

IN THE SUPREME COURT OF FLORIDA

The Florida Bar,

Case # SC21-28

Petitioner,

Lower Tribunal # 2020-30,134(18C)

v.

George Edward Ollinger, III

Respondent.

_____ /

ANSWER and AFFIRMATIVE DEFENSES

Respondent George Edward Ollinger, III, through counsel and as required by Rule 3-5.2(a), Answers the Petition For Emergency Suspension, and also, asserts the following Affirmative Defenses:

Answer

1. **In summary**, the Answer appearing below says that:

a. the following paragraphs of the Petition for Emergency

Suspension dated January 2021 are ADMITTED: 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23, 25, 26, 27, 41, 42, 49, and 50.

b. The following paragraphs are DENIED: 1st unnumbered

paragraph, paragraphs 4, 30, 32, 35, 36, 37, 39, 40, 46, 52, 53,

and A through L.

- c. The following paragraphs are not admitted; and are neither admitted nor denied; because Mr. Ollinger is WITHOUT SUFFICIENT INFORMATION to respond and therefore DENIES at this time: Paragraphs 1, 5, 21, 22, 24, 25, 26, 28, 29, 31, 33, 34, 35, 38, 43, 44, 45, and 47. Mr. Ollinger is without knowledge because the relevant rules did not provide him with a right to discovery prior to this Complaint. Mr. Ollinger attempted to obtain information, including but not necessarily limited to requesting a copy of his sworn statement/deposition; however, he did not receive it.
- d. The following paragraphs are ADMITTED in part and DENIED in part: 28, 34, 44, 48, and 51.
- e. Any and all other allegations not specifically admitted are DENIED.

2. The First Unnumbered Paragraph is denied. The evidence will prove that Mr. Ollinger is not causing great public harm; is not misappropriating client's funds; is not commingling attorney and clients funds; and is not engaging in conflicts of interest.

3. **Paragraph 4** (as well as Paragraphs **32, 36, 37, 39, and 40**) are denied. The evidence will prove that:

- a. The number 7277 operating account was not over drafted, it was supported and backed by another operating account, number 6467, which was set up 3 weeks earlier specifically to handle the overflow and had more than \$91,000.00 in it.
- b. EXHIBIT “B” (which is the order dated April 16, 2019, entered in *Rameshwar v. Minnesota Life Insurance Co.*, case number 6:18-1597-Orl-37LRH, in the United States District Court, Middle District of Florida, Orlando Division), and all allegations by the Bar arising out of Exhibit B, are denied and are not supported by the evidence.
- c. Management of attorney operating accounts is at the discretion of said attorney, RRFB Ch.5 - Trust Accounts 5-1.1, and Mr. Ollinger is not properly subject to discipline for his handling of the operating account.

4. Paragraph 21’s allegations are denied. The evidence will prove that Mr. Ollinger did not fail to timely tell the Rameshwar family of Mr. Ollinger’s receipt of the \$10,000.00 Geico check, in or around

June 2018. Nandalall Rameshwar and the Stepchildren were advised by email, family News Release as well as Nandalall Rameshwar personally signed the Geico Policy release form.

5. **Paragraph 22's** allegations are denied. The evidence will prove that one or more of the contingency contracts, or Mr. Ollinger's liens, or his agreement with the clients, allowed Mr. Ollinger to keep the \$15,000.00 Geico collected funds as reimbursement for costs and the invoice for costs was appropriate and lawful.

6. **Paragraph 28** allegations are denied in part. Mr. Ollinger is without knowledge for reasons including that Mr. Ollinger requested a copy of his sworn statement, but he has not been furnished with a copy; as mentioned above.

7. **Paragraph 29, 30, and 31** allegations are denied. The evidence will prove that:

a. The Rules Regulating The Florida Bar, such as in the Statement of Client's Rights, requires that the client has the right to approve a closing statement at the "end" of the case. We are not yet at the end of the case. The relevant case in question has not yet ended or never ended because of clients' neglect and failure

to perform under the contract and their backing out of signing the final closing statement as agreed.

b. Nandalall Rameshwar did sign a Release from Geico for the \$10,000.00.

c. Mr. Ollinger is without knowledge as to other defenses, and the right is reserved, because he requested a copy of his sworn statement/deposition; as mentioned above.

8. **Paragraph 32 and 33** are denied because Mr. Ollinger is without adequate knowledge of these paragraphs for the same reasons.

