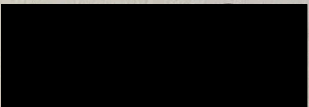
 OSB

Professional Liability Fund

November 15, 2023

David Koenig


Re: PLF File No. : 052623
Covered Party : Marc W. Mohan
Claimant(s) : David Koenig

David Koenig v. Evan Clinchy, et al
Multnomah County Court Case No. 23CV15424

Dear Mr. Koenig:

This will serve as the PLF's response to the legal malpractice claim you have asserted against the PLF's Covered Party, Marc Mohan.

As discussed below, the PLF respectfully denies the claim in its entirety.

At the outset, I want to explain the role of the PLF. The PLF is an independently operated arm of the Oregon State Bar. The PLF's sole purpose is to provide coverage for legal malpractice claims to nonexempt attorneys in the private practice of law in Oregon in accordance with the terms and conditions of the applicable coverage plan and to address claims against those attorneys that are potentially within coverage. We do not provide advice or assistance to people such as yourself to aid you in making a claim against an attorney. On the contrary, as Mr. Mohan's professional liability carrier, the PLF's interests are adverse to your interests. To the extent you want or need legal advice or representation concerning your claim, which the PLF recommends you seek, you will need to hire your own attorney to provide you with that advice and representation.

Furthermore, the PLF Coverage Plan does not cover disputes regarding attorney fees. The Plan provides coverage for alleged damages related to legal errors committed by an attorney in the private practice of law and specifically excludes any claims for the return of legal fees paid to an attorney. This includes fees alleged to have been negligently incurred, excessive or otherwise alleged to be unjustified. Accordingly, the PLF does not provide coverage (cannot reimburse you) for any portion of your claim requesting reimbursement of any fees paid to Mr. Mohan.

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As the person asserting the malpractice claim, you must prove each and every element of the claim. To successfully establish a claim for legal malpractice you must prove: (1) that Mr. Mohan was negligent in one or more of the ways in which you have alleged; and (2) that you sustained specific economic damages as a result of that negligence. *Harding v. Bell*, 265 Or 202, 508 P2d 216 (1973). The person asserting the claim must show, as the first step in proving the malpractice action, that the outcome in their case would have been better, but for the alleged negligence of the attorney. *Id.*

Simply stated, if this case were litigated, we think a court, or a jury would conclude you have not met your burden of proving either that Mr. Mohan was negligent in any aspect of his representation of you or that he caused the damages you claim you have sustained.

In April 2023, you contacted Mr. Mohan to pursue defamation and other claims against three individuals you alleged caused you to be suspended from competitive Scrabble. After the initial conversation with you, Mr. Mohan concluded that the one-year statute of limitations for defamation claims was quickly approaching in the matter of a few days. He explained that he was nevertheless willing to file the complaint notwithstanding that the time constraints prevented him from fully evaluating the strength of the case. You agreed to his representation under these conditions.

Following the filing of the suit, and as you know, the defendants vigorously defended against the claims. It was evident that the defendants were united in their allegations regarding the alleged inappropriate and threatening behavior you exhibited. You were equally vehement in your desire to prove that the statements were untrue and expose the ill treatment at the hands of the defendants. Mr. Mohan counseled you against taking a hyper-aggressive stance in discovery. This included not filing confrontational and aggressive Requests for Admissions. He further counseled you against continuing to post articles and send letters to the various Scrabble organizations.

In your letter to the PLF (and your communications to the Oregon State Bar) you alleged that Mr. Mohan failed to produce evidence in support of your claims. This included screenshots of text conversations with members of the NASPA Board. You indicate this was evidence that the Board was intentionally trying to ban you from competition without providing a basis for its decision. You noted that Mr. Mohan's response to the Oregon State Bar indicated that he did not produce the screenshots because he concluded it was not helpful, or responsive, to the claims you were alleging. You take exception to Mr. Mohan's decision regarding that discovery, as well as other discovery-related issues.

However, we do not agree that Mr. Mohan's handling of your case, including the responses to defendants' discovery requests, fell below the standard of care. While your suspension was certainly part of the alleged damages, the communications and screenshots you provided did nothing to further your case and, in fact, could potentially have worked against you.

You further find fault with Mr. Mohan in his drafting of the complaint. Specifically, you allege that the court found his drafting deficient because it did not include all the alleged defamatory statements. You indicate Mr. Mohan advised that in his opinion, only the three statements from the April 14, 2022 report

should be included as exhibits to the complaint. Again, we can find no fault with Mr. Mohan's decision to limit the pleadings to the three statements contained in the April 4, 2022 incident report. The court ultimately found those statements were not defamatory. We do not agree that adding any additional alleged defamatory statements would have changed that outcome.

In total, none of the alleged failures outlined in your letter to the PLF would have changed the outcome of your case. This includes the alleged failure in agreeing to a Stipulated Protective Order, not issuing subpoenas to the various Scrabble organizations, as well as the alleged failure to timely serve the complaint on the defendants. Considering the court's ruling on the merits of the alleged defamation claims, it is clear the court would nevertheless have dismissed the claims notwithstanding any alleged service issues.

Ultimately, the attorney-client relationship broke down and Mr. Mohan withdrew as your attorney in July 2023. Mr. Mohan explained in his withdrawal letter that "your actions and communications have affected my ability to pursue a meritorious case on your behalf, by having the effect of waiving attorney-client privilege and by failing to act with full candor to the court." He recommended that you voluntarily dismiss your case noting that the chances of you obtaining a judgment in your favor "have been seriously tarnished". He referred you to another attorney who we understand was unwilling to take on your case. You then proceeded to represent yourself in the case. This included filing responses to the Anti-SLAPP motions filed by the defendants.

The Court ruled that the protected conduct and statements "include the conduct and statements alleged in the Second Amended Complaint, as well as the conduct and statements detailed in the Exhibits attached to the Second Amended Complaint. The Court's ruling encompasses the conduct and statements contact in the Exhibits attached to the Second Amended Complaint." The court found that defendants alleged conduct and statements were subject to qualified immunity because they were made as part of a disciplinary process regarding an issue of public safety" and that defendant's alleged statements "are statements of opinion, which cannot form the basis of a defamation claim." You did not object to submission of the Order following the court's ruling.

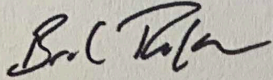
We conclude that you would not have been successful in your claims but for anything Mr. Mohan allegedly did or did not do. The court was unpersuaded and instead sided with the defendants confirming that it was your own behavior that led to the ban from Scrabble competitions and, in any event, that you did not have the proof needed to sustain your case. It was your decision to continue to pursue the case following Mr. Mohan's withdrawal as you ignored his advice to voluntarily dismiss the case. You continued to respond to the defendants Anti-SLAPP motions, produce additional discovery, and attend the hearing. The PLF must respectfully deny the legal malpractice claim you have asserted.

We encourage you to obtain independent legal advice regarding this matter. Nothing in this letter or prior correspondence is intended to be legal advice to you and you should not consider it to be legal advice.

David Koenig
November 15, 2023
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Thank you for your time and attention to this matter.

Very truly yours,



Brad M. Tompkins
Claims Attorney

BMT/nsb/sjs

c: Marc W. Mohan (*Personal & Confidential - via email*)