

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs.

THOMAS JACKSON CRAFT, JR.,

Respondent.

}
}
}
}
}
} CASE NO. SC20-
} Florida Bar File 2018-50,684 (15D)
}
}
}
}

**RESPONDENT’S STIPULATION FOR PROBABLE CAUSE AND
CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT**

Respondent, Thomas Jackson Craft, Jr., stipulates to a finding of probable cause for a violation of rules 4-5.3(b)(1) and 4-5.4(a) of the Rules Regulating The Florida Bar and tenders this conditional guilty plea for consent judgment pursuant to Rule Regulating The Florida Bar 3-7.9(a). The particulars and basis of this stipulation and conditional plea are as follows:

1. Respondent is and at all material times has been a member of The Florida Bar and subject to the disciplinary jurisdiction of this Court.
2. Respondent is 55 years old and was admitted to The Florida Bar in April 1991. Respondent has no prior disciplinary record and has not been sanctioned by any court.

3. Respondent waives and stipulates to a finding of probable cause for violation of Rules Regulating The Florida Bar 4-5.3(b)(1) (supervisory responsibility for nonlawyer assistants) and 4-5.4 (sharing fees with nonlawyers).

4. For purposes of this plea and the proposed consent judgment, Respondent admits that the following conduct on his part constituted a violation of Rules Regulating The Florida Bar 4-5.3(b)(1) and 4-5.4(a):

In 2015 Respondent, a solo practitioner, was introduced to Robert Han, the nonlawyer owner of The Mortgage Council, LLC. The Mortgage Council was in the business of providing consumers with mortgage-modification services. It had been formed by Mr. Han in December 2014. Mr. Han is a Vietnam veteran and former Navy SEAL member whom Respondent understood to be experienced in mortgage lending and related matters. Respondent believed him to be trustworthy and to be knowledgeable in loan-modification matters, with which Respondent had no experience. Respondent accepted Mr. Han's assurances that The Mortgage Council's loan-modification services did not constitute the practice of law.

[Nonlawyer-owned companies appear to be legally permitted to provide such services under certain conditions. *See* § 494.00296, Fla. Stat. (by inference).]

Respondent agreed with Mr. Han to assist The Mortgage Council in providing loan-modification services, with the administrative aspects (accumulation of documents, communication with lenders, etc.) to be handled by employees of The Mortgage Council and for Respondent to be available to speak with clients to answer questions that they might have. Respondent and Mr. Han agreed that for his services Respondent would receive \$650.00 per week. Respondent subsequently had the same arrangement with The Mortgage Guild, LLC, which Mr. Han formed in June 2016 to provide similar services and which shared offices and employees with The Mortgage Council.

The clients generated by The Mortgage Council and The Mortgage Guild signed retainer agreements with Respondent's law firm. It was Respondent's understanding and intent that the services to be provided would be limited to seeking loan modifications and that any litigation would be referred to outside counsel. The retainer agreements executed with clients expressly excluded litigation and bankruptcy services and authorized Respondent to refer the matters to local counsel as appropriate. Respondent never agreed to provide bankruptcy advice or services and never authorized The Mortgage Council or The Mortgage Guild or their representatives to do so. Respondent from time to

time spoke with clients about the importance of providing documents timely and answered their questions. He likewise periodically discussed individual cases with Mr. Han. The Mortgage Council charged and collected fees from the clients and remitted the agreed weekly compensation to Respondent.

In December 2015 Anthony and Angela Glenn, residents of North Carolina, retained Respondent through The Mortgage Council to provide them with mortgage-modification services. Negotiations with the Glens' lender were unsuccessful. An employee of The Mortgage Guild advised the Glens to file for bankruptcy, provided them with blank bankruptcy forms to complete and a response for filing in the foreclosure action, and referred them to North Carolina bankruptcy counsel for representation. Respondent himself had no contact with the Glens and did not authorize The Mortgage Council or The Mortgage Guild to provide the Glens with bankruptcy or litigation services or advice. The Glens retained North Carolina counsel and filed for bankruptcy protection in the Western District of North Carolina. The Mortgage Council's and the Mortgage Guild's involvement with the Glens was brought to the attention of the North Carolina State Bar's Authorized Practice Committee by the U.S. Bankruptcy Administrator. Following an investigation, that committee

issued a “Letter of Caution” to Respondent on February 12, 2018, based on his relationship with The Mortgage Council and The Mortgage Guild and brought the matter to the attention of The Florida Bar. The Glenns themselves did not complain to The Florida Bar.

Respondent terminated his relationship with The Mortgage Council and The Mortgage Guild in April 2018.

