
From: Becky Cole
Sent: Thursday, June 29, 2023 1:50 PM
To: Tim Maher; jkantor@gamlaw.net
Cc: Laurie Cylkowski; Becky Cole
Subject: RE: Motion to Vacate Invalid Settlement

Thank you for your email.

Since Joe Kantor was part of this, too, I am including him on this response, as well.

The motion includes how this was done without my knowledge or consent, and anything you share with Laurie now will only prove my point – because you have nothing that shows I knew of the terms and conditions you two decided on before you announced it in court. I agree you were hired to represent me, but there is a difference between representing me and acting without my knowledge or consent. What it comes down to is that you signed my name to a contract without my knowledge, consent or authorization and you have no evidence to support you fully informed me of the implications of what agreeing to the apology or accepting the check would mean.

At best, what you can offer is a discussion between me and you, but you don't have anything that shows you were authorized to do what you did – essentially put my name on a contract without informing me what you were signing or that you allowed me to fully participate in what you determined to be the response.

The bottom line is that you have no evidence to support I knew what you were doing before you did it. No matter how you spin it, it's not truthful to be telling Laurie or anyone else that I was given a full and complete opportunity to participate in my own defense. You took that away from me when you went behind my back and signed my name to a contract before informing me what you were signing.

You have no evidence that I knew and agreed to it before it was announced in court that taking that check would mean throwing away the small claims case for which you are not the attorney of record for that one (I have Geraldo as a witness on that fact) or any of the other terms and conditions you can up with. You have no evidence to support you told me the records would be sealed and that I agreed to it before you announced it in court.

I was at your office on June 9th for trial prep. Geraldo was in the room, and if need be can also be dragged into this as a witness that during that time there was NOTHING discussed about terms of a settlement agreement. He can attest that you talked about putting Brian up first and several of the question you would be asking me once I was on the stand. He also can attest that we talked about the small claims case and how you would coach me on it, but wouldn't be the attorney of record for it. I believe the language we even used was you would serve as my "wing man" but wouldn't represent me for it. So I was expecting to go to trial. Yet when I got there on Monday, all I got was yelled at.

So, if we were to ask the appropriate question, "Did you yell at Ms. Cole over the language of the apology to include the "representation" language and do you have an email that you can present that shows she was against using this language", the truthful answer to it would have to be "yes." Then the

next question would have to be, “how do you construe it to be the same as authorization when she explicitly was against that language”?

There was nothing that says accepting the apology would make the trial go away – until you announced it in court. There is no evidence that you told me and I agreed that accepting the apology would mean he’d get to seal the records. I didn’t learn about that until you announced it in court, and you have no evidence to support it otherwise.

You have nothing that shows you informed me that accepting the apology would mean giving up the small claims case, but I already showed them your email where you never informed me of the language you would be presenting to them prior to giving it to them. It also shows language I didn’t authorize. I also have another email where you tried to bully me into accepting \$3,000 and none of that shows you intended to seal the records.

I agree that you have were representing me at the time, but you still needed my knowledge and consent to implement it in that way. You still needed my authorization to sign a contract on my behalf and you didn’t have the authorization to do that. I couldn’t authorize something I didn’t know about.

The question I can now raise is if you really were acting in my best interest, what was holding you back from informing me to I could make an informed consent? The way you did it TO me instead of WITH me can raise the issue that you knew I wouldn’t agree so you side stepped the issue.

The interesting part of this is how you got the judge to dismiss part of Brian’s claims around the contract because there was no “meeting of the minds” and yet you are completely ignoring that with this. I agree that, as my attorney at the time, you had the ability to negotiate the settlement, but you had every ethical and other obligation to present it to me to get my consent before you announced it in court. There was no “meeting of the minds” with you on how you colluded with Laurie to implement this – that could only happen if you had informed me and I consented BEFORE you announced it in court.

You also made a case in Brian’s response that what OLPR says is irrelevant.

However, here’s the statute I shared with Laurie:

https://www.revisor.mn.gov/court_rules/pr/subtype/cond/id/4.1/

It talks about how attorneys are required to be truthful with the client and with the opposing attorney. Laurie is, perhaps purposely, sidestepping the issue and you are avoiding it altogether, but if the question were to be asked, “Did Mr. Maher inform Ms. Cole about the arrangements he made with Ms. Cylkowski and get consent to sealing the records, throwing away the small claims case (even though he wasn’t the attorney of record for that case) and using language in the “apology” that wasn’t agreed to, or any other terms or conditions of the settlement agreement, prior to announcing it in court?”, the truthful answer would be “NO”.

