

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Case Number SC21-1495

Complainant,

v.

ALLAN CAMPBELL,

Respondent.

_____ /

**Answer to Complaint
and Affirmative Defenses of the Respondent**

The undersigned attorney, for his client, the Respondent, Allan Campbell, Esq., hereby Answers the Complaint of the Florida Bar and asserts the following Affirmative Defenses.

ANSWER

1. The following paragraphs of the Complaint are admitted in their entirety: 1, 2, 14, 15, 31, 37, 62, 69, and 78.

2. The following paragraphs of the Complaint are denied in their entirety: 4, 17, 22, 40, 47, 48, 65, 72, 74, 89-91, 95, 95(a) - 95(x), 97-98, 101, 106-107, 107(a) - 107(x), 143, 143(a) - 143(dd), 154, 154(a) - 154(w), 160-162,

162(a) - 162 (y), 185, 185(a) - 185 (bb).

3. The following paragraphs of the Complaint are admitted in part, and denied, in part, as follows and for the following reasons:

A. Paragraph 3 is denied, upon information and belief formed after reasonable inquiry, insofar as the Grievance Committee lacked adequate information so as to deny Due Process of Law to Mr. Campbell. For further details, please refer to the Affirmative Defenses appearing below.

B. Paragraph 11 is admitted insofar as nonlawyers may solicit nonlegal business for themselves, and upon information and belief, it appears that a nonlawyer named William Howell Jr. solicited nonlegal business for himself. All other allegations (or implications) of this paragraph are denied.

C. Paragraph 30 is denied as to the allegation that *“they all agreed that they would bring on ...”*.

D. Paragraph 46 is admitted insofar as respondent had help from other lawyers in working respondent’s cases, including bankruptcy cases. Paragraph 46 is denied in its implication (or allegation) that respondent was not competent.

E. Paragraph 88 is admitted only as to these words: “*At the time of the June 2018 letter from Ruda, respondent had left Best Defense Law*” and is denied as to all other words, allegations, and implications of that paragraph.

F. Paragraph 105 is admitted that Respondent left the firm, but denied as to all other allegations in that paragraph.

G. Paragraph 123 is admitted that office staff had login information but denied as to the allegation that it is improper to share login information with office staff. It is not improper for office staff to have login information, and so, it is denied as to all allegations of wrongdoing made or implied by this paragraph.

4. The following paragraphs are not admitted at this time, and therefore are denied at this time. The right is reserved to admit them at a later time as my information improves and as discovery progresses. I sought from The Bar an extension of time to answer this Complaint to December 7, 2021. I planned appropriately. But when I returned from Thanksgiving vacation, I learned that the Bar had written directly to my represented client, giving him until today to file this Answer. In this way, The Bar did not give me the amount of time I requested. With all due respect, I believe that had I been given the

requested amount of time, I could have provided more specific and helpful information about the following paragraphs rather than just denying the following paragraphs: 5 - 10, 12, 13, 16, 18-21, 23-29, 32-36, 38-39, 41-45, 49-61, 63-64, 66-68, 70-71, 73, 75-77, 79-80, 81-87, 92-94, 96, 99-100, 102-104, 108-122, 124-142, 144-153, 155-159, and 163-184.

5. All allegations of the Complaint that are not clearly and specifically admitted above are **Denied**.

6. Right to amend reserved.

AFFIRMATIVE DEFENSES

A.

If any Rules Regulating The Florida Bar were violated by another lawyer, that violation was not done by Mr. Campbell, and Mr. Campbell is not vicariously liable for that violation.

1. The Bar's Complaint attempts, in part, to hold Mr. Campbell responsible for the actions or inactions of another lawyer or lawyer.

2. That or those other lawyer's actions and inactions, as described herein, are not a violation of the Rules Regulating The Florida Bar.

3. But even if they were (which they are not), Mr. Campbell is not

vicariously liable for them.

4. Vicarious liability is limited by the Rules Regulating The Florida Bar, because, as stated in the Official Comment to Rule 4-5.1:

Apart from this rule and rule 4-8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, shareholder, member of a limited liability company, officer, director, manager, associate, or subordinate.

