RECEIVED 08/08/2016 FLORIDA SUPREME COURT

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

MARIA ELENA PEREZ,

Respondent.

_____/

Supreme Court Case No.
SC14-733

The Florida Bar File Nos.
2013-70,658 (11K)
2013-70,671 (11K)
2013-70,691 (11K)

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the undersigned Respondent, Maria Elena Perez, and files this Conditional Guilty Plea pursuant to Rule 3-7.9 of the Rules Regulating The Florida Bar.

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent is acting freely and voluntarily in this matter, and tenders this Plea without fear or threat of coercion. Respondent is represented by counsel.

3. This consent judgement is entered into after the finding of probable cause and after the filing of a formal complaint.

4. Respondent is currently the subject of Florida Bar disciplinary matters which have been assigned The Florida Bar File No.(s) 2013-70,658 (11K); 2013-

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70,671 (11K); and 2013-70,691 (11K). There are no additional pending Florida Bar complaints that have been initiated or filed against Respondent.

5. The disciplinary measures to be imposed upon Respondent are as follows:

A. Respondent shall be suspended from the practice of law for ninety-one (91) days.

6. The following allegations and rules provide the basis for Respondent's guilty plea and for the discipline to be imposed in this matter:

<u>As to The Florida Bar File Nos.</u>
<u>2013-70,658 (11K) and</u>
<u>2013-70,691 (11K)</u>

A. In April of 2010, Respondent began representing Nevin Shapiro ("Shapiro") in connection with federal criminal charges arising out of the District of New Jersey, a Securities and Exchange Commission Complaint lodged in the Southern District of Florida, as well as involuntary bankruptcy proceedings in the Southern District of Florida. All of these matters related to Shapiro's running of a Ponzi scheme, which ultimately ended in Shapiro's conviction for money laundering and wire fraud. Respondent also represented Shapiro in a state court defamation action brought against him in September of 2011 by former rap artist Luther Campbell.

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B. Respondent's representation of Shapiro in the involuntary bankruptcy proceedings was aimed at facilitating Shapiro's cooperation with the bankruptcy trustee's efforts to recover victim proceeds which were lost during the Ponzi scheme. By cooperating with the trustee, Shapiro hoped to make creditors whole and potentially mitigate his sentence in the federal criminal matter. Shapiro's cooperation with the Trustee was also aimed at unearthing evidence and testimony that would corroborate Shapiro's earlier cooperation efforts with the federal government which commenced with Shapiro's predecessor attorneys and which included but was not limited to cooperation regarding the location and expenditures of Ponzi Proceeds, some of which were used to commit NCAA violations and likewise open a Sports Agency with Michael Huyghue, and fund a University of Miami Student Lounge.

C. To obtain testimony and evidence in aid of his recovery efforts, Shapiro expressed his desire to conduct Rule 2004 examinations of multiple individuals, including but not limited to, Sean Allen, Michael Huyghue, David Leshner, Craig Currie, Eric Sheppard, and others who received, witnessed, or otherwise participated in fraudulent conveyances derived from the Ponzi scheme.

D. These individuals had been previously identified by Shapiro to the trustee as having received Ponzi funds; however, the trustee was prioritizing the

larger claims first. While Shapiro wanted to conduct the Rule 2004 examinations, his family did not have the financial means to pay for them.

E. During the course of the Ponzi scheme, Shapiro used a portion of the fraudulent proceeds to engage in improper booster activities supporting the athletic programs of the University of Miami ("UM"), providing cash and other impermissible benefits. In early 2011, Shapiro, of his own volition and not on the advice of legal counsel, contacted the National Collegiate Athletic Association ("NCAA") to provide information regarding the improper benefits he provided to student athletes to aid in in their investigation of the University of Miami.

F. The individuals who Shapiro wished to examine in the ongoing bankruptcy proceedings also possessed information relevant to the NCAA's investigation. After discussions between Shapiro and the NCAA regarding his desire to conduct Rule 2004 examinations, NCAA investigators approached Respondent and offered to reimburse Respondent for her legal fees and costs associated with taking the bankruptcy examinations. In exchange, the NCAA would have the opportunity to attend the examinations, submit potential questions, and receive copies of the examination transcripts and the video tape portions of the Rule 2004 examinations.

