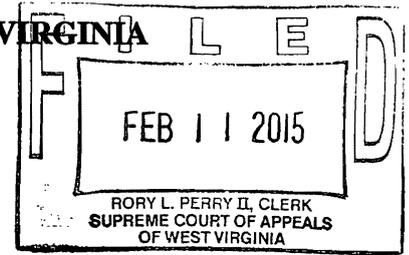


**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
STATE OF WEST VIRGINIA**

DOCKET NO. 15-0033



**STATE OF WEST VIRGINIA EX REL.
JAMES CAMPBELL, and STEVEN FOSTER**

Defendants below, Petitioners,

vs.) 15-0033

**HONORABLE DAVID H. SANDERS,
Judge of the Circuit Court of Jefferson County,
and GLEN POE**

Plaintiff Below, Respondents.

**RESPONDENT'S SUMMARY RESPONSE TO PETITION
FOR WRIT OF PROHIBITION**

Counsel for Respondent, Glen Poe

**Robert J. Schiavoni (WV Bar #4365)
Counsel of Record
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**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
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**STATE OF WEST VIRGINIA EX REL.
JAMES CAMPBELL, and STEVEN FOSTER**

Defendants below, Petitioners,

vs.) 15-0033

**HONORABLE DAVID H. SANDERS,
Judge of the Circuit Court of Jefferson County,
and GLEN POE**

Plaintiff Below, Respondents

**RESPONDENT'S SUMMARY RESPONSE TO PETITION
FOR WRIT OF PROHIBITION**

Now comes the Respondent and Plaintiff below, Glen Poe, by and through Counsel Robert J. Schiavoni, David M. Hammer and the law firm of Hammer, Ferretti & Schiavoni, pursuant to Rule 16(h) of the West Virginia Rules of Appellate Procedure and files this Summary Response.

I. QUESTION PRESENTED

Whether the Circuit Court of Berkeley County, after an appeal to this Court affirming Summary Judgment on behalf of Respondent and Plaintiff below, retained jurisdiction to enforce a Promissory Note the terms of which include the calculation of simple interest and the award of attorney fees and costs expended in enforcing the Note?

II. STATEMENT OF THE CASE

It will soon be seven full years since Petitioner James Campbell, Mr. Poe's former attorney, drafted the Promissory Note which induced his client to loan these Petitioners \$100,000.00 for a restaurant venture which, as was discovered through litigation, had been undercapitalized from the beginning. It has been over six years since Mr. Poe discovered that a significant amount of his money loaned to advance the project was fraudulently used to "pay" Petitioner Foster for "work" done on the project as opposed to moving the project forward as was represented to him. Nearly four years ago a Jefferson County jury reached a verdict finding that Petitioners Campbell and Foster committed fraud in separating Mr. Poe from his \$100,000.00. And, it was during the bifurcated punitive damage phase of the trial when Mr. Campbell, then seeking to minimize the amount of punitive damages to be awarded, told the Jury:

I think there is some unfairness in this process that makes it difficult for you to understand where we are. The first issue is this, as I understand your verdict – strike that – as I understand Mr. Poe's claim, he unequivocally loaned \$100,000.00. Mr. Hammer read to you my answer where I admitted signing the guarantee. Why did I admit in papers to this Court because I signed the guarantee because I did. I never lied about that. I never shied away from that. I never said I didn't. The draft of the note that is the note that is in evidence – you will see if you have the exhibits, you will see there is a draft note – you will note that it is identical to the note that you enforced. I never denied that.¹

Mr. Poe has been forced to pursue these Petitioners through three Circuit Court Judges and the Bankruptcy Court as these Petitioners were adept at evading justice through a nightmarish assortment of LLCs, motions, and procedural machinations in four

¹ In fact, Mr. Campbell was forced to admit owing on the Note during cross examination at his trial. In related bankruptcy litigation concerning the Petitioners' LLCs, Mr. Foster admitted to signing the Note. During the punitive phase of the trial, the lower court declared a mistrial based on a question from the jury. However, this admission by Mr. Campbell was used subsequently as a factual basis for granting summary judgment on behalf of the Plaintiff and Respondent herein.