Also, the evidence will show that:

a. The applicable lien law and *Florida Bar Rule 5-1.1 Trust*

Accounts allows Mr. Ollinger to retain the Geico \$15K payment pursuant to Mr. Ollinger's lien, which is agreed to by the parties in their contract and elsewhere.

b. Withdrawing that money was permitted by the relevant rules.

Rule 5-1.1 states, "*the portion belonging to the lawyer or law firm [which, here, is the \$15K Geico payment] shall be withdrawn within a reasonable time after it becomes due unless the right to the lawyer or law firm to receive it is disputed, in which event the*

portion in dispute shall be kept separate by the lawyer until the dispute is resolved.”

- c. Mr. Ollinger did everything that was required of him, including:
 - i. Mr. Ollinger deposited the Geico checks into his attorney trust account;
 - ii. Mr. Ollinger withdrew the funds within 30 days from his trust account;
 - iii. Mr. Ollinger provided clients with updated invoices of costs;
 - iv. Mr. Ollinger filed liens against the Clients upon their notice of termination of services;
 - v. Mr. Ollinger obtained four Florida Bar Opinions on how to handle disputed funds and conflicts of interest upon receiving a demand letter from his clients;
 - vi. Mr. Ollinger re-deposited the funds back into his trust account as advised by the Florida Bar Ethics Counsel where it sits there today; and
 - vii. Mr. Ollinger filed an independent action suit against the clients to resolve the dispute pursuant the *Florida Bar Trust Account Rule 5-1.1*, the *RRFB Florida Probate Code* and

Florida law.

9. **Paragraph 34** is denied. “EXHIBIT A” is hearsay; it is an Affidavit of Mr. Heredecker, a Florida Bar Auditor; and no correspondence is attached or shown. The evidence will show that Mr. Ollinger was mandated to transfer funds out of trust within reasonable time as per *Florida Bar Rule 5-1.1 Trust Accounts, RRFB*.
10. **Paragraphs 39 and, 40** are denied. The facts will show that Mr. Ollinger kept sufficient funds at all times.
11. **Paragraph 44** is admitted in part and denied in part. The facts will show that account number 6467 was to backup the other account, and when all accounts are considered together, adequate funds were held safely.
12. **Paragraph 48** is admitted in part and denied in part. The facts will show that:
 - i) The *Florida Bar Rule 4-16(d)* requires Mr. Ollinger to protect his client’s interest and his former clients, the Rameshwar’s, interests even after withdrawal. *Florida Bar Rule 4-16 (d)* states: “*Protection of Client’s Interest. Upon termination of representation, a lawyer shall take steps to the extent*

reasonably practicable to protect a client's interest”

The *Rule* goes on to state, “*Assisting the client upon withdrawal. Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the clients”*

- ii) Everything Mr. Ollinger did was in the best interests of the clients. They did not always take Mr. Ollinger's advice and they did not always communicate with Mr. Ollinger. Often they would instead allow their stepdaughter, Consuela Renae Hooks, to advise them.

Ms. Hooks would sometimes be a source of contrary advice for them.

- iii) Another consideration for Mr. Ollinger's continued participation in the litigation is that in a voluntary withdrawal from a contingency contract case there are no fees or costs, *Faro v. Romani*, 641 So.2d 69, 71 (Fla. 1994). This matter was on a contingency contract.

- iv) Mr. Ollinger waited since November 2018 for the heirs to hire other counsel as Mr. Ollinger advised; however, they did not until The Honorable Probate Judge said essentially the same thing when he ordered them to not come back to court unless they had a

lawyer.

13. **Paragraph 51** is admitted in part and denied in part. Nothing in Paragraph 51 can subject Mr. Ollinger to discipline. The evidence will show that the facts and law as alleged within this paragraph are incorrect. The evidence will show that:

- i) “EXHIBIT B”, which is the order of April 16, 2019, attached to the Florida Bar Petition for Emergency Suspension, constitutes reversible error. Mr. Ollinger did not want to inflame the Court at the time of the entry of Exhibit B. Mr. Ollinger’s performance in court that day was affected by what he was perceiving to be some hostility in the courtroom.
- ii) Exhibit B is reversible error due to, but not necessarily limited to, the following reasons:
 - a) Unlike another court, the court entering Exhibit B allowed all of the heirs to proceed as parties in the case (pro se) even though the surviving spouse or personal representative are the only litigants that have standing in order to be able to bring a claim pursuant to *Florida*