G. In September, 2011, Shapiro, Respondent, NCAA Directors of Enforcement Staff Ameen Najjar ("Najjar") and Richard Johanningmeier, and

NCAA supervisors and senior staff Julie Roe Lache, Tom Hosty and Jim Isch, began coordinating the Rule 2004 examinations. Respondent had proposed conducting examinations of nine (9) individuals for an estimated $14,420.00 dollars in legal fees and costs. However, the NCAA authorized reimbursement and payment of legal fees for seven (7) individuals: Sean Allen ("Allen"), Michael Huyghue ("Huyghue"), Mario Sanchez ("Sanchez"), David Leshner ("Leshner"), Eric Sheppard ("Sheppard"), Carlos Noriega ("Noriega"), and Ricky Grilasca ("Grilasca").

H. At all times relevant, the bankruptcy trustee was aware that Respondent was working with the NCAA and would be conducting Rule 2004 examinations of Allen, Huyghue, Sanchez, Leshner, Sheppard, Noriega and Grilasca. In fact, an attorney for the trustee, Andrea Rigali, telephonically attended the Rule 2004 examination of Huyghue. A University of Miami representative, Sandra Upegui, also telephonically attended the Rule 2004 examination of Michael Huyghue.

I. On December 8, 2011, Respondent subpoenaed Allen for a Rule 2004 examination. Allen had been an equipment manager with UM and served as Shapiro's personal assistant and employee during the relevant time period that the Ponzi scheme occurred. Allen had previously retained attorney Devang Desai ("Desai") in connection with the NCAA's investigation of the University of Miami which commenced in August, 2011. Desai continued to represent Allen in connection with the Rule 2004 examination, and telephoned Respondent on or about

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December 12, 2011, and December 13, 2011, in order to discuss the examination. On December 14, 2011, Desai sent Respondent correspondence confirming that he would accept service on behalf of Allen and agreed to hold the examination on December 19, 2011. In the correspondence, Desai expressed his understanding that only Respondent would conduct the Rule 2004 examination of Allen and that no other individuals or attorneys would attend.

J. After Respondent's conversations with Desai on December 13, 2011, she emailed Najjar inquiring into whether he was planning on attending Allen's Rule 2004 examination. Respondent also advised Najjar that Allen's attorney wanted to confirm that no one else would be present at the examination. Najjar responded on December 14, 2011, stating that he would attend the Rule 2004 examination of Allen. On December 18, 2011, Najjar emailed a list of questions he wanted Respondent to consider asking Allen. Although Najjar was physically present at the location where the examination was being held, he did not attend and exited the building as Allen and Desai appeared for the examination.

K. At no time prior to the examination did Respondent inform Desai of Najjar's initial plan to attend the examination or that she and Shapiro had a working relationship with the NCAA. Respondent contends that since August 16, 2011, her working relationship with the NCAA, and that of her client Shapiro, was a matter of public knowledge given the publicity in the local media about Shapiro and U.M.

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L. The court reporter from Allen's examination submitted an invoice to Respondent in the amount of $1,085.25, which she forwarded to the NCAA in early January, 2012. In turn, the NCAA issued a check in or about mid-February, 2012, for all costs and which was made payable to Respondent's operating account. However, given the fact that Respondent had advanced certain costs monies, not including the court reporter costs, the Respondent overlooked her need to transfer $1,085.00 dollars of the funds to her trust account for the benefit of the court reporter. Nevertheless, the court reporters' invoice for the Allen examination was indeed paid in July, 2014.

M. In email correspondence with the NCAA, Respondent indicated that it was her intention to obtain Sanchez's testimony by deposing him in the Luther Campbell defamation case. The Campbell defamation case was triggered by a quote Shapiro had given in a Yahoo! Sports article suggesting that the improper benefits he bestowed upon UM student athletes was a continuation of Campbell's own booster activities.

N. On several occasions in late 2011 and early 2012, Respondent attempted to serve Sanchez, Shapiro's former bodyguard, with a subpoena for a Rule 2004 examination. However, as a result of Sanchez's repeated moves from various addresses, he could not be served. On June 5, 2012, Sanchez was successfully served with a Rule 2004 examination subpoena, as well as a deposition subpoena in the

Luther Campbell state court defamation case (*See para. U, infra*). Both subpoenas required Sanchez to appear on July 9, 2012. Subsequently, Sanchez contacted Respondent's office regarding the Campbell subpoena, requesting that Respondent agree to interview him informally. Respondent agreed.