different venues. It should not be lost on this Court that the origins of this matter arose from an attorney, Petitioner Campbell, drafting a Promissory Note for his client wherein Mr. Campbell became the guarantor and that neither Campbell nor his business partner Foster have yet paid any amount on their admitted liability. The Petitioners have used every procedural machination to avoid liability including multiple motions to reconsider orders, repeated attempts to disqualify a judge, competing and contradictory positions in litigation and as between different venues, and now a Petition for a Writ to avoid the payment of what is admittedly owed. Like in Bleak House, Jarndyce v. Jarndyce, these Petitioners have been successfully, and without consequence, weaving this case through a litigation nightmare for almost seven years, and all this on a Note that Campbell drafted and for which Campbell and Foster have been forced to admit liability.

The long and difficult history of this case was presented to the West Virginia Supreme Court of Appeals and was addressed in this Court's Memorandum Opinion filed on June 7, 2013 at 2013 W.Va. Lexis 637, WL 2462169. In its Memorandum Opinion this Court affirmed the January 5, 2012 order of the Circuit Court denying these Petitioners' Rule 59 motion to alter or amend the lower court's previous order granting summary judgment in favor of the Petitioner. This Court thereafter on September 24, 2013 refused a "Joint Petition for Rehearing" and the Mandate issued on October 1, 2013.

After the Mandate and consistent with the Circuit Court's Orders entered on November 9, 2011 (Order Granting Judgment Against James P. Campbell, Esq. and Steven D. Foster Upon Promissory Note), Respondent filed and served "Plaintiff's Motion to Record Fixed Amount of the Judgment" which in essence included the calculation for simple 12% interest as stated clearly in the Promissory Note. In opposing

the motion to calculate simple interest for purposes of enforcing and collecting a liquidated amount on the judgment, the Petitioners argued that the Circuit Court lacked subject matter jurisdiction to allow for the calculation of simple interest and opposed a related petition for fees and expenses, both of which provisions were expressly agreed upon and admitted by these Respondents as stated in the Promissory Note itself, because, according to Petitioners, the Circuit Court's subject matter jurisdiction to enforce the Note somehow ended before January 4, 2013.

The Circuit Court entered its "Order Granting Motion to record Fixed Amount of Judgment" on January 17, 2014, which included the then current contractual interest due on the Note. Thereafter, Petitioners once again moved for reconsideration under Rule 59 making the same argument in opposing the interest calculation, namely, that the Circuit Court lacked subject matter jurisdiction to enter an order allowing for the calculation of simple interest.² The motion together with a petition to recover contractual fees and expenses remained on the docket until recently.³ After briefing and a hearing on January 5, 2015, by Order entered on January 16, 2015, the Circuit Court once again denied a motion to reconsider.[Ex A].⁴ And, after a full evidentiary hearing on January 16, 2015, by Order entered on January 30, 2015, the Circuit Court awarded fees and costs to date.

² This was a misuse of Rule 59 as the Rule's purpose is to allow for alteration or amendment of judgments, not for attempting to disregard simple calculations of damages. *See Handbook on West Virginia Rules of Civil Procedure*, § 59(e) at 1285 (4th Ed. 2012). Rule 59 is not to be used, and offers no support, for asking a court for ceaseless and meritless 'do-overs.'

³ Respondent petitioned for a writ to require the Circuit Court to rule on the Rule 59 motion and the fee petition. The docket for the Circuit Court in Jefferson County is primarily handled by one Judge serving a population of nearly 60,000 residents. The Circuit Court mooted the writ petition. During the pendency of the Poe Writ, these Petitioners filed this Writ asserting that the Circuit Court was without subject matter jurisdiction to hear the matter of assessing interest and awarding contractual fees and costs.

⁴ During the January 5th hearing, Petitioners requested to have additional time to address the fee petition as they stated they were unprepared to do so at that time. As a professional courtesy, Poe's counsel did not object to a second hearing date being scheduled solely upon the issue of attorney's fees and costs. In the time between the two hearings Petitioners filed this Writ and sought a stay of the attorney's fee hearing. That motion for a stay was denied.

