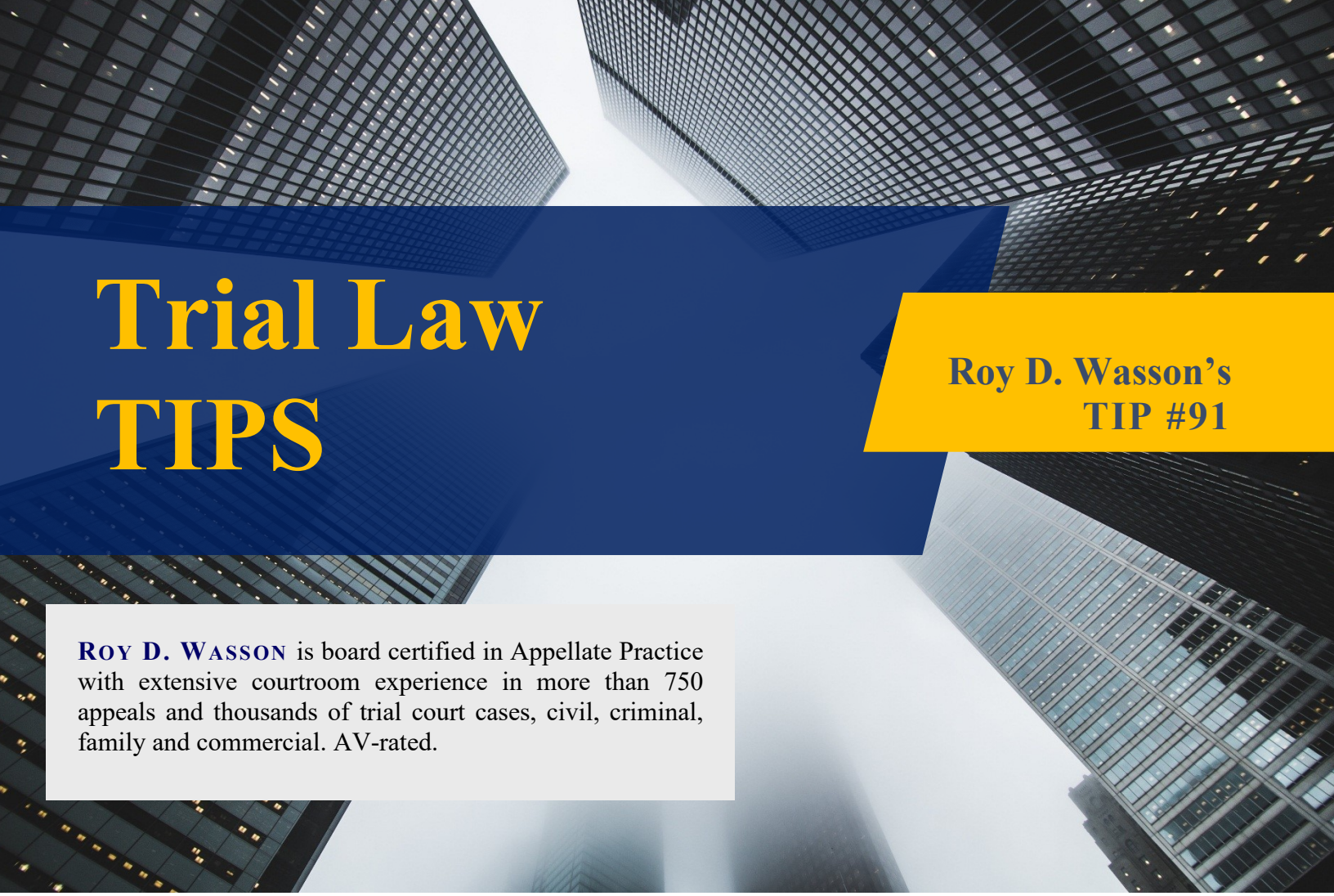

Trial Law TIPS

Roy D. Wasson's TIP #91

Roy D. Wasson is board certified in Appellate Practice with extensive courtroom experience in more than 750 appeals and thousands of trial court cases, civil, criminal, family and commercial. AV-rated.

