY"

ROBERT J. GINGRAS
JOHN L. CATES
MICHAEL J. LUEBKE
PAUL A. KINNE
ERIC J. HAAG

February 24, 2005

JAMIE STOCK-RETZLOFF
HEATH P. STRAKA

Steven Avery
12930 Avery Road
Two Rivers, WI 54241

Re: Our File No.: 5781

Dear Mr. Avery:

PERSONAL INJURY

PROFESSIONAL
MALPRACTICE

CIVIL RIGHTS

INSURANCE
MISCONDUCT

CLASS ACTION
LITIGATION

I am in receipt of your January 18, 2004 (but I assume you meant 2005) letter to me. You stated in that letter, "When I was at your firm I told you I was on the way to meet other attorneys." That statement is technically true: you said that you were going to meet with the lawyers that represented you as part of the Innocence Project. You never stated that you were going to meet with other lawyers for the purpose of retaining them to represent you in a civil lawsuit arising from your false imprisonment. You further stated in your letter the following, "I was then told by you that if I hired other lawyers, I should just let you know." That statement is completely false.

In your January 18 letter, you further stated, "My signing the agreement was just to save me the need to come back to your office if I didn't hire other lawyers." I never told you that signing the agreement was just to save you time on a return trip to my office, nor did anyone else from my office tell you that. When you signed the agreement in my office, it was agreed that my firm would represent you.

You also stated that, "That within a few days after I met with you I let you know that I had retained Walt Kelly and Steve Glynn to represent me. I explained at that time that I did not need you to represent me, and I made it clear that I did not want you to take any action to represent me." That statement is not completely true. My office learned that you had signed an agreement with Walt Kelly not from you, but from your lawyers at the Innocence Project. In a series of subsequent telephone conferences with my office, you indicated that you had not yet decided on a lawyer. (You did indicate, though, that you had signed a fee agreement with Walk Kelly after having signed one at my office).

8150 Excelsior Drive
P.O. Box 1808
Madison, WI 53701-1808

Phone (608) 833-2632
Fax (608) 833-2874

gcl@gcllawyers.com
www.gcllawyers.com

EXHIBIT

F

Steven Avery
January 31, 2005
Page 2

I understand that you discharged me and my firm not long after my firm learned that you had signed a fee agreement with Walt Kelly. It is your right to choose your own lawyer. However, it is also your obligation to live up to the terms of the contract you have with my office. As stated in earlier correspondence, under the terms of that contract, my office has a lien interest of 40 percent in any recovery from the matter covered by the fee agreement you signed with my firm.

Very truly yours,

GINGRAS, CATES & LUEBKE, S.C.

A handwritten signature in black ink, appearing to read "Robert J. Gingras", with a long horizontal flourish extending to the right.

Robert J. Gingras

/klg

GINGRAS, CATES & LUEBKE, S.C.

"WE'LL BE WITH YOU EVERY STEP OF THE WAY"

ROBERT J. GINGRAS
JOHN L. CATES
MICHAEL J. LUEBKE
PAUL A. KINNE
ERIC J. HAAG

JAMIE A. STOCK
HEATH P. STRAKA

May 25, 2004

Richard J. Cayo
Halling & Cayo, S.C.
320 East Buffalo Street
Suite 700
Milwaukee, WI 53202

Re: Steven Avery
Our File No.: 5781

Dear Mr. Cayo:

I received your May 3, 2004 letter regarding Steven Avery and my firm's lien against him. First, Mr. Avery's characterization of our meeting is simply not factually accurate. For example, we never told Mr. Avery he was not bound by our contract if he retained another attorney. Moreover, we did not know he had an appointment scheduled with another attorney. At the end of our meeting, Mr. Kinne and I were both of the belief that we were Mr. Avery's attorneys without any qualification or condition.

Mr. Kinne and I explained what the fee agreement meant to Mr. Avery, and we gave him an opportunity to ask any questions about it. When he signed the fee agreement, he was an informed party who knew or should have known the ramifications of entering into the agreement. I have no doubt whatsoever that I satisfied my duty under SCR 20:1.5. My firm deals with scores of clients of varying degrees of sophistication, and never before have we experienced this problem or issue.

At this time, I am not willing to relent with respect to the lien Mr. Avery agreed to pay. However, I am happy and willing to talk with you about this matter.

Thank you.

Very truly yours,

GINGRAS, CATES & LUEBKE, S.C.



