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Newsroom: Kuckes on Legal Fees Ruling 7/20/2016

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Roger Williams University School of Law

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Newsroom

July 20, 2016

Kuckes on Legal Fees Ruling

Professor Niki Kuckes discusses Rhode Island ruling that affidavits or expert testimony supporting counsel fee motion must come from lawyer not involved in case.

From Rhode Island Lawyers Weekly: [“Bar: ruling on fee motions to add expense, complexity”](#) by Sheri Qualters



July 20, 2016: A recent state Supreme Court decision finding that affidavits or testimony supporting counsel fee motions should come from a Rhode Island bar member who is not part of the case brings clarity and consistency to the process but also makes it more costly and complicated, practitioners say.

The Supreme Court vacated Superior Court Judge Bennett R. Gallo's decision to award plaintiff Tri-Town Construction Co. \$43,227.25 in attorneys' fees in a case involving a loan for a real estate development deal. In remanding the plaintiff's case against developer Commerce Park Associates 12 LL and manager Nicholas E. Cambio, the court directed Gallo to consider the testimony or affidavit of an independent lawyer about the reasonableness and necessity of Tri-Town's fees.



[...] The opinion, which cites Florida and Vermont case law, places Rhode Island on the restrictive end of the spectrum in terms of how much leeway judges have to evaluate fee applications, **said Niki Kuckes, a professor at Roger Williams University School of Law who has studied counsel fees.**

Litigants would not need expert testimony in a comparable case in Rhode Island federal court, according to 1st U.S. Circuit Court of Appeals standards, **she said.**

“Rhode Island has taken the view that that’s not proper for the judge to bring his or her own expertise to bear,” **Kuckes said.** “Other jurisdictions say it is proper.”

[...] The requirement for an expert opinion about a fee application increases the likelihood that an opposing party will hire its own expert to weigh in, which would add an additional layer of complexity to the process, **Kuckes said.**

“[The rule] is not appropriate to every occasion in which fees are sought. It can be appropriate for a very large, complex case that spans a number of years, but not necessarily for a small, routine contract dispute,” **she said.**