

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

ERIKA LYNN MULLER,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File Nos.
2021-50,582 (18B)
2021-50,661 (18B)

COMPLAINT

The Florida Bar, complainant, files this Complaint against Erika Lynn Muller, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is and was at all times mentioned herein a member of The Florida Bar, admitted on September 26, 2008, and is subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent practiced law in Broward County, Florida, at all times material.
3. The Eighteenth Judicial Circuit Grievance Committee "B" found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

4. Beginning in 2016, respondent practiced as an insurance defense attorney with the law firm of Cole, Scott & Kissane, P.A.

5. Respondent represented the defendant in Higgins v. R.T.G. Furniture Corp., Case No. CACE15014031, in the Circuit Court of the Seventeenth Judicial Circuit, Broward County. R.T.G. Furniture Corp. is hereinafter referred to as "RTG."

6. Since early 2018, respondent was the primary attorney with whom RTG and Broadspire, a third-party adjuster for RTG's insurer, communicated regarding the matter.

7. During respondent's representation of RTG, she engaged in a pattern of neglect and fraudulent conduct.

8. On or about November 5, 2020, respondent participated in a mediation where she falsely represented authority to settle on behalf of RTG and Broadspire.

9. Respondent did not have authority to settle at that time, and respondent had not discussed the November 5, 2020 mediation with any representatives from RTG or Broadspire.

10. Respondent hired an independent adjuster to attend the November 5, 2020 mediation, purportedly as an adjuster for RTG.

11. Respondent falsely informed the independent adjuster that

respondent herself had authority from RTG to settle, and respondent falsely told plaintiff's counsel and the mediator that it was the independent adjuster who had settlement authority.

12. The November 2020 mediation resulted in an impasse, and respondent did not pay the independent adjuster as her appearance was unauthorized by the client.

13. In December 2020, respondent entered into a verbal settlement with plaintiff's counsel for \$325,000.00. At that time, respondent did not have any authority to settle on behalf of the client.

14. Respondent then drafted a release, which the plaintiff signed on or about January 4, 2021.

15. Since the settlement was unauthorized, respondent could not deliver the promised payment.

16. On or about March 4, 2021, respondent sent plaintiff's counsel a photocopy of what purported to be a settlement check from Broadspire for \$375,000.00. The check was fabricated by respondent.

17. Thereafter, plaintiff's counsel filed several motions to enforce the settlement, and respondent agreed to multiple orders to enforce the settlement, resulting in a Final Judgment on March 22, 2021, for \$425,000.00.

18. On or about March 24, 2021, plaintiff's counsel moved for two writs of garnishment and issued post judgment discovery.

19. Respondent then promised to wire the \$425,000.00 settlement payment to plaintiff's counsel.

20. When the wire never materialized, respondent agreed, on April 2, 2021, to pay the plaintiff \$550,000.00 to stop execution and garnishment proceedings.

21. On or about April 2, 2021, respondent sent plaintiff's counsel an altered photocopy of a cashier's check for \$550,000.00, which she purported to be the settlement check. The check was fabricated by respondent.

22. Respondent further indicated that she would hand-deliver a settlement check to plaintiff's counsel on April 5, 2021.

23. On April 5, 2021, respondent misrepresented to plaintiff's counsel that she was involved in an automobile accident and would be unable to deliver the settlement funds that day. At no time did respondent have settlement funds in her possession.

24. On April 7, 2021, respondent agreed to meet plaintiff's counsel at a Starbucks to deliver the nonexistent settlement check. This meeting did not take place.

25. Furthermore, between December 2020 and March 2021, when respondent settled without the client's authorization and agreed to enforcement orders and a final judgment, she falsely informed RTG and Broadspire that the case was still active and was in the process of being set for mediation. Respondent provided RTG with a fraudulent notice of mediation, and respondent made a series of elaborate excuses for postponements of the purported mediations.

26. On or about April 7, 2021, respondent contacted a colleague at Cole, Scott & Kissane, P.A. advising of her intention to resign. At that time, respondent was a partner with the firm.