O. In an affidavit provided to The Florida Bar, Sanchez stated that he met with Respondent on July 9, 2012 and spoke off the record. He further stated that, during this interview, Respondent did not ask him any questions regarding Luther Campbell, but did ask a series of questions pertinent to the NCAA and bankruptcy matters.

P. Conversely, Respondent contends that Sanchez possessed relevant information regarding the defamation action, for example, having been present on an occasion when Campbell boasted about his own UM booster activities to Shapiro and witnessing Shapiro commit NCAA violations along with Campbell.

Q. On December 9, 2011, Respondent subpoenaed Leshner, a UM booster, for a Rule 2004 examination to take place on December 27, 2011. Leshner did not appear for the deposition, nor did he contact Respondent to discuss the subpoena's validity.

R. In early 2012, Respondent again attempted to subpoena Leshner. However, on March 1, 2012, attorney David Pollack ("Pollack") emailed Respondent stating that he was representing Leshner in connection with the Rule

2004 examination. Pollack stated in his email that Leshner resided in California and thus the subpoena from a Florida court was unenforceable.

S. Respondent contends that, based upon information in her possession, Leshner was not a bona fide California resident, and she suspected that he was attempting to avoid service. Respondent proceeded to send correspondence directly to Leshner along with a third subpoena. In the letter, Respondent acknowledged that she had received a phone call from an individual asserting that he was Leshner's attorney.

T. On March 22, 2012, Respondent filed a Subpoena Duces Tecum for Video Deposition in the Luther Campbell defamation case requiring Sanchez's appearance on April 19, 2010. However, as a result Sanchez's repeated moves, Respondent was not able to properly effectuate service. Nevertheless, as discussed *supra*, on June 5, 2012, Sanchez was effectively served with the deposition subpoena. The subpoena failed to indicate on the Certificate of Service that a copy was served on Campbell's attorney, Michael Carney, and instead erroneously identified an Assistant State Attorney as having received a copy of the Subpoena for deposition.

U. On April 19, 2012, Carney filed a Motion for Protective Order claiming that he had not received Respondent's subpoena and had no knowledge of the depositions. Respondent contends that, consistent with the fax transmittal sheets

from her office, she did in fact serve a copy of the Notice of Taking Video Deposition and Subpoena for Deposition on Carney via fax and U.S. mail.

V. On June 1, 2012, Respondent filed both a Notice of Taking Video Deposition and Subpoena Duces Tecum for Video Deposition in the Campbell defamation action requiring Sanchez' appearance on July 9, 2012. While the notice states that a copy was sent to Carney's firm, the certificate of service in the subpoena mistakenly reflects service only on Sanchez, the court reporter and an unidentified assistant state attorney. However, Respondent maintains that a copy of both the Notice of Taking Video Deposition and Subpoena Duces Tecum for Video Deposition was sent to Carney via U.S. mail after service via fax was unsuccessful. Conversely, Carney contends that he did not actually receive same.

W. Respondent contends that Shapiro and the NCAA have overlapping interests with regard to the Campbell defamation action and in demonstrating that Shapiro's statements regarding Campbell's previous NCAA violations were true.

X. According to the trustee assigned to Shapiro's involuntary bankruptcy proceedings, an additional $35 million were recovered as a result of the examinations conducted by Respondent on behalf of Shapiro.

Y. On August 2, 2012, Respondent sent the NCAA several invoices totaling $57,155.80, but subsequently in September, 2012, and October, 2012, the Respondent sent the NCAA revised invoices reflecting the $250.00 dollar per hour

rate which reduced the legal fees owed to the Respondent to $33,000.00. Of that amount, Respondent initially billed approximately $14,000.00 for attending continuing legal education courses and trainings necessary to gain electronic filing privileges in the bankruptcy court. Respondent contends that NCAA enforcement staff authorized these expenses.

Z. After the NCAA reviewed the Respondent's invoices together with the Respondent and after having discussed same with the original NCAA enforcement staff members, the NCAA agreed to pay Respondent a total amount of $18,325.00 dollars.