Statute 768.20 and relevant case law including *Federal Deposit Ins. Corp v. Morley*, 867 F.2d 1381, 1386, (11th Cir. 1989); *Valley Forge Christian College v. Am. United for Separation of Church and State*, 102 S. Ct. 752 (1982). These cases and others recognize that the personal representative or surviving spouse is the only appropriate party to bring the relevant action upon which Mr. Ollinger had been operating.

b) At the hearing that resulted in Exhibit B, an oral ruling stated: “*As early as November 20, 2018, he (Mr. Ollinger) no longer represented any plaintiff.*” The evidence will prove that this statement is incorrect. Mr. Ollinger filed a “Notice of Conflict” of the Plaintiffs only on this date and not a withdrawal. Also:

- Mr. Ollinger was obligated to preserve the case and the right to protect his liens pursuant to *The Florida Bar Rule 4-1.6(d) and others*, which require Mr. Ollinger to protect clients and former clients interests (including the Rameshwar’s interests) even

after withdrawal.

- *Florida Bar Rule 4-1.6 (d)* states, in relevant part, that: *“Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interest . . .”* The Rule also requires a withdrawing lawyer to assist the client upon withdrawal when it states: *“Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the clients...”*

- iii) Pursuant to Rule Regulating The Florida Bar 4-1.2, titled “Objectives And Scope of Representation,” Mr. Ollinger could not communicate fully with the heirs after the heir’s spokesperson, Consuela Renae Hooks, requested Mr. Ollinger to cease all communications. The evidence will show that this happened around the time when Mr. Ollinger filed his Notice of Conflict with the court. Mr. Ollinger asked the clients to obtain other counsel because of their conflict with each other and was subsequently

terminated by the heirs on November 16, 2018.

- iv) Mr. Ollinger did not harm his clients. He protected their interests in the \$250,000.00 Minnesota Life Claim; however, after Mr. Ollinger no longer represented them, they settled for a low amount, which may have done themselves harm, but that harm was not done by Mr. Ollinger.

14. Any and all other paragraphs or allegations that are not specifically and clearly admitted above are hereby **DENIED**.

Affirmative Defenses

1. The line between a mere “defense” and an “affirmative defense” is not always clear under the grievance adjudication procedures found in Chapter 3 of the Rules Regulating The Florida Bar. Therefore, to the extent that a “defense” listed above is more properly identified as an “affirmative defense,” we incorporate it herein by this reference.
2. Exhibit B exists because of an oral motion solely initiated by Mr. Ollinger in court. Mr. Ollinger’s oral motion was appropriate for

protecting his liens and his former clients interests pursuant to Florida Law and Florida Bar Rule 4-1.6 (d) and the relevant Florida Probate Rule. The court granted the withdrawal, with termination of services, and did not impose any sanction.

3. The evidence may show that the Complainant's bar complaint could be the result, in whole or in part, of undue influence. Based upon Mr. Ollinger's past information and interaction, Consuela Renae Hooks ("Renae"), Nandalall's stepdaughter, may be the driving force behind her Stepfather's, Nandalall Rameshwar, bar complaint. Upon information and belief, Renae drafted the bar complaint for her stepfather, Nandalall, as the original bar complaint displays her name instead of Nandalall's. Undue influence may also have arisen due to sibling rivalry and dissension. Once these apparent facts are proven, then we would ask this honorable court to consider these facts and the source of these accusations and rule accordingly as Mr. Ollinger does not deserve to be subject to discipline when his true intent was to try to help the indigent and unrepresented.

4. *Florida Bar Rule 5-1.1 Trust Accounts* allows Mr. Ollinger to retain the Geico \$15K payment pursuant to Mr. Ollinger's lien, which arises by law, is agreed to by the parties, and is either agreed to or is not contradicted by a proper reading of their contract.
5. The *Rule 5-1.1* states, "the portion belonging to the lawyer or law firm (the \$15K Geico payment) shall be withdrawn within a reasonable time after it becomes due unless the right to the lawyer or law firm to receive it is disputed, in which event the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. Mr. Ollinger filed suit against the heirs to resolve the dispute pursuant to this *Florida Bar Rule*, the *Florida Probate Code* and Florida law.
6. *Florida Bar Rule 4-16(d)* states, "Terminating Representation" which says, "Protection of Client's Interest. Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest . . ." The *Rule* goes on to state, "Assisting the client upon withdrawal. Even if

the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the clients . . .” This is what Mr. Ollinger did. Everything Mr. Ollinger did was in the best interests and protection of the clients.

