

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2018-CP-400-6344

Appellate Case # 2019-001488

MB Hutson/ MB Hudson

Appellant.

v.

Penn America Insurance Company,
Global Indemnity Group, Inc.,
Timothy J. Newton, Esq. and
J.R. Murphy, Esq., John Doe #1 and
John Doe #2

Respondents.

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Appellate requests that this motion be attached to:
Appellate's Motion for an Emergency Hearing.

APPELLATE'S RETURN TO HIS EMERGENCY MOTION FOR HEARING
AND RETURN TO PENN AMERICA'S RETURN TO APPELLANT'S
EMERGENCY MOTION FOR HEARING

Comes now the Appellant, victim/pro se, who brings a spotlight to the
Honorable Appeals Court of these facts:

1. This Appeals case is due to Respondents' deception, fraud, breach of contract and Extrinsic Fraud:

- A. All material that Respondent's have filed are irrelevant and misleading attempts to muddy up a clear picture to the court and conceal their willful wrong actions to harm this Appellant and to hide their own guilt. Respondents blame Appellant for faulty filings for the sole purpose of hiding their own wrong doings.
- B. Respondents 1) violated the law, 2) violated their Oath, 3) violated Rule 402, and also 4) violated Rule 3.3 (CANDOR TOWARD THE TRIBUNAL)—inserted below.
2. All Respondents were aware (including Christian Stegmaier who is sponsored by Penn America and paid by Penn America and Global) of the Extrinsic Fraud intentionally created by TLC's lawyers in the underlying cases. All Respondents had an exclusive duty to defend and protect the Appellant from TLC's lawsuits which involved underlying Extrinsic Fraud and prevented this Appellant from ever having his case heard in the lower courts. All Respondents were aware of the Extrinsic Fraud and that they had a duty to disclose the same to all the courts, including this Honorable Appeals Court (See RULE 3.3: CANDOR TOWARDS THE TRIBUNAL –*cited below*).
3. All Respondents fully understood that the intentional, underlying Extrinsic Fraud doomed the outcome of each court ruling for this Appellant, the insured.
4. All Respondents fully understood that *each* attorney had a *legal duty* to report the underlying Extrinsic Fraud to the court.

5. All Respondents elected not to report such fraud but rather became co-conspirators of the same, TLC attorneys' Extrinsic Fraud, knowing that such actions would destroy the future of this Appellant.

The Court of Appeals is the very Court that requires each attorney to take his professional oath (Rule 402) to become "officers of the court." Appellant asks this Honorable Appeals Court to have an emergency hearing: nothing prevents the Appeals Court from investigating the truth, clearing the court and stopping this infectious Extrinsic Fraud. Extrinsic Fraud destroys the credibility of the court. Respondents are merely continuing to be evasive and deceitful, but Respondents cannot produce any law that prevents the Honorable Appeals Court from investigating Extrinsic Fraud being perpetrated in *their* court. In fact, case law is already established that compels the Appellate Court Judges thru "inherent authority" to do so:

The requisite fraud on the court occurs where "it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense." Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989). . . . The trial court has the inherent authority, within the exercise of sound judicial discretion, to dismiss an action when a plaintiff has perpetrated a fraud on the court, or where a party refuses to comply with court orders. Kornblum v. Schneider, 609 So. 2d 138, 139 (Fla. 4th DCA 1992). (Emphasis, mine.)

Once this Appeals Court identifies that all Respondents are in violation of such rules, no rule or law prevents the Appeals Court from bringing action against the Respondents, and even from making an immediate ruling to reverse this case and send it to a jury. Appellant does not deserve the torture of more fraudulent time wasted nor the Courts time wasted.

Once put on notice of Extrinsic Fraud, the Honorable Court is *obligated to* seek satisfaction for the appellate. Any actions filed by its perpetrators, dishonest officers of the Court, should be suspended until the court achieves satisfaction and responds accordingly in favor of the Appellant.

Appellant challenges this court to investigate the allegation(s) of Extrinsic Fraud and immediately upon satisfaction that the Extrinsic Fraud exists, exonerate this Appellant by reversing his case to a jury without further delay. Respondents are betraying the Honorable Court trust since they are officers of the court.

RULE 3.3: CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make 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;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material

evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) apply when the lawyer is representing a client before a tribunal as well as in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. These duties continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Comment

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(q) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also the Comment to Rule 8.4(b).

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested

exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] Paragraph (a)(3) requires, that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. Counsel, however, may allow the accused to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. See also Comment [9]. When a narrative statement is offered under these circumstances, the lawyer may not examine the witness or use the false testimony in the closing argument.

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence

is false, however, can be inferred from the circumstances. See Rule 1.0(h). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

Remedial Measures

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make disclosure to the tribunal. It is for the tribunal then to determine what should be done making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of The Adjudicative Process

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

[14] Ordinarily an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

[15] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.


Last amended by Order dated April 15, 2015.

Therefore, this victim/Appellate prays that this court immediately investigates and consequently reverses and remands this case to a jury without

further hearings preventing the Respondents from access to this Appeals Court case.

Appellate prays that this honorable court will refuse to allow respondents any further involvement in this case due to the extraordinary Extrinsic Fraud upon the Court. Appellate states that no court should associate with officers of the court committing pre-planned and intentional fraud. Terminate this case now by reversing and mandating this case to a jury.

Respectfully submitted this 27^h day of July, 2020.



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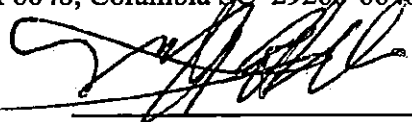
Respondents,

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PROOF OF SERVICE

I certify that I have served the APPELLATE'S RESPONSE TO PENN AMERICA'S RETURNS TO APPELLANT'S EMERGENCY MOTION FOR HEARING with a copy of this Proof of Service on Penn America Insurance Company, Global Indemnity Insurance Company, J. R. Murphy, Esq., and Timothy Newton, Esq. by depositing a copy of it in the United States Mail, postage prepaid, on July 27, 2020, addressed to the insurance companies' attorney of record, Christian Stegmaier, Esq., @ Post Office Box 12487, Columbia, South Carolina 29211-12487, and also to J.R. Murphy, Esq. and Timothy J. Newton, Esq., both of Murphy and Grantland, P.A. (both acting as Pro Se, of record), at Post Office Box 6648, Columbia SC 29269-6648.

July 27, 2020


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