

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

JOHN RUSSELL WIENOLD,

Attorney-Respondent,

No. 3012522

Commission No 2023PR00040

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Evette L. Ocasio, pursuant to Supreme Court Rule 753(b), complains of Respondent, John Russell Wienold, who was licensed to practice law in Illinois on October 21, 1976, and alleges that Respondent has engaged in the following conduct which subjects Respondent to discipline pursuant to Supreme Court Rule 770:

COUNT I

(Allowing a witness to present false testimony at a deposition)

1. On September 14, 2017, Mark T. Bretall (“Bretall”) was riding a motorcycle near the intersection of Maple Avenue and Main Street in Downers Grove, Illinois, when he was hit by a truck driven by Feliciano Gomez. Due to Bretall’s injuries, he had little memory of the accident.
2. The only independent eyewitness present at the scene of the accident was Ricky Meisner (“Meisner”). The Illinois Traffic Crash Report generated by the Downers Grove Police on September 17, 2017, refers to Meisner as “Witness 1.”
3. On November 20, 2017, Clifford Law Offices, P.C. (“Clifford Law Offices”) filed a complaint on behalf of Bretall and his wife, Linda Bretall, in the Circuit Court of 18th Judicial Circuit, DuPage County, Illinois, against Gomez and his employers, Green Turf, Inc. and Green

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Scene, Inc. The matter was docketed as *Mark T. Bretall, et al. v. Feliciano Gomez, et al.*, case number 2017 L 001294.

4. On April 2, 2018, Respondent filed an appearance on behalf of defendants, Gomez, Green Turf, Inc., and Green Scene, Inc.

5. On September 6, 2018, Respondent called Meisner and discussed Meisner's recollection and comments regarding the motorcycle accident, including the actions of Bretall and Gomez.

6. On April 21, 2020, Meisner called Bob Dore, the corporate representative of Green Turf, Inc. and Green Scene, Inc., to discuss questions Meisner had about his deposition in the pending litigation.

7. Later that afternoon on April 21, 2020, Respondent called Meisner to discuss Meisner's earlier phone call with Dore and that Meisner's deposition was not going forward due to ongoing concerns and restrictions related to COVID-19. During the call, Respondent and Meisner also discussed facts related to the accident, that Meisner's testimony was still needed, and that someone would be in touch with Meisner at a later date once the COVID-19 restrictions were lifted.

8. On July 6, 2020, Respondent called Meisner to request that they meet at the scene of the accident in Downers Grove.

9. On July 7, 2020, Meisner called Respondent to confirm that he would meet Respondent at the scene of the accident.

10. On July 8, 2020, Respondent and Meisner met at the scene of the accident in Downers Grove where they discussed Meisner's recollection and observations of the accident,

including the location of the vehicles and the traffic lights. Respondent also informed Meisner that he would need to be subpoenaed to appear for his deposition.

11. On July 8, 2020, following their discussion at the scene of the accident, Respondent and Meisner walked to a nearby restaurant to eat. While at the restaurant, Meisner informed Respondent that he owned three motorcycles that had been damaged in a fire. Meisner believed that the value of the motorcycles at the time they were destroyed was greater than the value Meisner received for his insurance claim. Respondent advised Meisner that in order to show the insurance carrier its appraisal for the motorcycles was inadequate, Meisner needed a qualified individual who could verify the value of the motorcycles before they were destroyed.

12. On July 30, 2020, Respondent called Meisner to ask if he could meet to accept a subpoena for his deposition. That same day, Meisner returned Respondent's call and suggested they meet at Falco's Pizza in Burr Ridge, Illinois that evening.

13. On July 30, 2020, Respondent and Meisner met at Falco's Pizza where Meisner accepted service of a subpoena for his deposition scheduled on August 18, 2020. Respondent and Meisner discussed facts related to the accident, Meisner's concern that he was missing a day's work to appear for the deposition, and Meisner's insurance claim for his destroyed motorcycles. In addition, Meisner provided Respondent with documents and photos related to his destroyed motorcycles, including a copy of the insurance policy for the motorcycles and receipts for work done on the motorcycles at a Harley Davidson Repair shop.

14. During the July 30, 2020 meeting, Respondent wrote two checks made out to Meisner. Respondent wrote check number 16269 out of his law firm's operating account, in the amount of \$26, and noted in the memo line that the check was for a witness fee. Respondent wrote check number 16270 out of his law firm's operating account, in the amount of \$300, and noted in

the memo line that the check was for a deposition fee. In addition, Respondent and Meisner agreed to meet prior to Meisner's deposition at a place near the court reporter's office.

