

FIRST COURT OF APPEALS OF TEXAS AT HOUSTON

Nii-Otabil Nelson v. State

Nelson · No. 01-14-00924-CR · Decided July 29, 2015

SUMMARY

This document is a compiled packet centered on Nii-Otabil Nelson's motion to extend the deadline for filing a motion for rehearing in a Texas criminal appeal. It includes the motion, a Texas Public Information Act request for case materials, attorney-client communications, and a legal services engagement agreement. The motion identifies cause number 01-14-00924-CR in the First Court of Appeals and requests a 45-day extension.

CASE DETAILS

COURT	First Court of Appeals of Texas at Houston
JURISDICTION	Texas
DECIDED	July 29, 2015
DOCKET	01-14-00924-CR
DISPOSITION	other
PROCEDURAL POSTURE	Appellant moved for a forty-five-day extension of time to file a motion for rehearing in a criminal appeal.
PRECEDENTIAL VALUE	none apparent; document is a motion rather than a judicial opinion
PARTIES	Nii-Otabil Nelson v. State of Texas

TOPICS

- appellate procedure
- criminal procedure

PRACTICE AREAS

- criminal appellate procedure

QUESTIONS PRESENTED

- Whether the appellate court should grant Nelson a forty-five-day extension of time to file a motion for rehearing under Texas Rule of Appellate Procedure 38.6(d).

FACTUAL BACKGROUND

Nelson was placed on deferred adjudication for assault of a family member. His newly retained appellate counsel stated that counsel needed additional time to obtain photographic evidence, witness statements, and police reports requested from the Harris County District Attorney's Office. The motion represented that the motion for rehearing was due July 15, 2015, and that this was Nelson's first request for an extension.

PROCEDURAL HISTORY

The matter arose from an appeal from the 182nd Judicial District Court of Harris County, Texas, in cause number 1372073A. Nelson stated that he had been placed on deferred adjudication for assault of a family member, retained counsel on July 3, 2015, and sought additional time to obtain evidence from the Harris County District Attorney's Office and prepare a motion for rehearing.

DISPOSITION

other

OPINION

PER CURIAM.

ACCCPTCD ^Sfw**9 • 01 14 000e-4 crr~ FIRST COURT OF APPEALS --SK** v^ovJi HOUSTON, TEXAS -7/0/2010 0.12.20 AWI— Ifft CHRISTOPHER PRINE ^ CLERK IP^ *.*)**• D^x\$~c?otilf&-c<£ NO.: 01 14 00924 CR NII-OTABIL NELSON IN THE VS. FIRST COURT STATE OF TEXAS, OF APPEALS MOTION TO EXTEND TIME TO FILE APPELLANT'S MOTION FOR REHEARING TO THE HONORABLE JUSTICES OF SAID COURT: Now comes NII-OTABIL NELSON, Appellant in the above styled and numbered cause and moves this Court to grant an extension of time to file appellant's brief, pursuant to Rule 38.6(d) of the Texas Rules of Appellate Procedure, and for good cause shows the following: 1.

This case is on appeal from the 182nd Judicial District Court of Harris County, Texas. 2. The cases below was styled the STATE ORTEXAS vs. NII-OTABIL NELSON, and numbered 1372073A. 3. Appellant was placed on deferred adjudication for Assault/Family Member. 4.

The Motion for Rehearing is due on July 15, 2015. 5. Appellant retained present counsel on July 3, 2015. 6. An extension is necessary for Appellant's counsel to obtain evidence from the State. Counsel has submitted an open records request to the Harris County District Attorney's Office to obtain such evidence, however, it is not likely that such evidence will be made available until after the July 15th deadline.

7. This is Appellant's first request for an extension for a Motion for Rehearing. 8, Appellant requests a forty-five (45) day extension to prepare a thorough Motion for Rehearing. WHEREFORE, PREMISES CONSIDERED, Appellant prays that this Court grant this Motion for

to Extend Time to File Appellant's Motion for Rehearing, and for such other and further relief as the Court may deem appropriate.