AA. By reason of the foregoing, Respondent admits that she has violated Rules 4-1.5, 4-3.1, 4-3.4, 4-4.1, 4-4.2, 4-4.4, and 4-8.4(a)(c)(d) of the Rules Regulating The Florida Bar, and Rule 5-1.1(b) of the Rules Regulating Trust Accounts.

<u>As to The Florida Bar File No. 2013-70,671 (11K)</u>

A. Saul Acuna-Acosta a/k/a Samuel Medina Flores ("Acuna-Acosta") was arrested in January 2008 and charged by the federal government with possession and intent to sell drugs. Shortly thereafter, Acuna-Acosta retained Respondent who successfully negotiated a plea deal.

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B. Although Acuna-Acosta had knowingly, intelligently and voluntarily waived his appellate rights as a condition of his plea, he requested that Respondent file a notice of appeal on his behalf. Respondent did so.

C. Despite having filed the Notice of Appeal, Respondent failed to file the necessary filing fee as the client had not provided costs monies to the Respondent. Consequently, the appeal was dismissed for non-payment. Respondent cured this deficiency by advancing her own funds and successfully reopened the appeal.

D. Once Respondent succeeded in reopening the appeal on January 14, 2009, the Eleventh Circuit issued a briefing notice, which provided that the Initial Brief would be due on April 11, 2009 (since this was a Saturday, the brief would have been due no later than April 13, 2009).

E. Respondent attempted to file a Motion for Additional Time to file the Initial Brief, but same was rejected as untimely. Therefore, since the Brief had not been received on April 13, 2009, the court issued a dismissal notice on April 15, 2009, providing Respondent fourteen (14) days to correct the previous deficiencies.

F. Although Respondent filed a brief on May 7, 2009, it was deemed untimely and deficient. All additional efforts by Respondent to effectuate timely filing and/or to correct the deficiencies failed. Consequently, the appeal was ultimately dismissed.

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G. On July 25, 2009, Acuna-Acosta filed a pro se Motion to the District Court alleging ineffective assistance of counsel by Respondent based on her failure to perfect his appeal. The Motion requested his sentence be vacated pursuant to 28 U.S.C. § 2255, based on Respondent's mistake.

H. The proceedings relative to Acuna-Acosta's motion culminated in an order from the trial judge finding that Respondent had failed to provide competent and diligent representation in violation of Rule 4-1.1 and 4-1.3 of the Rules Regulating The Florida Bar.

I. By reason of the foregoing, Respondent admits that she has violated Rule 4-1.1 and 4-1.3 of the Rules Regulating The Florida Bar.

7. The Florida Bar has approved this proposed plea in the manner required by Rule 3-7.9.

8. If this plea is not finally approved by the referee and the Supreme Court of Florida, then it shall be of no effect and may not be used by the parties in any way.

9. If this plea is approved, then respondent agrees to pay all reasonable costs associated with this case pursuant to Rule 3-7.6(q) in the amount of $4,278.46. These costs are due within 30 days of the court order. Respondent agrees that if the costs are not paid within 30 days of this court's order becoming final, Respondent shall pay interest on any unpaid costs at the statutory rate. Respondent further agrees

not to attempt to discharge the obligation for payment of the Bar's costs in any future proceedings, including but not limited to, a petition for bankruptcy. Respondent acknowledges the obligation to pay the costs of this proceeding and that payment is evidence of strict compliance with the conditions of any disciplinary order or agreement, and is also evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding may reflect adversely on any reinstatement proceedings or any other bar disciplinary matter in which respondent is involved.

10. This Conditional Guilty Plea is predicated upon approval by the Referee and the Supreme Court of Florida and should the Referee or the Supreme Court not approve this Conditional Guilty Plea then all admissions set forth herein will not be binding upon the Respondent or The Florida Bar.

11. This Conditional Guilty Plea for Consent Judgment fully complies with all requirements of the Rules Regulating The Florida Bar.

Dated this 6 day of July, 2016.

Maria Elena Perez
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Dated this 6th day of July, 2016

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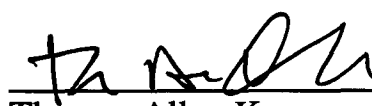
Dated this 6th day of July, 2016.



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