

Subject: LDD 2301117

From: Marc Mohan <marc@veritelawcompany.com>

Date: 9/26/23, 5:08 PM

To: OSB Client Assistance Office Intake <cao@osbar.org>

I appreciate the opportunity to respond to Mr. Koenig's complaint and accompanying declaration. I'll address each of the specific points he lists in paragraph 37 of his declaration.

1. "failing to submit evidence that I repeatedly asked him to submit."

It's not clear to me what relevant evidence this item refers to. Presumably it refers to the e-mail and attachments referenced in paragraph 19 of the declaration. During my representation of Mr. Koenig, I repeatedly indicated that communications with the organizations that had suspended him were not, in my opinion, relevant to his claims against the defendants or responsive to defendants' requests for production. Therefore, I did not produce those documents.

2. "lack of awareness of what he had or had not submitted."

Again, it's not exactly clear to me what this refers to. If it refers to the fact that the first batches of documents produced in response to defendants Evans and Jennifer Clinchy's attorney's requests for production were not provided to Brianna McKissen's attorney, that is because the first batches of documents (Bates 1-411) were produced on between May 22 and June 1, and I was only informed of defendant McKissen's representation on June 5.

3. "failing to take a proactive enough approach to discovery."

In drafting requests for production and admission on Mr. Koenig's behalf, I counseled against his efforts to expand the scope of those requests beyond what could be reasonably relevant to his claims against the defendants. In his view, this approach was apparently not proactive enough, but in my opinion, pursuing the approach Mr. Koenig would have been counterproductive and would have resulted in a waste of the court's time.

4. "failing to properly execute subpoenas."

Mr. Koenig expressed a desire to subpoena several Scrabble organizations. Defendants Evans & Jennifer Clinchy's attorney had already subpoenaed one of those organization, NASPA. That organization's suspension of Mr. Koenig is at the heart of his claims. I did not feel it was necessary or advisable to subpoena the other organizations, but eventually I agreed to do so. However, I was unable to issue said subpoenas prior to withdrawing as Mr. Koenig's attorney.

5. "agreeing to a stipulated protective order with opposing counsel without my consent."

The stipulated protective order proposed by Mr. Fuller and agreed to by me is, in my opinion, a standard measure in cases involving allegations related to private conduct. The order does not prevent any party from objecting to a confidential designation and does not prevent any documents or other information designated as confidential from being used in the case. Mr.

Koenig strongly desired to make his case against the defendants' in the public arena, as evidenced by repeated online comments and statements reiterating his claims. I did not feel it was necessary to obtain Mr. Koenig's specific permission to stipulate to this standard protective order, since doing so did not prejudice him. In addition, even if I had opposed the protective order, I am certain the court would have issued it regardless.

6. "failing to disclose to me a stipulate protective order after he and the judge has signed it." Again, as I considered the protective order a *pro forma* filing with no impact on the ability to pursue Mr. Koenig's claims, I did not feel it was necessary to bring it to his attention. Also, it is quite possible that I did mention it to him in a phone, although I do not have a record of such.

7. "falling for Michael Fuller's bullying deception that I was doing anything wrong." Mr. Fuller made serious allegations regarding Mr. Koenig's behavior and communications of which I had been previously unaware. It was incumbent on me to take those allegations seriously in order to avoid violating the ORPC myself and to evaluate whether I would be able to continue representing Mr. Koenig going forward. I do not see this as "falling for" anything. I see it as doing everything I could in order to ethically represent Mr. Koenig, and to withdraw from doing so when it became apparent that would be difficult to do.

8. "telling both Michael Fuller and Ashley L. Vaughn that he had to withdraw from the case before talking with me about it first."

When I determined that I would be withdrawing from representing Mr. Koenig, I notified him via email and then notified opposing counsel afterward. I did this so that they would be on notice that Mr. Koenig would be engaged in the process of obtaining new counsel or proceeding pro se. This was to Mr. Koenig's benefit, since he would be allowed some flexibility on filing deadlines while this process moved forward. Ultimately, I opted not to file a motion for mandatory withdrawal and assisted Mr. Koenig in attempting to obtain substitute counsel. When those efforts were unsuccessful, I filed a notice of withdrawal on July 28. A copy of my letter of July 7 to Mr. Koenig is attached.

To sum up:

When Mr. Koenig initially contacted me and provided me with the documents he had assembled, I concluded that he likely had a prima facie case of defamation. I informed him that defamation cases can be very difficult to prevail in, and that I would need to know a lot more about the facts before I could provide a more solid estimation of the strength of his case. Because the statute of limitations deadline was very near, I filed his complaint without performing as thorough an investigation of the facts as would have been ideal.

As we worked together, a tension quickly became apparent between Mr. Koenig's desire to publicly air his grievances (which, again, I felt were legitimate) against the Clinchys and Ms.

McKissen. He had previously sought to hire a public relations firm to represent him in this manner, but they, like I, informed him that it would be strategically unwise to continue to make public statements about his claims, or any other matters related to them, or to contact any of the parties or potential witnesses in the case. When he pushed to send communications to the various Scrabble organizations, I similarly counselled strongly against it. When he insisted, I reasoned that if he was going to send letters to these organizations, I should at least advise him to ensure that he didn't harm his case any more than possible. Therefore, I approved his communications to the organizations only to prevent more explicitly damaging communications from being sent.

As the case moved forward, Mr. Koenig continued to push for what, in my opinion, would have been overly aggressive, even frivolous motions. I was able for the most part to counsel him against these moves, which included adding additional defendants, making argumentative requests for admission, and even flying down to Las Vegas to confront players at the Scrabble tournaments he was missing due to his suspension. Eventually, it became clear that I did not possess the skills and qualities that would enable me to represent my client effectively going forward. In my views, continuing to represent him in the litigation would pose significant ethical risk.

As soon as that became apparent, I informed Mr. Koenig, in order to maximize his ability to obtain substitute counsel, and opposing counsel, in the expectation that they would grant Mr. Koenig flexibility regarding filing deadlines until his representation was determined. I arranged for Mr. Koenig to meet with an experienced Portland litigator, who declined due to the litigator's current commitments. I remained Mr. Koenig's attorney of record for the period from July 7 to July 28 because I did not want to abandon him. I am sympathetic to his claims and continue to believe he was ill-treated and defamed.

Throughout my representation of Mr. Koenig, I endeavored to vigorously and efficiently pursue those claims while maintaining professional standards and providing my client with honest, informed counsel. When it became apparent that I could no longer do so, I withdrew in as gentle a manner as possible, and made a more than reasonable effort to help him obtain substitute counsel. I can understand Mr. Koenig's frustration. However, I provided competent representation. I abided by his decisions regarding the objectives of the representation. I consulted with him about the means to pursue those objectives. I abided by his decision about whether to settle a matter, even when I advised him to accept a settlement offer from defendant McKissen. And I explained matters to him in a way reasonably necessary to allow him to make informed decisions.

For these reasons, I disagree that any violation of ORPC 1.1, 1.2(a), or 1.4(b) has occurred.

Again, thank you for the opportunity to respond, and feel free to reach out if you need any further information from me.

Sincerely,

Marc Mohan (he/him)

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