

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

In the Matter of:

TERRY L. GACA,

Attorney-Respondent,

No. 6196963.

Commission No. 2023PR00019

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission (“Commission”), by his attorney, Rachel C. Miller, pursuant to Supreme Court Rule 753(b) and Supreme Court Rule 761(c), complains of Respondent, Terry L. Gaca (“Respondent”), who was licensed to practice law in Illinois on December 8, 1987, and alleges that Respondent has engaged in the following conduct which subjects him to discipline pursuant to Supreme Court Rule 753(b) and 761(c):

COUNT I

*(false statement in a civil proceeding –
2019 CH 1237, Will County Circuit Court)*

1. Prior to August 1996, Respondent and his wife, Janet Wayman (“Wayman”), purchased the residential property located at 2401 Lisson Road (“Lisson Road property”) in Naperville, Will County, Illinois.
2. In August 1996, Respondent and Wayman transferred the Lisson Road property into a trust titled “Janet L. Wayman Trust” (“Wayman Trust”).

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3. The Lisson Road property sits adjacent on the north to the property located at 2316 Bill Court (“Bill Court property”). Thomas Frederick (“Frederick”) purchased the Bill Court property in April 1999 and continuously resided there with his family.

4. Prior to August 26, 2019, Respondent and Wayman moved out of the Lisson Road property. Respondent rented space in the Lisson Road property to at least four tenants, and those tenants resided in the Lisson Road property simultaneously.

5. On August 26, 2019, Frederick filed a complaint against Respondent and Wayman, both individually and as Trustee of the Wayman Trust, alleging, in part, various violations of City of Naperville zoning violations, including those involving the operation of a boarding house. The complaint also alleged public nuisance claims and violations related to operating a parking and storage facility. This matter was docketed as *Thomas J. Frederick v. Terry L. Gaca and Janet L. Wayman*, 2019 CH 1237 (Will County Circuit Court).

6. Prior to February 24, 2020, Respondent began staying at the Lisson Road property, although he did not stay there every night.

7. On February 24, 2020, Respondent filed a motion to dismiss the complaint. The motion to dismiss stated that Respondent lived in the home as an owner-occupant with only two other tenants and that all other occupants, including Sean Sealy (“Sealy”), had moved out of the property.

8. Respondent’s signed affidavit attached to the motion to dismiss stated:

“Upon moving back into the Lisson Road property, I served thirty-day notices on Sean Sealy, Peter Salerno, and Adrian Rittenhouse, who were residing at the Lisson Road property. As a result of the January 16, 2020 notices, these three individuals no longer reside at the residence. A true and accurate copy of the notice to the Lisson tenants is attached hereto, it is marked Exhibit 1 as incorporated here by reference. A Julien Green vacated the Lisson property of his own accord prior to January 16, 2020.”

9. Respondent's affidavit in paragraph eight, above, was false, because Sealy had not vacated the Lisson Road property on or before February 24, 2020 and still resided at the Lisson Road property.

10. When Respondent signed the affidavit referenced in paragraph eight, above, stating that Sealy had vacated the Lisson Road property, he knew that it was false.

11. On February 26, 2020, Judge Theodore Jarz denied Respondent's motion to dismiss and to dissolve the preliminary injunction. Furthermore, Judge Jarz granted Frederick's motion for partial summary judgment and entered a preliminary injunction prohibiting Respondent from operating a boarding house, operating a parking facility, or engaging in unlawful home occupations.

12. On March 25, 2020, Respondent and Wayman filed an interlocutory appeal from the order denying their motion to dismiss and granting Frederick's motion for partial summary judgment. In the appeal, Respondent stated that he lived in the Lisson Road property with only two other individuals, August Brooks and Jeffrey Byron; that he was in compliance with the municipal code; and that the court should have granted his motion to dismiss and denied Frederick's motion for partial summary judgment.