[Ex B]. The exclusive issue presented in this Writ is whether the Circuit Court, after seven years of litigation in which Mr. Poe has recovered nothing from his former attorney, had subject matter jurisdiction to enforce the express terms of the Note by fixing the amount of contractual interest and awarding fees and costs incurred to date.

Petitioners now claim that the lower court lacks jurisdiction to enforce the terms of the Promissory Note on the basis that any order calculating simple interest or awarding fees implicates Rule 60, and further, Petitioner argues, that the Respondent failed to ask for fees and costs in the Amended Complaint. Petitioners now argue that lacking any jurisdiction, there is nothing that Mr. Poe can do to collect on the Note which was the subject of the summary judgment in his favor. Thus, Petitioners now maintain that they owe nothing on the Note. In the context of the facts and history of this case, Petitioners' arguments are without merit.

III. ARGUMENT

The Petitioners correctly state the standard of review for a writ of prohibition with one caveat. Prohibition is an extraordinary writ and "is not a substitute for direct appeal." *State ex rel. Owners Ins. Co. v. McGraw*, 233 W.Va. 776, 780 (2014). Petitioners in seeking a writ fail to explain why a direct appeal is inadequate or how there has been a manifest injustice not otherwise correctable on appeal. Perhaps one reason Petitioners avoid the appeal process is because in essence they seek to mask what would otherwise be a reconsideration of this Court's prior memorandum opinion and wish to use extraordinary means to set aside a judgment order entered on November 8, 2011.

Beyond that recitation on the standard of review, there is little to no agreement as to the factual or legal basis for seeking this Writ. First, Petitioners are grossly inaccurate

in the Petition, as verified by Mr. Campbell, about the substantive basis for the recovery of fees and costs. Second, Petitioners' argument that the computation of simple interest, and the award of fees arising from a summary judgment order and pursuant to the contractual terms of the Note could only be accomplished through Rule 60, is without merit.

A. Petitioners misrepresent the record

Mr. Campbell, an attorney licensed to practice before this Court, verified this Petition and therein tells the Court that Mr. Poe "did not make an attorney fee claim in his Amended Complaint." That assertion is not true to the record. The Amended Complaint at Count 4 states:

59. The Note permits Poe to make immediately due the entire outstanding principal, and interest accrued thereon, late charges, all costs, and attorneys' fees without further notice to defendant James Campbell and Foster after the ten (10) day period from when written notice was provided. See Exhibit "A" at 1.

70. In addition to principal and interest amounts immediately due, the Note expressly charges defendants Campbell and Foster, upon such default, to pay Poe a late charge of five percent (5%) of any installments not received and on any principal payment not made when due. **Moreover, the Note provides that defendants Campbell and Foster will be liable for all expenses and costs occurred in connection with the collection of the debt, including reasonable attorneys' fees.**

72. As a result of defendants James Campbell's and Foster's continued failure to pay on their personal guarantees, **Poe has suffered contractual damages amounting to, at minimum, One-Hundred Thousand Dollars (\$100,000.00), plus any and all late charges and interest, fees and costs agreed to within the Note.**

The Note itself was attached to the Complaint as Exhibit A and incorporated throughout the Amended Complaint by reference given that Count 4 sought to enforce the contractual terms of the Note. Mr. Campbell's Verification is, quite simply, false.

B. Petitioners are obligated, and remain obligated, on the Note

By Order entered on November 9, 2011 granting Mr. Poe summary judgment, the lower court specifically and expressly incorporated by reference the entirety of the terms of the Note: “Defendants Campbell and Foster are personally obligated upon the Note and indebted **under the terms of said Note.**” The lower court’s Order, by incorporating the Note, and the “terms of the Note”, as a part of the Order, specifically and expressly retained jurisdiction over the enforcement of the “terms of the Note” to effectuate its Judgment Order. The lower court’s Order further contemplates continued jurisdiction of the matter including the remaining claims pending any appeal of this Judgment. The Court further held:

The Court shall conduct such further proceedings as may be necessary under the terms of the Note to liquidate an amount due under the Note, including an award of attorney’s fees and costs as provided for in the Note. The plaintiff shall have twenty days from the date of entry of this Order to submit such further issues to the Court and Rule 22 will issue upon the plaintiff’s motion.

