

**FILE**

*Proffet v. Dinsdale Instruments, Inc*

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**M E M O R A N D U M**

**TO:** Applicant  
**FROM:** Anna Springs  
**DATE:** February 22, 2000  
**SUBJECT:** Proffet v. Dinsdale Instruments, Inc.

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We represent Dinsdale Instruments, Inc. (DII) and its president, Richard Dinsdale, defendants in a suit filed by Mary Proffet. Today we concluded the evidentiary phase of the trial. In a meeting with the judge to settle jury instructions before tomorrow afternoon's closing arguments, the judge tentatively rejected our jury instruction on the measure of damages to be applied in Ms. Proffet's claim for quantum meruit and said she was probably going to give the instruction proffered by Proffet's attorney. When I objected, the judge said she would reconsider but she wants us to brief the issue.

Please draft a brief that persuades the court to adopt our jury instruction. Follow the guidelines in the firm's memo regarding persuasive briefs and the specific instructions of the judge.

*Palmer, Springs & Deckenbach*  
*Attorneys at Law*

**MEMORANDUM**

September 8, 1995

**TO:** Attorneys  
**FROM:** Mario Deckenbach  
**RE:** Persuasive Briefs

All persuasive briefs shall conform to the following guidelines.

All briefs shall include a Statement of Facts. The aim of the Statement of Facts is to persuade the tribunal that the facts support our client's position. The facts must be stated accurately; however, emphasis should be placed on the material facts that best support our client's position. The statement of facts need not be exhaustive but it must contain key facts sufficient to inform the court of the essence of the dispute and the relief sought.

The office follows the practice of breaking the argument into its major components and writing carefully crafted subject headings that illustrate the arguments they cover. Avoid writing briefs that contain only a single broad argument heading. The argument heading should succinctly summarize the reasons the tribunal should take the position you are advocating. A heading should be a specific application of a rule of law to the facts of the case and not a bare legal or factual conclusion or a statement of an abstract principle. For example, improper: THERE HAS BEEN NO BREACH OF CONTRACT. Proper: THE REFUSAL OF THE PLAINTIFF TO FOLLOW HER EMPLOYER'S DIRECTION TO CONCEAL THE PRICE-FIXING CONSPIRACY IS NOT A BREACH OF PLAINTIFFS CONTRACT OF EMPLOYMENT.

The body of each argument should analyze applicable legal authority and persuasively argue how the facts and law support our client's position. Authority supportive of our client's position should be emphasized, but contrary authority also should generally be cited, addressed in the argument, and explained or distinguished. Do not reserve arguments for reply or supplemental briefs.

The lawyer need not prepare a table of contents, a table of cases, a summary of argument, or the index. These will be prepared, where required, after the draft is approved.

**PLAINTIFF'S JURY INSTRUCTION NO. 17**

Proffet v. Dinsdale Instruments, Inc.

If you find that the plaintiff, Mary Proffet, rendered valuable services that benefited the defendants, you may award compensation to plaintiff for the reasonable value of her services by awarding her either:

1. The reasonable value of what it would have cost defendants to obtain from another person the services that Ms. Proffet provided; or
2. The value by which defendants were benefited as a result of the services rendered by Ms. Proffet.

See Restatement, Restitution, Section 1 and Comment.

Proffered: Yes \_\_\_  
                  No \_\_\_  
          Given: \_\_\_  
          Rejected: \_\_\_

**DEFENDANTS' JURY INSTRUCTION NO. 21**

Proffet v. Dinsdale Instruments. Inc.

If you find that there already existed an agreement establishing the plaintiffs compensation for her services, you must award Mary Proffet nothing on her claim for recovery in quantum meruit.

If, however, you find that no such agreement existed and that Mary Proffet rendered valuable services that unjustly enriched the defendants, you must assess the value of those services in quantum meruit by applying the following measure: the reasonable value of what it would have cost the defendants to obtain from another person the services provided by Ms. Proffet.

See Ouigley v. Rayner (Franklin Supreme Court, 1987) and Rosener v. First Financial Mortgage. Inc. (Franklin Court of Appeal, 1996).

Proffered: Yes \_\_\_

No \_\_\_

Given: \_\_\_

Rejected: \_\_\_

Trial Transcript

Excerpt of Testimony of Plaintiff, Mary Proffet

\* \* \*

**Question** (By counsel for plaintiff): So you first went to work for Dinsdale Instruments in 1973, is that right?

**Answer:** Yes.

**Q:** What job did you hold at first?

**A:** I was Richard's bookkeeper.

**Q:** How long were you the bookkeeper?

**A:** Well, I'm not really sure how long I held the title. I mean I kept the books for lots of years, but I also took on other jobs as time went on. But then, as the company got bigger, it just got to be too much, so we hired other bookkeepers and accountants. I guess that was about 1988 or 1989.

