

**IN THE COURT OF APPEALS OF IOWA**

No. 9-098 / 08-0713  
Filed March 11, 2009

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**DANIEL RIVERA GONZALES,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Howard County, Margaret L. Lingreen, Judge.

Criminal defense attorney appeals the district court's denial of his attorney fee claim as untimely filed. **AFFIRMED.**

Kevin E. Schoeberl of Story & Schoeberl Law Firm, Cresco, for appellant.

Mark C. Smith, State Appellate Defender, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

**EISENHAUER, J.**

On August 9, 2006, defendant Gonzales filled out a financial affidavit and listed 14556 as the court file number. This number references a disorderly conduct charge. While the body of the affidavit lists two pending charges (possession of marijuana/disorderly conduct), the possession charge's court file number, 14555, is not on the application. On the bottom of the defendant's affidavit the court approved the application and appointed Kevin Schoeberl as attorney. One year later, on August 20, 2007, the defendant pled guilty to disorderly conduct and the possession charge was dismissed.

On September 7, 2007, attorney Schoeberl filed a claim for fees with the state public defender's office. Schoeberl's filing listed court number SRCR14555 and attached the appointment order listing only court number 14556. On October 10, 2007, the public defender's office disallowed fees because Schoeberl's claim "contains a conflict in the case number. Please verify that the correct number is on the claim form and that it matches the appointment order." Schoeberl was directed to resubmit his information.

Approximately five months later, on January 30, 2008, the court entered an order stating it intended to appoint Schoeberl for both 14555/14556 and Schoeberl resubmitted his fee claim. On January 31, 2008, the state public defender's office again denied the claim stating: "You have verified the court

numbers in this case. However you failed to respond within 45 days of the date of the notice of action.”<sup>1</sup>

Schoeberl appealed and, in March 2008, the district court ruled: “defense counsel failed to resubmit necessary fee claim information in a timely manner. The Court further finds it is without authority to allow any extension of time.”

We review Schoeberl’s appeal of the district court’s ruling for correction of errors at law. Iowa R. App. P. 6.4; see Iowa Code § 13B.4(4)(d)(7) (2007).

Schoeberl first argues his fee application was timely filed and the district court erred in not recognizing the date of “final action” was the order of January 30, 2008. He admits his fee claim is governed by Iowa Code section 815.10A(2), which provides:

Claims for compensation and reimbursement submitted by an attorney . . . are not considered timely filed unless the claim is submitted to the state public defender within forty-five days of the sentencing, acquittal, or dismissal of a criminal case or the final ruling or dismissal of any other type of case.

By express language, the “final ruling” statutory language Schoeberl argues is applicable applies only to non-criminal cases. The statutory time clock started on August 20, 2007, when sentencing for one charge and dismissal of the other charge occurred. The statute contains no provision for a different time frame due to the entry of additional court orders.

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<sup>1</sup> Although the notice from the public defender’s office refers to forty-five days, its brief refers to Iowa Admin. Code r. 493-7.1 (2007), which states: “A timely claim returned to the claimant for additional information shall continue to be deemed timely only if resubmitted with the required information within 20 days.” On May 5, 2008, this rule was amended to allow forty-five days for resubmission of the required information. See *id.* Under either time frame, Schoeberl’s resubmission was untimely.

To the extent Schoeberl claims the court should have granted him an extension due to clerk/magistrate errors, he cites no authority for this proposition and, therefore, it is waived. See Iowa R. App. P. 6.14(1)(c). Accordingly, we affirm.

**AFFIRMED.**