After entry of the Order granting Respondent summary judgment, on November 8 and 10, 2011, Petitioners each once again filed serial motions to disqualify Judge Sanders which were denied by Administrative Order of the Supreme Court of Appeals entered on November 18, 2011. Then on November 23, 2011, Petitioners filed yet again separate Rule 59 motions to alter or amend the Court’s November 8, 2011 Order placing any action on the November 8th Order in abeyance until the motions to amend or alter were addressed by the Court. By Order entered on January 5, 2012 and received by Respondent’s counsel on January 10th, the lower court denied Petitioners’ motions to amend or alter the November 8th Order. On January 23, 2012, Respondent Campbell filed his Notice of Appeal followed by similar Notice filed by Respondent Foster on

January 27, 2012. On January 27, 2012, and only after an additional three months of litigating Petitioners' Rule 59 motions which delayed enforcement of the Judgment, Respondent provided the lower court with the calculations of interest and a petition for fees and costs consistent with the enforcement provisions of the Promissory Note as incorporated in the Circuit Court's November 8th Judgment Order. Thus, any further action by the lower court to effectuate its November 8, 2011 Order was held in abeyance by the conduct of, and delays caused by, these Petitioners and their serial motions to disqualify and reconsider. That pattern of delay, confusion and avoidance remains as an unfortunate legacy of this case continuing even now with this Petition.

Petitioners raced to file an appeal of the denial of their Rule 59 motion before a new scheduling order issued after the delays caused by the Petitioners. Nonetheless, Petitioners understood in full measure that the calculation of simple interest would continue until paid and that their obligation to pay fees and costs to enforce the Note continues by right of contract even now. That fact is evident because these Petitioners represented to this Court at the time that they were appealing a "final decision on the merits as to all issues and all parties." [Ex C] Now, Petitioners seem to suggest to this Court that they had in fact meant their appeal to be interlocutory because, as Petitioners argue, the lower court had not calculated interest, or had yet awarded fees and costs, and as a consequence their prior representation that they were appealing a final order was incorrect. Yet, Petitioners are clearly arguing further that, because the Respondent and this Court did not challenge their appeal as having arisen from a final and appealable order and this Court and Respondent having trusted the Petitioners' own representation that it was a final and appealable order, the lower court now has no jurisdiction to

calculate simple interest and award fees and costs pursuant to the express terms of the Note, including fees and costs associated with the appeal and the forthcoming collection process. Thus, Petitioners offer a conclusion that they no longer are obligated on any amount on the Note. This reasoning is incomprehensible except by way of a simple explanation: Petitioners are attempting to pull a fast one by deceiving the Courts and the Respondent.

In affirming the Circuit Court, the West Virginia Supreme Court of Appeals observed that the lower court found “Campbell and Foster are personally obligated upon the Note and indebted under the terms of said Note...”, and further in its *de novo* review, the West Virginia Supreme Court of Appeals observed that “the petitioners admitted during oral argument before this Court that they personally guaranteed a \$100,000.00 promissory note **payable to the respondent at twelve percent interest.**”[Memorandum Op at 7]. Now, after having admitted this very fact to the Supreme Court of Appeals, Petitioners argue otherwise, that there is no jurisdiction by the lower court to enforce an Order affirmed by the Supreme Court of Appeals which would include a simple, mechanical computation of interest as an expressed term of the Promissory Note, an expressed term of the Judgment Order, and an expressed admission by Petitioners as found in the Opinion of the Supreme Court of Appeals. That the lower court is “without jurisdiction” to enter an order calculating interest when that very interest was accruing during the pendency of the appeal (as were fees and costs) is absurdly bad, and bad faith, argument.

