IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

QUINCEY BRYANT, Husband and the Administrator of the Estate of KOYA SMITH BRYANT, Deceased,	)	
Plaintiff,	)	Civil Action File No. 11A39142
v.	)	
AVERY NATHANSON, M.D. and PULMONARY & SLEEP SPECIALISTS, P.C.	)	
Defendants,	)	

ORDER AWARDING COSTS AND FEES IN SATISFACTION OF ATTORNEYS' FEES LIEN

This matter is before the Court on the motion of Hezekiah Sistrunk, Jane Lamberti,[1] and Shean Williams, doing business as Cochran, Cherry, Givens, Sistrunk, & Sams, P.C., and acting through the Cochran Firm (hereinafter referred to as the "Cochran Firm") to enforce its attorney fee lien filed on November 27, 2012. The Court held a hearing on August 28, 2014. Upon consideration of the parties' filings and after a thorough evidentiary hearing, the Court finds the Cochran Firm is entitled to an apportionment of 30% of the attorneys' fee paid in this matter, in addition to $8,805.50 in expenses it incurred. Accordingly, the Court awards judgment to the Cochran Firm in the amount of $248,805.50.

[1] At the time the lien at issue in this matter was filed, Ms. Lamberti's name was Jane Lamberti Sams. She legally changed her name to Lamberti in July, 2014, so the court will use that name throughout.

I. Procedural History

Plaintiff filed this medical malpractice action on October 5, 2011. On November 27, 2012, the Cochran Firm filed a notice of its lien on any judgment to cover the $8,805.50 of expenses it incurred and costs of legal services it provided in pursuing this case before it was filed. On April 29, 2014, after learning the parties had agreed to settle the matter, the Cochran Firm moved to enforce its lien. Even though this Court had not yet adjudicated the validity of the Cochran Firm's lien, Plaintiff's attorneys voluntarily dismissed this case with prejudice less than one month later, on May 23, 2014. Thereafter, Plaintiff's attorneys disbursed the settlement proceeds and paid themselves an attorneys' fee in the amount of 40% of the gross settlement proceeds, or $800,000.

On June 26, 2014, the Cochran Firm filed a motion to vacate, asking this Court to set aside the dismissal to permit the firm to foreclose upon its lien. On August 5, 2014, the Court held a hearing on the matter and, after considering the authorities each party cited and the circumstances of this case, granted the motion in part. Specifically, the Court vacated the dismissal, reopened this case, and directed Plaintiff's attorneys to segregate $320,000 (which represented 40% of the fees paid to successor counsel) pending the Court's decision on how much of that amount, if any, should be awarded in quantum meruit to the Cochran Firm. The Court also directed the parties to appear at an evidentiary hearing to decide that matter.

At the subsequent August 28 hearing, the Cochran Firm offered into evidence several documentary exhibits and presented the testimony of four witnesses — Jane Lamberti and Hezekiah Sistrunk (two partners in the Cochran firm), Scott Bailey (the attorney who represented one of the Defendants who settled this case with Plaintiff), and

Audrey Tolson (one of Plaintiff Quincy Bryant's current lawyers) on cross-examination. The Tolson Firm presented two witnesses, Alwyn Fredericks and Audrey Tolson (Bryant's lawyers), but submitted no documentary evidence. The Court has thoroughly considered this evidence and finds as follows.

II. Findings of Fact

After his wife passed away, allegedly as a result of medical negligence, Plaintiff Quincey Bryant's mother-in-law suggested that he contact the Cochran Firm. Tr. at 265.[2] At that time, the only thing Bryant knew about the firm was the reputation of Johnnie L. Cochran. As he testified in deposition, "besides Johnny Cochran . . . nothing. I didn't know anything about them." Ex. 23 at 10-11; *see also* Tr. at 153-54, 157, 207. Tolson admitted she and Bryant had never met before he brought his case to the Cochran Firm. Tr. at 153. Bryant went to the Cochran Firm because his mother-in-law told him "this is the *firm* you need to contact and *they* will be able to help you . . . ." Ex. 23, at 10 (emphasis added).

