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## 1999 Survey of Rhode Island Law: Cases: Attorneys' Fees

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**Attorneys' Fees.** *Schroff, Inc. v. Taylor-Peterson*, 732 A.2d 719 (R.I. 1999). Paralegal fees should not be categorically eliminated from the calculus of attorneys' fees since reasonable out-of-pocket expenditures, beyond normal overhead, are routinely included in a counsel fee award.

#### FACTS AND TRAVEL

In *Schroff, Inc. v. Taylor-Peterson*,<sup>1</sup> the parties initially appeared before the Workers' Compensation Court on an employer's petition to review which was commenced by Schroff, Inc. (Schroff).<sup>2</sup> Taylor-Peterson, an employee of Schroff, began receiving compensation benefits for a partial incapacity in October 1994.<sup>3</sup> In its petition, Schroff argued that Taylor-Peterson's incapacity to work had ended, and that "she had reached a point of maximum medical improvement."<sup>4</sup> Although the trial judge found Taylor-Peterson had reached maximum medical improvement, he denied Schroff's petition on the grounds that Schroff failed to prove that Taylor-Peterson's incapacity to work had ended.<sup>5</sup>

The trial judge's order included an award of \$3,000.00 for counsel fees incurred by Taylor-Peterson in defending Schroff's petition.<sup>6</sup> However, the trial judge did not include in the award the time entries in the fee affidavit for services rendered by paralegals.<sup>7</sup> Taylor-Peterson appealed the counsel fee award to the Appellate Division, claiming that the award did not adequately represent the services provided because the trial judge refused to consider the paralegal fees.<sup>8</sup> The Appellate Division concluded that the trial judge's award was sufficient to compensate counsel and dismissed the appeal.<sup>9</sup> Taylor-Peterson filed a petition for writ of certiorari to the Rhode Island Supreme Court.<sup>10</sup>

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1. 732 A.2d 719 (R.I. 1999).
  2. *See id.* at 720.
  3. *See id.*
  4. *Id.*
  5. *See id.*
  6. *See id.*
  7. *See id.*
  8. *See id.*
  9. *See id.*
  10. *See id.*

## ANALYSIS AND HOLDING

In deciding whether or not paralegal fees should be included in the award of attorney's fees, the court relied on the rationale set forth by the United States Supreme Court in *Missouri v. Jenkins*.<sup>11</sup> In that case, the United States Supreme Court determined that a reasonable attorney's fee included the attorney's work product.<sup>12</sup> The fee "must include 'the work not only of attorneys,' but also of 'others whose labor contributes to the work product for which an attorney bills her client.'"<sup>13</sup>

Schroff's argument that awards of paralegal fees are neither supported by Rhode Island case law, nor governed by federal law was summarily rejected by the Rhode Island Supreme Court. Instead, the court noted that it was merely adopting the federal rationale in construing what constitutes a "reasonable attorney's fee" under the workers' compensation statutory scheme.<sup>14</sup> The court noted that the federal rationale had persuaded the same workers' compensation court judge that denied paralegal fees to Taylor-Peterson to award them to another claimant in a later proceeding.<sup>15</sup> Furthermore, the court concluded that paralegal fees could be included within an award of attorney's fees notwithstanding Rule 5.4 of the Supreme Court Rules of Professional Conduct.<sup>16</sup>

However, the court recognized that the amount awarded in counsel fees is within the sound discretion of the trial judge.<sup>17</sup> Therefore, the trial justice may use his discretion in determining whether the proffered fees are reasonable and whether or not the paralegal services were a necessary element in the proceeding.<sup>18</sup>

## CONCLUSION

In *Schroff, Inc. v. Taylor-Peterson*, the Rhode Island Supreme Court held that paralegal fees may be included in an award of attorney's fees. In the future, a trial justice should determine if the

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11. 491 U.S. 274 (1989).

12. *See id.* at 285.

13. *Schroff*, 732 A.2d at 721 (quoting *Missouri*, 491 U.S. at 285).

14. *Id.*

15. *See id.* at 721 n.4.

16. *See id.* at 721. Rhode Island Supreme Court Rule of Professional Conduct 5.4 states that a lawyer may not share fees with a nonlawyer, except that nonlawyer employees may be included in a compensation plan. R.I. Sup. Ct. R. 5.4.

17. *See id.*

18. *See id.*

fees listed are for paralegal services necessary to the proceeding, and consider the reasonableness of the fees.

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