5. Therefore, without a violation of 4-5.1 or 4-8.4(a), vicarious liability does not exist.

6. Turning now to each of those two rules individually, we see how there is no violation:

6a. Rule 4-5.1(c)(1) would only make Mr. Campbell liable for them if he “orders the specific conduct or, with knowledge thereof, ratifies the conduct involved,” but he did not do that.

6b. Rule 4-5.1(c)(2) would only make Mr. Campbell liable for them if he “knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action” but he did not.

6c. Rule 4-8.4(a) would only make Mr. Campbell liable for them if he were to “knowingly assist or induce another to do so” but he did not do

that.

7. Therefore, even if Mr. Campbell's law partner would have violated the Rules Regulating The Florida Bar (which he did not), Mr. Campbell is not subject to disciplinary action for that alleged violation.

B.

If any Rules Regulating The Florida Bar were violated by Mr. William Howell, Jr., those violations were not done by Mr. Campbell, and Mr. Campbell is not vicariously liable for those violations.

8. This Bar Complaint attempts, in part, to hold Mr. Campbell responsible for the actions or inactions of a nonlawyer named William Howell, Jr.

9. Assuming without stipulating that the actions of Mr. Howell violate the Rules Regulating the Florida Bar, Mr. Campbell is not vicariously liable for Mr. Howell's behavior for the following reasons.

10. To the extent that this Bar Complaint alleges or implies that Mr. Howell is an officer, then, under that allegation, vicarious liability is limited by the Rules Regulating The Florida Bar, because, as stated in the Official Comment to Rule 4-5.1:

Apart from this rule and rule 4-8.4(a), a lawyer does not have disciplinary liability for the conduct of a ... officer....

11. Therefore, without a violation of 4-5.1 or 4-8.4(a), vicarious liability does not exist under the Bar Complaint's allegation or implication of Mr. Howell being an "officer."

12. Turning now to each of those two rules individually, we see how there is no violation:

12a. Rule 4-5.1(c)(1) would only make Mr. Campbell liable for them if he "orders the specific conduct or, with knowledge thereof, ratifies the conduct involved," but he did not do that.

12b. Rule 4-5.1(c)(2) would only make Mr. Campbell liable for them if he "knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action" but Mr. Campbell took reasonable remedial action to the extent of Mr. Campbell's knowledge.

12c. These and Mr. Campbell's other responses to the inappropriate and unauthorized actions by Mr. Howell were the kind of reasonable remedial actions that relieve Mr. Campbell of vicarious liability under Rule 4-5.1(c).

12d. Also, Rule 4-8.4(a) would only make Mr. Campbell liable for them if he were to "knowingly assist or induce another to do so" but he

did not do that.

13. Therefore, Mr. Campbell is not subject to disciplinary action for Officer Howell's alleged violations of the Rules Regulating the Florida Bar.

C.

**The Grievance Committee Lacked Adequate Information,
and Did Not Have the Benefit of an Adequate Investigation,
Before Making Its Finding of Probable Cause**

14. The United States Supreme Court holds that an accused lawyer is protected by Due Process of Law even in a Bar disciplinary action like this one. *In re Ruffalo*, 390 U.S. 544 (1968).

15. Due Process of Law was denied to Mr. Campbell when the Grievance Committee found probable cause without first having adequate information and without the benefit of an adequate investigation.

16. Rule 3-7.4 of the Rules Regulating the Florida Bar is titled "Grievance Committee Procedures."

17. Rule 3-7.4 was not fully and properly followed, to the best of our information and belief. To the best of our knowledge, Mr. Campbell's Grievance Committee did not have full and adequate information, and this lack of information would violate Due Process of Law.

18. This error was not harmless, because, ultimately, the inadequate

investigation rendered the probable cause findings of the Grievance Committee to be a violation of Due Process of Law.

D.

