

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

PHILIP MAURICE GERSON,

Respondent.

Supreme Court Case
No.

The Florida Bar File
No. 2014-70,729(11C)

THE FLORIDA BAR'S REQUESTS FOR ADMISSION

Complainant, The Florida Bar, requests Respondent, Philip Maurice Gerson, pursuant to Fla. R. Civ. P. 1.370, within 45 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to their admissibility which may be interposed at the trial.

1. That each of the following statements are true and properly admissible as evidence.

A. That class action litigation initiated by flight attendants against tobacco companies (Ramos v. Philip Morris Cos., Inc., 743 So.2d 24 (Fla. 3d DCA 1999), rev. dismissed, 743 So.2d 14 (Fla. 1999) and Broin v. Philip Morris Cos., Inc., 641 So.2d 888 (Fla. 3d DCA 1994)) culminated in a settlement whereby class members waived their intentional tort and punitive

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damages claims, but retained their right to pursue individual compensatory claims.

B. That in exchange, the tobacco companies waived the statute of limitations and established a \$300 million settlement fund which was used to fund the Flight Attendant Medical Research Institute (FAMRI).

C. That you represented Raiti Waerness and Peggy Spurgeon in their individual actions against tobacco companies, filing complaints on behalf of each in September of 2000.

D. That you also coordinated with other attorneys representing flight attendant clients, joining in a team approach and pooling litigation information.

E. That on December 1, 2010, you, along with attorneys Steven Hunter and Alex Alvarez, filed a petition on behalf of flight attendant class members in Broin seeking the disbursement of FAMRI's remaining funds to the class members, an accounting of FAMRI, and an injunction prohibiting further expenditures without court approval.

F. That Alani Blissard, Patricia Young (former flight attendants who had pursued individual claims), and FAMRI itself, moved the trial court to disqualify you, Hunter and Alvarez based upon a conflict of interest.

G. That Blissard, Young, and Raiti Waerness (one of your flight attendant clients) submitted affidavits in support of the motion, describing their objection to you taking any action against FAMRI.

H. That the movants also included as an exhibit an email sent by Peggy Spurgeon, another of your flight attendant clients, objecting to your proposed actions.

I. That you submitted an affidavit in opposition.

J. That the trial court entered an order disqualifying you, Hunter and Alvarez (as well as four additional attorneys who had joined after the petition was filed), finding that the attempt to vacate or modify the settlement establishing FAMRI violated Rules 4-1.7 and 4-1.9 of the Rules of Professional Conduct.

K. That on appeal, the Third District Court of Appeals quashed the trial court's order disqualifying you.

L. That on review, the Florida Supreme Court reversed the Third District's decision, concluding that disqualification of you and Hunter was warranted based on a violation of Rules 4-1.7 and 4-1.9 of the Rules of Professional Conduct.

M. That prior to filing the petition against FAMRI, you were on notice that any such action would be directly adverse to the stated interests of your clients Waerness and Spurgeon.

N. That upon learning of Waerness' objection, you withdrew from her case, converting her into a former client.

O. That by proceeding to join the petition against FAMRI, you engaged in representation in which the interests of some of your flight attendant clients were directly adverse to others.

P. That the interests of those clients who you continued to represent in the petition against FAMRI were materially adverse to the interests of your former clients who opposed the petition or clients who had not given consent.

Q. That as to the former clients, by virtue of the team approach utilized, there is an irrefutable presumption that you learned confidential information from them which was used in the petition against FAMRI.

2. That each of the following documents, attached, is a genuine and authentic copy:

A. The Florida Supreme Court's opinion in Young, et al. v. Achenbauch, et al., 135 So.3d 575 (Fla. 2014), attached as Exhibit "A".

B. Affidavit of Patricia Young in support of motion to disqualify, attached as Exhibit “B”.

C. Affidavit of Alani Blissard in support of motion to disqualify, attached as Exhibit “C”.

D. Affidavit of Raiti Waerness in support of motion to disqualify, attached as Exhibit “D”.

E. Affidavit of Philip M. Gerson in opposition to motion to disqualify, attached as Exhibit “E”.

F. Trial court’s order granting motions to disqualify, attached as Exhibit “F”.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that The Florida Bar's Requests for Admission has been E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, using the E-filing Portal; that a copy has been furnished by United States Mail via certified mail No. 7016 0750 0000 3623 6242, return receipt requested to Philip Maurice Gerson, Respondent, whose record bar address is Gerson & Schwartz P.A., 1980 Coral Way, Miami, Florida 33145 and via email at pgerson@gslawusa.com; and via email only to Thomas Allen Kroeger, Bar Counsel, The Florida Bar at tkroeger@flabar.org, on this 6th day of June, 2016.

Adria E. Quintela

ADRIA E. QUINTELA
Staff Counsel