In *C&O Motors, Inc., v. W.Va. Paving, Inc.*, 223 W.Va. 469 (2009), the Supreme Court of Appeals, *sua sponte*, found that the appeal was improvidently granted because

the order of the lower court did not include an award of damages. However, the Court noted that in cases where liability is found and the computation of damages is ministerial or mechanical, then an order may be final. In the instant case, the Supreme Court of Appeals was told by Campbell and Foster that they had appealed a final order which included the damages as expressed in the “terms of the Note.” The calculation of the interest, as expressly contained within the “terms of the Note,” is in any event ministerial to the enforcement of this Court’s Judgment Order and the Supreme Court’s Memorandum Decision. *See Hensley v. W.Va. Dept. of Health and Human Resources*, 203 W.Va. 456 (1998) (statutory interest is recoverable on special damages unless there is an expressed agreement as to the interest which should apply). The Supreme Court of Appeals in its Memorandum Decision paid particular attention to Campbell’s admission during oral argument: “the petitioners admitted during oral argument before this Court that they personally guaranteed a \$100,000.00 promissory note payable to the respondent **at twelve percent interest.**” [Memorandum Op at 7]. Mr. Campbell and Mr. Foster, understood at the time of the appeal that the calculation of interest was ministerial and had been included as a part of the damage calculation upon appeal and would be recoverable even after the appeal in much the same manner as statutory judgment interest is recoverable.

Finally, as to fees and costs, the Promissory Note, and in furtherance by operation of the Judgment Order (which Order incorporates the Promissory Note), clearly state that “if any action is taken to collect this Note, Noteholder shall be entitled to collect, and Maker agree to and shall pay, all reasonable costs and expenses thereof, including but not limited to reasonable attorney fees.” Elsewhere the Promissory Note states that upon

failure to pay the amounts due that accrued interest and “reasonable attorneys fees shall at once become due and payable at the option of the Noteholder without prior notice to maker” and further and importantly that “the remedies of Noteholder shall be cumulative and concurrent and may be pursued singly, successively, or together, against Maker, at Noteholder’s discretion and may be exercised as often as the occasion therefor shall arise.” Petitioners remain contractually obligated to pay fees now and into the future when Mr. Poe seeks to collect on the judgment and when he must renew his claims for costs and fees expended in seeking to collect on his judgment.⁵

These Petitioners contractually agreed to pay all reasonable fees connected with this action and in furtherance of collecting any judgment, thereby submitting themselves to the continuing jurisdiction of a Court to enforce the “terms of the Note.” Petitioners are seeking the Court’s imprimatur to void their ongoing obligations under the Note and thereby reverse the Order granting Summary Judgment entered on November 8, 2011. The Supreme Court of Appeals has consistently recognized that in fee shifting cases, the right to recover attorney fees “extends beyond the initial trial below to encompass work performed in the pursuit of a necessary appeal. *Hollen v. Hathaway Elec., Inc.*, 213 W.Va. 667 (2003); *Bishop Coal Co., v. Salyers*, 181 W.Va. 71 (1989). Thus, as a general practice, in fee shifting cases, the lower court is charged with the task of assessing fees and costs which include those incurred in the appeal and which will inevitably ensue through further efforts to enforce the judgment. The very contract drafted by Mr. Campbell when inducing his then client to part with \$100,000.00 expressly allows for

⁵ Given the seven year history of Petitioners’ behavior in avoiding payment on the Note including discovery and investigation about how assets are “protected” and the multiple use of bankruptcy of their LLCs, it is anticipated that it will be many more years yet until judgment is paid by way of collection.

this recovery until this debt is fully paid. Mr. Campbell and Mr. Foster can end this ceaseless litigation by doing that which they promised to do—honor their contract.

IV. Conclusion

Wherefore, the Respondent pursuant to Rule 16(j) of the Rules of Appellate Procedure respectfully requests the entry of an order declining to issue a rule to show cause with prejudice.

Respectfully submitted,



Robert J. Schiavoni (WV Bar #4365)
Counsel of Record
David M. Hammer (WV Bar #5047)
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rschiavoni@hfslawyers.com
Counsel for Respondent, Glen Poe

R. Schiavoni

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

GLEN POE,

Plaintiff,

RECEIVED

JAN 16 2015

v.