13. Respondent's statement in the interlocutory appeal in paragraph 12, above, that he lived in the Lisson Road property with only two other tenants, not including Sealy, was false, because Sealy had not vacated the property on or before March 25, 2020.

14. When Respondent made the statement in paragraph 12, above, he knew that it was false.

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

- a. making a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer, by conduct including filing an affidavit described in paragraph eight, above, stating that Sealy had vacated the Lisson Road property when he had not, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct (2010), and
- b. engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including knowingly making the false statements in court pleadings as described in paragraphs eight and 12, above, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010), and
- c. engaging in conduct that is prejudicial to the administration of justice, by conduct including knowingly violating the court's preliminary injunction in 2019 CH 1237, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010).

COUNT II

*(guilty plea to two counts of indirect criminal contempt –
2020 CC 7, Will County Circuit Court)*

16. The Administrator realleges and incorporates paragraphs one through 14, above.
17. On June 22, 2020, Frederick filed a petition for adjudication of indirect criminal contempt and constructive direct criminal contempt against Respondent, and he alleged that Respondent perpetuated a fraud on the court by knowingly violating the court's injunction and knowingly filing false affidavits stating that Sealy no longer lived at the Lisson Road property. The matter was docketed as *Thomas J. Frederick v. Terry L. Gaca*, 2020 CC 7 (Will County Circuit Court).
18. On May 17, 2022, Respondent pled guilty in 2020 CC 7 to one count of indirect criminal contempt (violation of an injunction) and one count of indirect criminal contempt (false swearing) in 2020 CC 7. Respondent was sentenced to two years of supervision and ordered to pay \$10,000 of Frederick's attorney's fees.

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

- a. committing criminal acts that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, by conduct including committing and pleading guilty to two counts of indirect criminal contempt including violating an injunction entered by the court and by violating Section 1-109 of the Illinois Code of Civil Procedure by knowingly and willingly signing a false affidavit to be submitted in 2020 CC 7, as described in paragraph 18, above, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct (2010).

COUNT III

*(filing of frivolous pleadings and unauthorized practice of law –
2021 SC 3287, DuPage County Circuit Court)*

20. The Administrator re-alleges and incorporates paragraphs 16 through 18.

21. At all times related to this complaint, Illinois Supreme Court Rule 756(a)(6) stated that an attorney placed on retirement status “shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law in this state, except as provided in paragraph (k) of this rule.”

22. On January 12, 2021, Respondent changed his registration status with the Commission to retired.

23. On May 20, 2021, Respondent, acting as an attorney for the Terry L. Gaca Trust (“Gaca Trust”), filed a complaint for slander of title against Frederick in DuPage County alleging, in part, that Frederick recorded a *lis pendens* with the DuPage County Recorder against 422 Carriage Hill in Naperville (“Carriage Hill”), that Carriage Hill was held in trust by the Gaca Trust, and that the Gaca Trust was not a party in 2019 CH 1237. This matter was docketed as *Terry L. Gaca Trust v. Thomas J. Frederick*, 2021 SC 3287 (DuPage County Circuit Court).

24. On September 20, 2021, Frederick filed a motion for sanctions based on Respondent's allegedly frivolous pleadings.

25. On December 9, 2021, the court entered an order granting Frederick's motion for sanctions and ordering Respondent to pay \$7,336 of Frederick's attorneys' fees. The court found that Respondent's pleadings were "particularly egregious in light of similar pleadings and findings in similar matters filed in Will County [2021 SC 4850, in Count IV, below] such that the Court will enter sanctions based upon the filing of false, frivolous and baseless pleadings in the consolidated cases."

26. On December 29, 2021, Frederick filed a motion for rule to show cause as to why Respondent should not be held in contempt for the unauthorized practice of law.

27. On April 22, 2022, Judge Thomas Else found Respondent to be in minor direct criminal contempt and sentenced him to pay a \$500 fine.

