

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

CASS THOMAS CASPER,

Attorney-Respondent,

No. 6303022.

Commission No. 2022PR00024

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Matthew D. Lango, pursuant to Supreme Court Rule 753(b), complains of Respondent, Cass Thomas Casper, who was licensed to practice law in Illinois on November 4, 2010, and alleges that Respondent has engaged in the following conduct which subjects Respondent to discipline pursuant to Supreme Court Rule 770:

COUNT I

(Unauthorized Contact with a Represented Party; Dishonesty by Creating a False Document and Filing of a False Declaration; Filing a Frivolous Pleading)

1. In or about October 2018, two employees of the City of Chicago's Department of Aviation, Hector Hernandez and Charles Termini, met with Respondent and retained him to represent them with regard to certain adverse actions they believed they were suffering in the course of their employment at O'Hare Airport. Respondent, Hernandez, and Termini agreed that Respondent would pursue discrimination and retaliation claims on their behalf.

2. On November 17, 2018, Respondent filed a complaint in the United States District Court for the Northern District of Illinois on behalf of Hernandez and Termini, alleging various employment-related civil rights violations against the City of Chicago and a number of individual

defendants including City of Chicago Department of Aviation employees, Joseph Alesia, Kevin Martin, and Bill Helm (hereafter the “City of Chicago Litigation”). The matter was docketed as Case Number 18-CV-7647 and assigned to Judge John Z. Lee.

3. On January 7, 2019, Respondent, on behalf of Hernandez and Termini, filed a First Amended Complaint in the City of Chicago Litigation, which included additional alleged civil rights violations against the plaintiffs. The First Amended Complaint alleged, among other things, that the plaintiffs were retaliated against for acts of exposing and reporting alleged government corruption to the City of Chicago’s Office of the Inspector General (OIG).

4. On January 18, 2019, attorney Jessica Durkin from the City of Chicago’s Law Department filed an appearance on behalf of Alesia. Additional attorneys from the City of Chicago’s Law Department filed appearances on behalf of the City and the other individual defendants.

5. On February 19, 2019, attorneys Juanita B. Rodriguez and Danielle A. Kirby filed their appearances as substitute counsel on behalf of Alesia. On or shortly after February 19, 2019, Respondent was served with a copy of Rodriguez and Kirby’s appearances on behalf of Alesia, and Respondent knew that Alesia was represented by counsel in the City of Chicago Litigation.

6. On March 19, 2019, counsel for Alesia filed an answer to the First Amended Complaint in the City of Chicago Litigation.

7. Between February and July 2019, the parties to the City of Chicago Litigation engaged in motion practice, including briefing partial motions to dismiss, and engaged in discovery, including serving initial disclosures under Federal Rule of Civil Procedure 26(a)(1).

8. On July 19, 2019 at approximately 2:00 p.m., all counsel in the City of Chicago Litigation had a phone conference to discuss certain issues raised by Respondent, including

allegations of ongoing retaliation against the plaintiffs. During this phone conference, Respondent inquired as to whether Alesia or any other defendants had been interviewed by anyone from the OIG. Additionally, Respondent inquired whether Alesia's counsel had heard from Alesia that he wanted to "switch sides" in the City of Chicago Litigation. Alesia's counsel informed Respondent that Alesia had not indicated that he wanted to "switch sides" in the litigation.

9. Later on July 19, 2019 at approximately 8:38 p.m., Respondent placed the first of two phone calls to Alesia. Respondent called Alesia on his cell phone and identified himself to Alesia as Cass Casper, counsel for the plaintiffs in the City of Chicago Litigation. Alesia recognized Respondent's voice, having heard him speak in the past.

10. During the two phone calls from Respondent to Alesia on July 19, 2019, Respondent and Alesia discussed Alesia's knowledge of the allegations in the City of Chicago Litigation. Respondent also asked Alesia whether he knew anything about an investigation by the OIG concerning the allegations in the First Amended Complaint and what Alesia may have discussed with the OIG. At one point, Respondent's call to Alesia dropped out and Respondent called Alesia back. At the end of the conversation, Respondent told Alesia that he should speak to his lawyers and tell them he wants to "change sides" in the City of Chicago Litigation. The two phone calls lasted a total of approximately 20 minutes.