JEFFERSON COUNTY
CIRCUIT CLERK

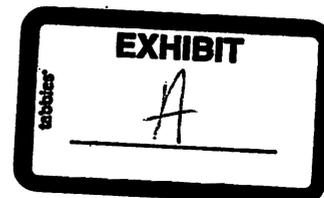
Civil Action No. 08-C-223

JAMES P. CAMPBELL, ESQ.,
STEVEN FOSTER, et al.,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION TO
ALTER OR AMEND JUDGMENT**

Defendants Campbell and Foster, by and through their counsel Charles Bailey moved this Court to alter or amend its Order entered January 17, 2014 which calculated contractual simple interest on the principal of the Note. Defendants argued that this Court did not have subject matter jurisdiction to enforce its Order of November 9, 2011 granting summary judgment in favor of the Plaintiff, said Order having included the Note itself which obligates Defendants to the payment of 12% simple annual interest on the Note principal and the payment of all reasonable costs, including reasonable attorneys fees expended enforcing the obligations of the Note.. The matter having been fully briefed and argued at a hearing on January 5, 2015 and the Court having considered the argument of counsel, the briefs submitted by counsel for the parties, the Court's prior orders and the Memorandum Opinion of the West Supreme Court of Appeals affirming both this Court's Order granting summary judgment enforcing the terms of the Note and the affirmation of the January 5, 2012 Order denying Defendants' motion to alter or amend the November 9, 2011 Order granting summary judgment, does hereby find and conclude that it has the jurisdiction to enforce its Order granting summary judgment to



the Plaintiff. In doing so and in accordance with the terms of the Note to which Defendants remain obligated and toward which no monies have yet been paid by the Defendants, the Court DENIES Defendants' Rule 59 Motion seeking to set aside this Court's Order of January 17, 2014.

At the hearing of January 5, 2014, the Court wished to proceed with Plaintiff's petition for fees and costs. Defendants requested and were granted without objection additional time to respond to Plaintiff's Petition. The Court set this matter for a hearing on January 16, 2015 at 9:00 a.m.

Wherefore, the Court DENIES Defendants' motion for Rule 59 reconsideration as the Court retains jurisdiction to give force and effect to its own Order enforcing the terms of the Note to which Defendants are and remain obligated.

The objections of the Defendants to this Order are noted and preserved.

The Clerk is directed to deliver an attested copy of this Order to all counsel of record and *pro se* parties.

5cc's:

Entered:

1/16/15

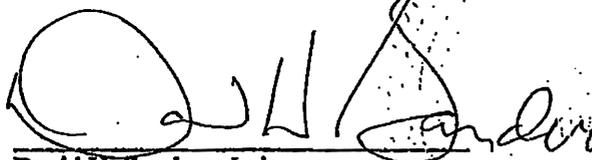
R. Schiavoni
J. Campbell
M. Cassell
C. Bailey

Foster-Hertz c/o S. Foster

Prepared by:

1/20/15

Robert J. Schiavoni (WV #4365)
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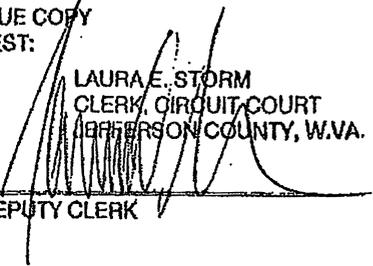


David H. Sanders, Judge
Jefferson County Circuit Court

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ATTEST:

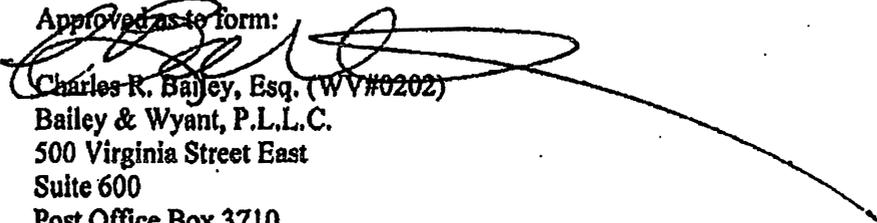
LAURAE STORM
CLERK, CIRCUIT COURT
JEFFERSON COUNTY, W.VA.

BY
DEPUTY CLERK



Counsel for the Plaintiff

Approved as to form:


Charles R. Bailey, Esq. (WV#0202)

Bailey & Wyant, P.L.L.C.