27. Ultimately, both respondent and plaintiff's counsel informed Cole, Scott & Kissane, P.A. about respondent's misconduct during her representation of RTG.

28. On or about April 12, 2021, respondent signed an affidavit describing her pattern of misconduct in the RTG matter. In her affidavit, respondent acknowledged that she made misrepresentations to multiple parties and presented altered documents to plaintiff's counsel. In her affidavit, respondent further stated that she was suffering from a mental health crisis during the time of the misconduct.

29. On April 16, 2021, counsel for RTG filed a motion to vacate the

settlement based on respondent's misconduct.

30. In addition, respondent has failed to respond to any of the bar's inquiries in this matter.

31. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar:

a. 4-1.1 Competence. A lawyer must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

b. 4-1.2(a) Lawyer to Abide by Client's Decisions. Subject to subdivisions (c) and (d), a lawyer must abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, must reasonably consult with the client as to the means by which they are to be pursued. A lawyer may take action on behalf of the client that is impliedly authorized to carry out the representation. A lawyer must abide by a client's decision whether to settle a matter. In a criminal case, the lawyer must abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

c. 4-1.3 Diligence. A lawyer shall act with reasonable

diligence and promptness in representing a client.

d. 4-1.4(a) Communication: Informing Client of Status of Representation. A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

e. 4-1.4(b) Communication: Duty to Explain Matters to Client. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

f. 4-3.2 Expediting Litigation. A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

g. 4-3.3(a)(1) Candor Toward the Tribunal. False Evidence; Duty to Disclose. A lawyer shall not knowingly 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.

h. 4-3.4(b) Fairness to Opposing Party or Counsel. A lawyer must not fabricate evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness, except a lawyer may pay a witness reasonable expenses incurred by the witness in attending or testifying at proceedings; a reasonable, noncontingent fee for professional services of an expert witness; and reasonable compensation to a witness for time spent preparing for, attending, or testifying at proceedings.

i. 4-4.1(a) Truthfulness in Statements to Others. In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

j. 4-8.4(c) Misconduct. A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

k. 4-8.4(g) Misconduct. A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency,

as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made: (1) within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors; (2) within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors.

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.

Respectfully submitted,



JAN K. WICHROWSKI
Bar Counsel
The Florida Bar
1000 Legion Place, Suite 1625
Orlando, Florida 32801
(407) 425-5424
Florida Bar No. 381586
jwichrow@floridabar.org
orlandooffice@floridabar.org



PATRICIA ANN TORO SAVITZ
Staff Counsel
The Florida Bar

651 East Jefferson Street
Tallahassee, Florida 32399
(850) 561-5839
Florida Bar No. 559547
psavitz@floridabar.org

CERTIFICATE OF SERVICE

I certify that this document has been e-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida; with copies provided to Erika Lynn Muller, Respondent, by United States Mail, Certified Mail No. 7017 1070 0000 4774 3071, return receipt requested, to her record bar address, 110 Tower, 110 SE 6th Street, Suite 2700, Fort Lauderdale, Florida 33301; by United States Mail, Certified Mail No. 7017 1070 0000 4774 3095, return receipt requested, to Respondent's alternate address, 4268 Frances Drive, Delray Beach, Florida 33445; by United States Mail, Certified Mail No. 7017 1070 0000 4774 3088, return receipt requested, to Respondent's additional address, 2882 SW 13th Court, Deerfield Beach, Florida 33442, and via email to erika.muller.esq@gmail.com and erikalmuller@gmail.com; and a copy to Jan K. Wichrowski, Bar Counsel, via email to jwichrow@floridabar.org; on this 17th day of February, 2022.



Patricia Ann Toro Savitz,
Staff Counsel

NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY EMAIL ADDRESS

PLEASE TAKE NOTICE that the trial counsel in this matter is Jan K. Wichrowski, Bar Counsel, whose address, telephone number, and primary email address are The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, Florida 32801, (407) 425-5424, and jwichrow@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399, psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES REGULATING THE FLORIDA BAR,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.