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

- a. bringing a proceeding, or asserting an issue therein, without a basis in law and fact for doing so that was not frivolous, by conduct including filing a complaint for slander of title in a matter docketed as 2021 SC 3287 in DuPage County, despite similar pleadings and filings in 2021 SC 4850 in Will County, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct (2010), and
- b. practicing law in a jurisdiction in violation of the regulation of the legal professional in that jurisdiction, by representing the Gaca Trust after he assumed retirement status, in violation of Rule 5.5(a) of the Illinois Rules of Professional Conduct (2010), and
- c. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, by conduct engaging in the authorized practice of law, as described in paragraph 23, above, and being held in indirect

criminal contempt, as described in paragraph 27, above, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct (2010).

- d. engaging in conduct that is prejudicial to the administration of justice, by conduct including engaging in the unauthorized practice of law in 2021 SC 3287, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010).

COUNT IV

(unauthorized practice of law – 2021 SC 4850, Will County Circuit Court)

29. The Administrator re-alleges and incorporates paragraphs 20 through 27.

30. On July 2, 2021, Respondent filed a complaint against Frederick alleging slander of title arising from Frederick recording a *lis pendens* with the Will County Recorder on the Lisson property. This matter was docketed as *Terry L. Gaca Trust v. Thomas J. Frederick*, 2021 SC 4850 (Will County Circuit Court).

31. Between July 27, 2021 and October 1, 2021, Respondent filed pleadings in 2021 SC 4850 on behalf of the Gaca Trust.

32. Between July 27, 2021 and October 1, 2021, Respondent appeared in court for 2021 SC 4850 on behalf of the Gaca Trust.

33. On October 1, 2021, the court entered an order stating that the Gaca Trust “may appear in this action only through counsel authorized to practice law.”

34. Between October 1, 2021 and October 15, 2021, Respondent appeared in court for 2021 SC 4850 on behalf of the Gaca Trust.

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

- a. knowingly disobeying an obligation under the rules of a tribunal, by conduct including appearing in court on behalf of the Gaca Trust, as described in paragraph 34, above,

despite the court entering an order that the Gaca Trust may appear only through counsel authorized to practice law, in violation of Rule 3.4(c), of the Illinois Rules of Professional Conduct (2010), and

- b. practicing law in a jurisdiction in violation of the regulation of the legal professional in that jurisdiction, by appearing on behalf of the Gaca Trust despite being non-compliant with Rule 756, in violation of Rule 5.5(a) of the Illinois Rules of Professional Conduct (2010), and
- c. engaging in conduct that is prejudicial to the administration of justice, by conduct including engaging in the unauthorized practice of law in 2021 SC 4850, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010).

COUNT V

*(committing three counts of indirect criminal contempt –
2021 CC 11, Will County Circuit Court)*

36. The Administrator realleges and incorporates paragraphs 29 through 34.

37. On October 26, 2021, Frederick filed a petition for adjudication of minor indirect criminal contempt against Respondent in which he alleged Respondent engaged in the unauthorized practice of law in filing and prosecuting 2021 SC 4850. The matter was docketed as *Thomas J. Frederick v. Terry L. Gaca*, 2021 CC 11 (Will County Circuit Court).

38. On December 2, 2022, Respondent pled guilty to three counts of indirect criminal contempt, including a count of filing a complaint in 2021 SC 4850 despite not being authorized to practice law, a count for appearing in court on behalf of the Gaca Trust on October 14, 2021, and a count for appearing in court on behalf of the Gaca Trust on October 15, 2021.

39. On December 9, 2022, court entered an order of conditional discharge and sentenced Respondent to pay \$700 in fines. The court also sentenced Respondent to 30 days in jail, which was suspended subject to a motion to vacate upon payment of the fines and Frederick's attorneys' fees accrued in 2021 SC 4850.

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

- a. engaging in conduct involving committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, by conduct including pleading guilty to three counts of indirect criminal contempt related to the unauthorized practice of law as described in paragraph 40, above, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and 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/ Rachel C. Miller
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