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A LAW FIRM'S FINANCIAL RELATIONSHIP WITH A DOCTOR IS DISCOVERABLE ON THE ISSUE OF BIAS.

Brown v. Mittelman, 39 Fla. Weekly D1806 (Fla. 4th DCA August 27, 2014):

A doctor petitioned the court for certiorari after the trial judge denied his objections to a subpoena duces tecum. The doctor had treated the plaintiff under a LOP. The original lawyer had referred the plaintiff to the doctor, and then referred the case to Lytal Reiter.

The defendant subpoenaed the person with the most billing knowledge at Dr. Brown's office to produce documents regarding patients previously represented by both law firms, LOP cases, and referrals from the plaintiff's attorneys. When the trial court overruled the doctor's objections, he appealed.

Noting that the financial relationship between the treating doctor and the plaintiff's attorneys in present and past cases creates potential for bias and discovery, the court ruled to deny the petition. According to the court, a physician's continued financial interest in treating other patients referred by a particular law firm could conceivably be a source of bias not immediately apparent to a jury.

Additionally, the Fourth District wrote whether the law firm directly referred the plaintiff to the treating physician does not determine whether discovery of the doctor/law firm relationship is allowed. The court said it has previously recognized a direct referral by the lawyer to the doctor as a "circumstance" that creates a potential for bias. Still, the court said the fact that Lytal Reiter did not directly refer the plaintiff to Dr. Brown made no difference.

In cases where there is evidence of a referral relationship, more extensive financial discovery may be appropriate from the law firm and the doctor. However, treating physician witnesses should be protected from overly intrusive financial discovery under Rule 1.280(b). Trial courts do have broad discretion to balance those interests.

Finding that the discovery was limited to a reasonable time frame and was not overly intrusive, the court said there was no departure from the essential requirements of law and overruling the doctor's objections. The court wanted to "again emphasize" that the rule limiting financial discovery from retained experts cannot be used to hide relevant information regarding a treating physician's possible bias or the reasonableness of the charges at issue in the litigation.

TRIAL COURT ERRED IN ACCEPTING A RENEWED OBJECTION TO THE REFUSAL TO CONDUCT A GENUINE ANALYSIS OF A POTENTIAL JUROR ON THE MORNING AFTER THE JURY WAS ACCEPTED

Baccari v. State, 39 Fla. L. Weekly D1803 (Fla. 4th DCA August 27, 2014):

In this criminal case, the defendant espoused his race neutral reasons for exercising a peremptory challenge against one of the jurors. The court found the reasons were not genuine race, ethnic or gender neutral reasons, and denied the challenge. The defendant failed to renew his objection after the court denied the challenge, and the parties both accepted the jury.

The next day, however, trial counsel renewed his objection. The trial court found the objection "close enough" to be timely, but still sustained the objection again.

In reviewing the case, the Fourth District ruled the objection was not timely, and therefore not preserved. In order to preserve the issue of whether a trial court's ruling on a peremptory challenge constitutes reversal of error, the appellant must accept the juror, or panel, **subject to his/her prior** objection and/or renew the objection before the jury is sworn.

To preserve the challenge, **there must be more than one objection**. Once there is affirmative acceptance of the jury, there is no going back. The court found if the trial judge could accept the appellant's belated acceptance, subject to his previous objections, that would insert great uncertainty into the jury selection process.

Kind regards

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