Successor Attorneys Need Not Split Fees with Wrongfully Discharged Prior Counsel: *Another "Courthouse Legend" Bites the Dust*

Have you ever declined a decent case because the client had discharged his or her prior attorney without cause and you did not want to deal with splitting your fee with that prior attorney? Or have you taken such a case and, upon a successful resolution by settlement or judgment, divided a portion of your fee with prior counsel? If your answer to either of those questions is "yes," you are one of a number of trial lawyers I have met who is laboring under the mistaken impression that a client will never have to pay more than the maximum percentage fee allowed under Rule 4-1.5 of the Rules Regulating The Florida Bar.

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In actuality, there is no reason you should decline to take a case as a successor attorney out of concern that you will not be able to charge your full percentage fee. It will be up to the client to satisfy his or her prior attorney's charging lien out of the client's share of the recovery, ***after*** you have been fully compensated. The idea that the client's obligation to all attorneys is somehow capped at the 40% fee allowed by Rule 4-1.5 is simply a false "Courthouse Legend."

The law in this area has been summarized as follows by the Third District Court of Appeal:

> The proper basis for awarding attorney's fees to discharged attorneys and their successors is as follows: Discharged attorneys hired under a contingent fee contract are entitled to recover quantum meruit for their services, limited by the maximum fee allowable under the fee agreement. *Adams v. Fisher*, 390 So. 2d 1248 (Fla. 1st DCA 1980), *Sohn v. Brockington,* 371 So. 2d 1089 (Fla. 1st DCA 1979). ***A substituted attorney, however, is entitled to the full contingent fee provided for in the contract***. *See Adams v. Fisher*, 390 So. 2d at 1251. This rule ensures the client the right to discharge an attorney at any time with or without cause, while at the same time making a client responsible for his or her actions. *Adams v. Fisher*, 390 So. 2d at 1251.

Lubell v. Martinez, 901 So. 2d 951, 952-53 (Fla. 3d DCA 2005)(emphasis added). That Third DCA decision is not from some rogue court at odds with other Florida courts:

> The ***weight of authority in Florida*** favors RMJS and its position that ***typically the client—not the subsequent attorney—must bear the additional costs associated with its decision to terminate one attorney and hire another.*** *See, e.g., Lubell v. Martinez,* 901 So. 2d 951 (Fla. 3d DCA 2005); *Jones & Granger v. Johnson*, 788 So. 2d 381 (Fla. 1st DCA 2001); *Car-man v. Guardianship of Potter*, 768 So. 2d 1156 (Fla. 1st DCA 2000); *Afrazeh v. Miami*

> *Elevator Co. of America*, 769 So. 2d 399 (Fla. 3d DCA 2000); *Miller v. Jacobs & Goodman, P.A.*, 699 So. 2d 729 (Fla. 5th DCA 1997); *Adams v. Fisher*, 390 So. 2d 1248 (Fla. 1st DCA 1980); *Sohn v. Brockington*, 371 So. 2d 1089 (Fla. 1st DCA 1979); *see also Reed & Steven v. Hip Health Plan of Florida, Inc.*, 81 F. Supp. 2d 1335 (S.D. Fla. 1999) (citing Florida law).

Buckley Towers Condo., Inc. v. QBE Ins. Corp., 2012 U.S.Dist LEXIS 24159 @ *30 (S.D. Fla. Feb. 22, 2102)(emphasis added).

Be sure to inform your prospective client of the fact that he or she will have to pay you your full fee and then resolve the discharged attorney's fee claim on a quantum meruit basis. That may result in you losing the client, but you weren't going to take the case before you read this "TIP" anyway, were you?

I may not be able to correct each and every false "Courthouse Legend" that trial lawyers perpetuate, and you may not be able to sign-up every good case that comes into your office; all we can do is:

Keep Tryin!

Roy

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