5. As appropriate discipline for the foregoing conduct, Respondent agrees to the following:

- a. Respondent shall receive a public reprimand, to be administered by service of the Court’s order approving the proposed consent judgment.
- b. Respondent shall refund or arrange to be refunded to Anthony and Angela Glenn, within 60 days of the Court’s order approving the proposed consent judgment, the amount of \$3,750.00, representing the fee that they paid.
- c. Respondent shall attend The Florida Bar Ethics School within six months of the Court’s order approving the proposed consent judgment and shall pay the associated \$750.00 prior to attending.

d. Respondent shall:

- (i) schedule an evaluation by Florida Lawyers Assistance, Inc. (FLA), within 60 days of the Court's order approving the proposed consent judgment;
- (ii) abide by all recommendations of FLA, including entering into a rehabilitation contract with FLA if recommended;
- (iii) if such a contract is entered into, pay FLA's registration fee and monthly monitoring fee directly to FLA no later than the end of each month in which the fee is due; and
- (iv) waive confidentiality to authorize FLA to notify the Bar of the results of his evaluation and, if a contract with FLA is entered into, to authorize FLA to notify the Bar of his progress during the term of the contract and any breach of that contract.

e. Respondent shall be placed on probation for a period of two years from the Court's order approving the proposed consent judgment or, if he enters into a contract with FLA, for the term of that contract, with the conditions (i) that he not directly or indirectly engage in offering or providing mortgage-modification or debt-relief services and (ii), if he enters into a contract with FLA, that he not breach that contract.

f. The Florida Bar will monitor Respondent's compliance with any contract entered into with FLA, including paying all costs associated with any recommendations by FLA.

6. Respondent acknowledges that substantial experience in the practice of law is considered an aggravating factor. Respondent, however, although admitted in 1991, has had limited actual legal-practice experience, instead has been active mostly in nonlegal business and entrepreneurial endeavors. He had no experience with the provision of mortgage-modification services.

7. Respondent respectfully suggests that the following mitigating factors apply:

a. *Absence of a Prior Disciplinary Record.* Respondent has no prior disciplinary record in his 29 years as a member of The Florida Bar.

b. *Absence of a Dishonest or Selfish Motive.* Respondent harbored no dishonest or selfish motive in becoming involved with The Mortgage Council. He believed (rightfully) that The Mortgage Council was in the business of helping individuals struggling with mortgage debt. The company succeeded in obtaining mortgage modifications for approximately 90 of the approximately 300 clients served. Mr. Craft was not motivated by personal financial gain, receiving a modest \$650.00 per week for his involvement.

c. *Timely Good Faith Effort to Make Restitution or to Rectify Consequences of Misconduct.* Respondent offered to the North Carolina State Bar

to make any restitution that it or the bankruptcy court felt was due and has agreed to refund or arrange to have refunded the fee paid by the Glens. To Respondent's knowledge, no other client has complained to the Bar, and any client who complained to The Mortgage Council or The Mortgage Guild has received a full refund of fees paid.

d. *Full and Free Disclosure to Disciplinary Authority;*

Cooperative Attitude Toward Proceedings. Respondent has made every effort to provide the Bar with any and all information that it has requested, which has been considerable.

e. *Character or Reputation.* Respondent enjoys a reputation for good character. Respondent has provided the Bar with character references from Jeffrey J. Colbath, R. Todd Lazenby, James Johnson, Jo Ann Barone, James N. Nance, John F. Schutz, and Gregory W. Coleman. Mr. Colbath is a retired circuit judge from the Fifteenth Judicial Circuit of Florida. Mr. Lazenby and Mr. Johnson are long-time friends. Ms. Barone and Mr. Nance are members of The Florida Bar who have known Respondent for many years. Mr. Schutz also is a member of The Florida Bar and current President of the Florida Chapter of the American Academy of Matrimonial Lawyers who has known Respondent since their

high-school days. Mr. Coleman is a past president of The Florida Bar.

Mr. Coleman rarely writes character reference letters, yet has done so for Respondent. From his long association with the Bar in leadership and other service positions, he is well acquainted with the disciplinary system. He recommends a public reprimand. These people know Respondent as well as anyone and attest to his good character.

f. *Physical or Mental Disability or Impairment.* Respondent is an alcoholic. When he entered into the arrangement with The Mortgage Council in 2015, he was in the depths of his addiction. He has been sober since May 2, 2016. He regularly attends AA meetings, has an AA sponsor, and has worked AA's twelve-step program. (Respondent has provided the Bar with correspondence from his AA sponsor.) Although he remained in the relationship with The Mortgage Council and The Mortgage Guild for more than a year after attaining sobriety, most certified addiction counselors and members of AA will confirm that the first year or more of sobriety is consumed with regaining one's mental and emotional equilibrium and working the AA program.

g. *Interim Rehabilitation.* Respondent terminated his relationship with The Mortgage Council and The Mortgage Guild promptly after becoming

aware of the ethical improprieties involved and has dealt with his addiction that contributed to his entering into that relationship in the first place.

h. *Remorse.* Respondent truly is remorseful for his failure to appreciate the ethical improprieties involved in his relationship with The Mortgage Council and The Mortgage Guild.