Respectfully submitted, /s/Andre D. Evans Andre D. Evans TBN: 24082970 3003 South Loop West Ste. 108 Houston, Texas 77054 Telephone (832) 941-1282 Facsimile (646) 3044054 Attorney for Appellant AnoreEvah's £ ASSOCIATES Dear Prospective Client: I thank you for retaining this firm to represent you. Engagement: This Agreement dated *7..1 ^l/£>, will confirm our mutual understanding with respect to the terms of this firm's representation of you and is made between the client(s) whose name(s) appear below (collectively called "Client") and The Law Offices of Andre Evans & Associates, PLLC (called "Attorney").

This Agreement is prepared in accordance with Texas Business and Organizations Code. You have retained my firm for the purpose of rendering transactional legal services. My services will not include litigation of any kind, whether in court, or in administrative hearings or before government agencies or arbitration tribunals. At your request, and if you and I agree on the financial arrangements, my services may also include such additional matters as fall within the fields of emphasis of my practice.

I agree to provide conscientious, competent and diligent services and at all times will seek to achieve the purpose for which I have been retained. However, because of the uncertainties in litigation, I cannot and do not warrant, predict or guarantee results or that a particular agreement or terms of an agreement, or financial arrangements will be obtained which are satisfying to you and nothing in my statements to you will be construed as a promise or guarantee about the outcome of your matters; my comments are expressions of opinion only.

Authorization: You hereby authorize, empower, and appoint me as your attorney-in-fact for yourself(ves) and your company to collect and receive all monies due you and/or your company relating to this Agreement, to negotiate and endorse your or your company's name on and deposit into my client trust account all checks and other monies payable, to deduct my compensation as set forth herein, if applicable, together with any costs advanced by me, and to send the remainder to you, Fees: It is impossible to determine in advance the amount of fees or costs needed to complete this matter.

Our fees are not set by law, but are subject to negotiation between you and me. Accordingly, you have agreed to pay me the sum of Two Thousand Five Hundred Dollars (\$2,500.00) as a retainer in connection with the above-described matters; upon receipt of such sum, we will commence representation of you. Our fees are computed on an hourly basis in five minute increments at the rate of Two Hundred Fifty Dollars (\$250.00) per hour or at an agreed upon flat or variable rate; our rates are subject to change upon written notice.

You will not be billed for photocopying, long distance telephone call charges within the United States, word processing, telecopying, mileage (within a fifty mile radius of Houston, TX), faxing, or secretarial charges. All clients are required to pay all outstanding bills within ten (10) days of their presentment. Time is recorded and billed for those services for which billing is normally expected, such as drafting letters, agreements, conducting negotiations, attending meetings, etc., and also for phone calls and travel time to and from out-of-office meetings.

Should any travel be required beyond a fifty-mile radius of Houston, you will advance all travel costs, subject to your sole approval. You agree to fly me Business Class, if available, or First class, if Business Class is unavailable, and all hotel and food arrangements will be paid by you, should such travel be necessary and approved in advance by you before the commencement of such travel.

You are entitled to an "open door policy" whereupon any phone call made to this firm that lasts for less than ten minutes (unless such calls are sequential) will not be billed to you. This is offered to you in an effort to create a bridge between the lawyer and client without the constant attention to financial concerns. Retainer: We have requested that you pay the firm an initial retainer as described above in connection with the services we will perform on your behalf.

That sum will be deposited in our trust account to be applied to fees and costs as they are incurred. You may also be required to replenish or add to the amount in the trust account as deemed necessary by this firm to cover ongoing legal services. At the conclusion of our representation of you (including your decision to terminate this agreement at any time), any sums remaining in the firm's trust account for your behalf after a final accounting and payment of all sums owed will be returned forthwith.

Termination of Representation: You are free to terminate your relationship with the firm at any time you desire upon immediate written notice, and the firm reserves the right to withdraw as your counsel at any time upon written notice. Should the firm decide to terminate the relationship, we agree to provide any new attorney with complete copies of files and adequate transitional assistance.

Conflict of Interest: As you know, attorneys are governed by rules of ethical conduct, which under certain circumstances forbid their representation of clients with conflicting interests. We cannot, and will not, without appropriate written consents, represent a new client if we determine there is a conflict of interest with any of our other existing client matters.