Robert J. Gingras

/klg

131 W Wilson Street
Suite 610
P.O. Box 1808
Madison, WI 53701-1808

Phone (608) 255-0061
Fax (608) 255-0675

gcl@gcllawyers.com
www.gcllawyers.com



GINGRAS, CATES & LUEBKE, S.C.

"WE'LL BE WITH YOU EVERY STEP OF THE WAY"

ROBERT J. GINGRAS
JOHN L. CATES
MICHAEL J. LUEBKE
PAUL A. KINNE

December 17, 2003

ERIC J. HAAG
JAMIE A. STOCK
HEATH P. STRAKA

Attorney Walter Kelly
Walter F Kelly SC
158 N Broadway # 600
Milwaukee, WI 53202-6015

Re: Steven Avery
Our File No.: 5781

Dear Walt:

I am writing to confirm certain issues with respect to the above-referenced case. On October 30, 2003, Steve Avery signed a fee agreement with my firm (a copy of which is enclosed). Sometime after that, Mr. Avery signed a fee agreement with your firm. Prior to signing that fee agreement, you were aware that Mr. Avery had an agreement with my firm to represent him with respect to his claims.

On November 10, 2003, you and I spoke. I suggested that both of our firms work together on the case. You declined my offer.

Under the circumstances, I have no alternative but to assert a lien against any proceeds recovered in the case. I request that you inform me of any settlement or recovery and not distribute the proceeds of any settlement or recovery until I have given you authority to do so.

When I indicated in our conversation that our firm had a lien in this matter, you stated that Mr. Avery had the right to shop around for an attorney. I agree that people like Mr. Avery have the right to select a lawyer of their choosing. I do not agree that they have a right to sign a fee agreement and then completely disregard that fee agreement if they choose to do so. Mr. Avery has fired our firm, but not for cause. I was both willing and able to represent him.

Please be advised that I am providing Mr. Avery with a copy of this letter. I would request that you do so as well.

Thank you.

Very truly yours,

GINGRAS, CATES & LUEBKE, S.C.



Robert J. Gingras

/clk
enclosure
cc: Steven Avery

131 W Wilson Street
Suite 610
P.O. Box 1808
Madison, WI 53701-1808

Phone (608) 255-0061
Fax (608) 255-0675

gcl@gcllawyers.com
www.gcllawyers.com



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STEVEN A. AVERY,

Plaintiff,

v.

04-C-00986

MANITOWOC COUNTY,
THOMAS H. KOCOUREK and
DENIS R. VOGEL,

Defendants.

AFFIDAVIT OF PAUL A. KINNE

STATE OF WISCONSIN)
)§
COUNTY OF DANE)

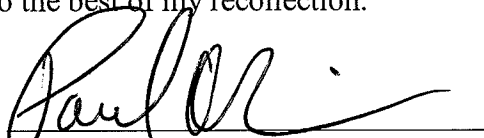
Paul A. Kinne, being first duly sworn, hereby testifies and avers as follows:

1. I am an attorney with the firm of Gingras, Cates & Luebke, S.C.
2. On October 30, 2003, Steven Avery signed a fee contract with the law firm of Gingras, Cates & Luebke, S.C.
3. The fee contract that is attached as Exhibit A to the Affidavit of Robert J. Gingras was signed during a meeting on October 30, 2003, at the offices of Gingras, Cates & Luebke, S.C., and I was present, along with Attorney Robert J. Gingras and Steven Avery and his parents.
4. During the meeting when the fee contract was signed, the contract was explained to Avery, he was allowed to ask questions about the contract and he was not pressured or induced to sign it.
5. Based on my observations, Avery understood the contract and signed it of his own free will.