500 Virginia Street East

Suite 600

Post Office Box 3710

Charleston, WV 25337-3710

P. Schuon

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

GLEN POE,

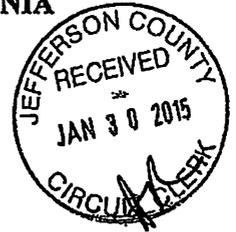
Plaintiff,

v.

Civil Action No. 08-C-223

**JAMES P. CAMPBELL, ESQ.,
STEVEN FOSTER, et al.,**

Defendants.



ORDER AWARDING PLAINTIFF'S FEES AND COSTS

Plaintiff Glen Poe, by and through his counsel, petitioned this Court for an award of fees and costs pursuant to the contractual terms of the Promissory Note and consistent with the Orders of this Court. The Court having reviewed the amended petition for fees and costs, and the memoranda and argument of counsel, does hereby ORDER that said petition as amended by Plaintiff be granted. In granting the award of fees and expenses the Court incorporates its reasons as stated on the record of the hearing of this matter on January 16, 2015. The Court further notes that the rates of \$300.00/hour for work performed up to 2009 and \$350.00/hour for work thereafter were acknowledged by Defendants as reasonable. The Court accepted the reduction of fees and costs as presented by Plaintiff relating to Defendant Richardson and other discrete theories of recovery for lawyer negligence and violation of a lawyer's fiduciary duty up to and through the time of the dismissal of those claims and finds that, as to the remaining theories asserted in pursuit of a recovery for the money owed by Defendants, counsel for Plaintiff advanced a common core of facts cutting across various theories of the case leading to summary judgment on behalf of the Plaintiff. The fees and costs, therefore,



materially advanced the litigation throughout the many years for which this case has been on the docket and, after a detailed review of the hours expended, descriptions of work performed, and itemization of costs incurred are found to be reasonable and necessarily incurred.

Wherefore it is hereby ORDERED that Plaintiff be awarded \$179,614.50 in fees and \$12,117.94 in costs said award subject to post judgment interest. The Court further ORDERS that this matter remain on the docket given that Defendants have not paid the underlying judgment on the Promissory Note.

The objections of counsel and the parties are noted on the record.

The Clerk is directed to deliver an attested copy of this Order to all counsel of record.

Entered: 1/30/15



David H. Sanders, Judge
Jefferson County Circuit Court

Prepared by:


Robert J. Schiavoni (WV #4365)
David M. Hammer (WV #5047)
Hammer, Ferretti & Schiavoni
408 West King St.,
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5 cc's:

A. Schiavoni
C. Bailey
J. Campbell
M. Cassell
Foster-Hardy c/o S. Foster

Approved as to form only:

2-2-15 BC


Charles R. Bailey, Esq. (WV #0202)
Bailey & Wyant, P.L.L.C.
500 Virginia Street East
Suite 600
Post Office Box 3710
Charleston, WV 25337-3710

with permission to
sign authorized on 1/26/2015.

A TRUE COPY
ATTEST:

LAURA E. STORM
CLERK, CIRCUIT COURT
JEFFERSON COUNTY, W.VA.

BY 
DEPUTY CLERK

SHORT CASE NAME: Poe v. Campbell, et al

6. Date of Entry of Judgment: November 9, 2011

Date of Entry of Judgment on Post-Trial Motions, if any:

(1) January 5, 2012 (2) _____ (3) _____

7. CRIMINAL CASES: Ball Status: _____

Defendant's Sentence: _____

8. ABUSE AND NEGLECT CASES: On an extra sheet, provide a list of the names, ages, and parent's names of all minor children, a brief description of the current status of the parental rights of each parent as of the filing of the notice of appeal, a description of the proposed permanent placement of each child, and the name of each guardian *ad litem* appointed in the case.

9. Is the order or judgment appealed a final decision on the merits as to all issues and all parties? YES / NO
If your answer is no, was the order or judgment entered pursuant to R. Civ. P. 54(b)? YES / NO
If your answer is no, you must attach a brief explanation as to why the order or judgment being appealed is proper for the Court to consider.