15. On August 18, 2020, Meisner called Respondent to schedule a place for the two to meet prior to Meisner's deposition. Later that morning, Respondent and Meisner met at The Verdict, a restaurant in Wheaton, Illinois. During this meeting, Respondent explained, among other things, the procedure of the deposition, anticipated questioning, and what Meisner would testify to during the deposition.

16. During Meisner's deposition, Bretall's attorney, Sean Driscoll ("Driscoll"), asked Meisner the following questions and Meisner gave the following answers:

- Q. When did you first meet with [Respondent]?
- A. He gave me a check, the \$22 check, a couple weeks ago.
- Q. Okay. And where did he give you the check?
- A. We stopped and met me at a Falco's Pizza.
- Q. Where is that?
- A. It's in Burr Ridge.
- Q. How's the pizza?
- A. Halfway decent.
- Q. All right. And how long did you spend with him?
- A. Ten minutes.

17. The answers given by Meisner during his deposition on August 18, 2020, as set forth in paragraph 16, above, were false, because Respondent first met with Meisner on July 8, 2020, at the accident scene in Downers Grove, prior to the July 30, 2020, meeting at Falco's Pizza. In addition, at the July 30, 2020, meeting Respondent met with Meisner for approximately an hour and gave Meisner checks in the amount of \$26 and \$300, not \$22.

18. Respondent knew Meisner's answers, as set forth in paragraph 16, above, were false at the time Meisner made them.

19. During Meisner's deposition, Driscoll asked Meisner the following questions about Meisner and Respondent's August 18, 2020, meeting at The Verdict, and Meisner gave the following answers:

- Q. And did he arrange to meet with you prior to your deposition?
A. No. We just stopped and had a bite to eat.
Q. Okay.
A. I didn't exactly know where I was going.
Q. Who paid for lunch?
A. I did.
Q. Okay. How long did you spend with him?
A. Ten minutes.
Q. What did you guys talk about?
A. Well, I have another problem, with my burned-up motorcycles. And I asked him if he knew anybody that could help me.
Q. Okay. What else did you talk about?
A. That was about it.
Q. Did you talk about the occurrence?
A. This?
Q. The accident.
A. No.
Q. No?
A. No. He showed me some pictures. We looked at them. And I says yeah, this is the way it was, this is where the bike was. That was about it.

20. The answers given by Meisner during his deposition on August 18, 2020, as set forth in paragraph 19, above, were false because on July 30, 2020, Respondent had arranged to meet Meisner prior to the deposition and the August 18, 2020, meeting prior to the deposition lasted more than ten minutes. In addition, Meisner first inquired about obtaining legal assistance for his destroyed motorcycles at the July 8, 2020, meeting, and Respondent had established an attorney-client relationship with Meisner.

21. Respondent knew the answers set forth in paragraph 19, above, were false at the time Meisner made them.

22. During Meisner's deposition, Driscoll asked Meisner the following questions and Meisner gave the following answers:

- Q. Did you ever go to the intersection with him?
A. No.
Q. Did he ever ask you to go to the intersection with him?
A. Nope.

23. The answers given by Meisner during his deposition on August 18, 2020, as set forth in paragraph 22, above, were false, because Respondent called and asked Meisner to meet with him at the scene of the accident on July 6, 2020, and Respondent and Meisner went to the intersection where the accident occurred on July 8, 2020.

24. Respondent knew Meisner's answers, as set forth in paragraph 22, above, were false at the time Meisner made them.

25. During Meisner's deposition, Driscoll asked Meisner the following question and Meisner gave the following answer:

- Q. All right. Did you ever talk to him on the phone?
A. No.

26. The answers given by Meisner during his deposition on August 18, 2020, as set forth in paragraph 25, above, were false because Respondent and Meisner talked on the phone on September 6, 2018, and April 21, July 6, July 7, July 30, and August 18, 2020.

27. Respondent knew Meisner's answers, as set forth in paragraph 25, above, were false at the time Meisner made them.

28. At no time during Meisner's August 18, 2020, deposition or thereafter, did Respondent take reasonable remedial measures regarding Meisner's false testimony.

29. On August 9, 2021, attorneys for Bretall received an unsolicited phone call and voicemail from Meisner, requesting a phone call on an important matter. Meisner was later contacted by Yvette Loizon ("Loizon"), a Clifford Law Offices attorney who was unconnected to Bretall's litigation.