Mr. Howell's Misbehavior, and Other Factors, Resulted in Confusion, Misunderstandings, and Similar-Sounding Names

19. The allegations in this Bar Complaint often conflates names and confuses facts.

20. Confusion was also caused by others, such as Mr. Howell, who misappropriated the name and likeness of others, and who chose entity names confusingly similar to entities with which Mr. Campbell was affiliated.

21. Mr. Campbell did all things necessary to avoid the confusion of Mr. Howell's name choices, to the extent of his knowledge, but Mr. Campbell's knowledge was limited because others including Mr. Howell hid information from Mr. Campbell.

22. Mr. Campbell is not to blame for confusions and misunderstandings such as these that appear in the Bar Complaint.

23. However, had a better investigation been done prior to the filing of this Bar Complaint, much if not all of these misunderstandings could have been avoided.

24. Mr. Campbell and his law firm took every reasonable step to avoid any misunderstandings or confusion.

E.

Respondent is Represented by the Undersigned Counsel, and The Florida Bar's *ex parte* Communications With My Represented Client Outside My Presence Gives the Bar an Unfair Advantage

25. The Bar knows I represent Mr. Campbell in this case, and the Bar knows that the Rules Regulating The Florida Bar does not allow the Bar to communicate with Mr. Campbell about this case outside my presence.

26. The Bar's failure to follow these Rules, whether deliberate or inadvertent, gives the Bar an unfair advantage over me. I follow these Rules. They should too.

F.

Mr. Campbell's Ill Health, and Other Factors, Resulted in Situations that Could Not Be Within Mr. Campbell's Control or Responsibility

27. At times relevant to this complaint, Mr. Campbell fell ill through no fault of his own.

28. The Rules Regulating The Florida Bar do not punish or discipline lawyers for becoming ill.

29. The Americans With Disabilities Act, and similar protections under state and federal law, do not allow the Bar or This Honorable Court to punish or

discipline a lawyer who suffers from an illness, ailment, or disability.

G.
**Right to Add and Amend Affirmative Defenses
Is Reserved**

30. For the reasons set forth above, the undersigned did not receive the full amount of time contemplated for preparing this Answer and Affirmative Defenses.

31. In the interest of fairness, due process, and equal justice, the right to add and amend affirmative defenses is hereby reserved.

**DEMAND FOR ANSWER BY THE FLORIDA BAR
TO THESE AFFIRMATIVE DEFENSES**

Demand is hereby respectfully made for a paragraph-by-paragraph response to these Affirmative Defenses. Rule 3-7.6(h) of the Rules Regulating the Florida Bar provides in relevant part that:

If the respondent's answer shall contain any new matter or affirmative defense, a reply thereto may be filed within 10 days of the date of service of a copy upon bar counsel, but failure to file such a reply shall not prejudice The Florida Bar....

Although the failure to reply might not prejudice The Florida Bar, it will certainly prejudice Mr. Campbell. Therefore, in fairness and in the interest of justice, we must demand a paragraph-by-paragraph response. All paragraphs of our

affirmative defenses are numbered consecutively so as to make this paragraph-by-paragraph response possible.

Certificate of Service

I Hereby Certify that a true and correct copy of the foregoing **Answer and Affirmative Defenses** was served via email on **November 30, 2021** to (1) Honorable Judge Alicia Washington, Seventh Judicial Circuit of Florida, as Referee of the Supreme Court of Florida, P.O. Box 758, Palatka, FL 32177 tblaha@circuit7.org ; (2) Laura N. Gryb, Bar Counsel, The Florida Bar, 1000 Legion Pl., Ste. 1625, Orlando, FL 32801-1050 lgryb@floridabar.org, orlandooffice@floridabar.org, dsullivan@floridabar.org ; and (3) Patricia Savitz, Staff Counsel, The Florida Bar, 651 E. Jefferson St., Tallahassee, FL 32399, psavitz@floridabar.org .

Respectfully Submitted,

Law Office of Patrick John McGinley, P.A.

/s/ Patrick John McGinley

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As Counsel for the Respondent, Allan Campbell, Esq.

cc: client (via email)