10. Has this case previously been appealed? YES / NO
If yes, provide the case name, docket number and disposition of each prior appeal.

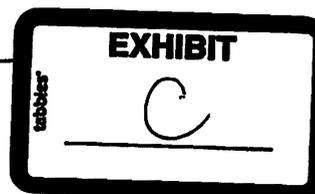
11. Are there any related cases currently pending in the Supreme Court or in a lower tribunal? YES / NO
If yes, cite the case, provide the status, and provide a description of how it is related.

12. Is any part of the case confidential? YES / NO
If yes, identify which part and provide specific authority for confidentiality.

13. If an appealing party is a corporation, an extra sheet must list the names of parent corporations and the name of any public company that owns ten percent or more of the corporation's stock. If this section is not applicable to the appealing party, please so indicate below.

The corporation who is a party to this appeal does not have a parent corporation and no publicly held company owns ten percent or more of the corporation's stock.

14. Do you know of any reason why one or more of the Supreme Court Justices should be disqualified from this case?
 YES / NO If yes, set forth the basis on an extra sheet. Providing the information required in this section does not relieve a party from the obligation to file a motion for disqualification in accordance with Rule 33.



SHORT CASE NAME: Poe v. Campbell, et al

15. Is a transcript of proceedings necessary for the Court to fairly consider the assignments of error in the case?

YES / NO If yes, you must complete the appellate transcript request on page 4 of this form.

16. NATURE OF CASE, RELIEF SOUGHT, and OUTCOME BELOW (Limit to two double-spaced pages; please attach.)

17. ASSIGNMENTS OF ERROR

Express the assignments in the terms and circumstances of the case, but without unnecessary detail. Separately number each assignment of error and for each assignment:

(1) state the issue;

(2) provide a succinct statement as to why the Court should review the issue.

Limit to eight pages double-spaced; please attach.

18. ATTACHMENTS

Attach to this notice of appeal the following documents in order:

(1) extra sheets containing supplemental information in response to sections 1 - 14 of this form;

(2) a double-spaced statement of the nature of the case, not to exceed two pages, as material required by section 16 of this form;

(3) a double-spaced statement of the assignments of error not to exceed eight pages as required by section 17 of this form;

(4) a copy of the lower court's decision or order from which you are appealing;

(5) a copy of any order deciding a timely post-trial motion; and

(6) a copy of any order extending the time period for appeal.

CERTIFICATIONS

STATE OF WEST VIRGINIA

I hereby certify that I have performed a review of the case that is reasonable under the circumstances and I have a good faith belief that an appeal is warranted.

January 23, 2012

Date



Counsel of record or unrepresented party

I hereby certify that on or before the date below, copies of this notice of appeal and attachments were served on all parties to the case, and copies were provided to the clerk of the circuit court from which the appeal is taken and to each court reporter from whom a transcript is requested.

January 23, 2012

Date



Counsel of record or unrepresented party

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
STATE OF WEST VIRGINIA**

DOCKET NO. 15-0033

**STATE OF WEST VIRGINIA EX REL.
JAMES CAMPBELL, and STEVEN FOSTER**

Defendants below, Petitioners,

vs.) 15-0033

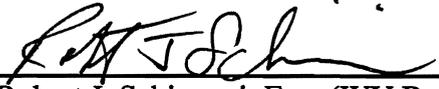
**HONORABLE DAVID H. SANDERS,
Judge of the Circuit Court of Jefferson County,
and GLEN POE**

Plaintiff Below, Respondents.

CERTIFICATE OF SERVICE

I hereby certify that service of a true copy of the foregoing has been made as follows:

Type of Service: United States Mail Certified, postage pre-paid
Date of Service: February 10, 2015
Persons served and address: Charles Bailey
Bailey & Wyant, PLLC
500 Virginia Street East, Suite 600
PO Box 3710
Charleston, WV 25337
Item(s) Served: Respondent's Summary Response to Petition for
Writ of Prohibition


Robert J. Schiavoni, Esq. (WV Bar #4365)
HAMMER, FERRETTI & SCHIAVONI
408 West King Street
Martinsburg, WV 25401
(304) 264-8505 (office)
Counsel of Record for Petitioner