Before his death in 2005, Johnnie Cochran cultivated a national reputation as a successful attorney and built a national law firm around it, including in Atlanta. *E.g.*, Tr. at 63-64. Since that time, the Cochran Firm has expended significant resources to attract clients like Bryant. *E.g.*, *id.* 68-72; Conf. Tr. 3-4. Based upon the evidence presented, including the deposition testimony of Bryant,[3] the Court finds that the Cochran Firm

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[2] As used in this opinion, "Ex." refers to the exhibits admitted at the August 28, 2014 hearing, "Tr." refers to the transcript, and "Conf. Tr." refers to the portions of the transcript deemed confidential and separated out for that reason.

[3] Tolson raised no hearsay objection to the admission of Bryant's deposition testimony regarding why he first contacted the Cochran Firm. *See* Tr. at 155-56, 201. The court therefore considers any objection on that ground waived. O.C.G.A. § 24-8-802 ("[I]f a

originated this case in part due to the reputation of Johnnie Cochran and the Cochran Firm's reputation in the community. *See* Tr. at 153-54, 157, 258.

In a conference room at the Cochran Firm's Atlanta office in mid-October, Bryant first met Tolson, then a W-2 employee of the Cochran Firm of over ten years. Tr. at 82-83, 140-42, 153; *see* Ex. 12, at 1-6. Bryant signed an engagement letter, dated October 19, 2009, in which he agreed to "employ[] Cochran, Cherry, Givens, Smith & Sistrunk & Sams, P.C. as his attorneys at law, to recover by suit or settlement, claims against any and all parties for damages by reason of that certain incident which occurred on or about October 7, 2009," and to pay the firm for those services and any expenses it incurred.[4] Ex. 14, at 1. Tolson signed the engagement agreement for the Cochran Firm and signed partner Jane Lamberti's name after obtaining her express permission. *Id.*; *see also* Tr. at 144-46. For the next year and a half, the Cochran Firm performed substantive work investigating Bryant's claims, educating him about those claims and the legal process ahead, gathering proof, negotiating on Bryant's behalf, and preparing his case for suit. Tr. at 83-84, 89, 163-64, 224-25. All work Tolson did on Bryant's case during that time was as an agent and employee of the Cochran Firm, under the direction of Lamberti, with whom she had regular discussions about the case. *Id.* at 153,163-65, 219-24.

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party does not properly object to hearsay, the objection shall be deemed waived, and the hearsay evidence shall be legal evidence and admissible."). Moreover, the court would find Bryant's testimony admissible in any event because no party genuinely disputes the truth or accuracy of Bryant's statement or that it is the best evidence, and no party was unfairly surprised by it. *See* O.C.G.A. § 24-8-807. Indeed, Tolson acknowledged that she was present at Bryant's deposition and did not dispute the veracity of Bryant's recollection. *See* Tr. at 155-57.

[4] The court has normalized the font style of this quotation to make it consistent with the text of this order.

The Cochran Firm's work on Bryant's case during the 19 months after he engaged the Firm conferred value on Bryant and successor counsel. First, the Firm consolidated Bryant's trust in legal process as a means to vindicate the death of his wife and educated him about the likelihood he would succeed, as well as the hurdles his claims faced and the inherent difficulties of prosecuting a medical malpractice case, which all counsel agreed are among the most difficult to litigate. *E.g.*, *id.* at 83, 89, 214-15, 224, 233-34. Lamberti then educated herself about the complex medical conditions and complicated series of medical procedures Bryant's wife had experienced. *Id.* at 221-25. In addition to training Tolson in medical malpractice, Lamberti shared her knowledge and medical and legal analysis with Tolson, which benefitted Tolson after she became successor counsel. *E.g.*, *id.* at 231-233, 263. When theories of negligence proved to be dead-ends, Cochran Firm lawyers formulated new ones, discussed them, and sought experts to prove them. *E.g.*, *id.* at 222-23. The Firm persevered in its pursuit of this case even after several experts declined to opine that one physician or another who treated Ms. Bryant acted negligently because, as Lamberti put it, "we believed in this case." *Id.* at 223-24.