**Q:** What caused you and Richard to have a falling out?

**A:** Well, it had been coming on a long time. I had worked my tail off at growing the business and I'd been asking him for a long time to give me stock in the company, and he wouldn't do that. About three years ago, I found out he was going to transfer about half of the company stock to his no-account son who's never done a day's work. I confronted Richard, and he told me it was none of my business, that it was his stock, and he could do with it as he pleased. That was the last straw. I quit.

**Q:** What part did you play in "growing the business," as you put it?

**A:** The company was rocking along at about half a million dollars, more or less, when I started working for Richard. Over time, I took over the financial, administrative, marketing, and sales end of things to give him more of a chance to concentrate on production, which was his strong suit.

**Q:** About what time period are you talking about?

**A:** Well, it was progressive. I mean, it took time for Richard to get enough confidence in me to turn those functions over to me. But I'd say that by about 1989 or 1990, I was fully in charge. He made me a vice president of the corporation. My main job was marketing,

**Q:** At some point, did Dinsdale Instruments begin manufacturing a new product line?

**A:** Yeah, it happened about 10 years ago.

**Q:** Tell the jury about that.

**Counsel for defendant:** Objection. Calls for a narrative answer.

**The Court:** Overruled. Go ahead and answer, Ms. Proffet.

**A:** OK. We had been manufacturing some high quality industrial-type flashlights. They were kind of bulky things. In my travels connected with my marketing job, I got to talking with customers and sales representatives and got the idea that really good quality smaller specialty flashlights you could carry in your car or pockets or purses or key rings—that sort of thing—would be a good idea. I mean, there were lots of products like that out there, but they were mostly cheap novelty items. I convinced Richard to give it a try. He manufactured them, and I marketed the heck out of them. They caught on, and we started to make money hand over fist.

**Q:** Ms. Proffet, what was the net asset value of Dinsdale Instruments in 1989 when you first became vice president of marketing?

**A:** It was right at \$500,000.

**Q:** You said these new flashlights caught on. What do you mean by that?

**A:** I mean they sold like hotcakes, doubling and tripling each year and they still are selling like mad. They make up about 90% of the company's sales today. On account of my idea to start producing those flashlights, the company is worth a lot more today.

**Q:** All right. As of the time you left Dinsdale, what was the net asset value of the company?

**A:** It was right at \$198 million. See what I mean? All that growth is because of my idea and hard work.

**Counsel for plaintiff:** That's all I have, your honor.

**The Court:** All right. Ms. Springs? Cross-examination?

**Counsel for defendant:** Yes, your honor. Thank you.

#### Cross-Examination of Plaintiff

**Question** (By counsel for defendant): Ms. Proffet, the company employed more than 500 people, didn't it?

**A:** Yes.

**Q:** The manufacturing operation was of the highest quality, wasn't it?

**A:** Yes, we made the best flashlights on the market.

**Q:** And Mr. Dinsdale developed these manufacturing techniques, didn't he?

**A:** Yes, we all worked hard. But if it hadn't been for my idea and hard work, we wouldn't be anywhere near as large as we are today. I ought to be entitled to a share of the growth. I don't see why Richard should get all the benefit.

**Q:** You understand, don't you, that Dinsdale Instruments is a corporation and that Richard Dinsdale owns the stock of the corporation?

**A:** Yeah. It's a corporation, but Richard doesn't own all the stock any more. He gave about half of it to his deadbeat son. That's the half that should've gone to me.

**Q:** Let's explore that. At no time in all years you knew him did Mr. Dinsdale ever promise or even suggest that you would get stock in the company. Isn't that correct?

**A:** Well, it depends on what you mean by "promise or suggest." He kept telling me he'd think about it.

**Q:** But it's true, isn't it, that he never agreed to give you or even let you buy any stock?

**A:** Yeah. I guess he's still thinking about it.

\* \* \*

**Q:** When you first became vice president of marketing in 1989, what was the amount of your salary?

**A:** I don't remember exactly. I think it was about \$25,000 a year, about that.

**Q:** You received pretty generous salary increases every year, didn't you?

**A:** Well, I don't know about generous, but, yeah, I got yearly raises. Other people get stock when they transform a company.

**Q:** What was the amount of your salary in the last year you worked for Dinsdale?

**A:** (Inaudible.)

**Q:** I'm sorry, Ms. Proffet. Could you say that just a bit louder so the jury can hear you?

**A:** \$350,000 a year.

**Q:** Thank you. And in addition, you got some sizeable bonuses, didn't you?

**A:** Not in relation to my contribution to the profits of the company. But, even so, I was entitled to them. After all, it was my work and my ideas that made the company all this money. I had the right to be compensated for it.

**Q:** Let me show you the document we've marked Defendants' Exhibit 27. I'll tell you that it's a schedule compiled from the company's payroll records showing the annual compensation you received from Dinsdale during the time you were vice president of marketing. Would you look at it and tell me if it's accurate.