8. A public reprimand is supported by Standard for Imposing Lawyer Sanctions 7.3: “Public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.” Standard 7.2 (suspension) applies when the lawyer “*knowingly* engages in conduct that is a violation of a duty owed as a professional *and* causes injury or potential injury to a client, the public, or the legal system.” (Emphasis added.) Respondent arguably engaged in conduct that constituted a violation, but he did not do so knowing that it was a violation. It also is doubtful that his conduct caused actual or potential injury. Standard 7.4 provides that *admonishment* is appropriate “when a lawyer is negligent in determining whether the lawyer’s conduct violates a duty owed as a professional and causes little or no actual or potential injury to a client, the public,

or the legal system.” If anything, Standard 7.4 is more closely applicable than Standard 7.2.

9. The following two cases support a public reprimand:

a. *Florida Bar v. Saracco*, No. SC18-1684 (Fla. Nov. 1, 2018).

Three separate individuals complained that Saracco neglected their matters during his association with a company that assisted consumers in canceling timeshare contracts. They alleged that Saracco and the company did not perform the work promised, failed to return calls, and failed to promptly refund fees when they were unsuccessful in terminating timeshare contracts. The Bar also received a complaint from an attorney about Saracco’s association with the company. Saracco received a flat weekly or biweekly amount from the company. His relationship to the company was not clearly explained to the complaining parties. He was licensed only in Florida, but the company assisted consumers with cancellation of contracts both within and outside the state of Florida. Saracco received a public reprimand.

b. *Florida Bar v. Rosen*, No. SC12-392 (Fla. Aug. 22, 2013).

From 2007 to 2011, Rosen’s law firm associated with Morgan Drexen, a California nonlawyer-owned entity that sought to assist debtors nationwide seeking relief from credit-card debt. When laws changed to prohibit nonlawyers

from receiving up-front fees for debt settlement, Morgan Drexen associated with lawyers across the country for this purpose. Rosen was one of them. The Bar alleged that through nonlawyer employees at Morgan Drexen, Rosen engaged in a systematic pattern of conduct designed and intended to induce potential clients to purchase credit-card-debt services via a series of false and fraudulent representations. Morgan Drexen advertised nationally on television, radio, and other methods to solicit representation of individuals seeking debt relief. A video of Rosen speaking about Morgan Drexen's services was displayed on Morgan Drexen's website and viewable by the general public over the approximately four years he was associated with Morgan Drexen. These advertisements were never submitted for approval and were not compliant with The Florida Bar's advertising rules. Rosen's law firm received between 7,000 and 8,000 cases. Rosen allowed Morgan Drexen to use his firm's letterhead and electronic signatures. Rosen received a public reprimand. The case was more egregious than Respondent's because of the number of clients affected and the lengthier period of time in which Rosen was involved, because an associate in the firm had raised concerns about the firm's association with Morgan Drexen in 2009, and because between 2009

and 2011, Morgan Drexen was the subject of actions by attorneys general in several states due to improper business practices.

10. This stipulation and conditional guilty plea is tendered freely, voluntarily, and without fear or threat of coercion.

11. Respondent has been afforded all procedural and substantive due process required in this proceeding.

12. This plea is conditioned upon approval of the proposed consent judgment by the Board of Governors of The Florida Bar and by the Court. If the Board of Governors or the Court rejects or otherwise disapproves the proposed consent judgment, this plea shall be considered withdrawn, and neither it nor the statements contained in it may be used against Respondent in any way.

13. If the Board of Governors and the Court approve the proposed consent judgment, Respondent shall pay the Bar's reasonably and necessarily incurred costs under Rule 3-7.6(q), including an administrative fee in the amount of \$1,250.00. The full amount shall be due and payable within 30 days of the Court's order approving the proposed consent judgment. Any portion remaining unpaid after 30 days shall bear interest at the statutory rate. Respondent shall not

attempt to discharge the obligation for those costs by petition for bankruptcy, assignment for the benefit of creditors, or other like procedure.

14. This stipulation and conditional guilty plea fully complies with all requirements of The Rules Regulating The Florida Bar.

15. Respondent has been represented by undersigned counsel in this proceeding and is satisfied with that representation.

Respectfully submitted,

/s/ Thomas J. Craft, Jr.

Thomas J. Craft, Jr.

Florida Bar No. 881503

Respondent

Date: June 10, 2020

Approved as to form and content:

/s/ D. Culver Smith III

D. Culver Smith III

Florida Bar No. 105933

Culver Smith III, P.A.

500 South Australian Avenue, Suite 600

West Palm Beach, FL 33401

Tel.: 561-598-6800

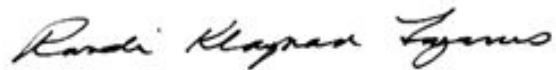
E-mail: csmith@culversmithlaw.com

Counsel for Respondent

Date: June 10, 2020

Fla. Bar v. Craft
Fla. Bar File 2018-50,684 (15D)
Stipulation for Probable Cause and Conditional
Guilty Plea for Consent Judgment

*Accepted and approved by The Florida Bar
pursuant to Rule 3-7.9(a).*



Randi Klayman Lazarus
Florida Bar No. 360929

The Florida Bar
1300 Concord Terrace, Suite 130
Sunrise, FL 33323
Tel.: 954-835-0233
E-mail: rlazarus@floridabar.org

Bar Counsel

Date: June 22, 2020