Tolson resigned from the Cochran Firm by email on May 9, 2011, without notice to either of the Firm's principals. Ex. 5, *passim*; Tr. at 103, 172, 208-211. One day prior to resigning from the Cochran Firm, on a Sunday afternoon, Tolson contacted several clients, including Bryant, secured their agreement to continue with Tolson as their counsel and terminate the Cochran firm, and obtained their "authoriz[ation] to pick up their files from the office," as she put it in her resignation email. Ex. 5, at 2.[5] Tolson did

[5] In her resignation letter, in addition to stating that she had obtained the agreement of at least seven of the Cochran Firm's clients to terminate the Cochran Firm, Tolson reported to the firm's managing partner that she had declined a partnership offer at a large law

not advise Bryant that, by terminating the Cochran Firm, he may be liable for the fees and expenses the Cochran Firm incurred in prosecuting his matter over the preceding 19 months. Tr. 181-82; *see also* Ex. 14, at 1. Several days later, Bryant wrote the Cochran Firm, stating that he had elected to retain Tolson and terminate the Cochran Firm, but explaining he was "glad to say that the Cochran Firm has done a great job handling my case thus far and I will recommend you all to anyone in need."[6] Ex. 23, at 22.

Less than two months after she secured Bryant's agreement to terminate the Cochran Firm (and just before the statute of limitations ran on Bryant's case), Tolson requested that Alwyn Fredericks of Cash, Krugler & Fredericks LLC join as co-counsel in the case. Tr. at 242, 255. Tolson and Fredericks agreed to an equal 50/50 share of the fees, expenses, and workload in this case. *Id.* at 59, 187, 238, 248. During the course of the case, however, Tolson and Fredericks departed from that arrangement, with Fredericks performing the lion's share of the work and bearing most of the expenses prosecuting Bryant's claims. *Id.* at 251-56. The testimony was undisputed that Tolson was present for no more than four of sixteen depositions and had few if any interactions with opposing counsel. Ex. 20, *passim*; Tr. at 56, 193-94, 256. Further, even though she had done significant work on the case as a Cochran Firm employee, Fredericks, not Tolson, did the lion's share of the work on the case after Tolson solicited Bryant's termination of the Firm. Tr. at 253-56. Opposing counsel considered Fredericks, not

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firm. Ex. 5, at 1-2. On the stand, Tolson admitted she had fabricated the story of a partnership offer from another firm during discussions with the firm's managing partner prior to her resignation. *See* Tr. at 168-70.

[6] The email was introduced during the court's August 5, 2014 hearing on the Cochran Firm's motion to enforce its lien. Both parties referred to and relied on it during the August 28, 2014 hearing. *E.g.*, Tr. at 41, 135.

Tolson, to be lead counsel to whom any settlement offers should be directed. *See id.* at 56-59. Tolson paid less than one tenth of the expenses.[7] Ex. 19, at 1. Tolson conceded at the hearing that "it turned out" that Fredericks was lead counsel. Tr. at 193. Fredericks "drafted the Complaint, and the affidavits, and the discovery, and filed the case," saying he "did the heavy lifting" and agreed the "vast majority of the work on prosecuting this case" was his. *Id.* at 250, 253. 256. Tolson did not sign the settlement documents. *See* Ex. 21; Tr. 199-200.

Ultimately, Tolson and Fredericks revised their fee-sharing agreement, with Tolson agreeing to take 40% of the total fee. Tr. at 251. 256. Even though he did "a lot more work than [he] had anticipated," Fredericks agreed that 60/40 was a number he could "live with" because "she brought the case to us." *Id.* at 256-57. When asked to clarify whether "part of the reason that [he] agreed to 40 percent was because Audrey brought [him] the case," he said, "[w]ell, we all do." *Id.* Further, he agreed that "[i]n terms of referral fees as they go, if we were given the case — if we were offered a case by a referring lawyer and they weren't going to do anything with it, you know, we would pay them 25 percent. That is about right." *Id.* at 248.

The Court also heard testimony concerning the compensation arrangement between the Cochran Firm and Tolson. Typically, and subject to the discretion of the Cochran Firm's managing partner, the Cochran Firm distributed 12.5% of its net fee

[7] In light of the court's evaluation of the credibility of Tolson's testimony on the stand, her inability to precisely estimate the amount, and her failure to produce at the hearing any documentary evidence supporting it, the court declines to credit Tolson's testimony that she paid some unspecified amount of expenses more than the $3,002.02 (of a total $95,105.83) shown on Bryant's closing statement. *See* Ex. 19, at 1; *cf.* Tr. 189-93 (equivocal testimony asserting a previously undisclosed approximation of some additional amount over that given the client in the closing statement).