**Counsel for plaintiff:** Your honor, I object on best evidence and relevancy grounds.

**Counsel for defendant:** Your honor, this is a summary of business records and counsel has been given access to the original records to verify the information on the exhibit. And it's highly



relevant. Ms. Proffet is asserting a claim for quantum meruit, and it's relevant to show she's been adequately paid for her services.

**The Court:** Objection overruled on both grounds. Proceed. Ms. Proffet, can you answer the question?

**A:** Yes, your honor. I mean I can't be absolutely sure it's accurate, but it appears to be.

**Question** (By counsel for defendant): I offer Defendants' 27.

**Counsel for plaintiff:** No objection.

**The Court:** Very well, Defendants' 27 is received.

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Excerpt of Testimony of Defendant, Richard Dinsdale

\* \* \*

**Question** (By counsel for defendant): Mr. Dinsdale, at the time Ms. Proffet began working for you, was Dinsdale Instruments a corporation?

**Answer:** No. It was a sole proprietorship. I invested everything I had and didn't get any help from anybody. I incorporated the company in 1987.

**Q:** Since that time, who have been the shareholders of Dinsdale Instruments?

**A:** Until about three years ago, when I transferred half of the shares to my son, I was the only shareholder.

**Q:** Did you ever promise to give or sell Ms. Proffet any shares in the company?

**A:** No. She kept asking me over the years to let her buy in, but I told her no every time. I told her I wanted to keep the stock in the family.

\* \* \*

**Question** (By counsel for defendant): You heard Ms. Proffet's testimony about the growth in the net asset value of the company—from about \$500,000 to almost \$198 million. Do you agree with those numbers?

**Answer:** Yeah, they're about right.

**Q:** Do you agree with her assessment that she was mainly responsible for the growth of the company?

**A:** Of course not. She did come up with the ideas for manufacturing and marketing the line of personal flashlights, and she kind of mobilized the resources to keep it going. So, yeah, she deserves a lot of credit. But, remember, she got paid pretty well for what she did. After all, it was her job in marketing to come up with ideas like the flashlight idea. That's what all people in jobs like hers are supposed to do. But I'm the one who financed it and figured out how to manufacture it. And, let's not forget the other 500 company employees.

**Q:** Let me show you Defendants' Exhibit 27. Do you recognize it?

**A:** That's a list of her salary and bonuses during the time she was vice president of the company.

**Q:** How were her salary and bonuses set each year?

**A:** Well, at the beginning of each fiscal year, she and I would sit down and review things. The company was going great guns and she was doing a great job. She'd always make a survey of comparable compensation packages for her counterparts in similar size companies and she'd tell me how much she thought she should be paid to keep up with the competition and I always agreed. So, I guess you'd say she set her own wages.

**Q:** Was particular consideration given to the bonuses during your discussions?

**A:** Yes. She'd always say she wanted me to sell her some stock or give her stock options. I told her I didn't want to do that. I recognized how much she had contributed to the company, and I told her the bonuses were intended to reward her for that.

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*In camera* Conference to Settle Jury Instructions

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**The Court:** All right, let's move on to the instructions on the measure of damages on Ms. Proffet's claim for quantum meruit. I'm inclined to give Plaintiffs Instruction number 17.

**Counsel for defendant:** Excuse me, your honor. I'd like you to take a look at Defendants' Instruction number 21. That accurately reflects the law. The one plaintiff is proposing doesn't.

**Counsel for plaintiff:** That's not right, your honor. It's pretty clear from the facts that Ms. Proffet was the moving force behind the company and that the jury is entitled to give her a quantum meruit award measured by the amount her efforts increased Dinsdale's net worth.

**Counsel for defendant:** No, not at all. The facts show....

**The Court:** Wait a minute. I'm not going to listen to factual arguments at this time. I'm tentatively saying I'm going to give Plaintiffs number 17, but I'm open to being convinced otherwise. We're not instructing the jury until tomorrow, so here's what we'll do.

I want each of you to brief me on which one is the correct instruction. I don't want you to submit just a string of case citations. I want you to explain the law and, more important, tell me how the evidence supports your view of the law. A jury instruction has to be supported by the facts in evidence, so, in your briefs, use the facts and spell out how they support the instruction you want me to give. Also, tell me what's wrong with the instructions you don't want me to give.

**Counsel for defendant:** Thank you, your honor.

**Counsel for plaintiff:** Yes, your honor.

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## SCHEDULE OF COMPENSATION

### Mary Proffet, Vice President/Marketing 1989 to 1998

Year	Salary	Bonus	Total
1989	\$25,000	\$1,500	\$26,500
1990	35,000	3,000	38,000
1991	50,000	10,000	60,000
1992	75,000	15,000	90,000
1993	100,000	25,000	125,000
1994	150,000	50,000	200,000
1995	200,000	100,000	300,000
1996	250,000	150,000	400,000
1997	300,000	200,000	500,000
1998	<u>350,000</u>	<u>300,000</u>	<u>650,000</u>
Totals:	\$1,535,000	\$854,500	\$2,389,500

Deft. Exhibit 27

