

IN THE SUPREME COURT OF FLORIDA  
(Before a Grievance Committee)

THE FLORIDA BAR,

Complainant,

Florida Bar File No. 2018-50,933 (15A)

v.

MICHAEL ELIOT ZAPIN,

Respondent.

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**ADMISSION OF MINOR MISCONDUCT**

The respondent deposes and states:

1. I am aware that Rule 3-5.1(b)(5) reads, in part, as follows:

If the respondent admits guilt of minor misconduct and the committee concurs, the grievance committee shall file its report recommending an admonishment, the manner of administration, the taxing of costs, and an assessment or administrative fee in the amount of \$1,250 against the respondent. The respondent may not condition the admission of minor misconduct on the method of administration of the admonishment or upon nonpayment of costs incurred in the proceedings. The report recommending an admonishment shall be forwarded to staff counsel and the designated reviewer for review. If the report is thereafter approved, it shall then be served on the respondent by bar counsel and shall become final.

2. This document is tendered pursuant to Rule 3-5.1(b)(5), within a pertinent time frame.

3. If this admission is accepted by the committee and the committee report is approved by The Florida Bar, this admission shall be in full force and effect, and I shall pay any costs incurred in the proceeding including a \$1,250.00 administrative cost. I am aware that the Board of Governors of The Florida Bar may order me to appear before it for administration of an admonishment.

4. If this admission is not accepted by the committee or an admonishment is not approved, this tendered admission will be null and void, and no part of the plea may be used as evidence bearing upon any issue.

5. The following allegations and rules form the basis of my admission of minor misconduct: Rule 4-3.4, Rule 4-1.8(h), Rule 4-8.4(d), R. Regulating Fla. Bar.

6. The facts and circumstances underlying the complaint of Sheila Biehl are as follows:

In February 2015, the undersigned respondent accepted employment to represent Charles Pugsley and his solely-owned company, Medicaid Eligibility, Inc, as successor counsel in defending a civil action brought by plaintiff, Andrew S. Neilson IV, as Personal Representative of the Estate of Melvin R. Angell (Case No. 50-2012CA022145).

At the time respondent was hired, the case was already set for trial to commence starting May 26, 2015. Respondent received an initial fee of \$6,500 to defend the suit.

A week before trial, respondent and Mr. Pugsley met to go over the case and prepare for trial. Two witnesses, Alan and Diana Tiffenberg, had been deposed previously, and their testimony was favorable to the defense. At the conference it was determined that the Tiffenbergs would be subpoenaed to appear, and they were contacted by telephone regarding that. The Tiffenbergs advised that they were out of the jurisdiction for at least the next two weeks awaiting the birth of their grandchild. Without the appearance of those witnesses, the prospects for success at trial seemed significantly diminished. When respondent and Mr. Pugsley met again on May 21, and, in addition to preparing for the trial, they began discussing the prospect of settling the case instead of trying it. The following day, Mr. Pugsley told respondent how upset he was at the prospect of losing the case or having to settle because his witnesses were unavailable. He essentially told respondent that he would not go to trial without those witnesses.

At the courthouse on the morning of May 26, 2015, the parties went into the hallway to discuss settling the case. Mr. Pugsley resolutely refused to go forward with the trial due to his lack of witnesses, notwithstanding the opportunity to have their deposition testimony admitted under Fla. Stat. § 90.804(2)(a). A handwritten settlement agreement was drawn up, and each party and their counsel signed it, then advised the court that the case had settled. The settlement terms were favorable to the plaintiff in that Mr. Pugsley and his company were to be jointly and severally liable to pay the plaintiff \$65,000. The Court approved the settlement and ordered it enforced.

Mr. Pugsley again angrily asserted that his legal case had been compromised by respondent's failure to subpoena the Tiffenbergs to appear, and stated his intention to seek advice from another lawyer as to his options. Mr. Pugsley stated that he intended for the respondent to assume liability to pay half the settlement proceeds, and threatened to have respondent "disbarred." Respondent advised him that under the circumstances he would do what he could to lessen the adverse impact of the situation. Mr. Pugsley then

counseled with Douglas Kahle, Esq., about what he felt was respondent's negligence in failing to secure the witnesses for trial, and for advice on structuring and procuring an agreement between himself and the respondent by which the respondent would become liable to pay half the settlement amount. With Mr. Kahle advising him, Mr. Pugsley and respondent entered into a written agreement by which respondent became bound to pay a five-figure sum to Mr. Pugsley. In consideration thereof, Mr. Pugsley agreed not to sue respondent for negligence and agreed to forego filing a bar complaint. Later, again with Mr. Kahle's knowledge and input, the agreement between respondent and Mr. Pugsley was revised.

This payment arrangement between respondent and his client was disclosed to plaintiff's counsel, Sheila Biehl, Esq. Respondent had agreed and stipulated to owing a total of \$36,500 to Mr. Pugsley and Medicaid Eligibility, Inc. for the benefit of Ms. Biehl's client. By the time of these events, however, respondent did not have the financial wherewithal to comply to the terms of the revised settlement agreement he had made with Mr. Pugsley. Respondent's further prospects for alleviating his financial problems so as to make good on this debt did not pan out. When he could not pay his half of the settlement proceeds to Ms. Biehl's client, she initiated a garnishment action against respondent. The court ordered respondent, as the garnishee, to pay the \$36,500 in scheduled monthly installments to the trust account of Sheila Biehl, P.A. for the benefit of her client. When he could not comply with the court order, Ms. Biehl filed the instant bar complaint, alleging that respondent did not remit the payments to her law firm's trust account in accordance with the court's order dated March 27, 2016.

Respondent admits that, when Mr. Pugsley accused him of professional negligence he did not advise Mr. Pugsley in writing to seek the advice of independent legal counsel; however, Mr. Pugsley is a sophisticated client who knew his rights, and he acted in his own best interest by seeking and obtaining the advice of an independent lawyer without such written advice. Mr. Pugsley's agreement not to sue respondent, and his agreement to forego filing a bar complaint were in fact done with the awareness and advice of his counsel, Mr. Kahle.

By virtue of the foregoing, respondent admits that, by failing to immediately advise Mr. Pugsley in writing that he had a right to independent legal advice before entering into a business transaction with him, including agreeing not to sue for malpractice and not to file a bar complaint, he violated Rule 4-1.8(a) and (h) (Limiting Liability for Malpractice). By the actions described herein, and through his inability to pay the amounts despite the garnishment and resulting order, respondent admits to unintentionally violating Rule 3-4.3 (Other Non-Specified Misconduct) and Rule 4-8.4(d) (interfering with the administration of justice).

7. In closing, respondent respectfully asks the grievance committee to take into account the following in mitigation:

- A. Respondent was admitted to the bar in 2007 and has no prior discipline.
- B. Respondent had no dishonest or selfish motive;
- C. Respondent possesses good character and a good reputation;
- D. Respondent has experienced personal or emotional problems; and
- E. Respondent has made every effort to cooperate with this proceeding.

Dated this 3<sup>rd</sup> day of June 2020.

Respectfully submitted,



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