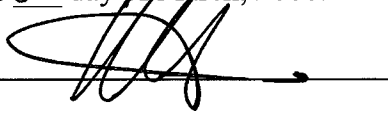
6. During the course of the meeting, Avery told me and Attorney Gingras that he was going to meet with the Innocence Project lawyers later that same day.
7. Avery never told me that he was going to meet with Attorney Walt Kelly or any other civil rights attorney that same day.
8. I never told Avery that he could just sign the fee contract in order to save him from having to travel back to our office in the future.
9. At the conclusion of the meeting, Attorneys Gingras and I were ready willing and able to prosecute Avery's case on his behalf and we were both of the belief that we were Avery's attorneys without any qualification or condition.
10. In the days following Avery's signing the fee contract, Avery did not call me to tell me that he had signed a fee contract with Attorney Kelly.
11. On November 3, 2003, I wrote a letter to Attorney Tracey Wood, who practices criminal defense, inquiring if she wanted to be involved in the representation of Avery. Attached hereto as Exhibit B is a true and correct copy of that letter.
12. I wrote the letter, because Attorney Gingras, Avery and I discussed Attorney Wood's potential involvement at the meeting on October 30, 2003.
13. On November 4, 2003, I wrote a letter to Avery regarding a phone conversation that Avery and I had that same day. Attached hereto as Exhibit C is a true and correct copy of that letter.
14. During that conversation, Avery asked me to hold off filing a complaint in federal court, but gave me permission to speak with Attorney Keith Findley from the Innocence Project.
15. I spoke with Attorney Findley in the afternoon of November 4, 2003, in an effort to secure copies of the documents that the Innocence Project had relative to Avery's criminal case and subsequent release.

16. During that conversation, Attorney Findley told me that he thought that Avery had also signed a fee contract with the law firm of Attorney Walt Kelly.

17. The above statements are true and accurate to the best of my recollection.


Paul A. Kirme

Subscribed and sworn to before me
this 3rd day of March, 2006.



Heath P. Straka, Notary Public
State of Wisconsin

My commission is permanent

GINGRAS, CATES & LUEBKE, S.C.

"WE'LL BE WITH YOU EVERY STEP OF THE WAY"

ROBERT J. GINGRAS
JOHN L. CATES
MICHAEL J. LUEBKE
PAUL A. KINNE

November 3, 2003

Tracey Wood
Van Wagner & Wood SC
10 E Doty # 701 PO Box 88
Madison, WI 53701-0088

Re: Steven Avery
Our File No.: 5781

Dear Tracey:

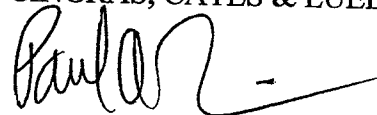
Bob Gingras and I met with Steve Avery on October 30, 2003. I mentioned to him that you might also be taking part in his representation with respect to any civil rights claims he might have arising out of his wrongful conviction. He said that would be absolutely fine.

The next question is, then, do you wish to be involved? Please give me a call at your earliest convenience so we can discuss it further.

Thank you.

Very truly yours,

GINGRAS, CATES & LUEBKE, S.C.



Paul A. Kinne

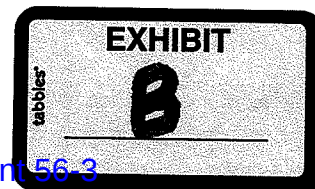
/klg

cc: Steve Avery

131 W Wilson Street
Suite 610
P.O. Box 1808
Madison, WI 53701-1808

Phone (608) 255-0061
Fax (608) 255-0675

gcl@gcllawyers.com
www.gcllawyers.com



GINGRAS, CATES & LUEBKE, S.C.

"WE'LL BE WITH YOU EVERY STEP OF THE WAY"

ROBERT J. GINGRAS
JOHN L. CATES
MICHAEL J. LUEBKE
PAUL A. KINNE

November 4, 2003

ERIC J. HAAG
JAMIE A. STOCK
HEATH P. STRAKA

Steven Avery
2930 Avery Road
Two Rivers, WI 54241

Re: Our File No.: 5781

Dear Steve:

I am writing to confirm our telephone conversation of today. You called me to ask me to hold off on filing a complaint for at least a month. You said you wanted to see what the State did before you elected to go forward with any kind of a lawsuit. You did, though, give me permission to go ahead and speak with Keith Findley from the Innocence Project.

I told you that we would not file a complaint until you gave us permission to do so. It is important, though, that before you decide to resolve any legal matter with the State of Wisconsin, that you consult us so we can give you our legal opinion about whether the State is being fair with you. In other words, don't sign anything until you talk to us first.

If I have not heard from you in roughly a month, I will give you a call.

Thank you.

Very truly yours,

GINGRAS, CATES & LUEBKE, S.C.


Paul A. Kinne

/klg

131 W Wilson Street
Suite 610
P.O. Box 1808
Madison, WI 53701-1808

Phone (608) 255-0061
Fax (608) 255-0675

gcl@gclawyers.com
www.gclawyers.com