In order to avoid conflicts of interest, we ask that when you return the signed copy of this letter, you advise us of the names of any individuals or entities which may be involved in your representation. In addition, please inform us at once if you learn in the future of other persons or entities that may be involved so that we may make a conflict of interest search with respect to them.

I have advised you that, whenever an attorney represents more than one individual, there exists a potential for a conflict of interest to arise in connection with such representation. You hereby acknowledge that you have been made aware of such potential conflict of interest by me, that I have made you aware of the right of each individual to retain his/her own attorney, and that you have chosen to waive such right and desire this office to represent each of you. k Arbitration: We appreciate the opportunity to serve as your attorneys and look forward to a harmonious relationship unmarred by disputes between us.

In the event you become dissatisfied for any reason with the fees charged or the services we have performed, we encourage you to bring that to our attention immediately. It is our belief that most problems can be resolved by good faith discussion between the parties. Nevertheless, it is always possible that some dispute may arise which cannot be resolved by discussion between us.

We believe that such disputes can be resolved more quickly and with less expense to all concerned by binding arbitration than by court action. Arbitration is a process by which both parties to a dispute agree to submit the matter to a judge or arbitrator who has expertise in the area and to abide by the arbitrator's decision.

In arbitration, there is no right to a trial by jury and the arbitrator's legal and factual determinations are not subject to appellate review. Rules of evidence and procedure are often less formal and rigid than in a trial before a court or jury. Arbitration usually results in a decision much more quickly than proceedings in court, and the attorneys' fees and costs incurred by both sides are usually substantially less.

Your agreeing to arbitrate disputes is not a condition of our agreeing to represent you, and if you do not wish to arbitrate should there be a problem, you should advise us before signing this letter so that we can delete this section of the letter.

Because by agreeing to arbitrate you will be giving up the right to a jury trial and other rights, we encourage you to discuss the advisability of arbitration with other counsel or any of your other advisors and to ask any questions of us or them that you may have. BY SIGNING THIS LETTER AGREEMENT, YOU AGREE THAT IN THE EVENT OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, OUR RELATIONSHIP, OR THE SERVICES PERFORMED (INCLUDING BUT NOT LIMITED TO DISPUTES REGARDING ATTORNEYS' FEES OR COSTS AND THOSE ALLEGING NEGLIGENCE, BREACH OF FIDUCIARY DUTY, FRAUD, OR ANY CLAIM BASED UPON A STATUTE), SUCH DISPUTE SHALL BE RESOLVED BY FINAL, BINDING ARBITRATION IN HARRIS COUNTY, TEXAS, BEFORE A RETIRED JUDGE OR JUSTICE.

IF WE ARE UNABLE TO AGREE ON A RETIRED JUDGE OR JUSTICE, EACH PARTY WILL NAME ONE RETIRED JUDGE OR JUSTICE AND THE TWO NAMED PERSONS

WILL SELECT A RETIRED JUDGE OR JUSTICE WHO WILL ACT AS THE SOLE ARBITRATOR. The parties shall be entitled to take discovery in accordance with the provisions of the Texas Code of Civil Procedure, but either party may request that the arbitrator limit the amount or scope of such discovery, and in determining whether to do so, the arbitrator shall balance the need for the discovery against the parties' mutual desire to resolve disputes expeditiously and inexpensively.

In the event legal action is needed to collect fees and costs incurred but not paid, the prevailing party in such an action shall be entitled to receive the legal fees and costs incurred in that proceeding in addition to any other relief ordered by the arbitrator or court. Confirmation of Agreement: By countersigning below, you acknowledge that you have carefully read this Agreement, that you understand that I cannot advise you concerning it, and that you have the right to consult outside counsel concerning this Agreement; accordingly, you have either consulted with such outside counsel or, without having consulted such outside counsel, are satisfied that you fully understand and agree to this Agreement.

If the foregoing correctly reflects our mutual understanding, please so indicate by signing the enclosed copy of this letter and returning it to us in the enclosed envelope. Please be sure to retain a copy of this Agreement for your files. I am very pleased to represent you and thank you again for your confidence in us. I am looking forward to working with you.