11. At no time did Alesia's counsel authorize Respondent to speak directly to Alesia, and Alesia's counsel was not present on the two calls that Respondent placed to Alesia on July 19, 2019.

12. On July 19, 2019, Respondent knew that Alesia was represented by counsel in the City of Chicago Litigation. In addition, Respondent knew that Alesia's counsel had not authorized him to speak with Alesia.

13. On July 25, 2019, counsel for Alesia learned of the two phone calls made by Respondent to Alesia on July 19, 2019. On July 29, 2019, counsel for Alesia sent a letter to Respondent concerning the phone calls by Respondent to Alesia and notifying Respondent that his communications with Alesia would be brought to the attention of Judge Lee and the Administrator of the ARDC.

14. In his subsequent communications with counsel for the defendants in the City of Chicago Litigation, Respondent denied calling Alesia and denied any improper communications with him. For example, in a letter to Rodriguez dated July 29, 2019, Respondent stated “First, I absolutely, completely, and wholly deny your allegation that I spoke with Mr. Alesia directly. I would never do something like that, know that it would be wrong to do something like that, have never done anything like that in my career, and I do, swear, and will continue to swear under oath, that I have had no contact with Mr. Alesia to my knowledge.”

15. Attached to Respondent’s letter of July 29, 2019 to Rodriguez, Respondent included what purported to be his cell phone records from July 2019. The records that Respondent attached to his July 29, 2019 letter did not show any calls from Respondent to Alesia on July 19, 2019.

16. Respondent’s statements to Rodriguez in his letter of July 29, 2019 where he denied calling Alesia were false because he placed two calls to Alesia on the evening of July 19, 2019. Respondent knew those statements were false at the time he made them.

17. Prior to sending his letter of July 29, 2019 to Rodriguez, Respondent obtained and altered his cell phone records to make it appear that he did not call Alesia on July 19, 2019.

18. Five days after receiving Rodriguez’s letter, on August 3, 2019, Respondent filed a stipulation to voluntarily dismiss Alesia from the City of Chicago Litigation.

19. On September 11, 2019, the defendants in the City of Chicago Litigation filed a Motion to Disqualify Respondent as counsel for the plaintiffs in the case. Defendants in the case argued that the proper remedy for Respondent's alleged violations of ABA Model Rule 4.2 in contacting Alesia, whom he knew to be represented by counsel, was Respondent's disqualification from representing any party in the case. Attached to the defendants' Motion to Disqualify were screenshots from Alesia's cell phone showing the incoming calls from Respondent on July 19, 2019, as well as records from Alesia's cell phone provider showing the calls from Respondent.

20. On October 9, 2019, Respondent filed a response in opposition to the Motion to Disqualify. In his response to the Motion to Disqualify, Respondent stated, among other things, that he "categorically denies the direct contact with Mr. Alesia and includes a Declaration to that effect." In his response to the Motion to Disqualify, Respondent speculated that someone other than him was using "spoofing software" to make it appear as though the calls Alesia received on July 19, 2019 were coming from Respondent's cell phone. In support of this theory, Respondent included in his response to the Motion to Disqualify a screenshot of a smartphone app that can be used to "spoof" a number, thus making it appear that an incoming call is originating from a different number than the one actually belonging to the caller.

21. Respondent's statements in his response to the Motion to Disqualify that he did not call Alesia and that some unknown third party was "spoofing" his phone number were false. Respondent knew those statements were false at the time he made them.

22. Attached to his response to the Motion to Disqualify, Respondent included a sworn Declaration (hereafter "the Declaration") in which he stated, among other things, "At no time have I, to my knowledge, had a phone conversation with Joseph Alesia." This statement in the

Declaration was false. Respondent knew that this statement was false, as he knew that on July 19, 2019, he placed two phone calls to Alesia and discussed the City of Chicago Litigation with him.

23. Attached to the Declaration as Exhibit A, Respondent included a scanned document that purported to be Respondent's cell phone records showing all calls that he made and received in July 2019. Sometime prior to October 9, 2019, Respondent obtained a copy of his cell phone records from his provider, T-Mobile. Respondent then altered those records to make it appear as though he did not call Alesia on July 19, 2019.