30. On August 14, 2021, Meisner voluntarily gave a recorded statement to Loizon and a private investigator retained by Clifford Law Offices. In the recorded statement, Meisner gave testimony contrary to the testimony given at his August 18, 2020, deposition, including testimony that he first met Respondent at the scene of the accident prior to his deposition and that Respondent agreed to represent him pro bono in regard to Meisner's destroyed motorcycles.

31. On August 31, 2021, Clifford Law Offices filed an emergency motion requesting additional discovery based on newly discovered evidence of probable cause of discovery violations and unethical conduct committed by Respondent and for a protective order.

32. On September 7, 2021, the Court entered a protective order prohibiting the parties, their attorneys, their agents, or any other person working on their behalf from contacting Meisner in any manner without further order of court.

33. On October 1, 2021, Respondent filed a response to Clifford Law Offices' emergency motion for additional discovery.

34. On October 21, 2021, the Court entered an order granting the plaintiffs' motion for discovery in part, and permitting the parties to issue interrogatories and requests to produce limited to Respondent's and the defendants' interactions with Meisner.

35. On December 15, 2021, Respondent served on Clifford Law Offices the defendants' answers to additional discovery. On February 16, 2022, Respondent served on Clifford Law Offices additional supplemental answers to written discovery, per the court's January 12, 2022 ruling.

36. On February 28, 2022, the Court ordered the plaintiffs to file a motion for sanctions. On March 4, 2022, Clifford Law Offices filed a motion for Rule 219 sanctions against the defendants. On June 9, 2022, Clifford Law Offices amended its motion for sanctions.

37. On July 8, 2022, the Court entered an order granting the plaintiffs' amended motion for Rule 219 sanctions in part, barring Meisner from testifying at trial, allowing only a limited portion of the testimony from his discovery deposition to be read to the jury, and sanctioning Respondent for attorney's fees.

38. On February 15, 2023, the Court granted the plaintiffs' amended Rule 219 motion for attorney's fees and costs in part, and sanctioned Respondent pursuant to Ill.S.C.R. 219(e), for a total amount of \$36,678.24 (\$35,550 in attorney fees and \$1,125.44 in costs). Respondent paid the total sanction amount.

39. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. offering evidence the lawyer knows to be false, by conduct including, allowing Meisner, a witness called by Respondent, to testify falsely at his August 18, 2020, deposition regarding: when Meisner first met Respondent; the total compensation given to Meisner by Respondent for Meisner's deposition; the length of Meisner's July 30 and August 18, 2020, meetings with Respondent; whether Respondent arranged to meet with Meisner prior to his deposition, the number of meetings between Meisner and Respondent; the existence of an attorney-client relationship between Meisner and Respondent; whether Meisner had been to the scene of the accident with Respondent; whether Respondent had ever asked Meisner to go to the scene of the accident with him; and whether Meisner and Respondent had ever spoken via telephone, without taking reasonable remedial measures when Respondent came to know of Meisner's false testimony, in violation of Rule 3.3(a)(3) of the Illinois Rules of Professional Conduct (2010);
- b. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including, allowing Meisner, a witness called by Respondent, to testify falsely at his August 18, 2020, deposition regarding: when Meisner first met Respondent; the total compensation given to Meisner by Respondent for Meisner's deposition; the length of Meisner's July 30 and August 18, 2020, meetings with Respondent; whether Respondent arranged to meet with Meisner prior to his deposition, the number of meetings between Meisner and Respondent; the existence of an attorney-

client relationship between Meisner and Respondent; whether Meisner had been to the scene of the accident with Respondent; whether Respondent had ever asked Meisner to go to the scene of the accident with him; and whether Meisner and Respondent had ever spoken via telephone, without taking reasonable remedial measures when Respondent came to know of Meisner's false testimony, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010); and

- c. engaging in conduct prejudicial to the administration of justice by conduct including, allowing Meisner, a witness called by Respondent, to testify falsely at his August 18, 2020, deposition without taking reasonable remedial measures when Respondent came to know of Meisner's false testimony, which resulted in the Court barring Meisner from testifying at trial and permitting the presentation of only a limited portion of Meisner's deposition testimony to be used at trial, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator respectfully requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Evette L. Ocasio
Evette L. Ocasio

Evette L. Ocasio
Counsel for Administrator
One Prudential Plaza
130 East Randolph Drive, Suite 1500
Chicago, Illinois 60601
Telephone: (312) 565-2600
Email: eocasio@iadc.org
Email: ARDCeService@iadc.org

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