7. Another consideration for Mr. Ollinger’s continued participation in the litigation is that, in a voluntary withdrawal from a contingency contract case, there are no fees or costs. See, for example, *Faro v. Romani*, 641 So.2d 69, 71 (Fla. 1994). This matter was on a contingency contract. Most of Mr. Ollinger’s clients are poor and cannot afford an attorney; therefore, Mr. Ollinger represents them on a contingency basis making insurance companies pay the clients and Mr. Ollinger. Therefore, Mr. Ollinger was able to do numerous matters for free or pro bono.

8. *Florida Bar Rule, 4-16(d)* required Mr. Ollinger to protect clients and former clients, the Rameshwar’s interests, even after withdrawal.

9. Mr. Ollinger has a lien that arose by operation of law. *Chapter 5, Rules Regulating Trust Accounts, Rule 5-1.1(d)* states, “*Liens Permitted*. This subchapter does not preclude the retention of money or other property upon which the lawyer has a valid lien for services nor does it preclude the payment of agreed fees from the proceeds of transactions or collection.” Mr. Ollinger has a valid lien.

10. Mr. Ollinger’s behavior was permitted or perhaps even required by case law precedent such as *Faro v. Romani*, 641 So.2d 69, 71 (Fla. 1994). That case and others establishes that, in a voluntary withdrawal from a contingency contract case, the voluntary withdrawal affects the Florida lawyer’s fees or costs. As to one or more of the relevant cases at issue in this Petition, Mr. Ollinger was on a contingency contract. If Mr. Ollinger voluntarily withdrew, he would be waiving his liens and causes of action for fees and costs. Therefore, Mr. Ollinger could not voluntarily withdraw and had to wait for an order for his withdrawal.

11. Mr. Ollinger’s behavior was in furtherance of helping the

public. Most of Mr. Ollinger's clients are poor and cannot afford an attorney; therefore, Mr. Ollinger represents them on a contingency basis making insurance companies pay the clients and Mr. Ollinger. Therefore, Mr. Ollinger was able to do numerous matters for free or pro bono.

12. The Florida Bar, This Honorable Referee, and This Honorable Court lack jurisdiction over Mr. Ollinger and over this complaint. Case law precedent including *The Florida Bar v. Della-Donna*, 383 So.2d 307, 312 (Fla. 1989) establishes that: "Disciplinary actions cannot be used as a substitute for what should be addressed in private civil actions against attorneys."

13. The Geico Insurance Company payout money belonged to Mr. Ollinger and was paid to Mr. Ollinger. It was not spent and it sits today waiting for a judge's order to confirm the money belongs to Mr. Ollinger pursuant to an independent action, required by the Florida Probate Code and Florida Law, filed by Mr. Ollinger in circuit court.

14. The procedural Rules Regulating The Florida Bar did not

provide Mr. Ollinger or his undersigned attorney with a right to formal discovery until now. Therefore, we reserve the right to add, delete or amend defenses and affirmative defenses as discovery progresses.

15. Likewise, the Rules Regulating The Florida Bar, including Rule 3-5.2, establish new rights due to this filing of this January 2021 Petition for Emergency Suspension, including but not limited to (1) the right to a Motion for Dissolution of the Emergency Suspension, (2) the right to a Motion to Tax Costs; and (3) the right to referee review of frozen trust accounts. Like all our rights, these rights are reserved. Nothing herein is intended to waive them. For example, we are contemplating the filing of a Motion for Dissolution, and we reserve the right to have it heard and adjudicated within the time required by law after we file it.

Wherefore, Mr. Ollinger through counsel answers the Petition for Emergency Suspension, denies its relevant allegations, asserts the affirmative defenses mentioned above, and respectfully requests The

Honorable Referee to recommend, and This Honorable Court to order,
that Mr. Ollinger is not subject to discipline.

CERTIFICATE OF SERVICE

I Hereby Certify that a true and correct copy of the foregoing was provided on this 29th day of January, 2021 via email to: (1) the Judicial Assistant to the Honorable Judge who was appointed to serve as the referee; (2) Kenneth H.P. Bryk, Bar Counsel, The Florida Bar, Orlando Branch Office, The Gateway Center, 1000 Legion Place, Suite 1625, Orlando, FL 32801-1050 kbryk@floridabar.org orlandoffice@floridabar.org ; (3) Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 E. Jefferson St., Tallahassee, FL 32399-2300 psavitz@floridabar.org ; and (4) Respondent George E. Ollinger, III.

Respectfully Submitted by:

Law Office of Patrick John McGinley, P.A.

/s/ Patrick John McGinley

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