recovery to each of the two primary attorneys working on the case, after the Cochran Firm remitted a portion of the fee to its national office. *Id.* at 226-27. Had Tolson remained with the Cochran Firm and continued to work on the matter through conclusion, she would have received a maximum of $80,000 (which represents 10% of the total $800,000 attorneys' fee). *Id.* at 227-29. Given that Tolson solicited Bryant's termination of the Cochran Firm while she was still employed by the Cochran Firm, and given that Tolson's work prosecuting the case after her resignation from the Cochran Firm was relatively minimal compared to the work performed by Fredericks' firm, the Court finds that any money Tolson might recover above the $80,000 she would have otherwise recovered as compensation from the Cochran Firm would unjustly reward Tolson for the referral value of a case the Cochran Firm originated, and it would unfairly deprive the Cochran Firm of just compensation for the value of originating the case and performing substantial presuit work. *Id.* at 248, 253-57.[8]

III. Conclusions of Law

The Cochran Firm is entitled to the quantum meruit value of its origination of the case and the work it performed before Tolson left the firm on May 9, 2011.[9] Further,

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[8] As noted above, the Court has found that Bryant contacted the Cochran Firm at least in part because of the firm's reputation. Even assuming, however, that Bryant had contacted the Cochran Firm because he had been referred specifically to Tolson, Tolson would have received no additional compensation for her work on the case as an employee of the Cochran Firm. The evidence presented at the hearing established that no lawyer at the firm ever received increased compensation as a result of having individually originated a case. Tr. 73.

[9] An action to determine the Cochran Firm's interest in other cases Tolson took with her when she left the firm is currently pending in the Superior Court of Fulton County. *See Cochran, Cherry, Givens, Smith, Sistrunk & Sams, P.C. v. The Tolson Firm, LLC, et al.*, Civil Action File No. 2013CV231036 (Fulton County Superior Court). Because the lien

although Tolson's counsel has at various points contended that the Cochran Firm's quantum meruit remedy, if any, is against Bryant, the parties agreed at the hearing that any fee apportioned to the Cochran Firm should be paid out of the proceeds prematurely distributed to successor counsel and not out of Bryant's share of the settlement proceeds.[10] Accordingly, the Court concludes the proper party against whom the Cochran Firm's claim to its fees lies is successor counsel. *See Kirschner & Venker, P.C. v. Taylor & Martino, P.C.*, 277 Ga. App. 512, 514 n.1 (2006) (holding that where attorneys worked together on a matter but one was "fired before [the other] obtained a settlement . . . the discharged counsel may have a cause of action in quantum meruit . . .against the remaining counsel who continues with the case until its conclusion.").

Further, the Court concludes Tolson is the proper successor counsel against whom an award should be rendered. All parties agreed, and the Cochran Firm conceded at the evidentiary hearing, that Fredericks earned the share of the fee he was paid, even though this Court has already held that fee should not have been disbursed prior to this Court's adjudication of the Cochran Firm's lien. *E.g.*, Tr. at 22, 35, 59, 224. It was also Tolson's obligation, not Fredericks's, to warn Bryant that the Cochran Firm retained a claim to its fees after he terminated their attorney-client relationship, which the Court concludes she failed to do. *See King v. Lessinger*, 276 Ga. App. 145, 148 (2005) (holding that, because successor counsel stands to forfeit portion of his fee to former counsel, a "successor

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in this matter was filed before that action, the court concludes this action is the first filed for purposes of O.C.G.A. §§ 9-2-5(a) and 9-2-44.

[10] This ruling is consistent with the agreement between Tolson and Fredericks regarding who should pay the Cochran Firm's fees. "In a sense," Tolson explained, she had agreed to indemnify Fredericks and Bryant by promising that "if there is a fee to be paid" to the Cochran Firm, Tolson would "take care of it . . . ." Tr. at 184-85.

attorney has an incentive to inform the client that the client may have to pay reasonable attorney fees to the discharged attorney for services already rendered, a fact which will help ensure that the client does not agree to a fee arrangement that over-compensates the successor attorney"); *Galanis v. Lyons & Truit*, 715 N.E.2d 858, 863 (Ind. 1999) (holding successor counsel liable for former counsel's fee where he had not "advised [his client] of the need to pay" that fee). Most critically, the Court concludes in the exercise of its discretion that Tolson would be unjustly enriched were she able to retain more than the 10% of the fee she likely would have received had she worked on this case to its conclusion as a Cochran Firm employee. *Cf.* Tr. at 227-29.

