

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

MICHAEL JOSEPH PRESUTTI,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2017-31,063 (18A)

CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT

COMES NOW, the undersigned respondent, Michael Joseph Presutti, and files this Conditional Guilty Plea pursuant to Rule 3-7.9 of the Rules Regulating The Florida Bar.

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent is currently the subject of a Florida Bar disciplinary matter which has been assigned The Florida Bar File No. 2017-31,063 (18A).
3. As to The Florida Bar File No. 2017-31,063 (18A), there has been a finding of probable cause by the Eighteenth Judicial Circuit Grievance Committee "A."



4. Respondent is acting freely and voluntarily in this matter and tenders this Plea without fear or threat of coercion. Respondent is not represented in this matter.

5. The disciplinary measures to be imposed upon respondent are as follows:

- A. Public reprimand to be administered by publication.
- B. Payment of the disciplinary costs in this matter.

6. The following allegations and rules provide the basis for respondent's guilty plea and for the discipline to be imposed in this matter:

A. Respondent represented the personal representative in an estate proceeding where there was a surviving spouse. Issues developed between the personal representative and the surviving spouse, resulting in considerable litigation, including an allegation of fraud by the surviving spouse against decedent. Ultimately, the court entered an order assessing the full amount of the opposing party's attorney's fees and costs against respondent, personally, under the doctrine of inequitable conduct. The court declined to assess any of the fees and costs against the personal representative. However, it should be noted that the surviving spouse and the personal representative both initially believed the estate to be worth at least \$200,000 more than the final amount. Based on the issues raised at the time of the filing of the probate matter and the initial assessment of



the value of the estate, it appears the initial litigation by the respondent was necessary.

B. Thereafter, respondent filed an appeal of the judgment that was entered solely against him and included his client, the personal representative, in the style of the appeal.

C. Respondent did not obtain a written waiver from his client of the conflict of interest before including her as an appellant in the style of the appeal. Nothing in the brief alleged any appellant right by the personal representative.

D. The appellate court entered an order granting appellee's motion for attorney's fees against appellants, which included respondent's client, and remanded the cause to the Circuit Court to determine and assess reasonable attorney's fees for this appeal.

E. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar:

i. 4-1.7(a)(2) Except as provided in subdivision (b), a lawyer must not represent a client if there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

7. In mitigation, respondent suffered from personal issues [Florida Standard for Imposing Lawyer Sanctions 9.32(c)] and suffered from a physical disability or impairment as he was undergoing chemotherapy at the time of his misconduct [9.32(h)]; respondent received imposition of other penalties as he was ordered to pay attorney's fees in the underlying matter in excess of \$103,000 [9.32(k)]; and his prior disciplinary sanction is remote in time, having been imposed in 1997 [9.32(m)].

8. In aggravation, respondent has substantial experience in the practice of law [9.22(i)].

9. The Florida Bar has approved this proposed plea in the manner required by Rule 3-7.9.

10. If this plea is not finally approved by the Board of Governors of The Florida Bar and the Supreme Court of Florida, then it shall be of no effect and may not be used by the parties in any way.

11. If this plea is approved, then respondent agrees to pay all reasonable costs associated with this case pursuant to Rule 3-7.6(q) in the amount of \$2,775.16. These costs are due within 30 days of the court order. Respondent agrees that if the costs are not paid within 30 days of this court's order becoming final, respondent shall pay interest on any unpaid costs at the statutory rate.

Respondent further agrees not to attempt to discharge the obligation for payment of

the Bar's costs in any future proceedings, including but not limited to, a petition for bankruptcy. Respondent shall be deemed delinquent and ineligible to practice law pursuant to Rule 1-3.6 if the cost judgment is not satisfied within 30 days of the final court order, unless deferred by the Board of Governors of The Florida Bar.

12. Respondent acknowledges the obligation to pay the costs of this proceeding and that payment is evidence of strict compliance with the conditions of any disciplinary order or agreement and is also evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding or restitution will reflect adversely on any other bar disciplinary matter in which respondent is involved.

13. If this plea is approved, and restitution is owed, if the person to whom restitution is owed cannot be located after a diligent search, respondent shall execute an affidavit of diligent search and provide same to The Florida Bar and shall pay the full amount of the restitution to the Clients' Security Fund of The Florida Bar within 30 days of the date of the affidavit of diligent search.

14. This Conditional Guilty Plea for Consent Judgment fully complies with all requirements of the Rules Regulating The Florida Bar.

Dated this 10 day of July, 2019.



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