24. At the time he filed his Declaration on October 9, 2019, Respondent knew that the cell phone records he attached as Exhibit A to the Declaration had been altered and did not accurately reflect the calls that Respondent made on July 19, 2019.

25. Prior to filing his response to the defendants' Motion to Disqualify, on September 16, 2019, Respondent filed a motion to disqualify counsel for the defendants, alleging, among other things, that counsel for the defendants in the City of Chicago Litigation were using the false allegations of Respondent's improper communication with Alesia to their strategic advantage in the case. At the time he filed his motion to disqualify defense counsel, Respondent knew that defense counsel in the City of Chicago Litigation had a good faith basis for seeking his disqualification in the case.

26. Respondent's motion to disqualify defense counsel in the City of Chicago Litigation, as described in paragraph 25 above, was frivolous and lacked a basis in fact or law, which Respondent knew at the time he filed the motion. Respondent filed the motion to disqualify defense counsel for no purpose other than to harass, delay, or burden the parties against whom the motion was filed.

27. In October 2019, Judge Lee referred the parties' motions to disqualify, as well as a number of outstanding discovery disputes in the City of Chicago Litigation, to Magistrate Judge Sidney Schenkier.

28. On November 12, 2019, Judge Schenkier entered an order denying Respondent's motion to disqualify counsel for the defendants. In addition, Judge Schenkier indicated that an evidentiary hearing would take place on the Motion to Disqualify Respondent.

29. Before an evidentiary hearing on the Motion to Disqualify could take place, on December 11, 2019, Respondent filed a motion seeking to withdraw as counsel for the plaintiffs in the City of Chicago Litigation.

30. On December 12, 2019, Judge Lee entered an order granting Respondent's motion to withdraw as counsel. Accordingly, Judge Schenkier never held an evidentiary hearing on the Motion to Disqualify Respondent, as the motion became moot.

31. Following Respondent's withdrawal as counsel for the plaintiffs, the underlying City of Chicago continued with the plaintiffs represented by Respondent's former co-counsel, Gianna Scatchell. On August 4, 2021, the Court granted motions for summary judgment in favor of the defendants and against the plaintiffs.

32. By reason of the conduct described above, Respondent engaged in the following misconduct:

- a. during the course of representing a client, communicating about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, without the consent of the lawyer representing such party, by conduct including calling Joseph Alesia during Respondent's representation of the plaintiffs in the City of Chicago Litigation, when Respondent knew Alesia to be represented by attorneys Juanita Rodriguez and Danielle Kirby, without obtaining the consent of the lawyers representing Alesia, in violation of Rule 4.2 of the Illinois Rules of Professional Conduct (2010);

- b. knowingly making a false statement of fact or law to a third person, Juanita Rodriguez, by falsely stating to Rodriguez in his letter of July 29, 2019 that he did not call Joseph Alesia and attaching altered phone records to that letter, in violation of Rule 4.1(a) of the Illinois Rules of Professional Conduct (2010);
- c. knowingly making a false statement of fact or law to a tribunal by conduct including falsely stating in his Declaration filed on October 9, 2019 in the City of Chicago Litigation that he did not contact Joseph Alesia and attaching altered phone records to that Declaration, and thereafter failing to correct those false statements, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct (2010);
- d. bringing or defending a proceeding, or asserting or controverting an issue therein, with no basis for doing so that is not frivolous, by conduct including on September 16, 2019, filing a motion to disqualify defense counsel in the City of Chicago Litigation knowing that such motion had no basis in fact or law, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct (2010);
- e. conduct involving dishonesty, fraud, deceit or misrepresentation by conduct including repeatedly making false statements to opposing counsel that he did not call Joseph Alesia on July 19, 2019, filing a false Declaration and altering his cell phone records and filing those records with his Declaration on October 9, 2019, in the City of Chicago Litigation for the purpose of deceiving the Court and opposing counsel into believing that he did not contact Joseph Alesia, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010),

WHEREFORE, the Administrator respectfully requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/Matthew D. Lango
Matthew D. Lango

Matthew D. Lango
Counsel for the Administrator
130 East Randolph Drive, Suite 1500
Chicago, Illinois 60601
Telephone: (312) 565-2600
Email: mlango@iadc.org;
Email: ARDCeService@iadc.org

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