"Quantum meruit literally means 'as much as he deserves.' It is an equitable doctrine based on the concept that *no one who benefits from the labor and materials of another should be unjustly enriched thereby*." *Ellerin & Assocs. v. Brawley*, 263 Ga. App. 860, 863 (2003) (emphasis supplied) (internal quotations omitted)). "[T]he time and labor required in a case is *but one factor* to be considered in determining a reasonable attorney fee under the doctrine of *quantum meruit*." *Johns v. Klecan*, 556 N.E.2d 689, 693 (Ill. App. Ct. 1990) (emphasis supplied). There is no exhaustive list of factors to be considered in making this equitable determination, but Georgia's appellate courts have indicated that the "size of the recovery,"[11] the reputation of the firm seeking its fees,[12] the

[11] *E.g.*, *Ellerin & Assocs.*, 263 Ga. App. at 863; *see also King*, 276 Ga. App. at 146 ("[T]he size of any recovery ultimately obtained by the former client is a factor that may be considered in determining the 'reasonable value' of the discharged attorney's services under a theory of quantum meruit.")

[12] *E.g.*, *Babb v. Potts*, 183 Ga. App. 785, 787 (1987) (holding that, in quantum meruit valuation, courts should look to the work of "members of similar standing" in the profession) (quoting *Marshall v. Bahnsen*, 1 Ga. App. 485, 57 S.E. 1006 (1907)); *see also*

contingency agreements if any,[13] and the relative expenses paid,[14] should all be considered. Other jurisdictions have held the value of originating a case must be included in an equitable quantum meruit award to former counsel; otherwise successor counsel would be unjustly enriched by the prior attorney's efforts. *See Crocket & Myers, Ltd. v. Napier, Fitzgerald & Kirby, LLP*, 664 F.3d 282, 284 (9th Cir. 2011) (holding trial court "'clearly erred' in its calculation of [the] quantum meruit award because the . . . amount did not reflect the value of [the former attorney's] referral of the [client's] case to [successor counsel], and stating "the quantum meruit award [must] include the value of the client referral in and of itself"). Although Georgia courts have not had occasion to address this particular issue, this Court concludes that equity demands that the Cochran Firm's quantum meruit award include the value it conferred on Bryant and successor counsel by originating his case.[15]

All parties, including successor counsel, agreed that the usual and customary value of originating a case and referring it to competent co-counsel among firms in Atlanta is no less than 25% of any contingency fee ultimately generated in the case. Tr.

Marshall, 1 Ga. App. at 485 (requiring inquiry to ordinary and customary charges for like services in the community).

[13] *See Georgia Dep't of Corr. v. Couch*, 295 Ga. 469,759 S.E.2d 804, 815-16 (Ga. 2014) (holding contingency agreement is "certainly a guidepost to the reasonable value of the services the lawyer performed . . . ."); *see also G. Carbonara & Co. v. Helms*, 205 Ga. App. 547, 548 (1992) ("[T]he express contract between the parties affords prima facie proof of the value of the services rendered, and as such is properly received in evidence even when recovery is sought upon quantum meruit and not upon the contract.").

[14] *See Ellerin & Assocs.*, 263 Ga. App. at 863.

[15] The value of that origination to Bryant is underscored by Lamberti's testimony the Cochran Firm "believed in this case," and continued diligently to pursue it, even though three experts had opined no negligence had occurred. *E.g.*, Tr. at 224-25, 231-32, 239.