Very truly yours, THE LAW OFFICES OF ANDRE EVANS & ASSOCIATES, P.L.L.C. Andre D. Evans / 7-%-!,£ Client (Signature/Date) --Print Page 1 of 1 Subject: Application Request From: Melissa.Fowler@heahealthcare.com (Melissa.Fowler@hcahealthcare,c6rti) To: niinelsonmd@yahoo.com; • Date: Wednesday, December 31, 2014 9:07 AM Hello Dr. Nelson, Attached is the application you've requested, this will be the same packet for your assistant surgeon.

Thank you, Melissa Fowler Conroe Regional Medical Center Medical Staff Assistant Ph.936-539-7415 Email Melissa.cortinas@hcahealthcare.com <https://us-mR4.mail.yahoo.com/neo/launch?.rand=06r70d7k-fi5Sp.s nfti/oni/>) EXHIBIT A Ari Dre Evans & ASSOCIATES ATTORNEYS AT LAW A PROFESSIONAL LIMITED LIABILITY COMPANY 3003 SOUTH LOOP WEST, HOUSTON, TEXAS 77054 ANDRE D. EVANS Telephone: 832304.1059 E-mail: Andre@attorneyandreevans.com Facsimile: 1-646-304-1054 By Facsimile: (713) 368-9275 July 7, 2015 Harris County District Attorney's Office ATTN: General Litigation Division 1201 Franklin Street Houston, TX 77002 Re: Public Information Request for STATE OF TEXAS vs. NII-OTABIL NELSON, No.: 1372073 To Officer for Public Information: I am writing pursuant to the Texas Public Information Act, Texas Government Code Ch. 552, to request that you send me a copy of the following information maintained by the Harris County District Attorney's Office: 1.

All photographic evidence in your possession regarding Cause No. 1372073A; 2. Any witness statements, including any police reports; I would appreciate the requested materials at your earliest convenience, and anticipate your response on or before July, 17 2015. Materials may be produced on a rolling basis as they become available. Materials may be sent by e-mail to andre@attorneyandereevans.com, by fax to (646) 304-1054, or by mail to 3003 South Loop West Ste 108, Houston, Texas 77054.

I am willing to pay the statutory fee for copying these materials. If the fee exceeds \$40.00, please send me a written estimate of costs in advance via fax or email. Please feel free to contact me if you have any questions. I can be reached at andre@attorneyandereevans.com or (281) 883-8385. Thank you for your assistance in this matter. Sincerely, Andre Evans
Mr. Nelson,
Below I have attached a copy of your time stamped Motion to Extend Time to File Motion for Rehearing and the Open Records Request that I sent to the District Attorney's Office.

Today is the To niinelsonmd@yahoo.com Jul 15 Mr. Nelson, Below I have attached a copy of your time stamped Motion to Extend Time to File Motion for Rehearing and the Open Records Request that I sent to the District Attorney's Office. Today is the deadline for filing the motion for rehearing, but I spoke with the clerk with the First Court of Appeals and she confirmed that my motion was timely filed and that we would not be penalized for not filing a motion by the 15th.

Further, I have begun to draft your motion while I am awaiting the records requested, however it seems that I will have to incorporate all arguments in favor of granting the motion. Which will take, considerably, much more time to draft than simply arguing that the writ was denied because you did not present a brief. Given such, I will need an additional \$2,500, not including the outstanding \$500 which is currently due.

I sent you a request for the outstanding balance, please submit the payment by Friday. I have done a considerable amount of research and it appears that, given the present circumstances, you have multiple viable claims to have your motion for rehearing granted.

However, most of which depend on the evidence received from the District Attorney's Office. Give me a call tomorrow and let me know how you would like to proceed. Thank you, Andre D. Evans, Esq. Andre Evans & Associates, PLLC. 3003 South Loop West, Suite 108 Houston, Texas 77054 Office: 832.941.1282 Direct: 281.883.8385 Fax: 646.304.1054 E: andre@attorneyandereevans.com
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