at 248 (testimony of Fredericks that 25% was baseline); *see also id.* at 75-76, 89, 217; *see also, e.g.*, *Crocket & Myers, Ltd.*, 664 F.3d at 284 (successor counsel's "custom of paying a one-third referral fee [was] the most definitive indication of the value of [former counsel's] referral of the [client's] case."). Based on the evidence presented at the evidentiary hearing, and especially Bryant's own deposition testimony, the Court concludes the Cochran Firm originated Bryant's case. Yet less than two months after leaving the firm, Tolson referred the case to Fredericks in exchange for a sizeable fee despite the fact that she had a relatively minor role in the prosecution of the case and advancement of expenses. In other words, she benefitted from the full value of the origination and referral, even though the Cochran Firm originated the case. Further, she did so after securing Bryant's authorization to take his file from the Firm before resigning from the Firm, despite her duties to it as an employee.[16] It would be inequitable and would unjustly enrich Tolson to permit her to keep that value. But for the Cochran Firm's origination of this matter, neither the Tolson Firm nor Cash, Krugler & Fredericks would have handled this matter or received a fee. Based upon the findings and conclusions above, the Court concludes the Cochran Firm is entitled as a result of its origination of this matter to 25% of the fee.

Additionally, during the 19 months that the Cochran Firm pursued Bryant's case, the firm, *inter alia*, educated Bryant about his claims, issued a demand letter,[17] secured

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[16] The circumstances of Tolson's resignation and solicitation of Bryant's termination of the Cochran Firm are relevant to the equities of this case, and therefore to the equitable distribution of the fee. *See Ellerin & Assocs.*, 263 Ga. App. at 863.

[17] Because she was a W-2 employee when she did it, the court rejects Tolson's contention that she is entitled to the entire fee for any part of the Cochran Firm's work on Bryant's case for which she was responsible. *See* Ex. 12, *passim*. The 10% of the fee she will

medical records from at least nine different medical services providers, and engaged at least three different potential experts for review of those records. *E.g.*, Ex. 3, at 1-2; Tr. at 89, 224. The Cochran Firm also researched, weighed, rejected, and reformulated various theories of the case, conferring significant value on Bryant and successor counsel by narrowing the case towards the issues that ultimately resulted in the settlement. Tr. at 83, 234-35, 237. The Cochran Firm's expenses constituted over 9% of the total expended in Bryant's matter. Ex. 19, at 1.; *cf. Ellerin*, 263 Ga. App. at 863 (holding expenses should be considered in determining quantum meruit value of services). The Court concludes the Cochran Firm's request for 5% of the fee for this work in addition to the 25% it is due for originating the case is eminently reasonable. This amount ensures that Tolson receives a sizable fee for the work she conducted on the matter, as much as she would have received had she continued to work on the case as a Cochran Firm employee.

Finally, the Court also concludes that Tolson and Fredericks conceded the Cochran Firm is entitled to repayment of the $8,805.50 in expenses it incurred, by offering that amount to the Firm before the Court adjudicated the validity of the Cochran Firm's lien.

IV. Order

In accordance with the foregoing, the Court AWARDS Hezekiah Sistrunk, Jane Lamberti, and Shean Williams, doing business as Cochran, Cherry, Givens, Sistrunk, & Sams, P.C. and acting through the Cochran Firm, in quantum meruit $240,000 in attorneys' fees for the work it conducted during the first 19 months of this matter, plus the $8,805.50 in expenses it incurred. The Court further ORDERS that this award should

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retain after execution of this order adequately compensates her for that work as an agent, as well as the work she conducted after May of 2011.

be paid from the $320,000 fee Tolson paid to herself out of the settlement proceeds, as this Court previously has found, which has been placed into the IOLTA account of Cash, Krugler and Fredericks LLC per the Court's order. Accordingly, judgment is entered in favor of Hezekiah Sistrunk, Jane Lamberti, and Shean Williams, doing business as Cochran, Cherry, Givens, Sistrunk, & Sams, P.C., and acting through the Cochran Firm and against the Tolson Firm in the amount of $248,805.50, and the Court ORDERS Cash, Krugler, and Fredericks LLC to disburse $248,805.60 to the Hezekiah Sistrunk, Jane Lamberti, and Shean Williams, doing business as Cochran, Cherry, Givens, Sistrunk, & Sams, P.C., no later than ten (10) days of the date of this order.

SO ORDERED, this 17th day of September, 2014.

Stacey Hydrick
STACEY K. HYDRICK
JUDGE, STATE COURT OF
DEKALB COUNTY

FILED IN THIS OFFICE
THIS 18th DAY OF Sept 2014
J. Daniel
Clerk, State Court, Dekalb County

cc: Alwyn R. Fredericks
F. Carlton King, Jr.
Michael A. Caplan
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