I showed up for a trial. If you had changed plans or decided to do something different that morning, in the very least you had an ethical obligation to discuss it with me so I could make an informed choice about what to do because the choice you cheated me out of was I could have chosen to proceed with the trial. All I got that morning was yelled at by you over not accepting \$3,000 and the language of the “apology” including the term “representation” in it. An apology for which you have no evidence that you ever explained to me why I had to write and why Brian was not expected to write or offer on his own. I was against it, and I have an email to support that, and you yelled at me that it should be there. But, if

you want to play the truthfulness card on this, too, and raise the issue of what else you discussed, informed or told me about after you got done yelling at me, the truthful answer to it would be "Nothing."

So the next question that needs to be raised and asked in this truthfulness situation is "Did Mr. Maher allow Ms. Cole to have a choice between accepting the settlement agreement and proceeding with the trial", and the truthful answer to that is "NO".

Another question in this truthfulness situation is "Does Mr. Maher have anything with Ms. Cole's signature on it to provide evidence that the terms of the settlement agreement was made with her knowledge and consent," and the truthfulness answer to that is "NO". The other side to that question is "Did Ms. Cylkowski do her due diligence for her client by asking for something with a signature as evidence to show it was done with consent, and the truthful answer is "NO". The other place where this fails her client is that without truthful evidence of that knowledge and consent, all she has is "Tim says so" as a defense.

And while we are on a roll with the truthfulness thing, another question to raise is "Did Mr. Maher explain, define or otherwise put a framework on what constitutes "disparagement" means or what would be included in it?" and the truthfulness is that this never happened. It would seem that Ms. Cylkowski also failed her client by leaving it as vague and undefined, as well. "Did Ms. Cylkowski ask for it to be defined, or was she ok with having a contract with a vague and undefined term in it?" And if the truthful answer to that is she didn't require the nature of that to be defined, wouldn't the next question be "how does that benefit her client?"

Also, even though I wasn't informed or included in the discussion between you and her about this, is the truthfulness is that I have an email where I asked for it to be defined and it includes me telling you to let Laurie know that linking to a public court case is not "disparagement". This goes to another issue where the vague and general terms of what you two agreed to have failed both sides.

While you two keep attacking me on this issue, the truthfulness behind leaving this open and subject to interpretation is that it allows me to do what Brian has been doing for the past two years – making up things without evidence or truthfulness and calling it "disparagement". For example, if I happen to run into him at Walmart and he looked at me, I could make a claim that I was harmed because he looked at me and file a claim for the \$20,000 and attorneys fees. I could also use the hearing a couple of times ago where he was reprimanded for being disrespectful to the court during the hearing as my evidence of how he says things he doesn't mean. There is nothing in this that requires substantial evidence to make a claim, let alone that the filing has to be truthful.

Don't forget Ms. Cylkowski supported him in filing a claim that he was harmed by me because part of his plea agreement for his probation required him to tell potential clients he was on probation to begin with. The logic of this makes no sense, but it didn't prevent the motion from being filed in the first place and taking up court resources to be resolved.

So, the point to this is that while you both have a need to dump on me and want to set aside that I have been the one who has been harmed and Brian is not a victim in any of this, neither of you were serving your clients well by doing what you did and including vague and undefined terms in an agreement, let alone trying to enforce something you can't provide evidence I agreed to have in the first place. The

“meeting of the minds” thing is an issue you raised with Brian, so it’s not unclear why you don’t feel it applies here and to this situation.

What was raised in court was about sealing the records but what exactly is it that would be sealed isn’t a part of the transcript. You aren’t the attorney of record for the small claims case, and nothing OLPR says can change the fact that in order to include that in any kind of settlement agreement, you needed express consent from me to include it. And so when we are to ask “Did Mr. Maher inform Ms. Cole he was planning to include a case for which he was not the attorney of record and obtain consent to include it in this case,” the truthful answer would have to be “No”. And the other side of this is “Did Ms. Cylkowski ask for evidence to support Mr. Maher had the authorization to include a case for which he was not the attorney of record”, and the truthfulness to that answer is “No”. You are welcome to provide any emails to Laurie or notes with my signature on it that support your claim you had informed me and had my authorization to include the small claims case in this settlement agreement. You are also welcome to be truthful to tell her you can’t provide it because it doesn’t exist.

There’s a difference between representation and consent and what this comes down to is that while you were supposed to represent me, you signed my name to a contract and did it without my knowledge or consent. Representation is about gathering and presenting information, it doesn’t include making blind promises without authorization.

Consent is predicated on knowledge and being informed, and being informed is necessary in order to give consent. Regardless of what OLPR says, signing my name to a contract that contains conditions I wasn’t informed of or consented to in the very least is not ethical or appropriate. And Laurie agreeing to a contract without my express signature on it is evidence she is not serving her client all that well, either. Please remember that you had already determined in Brian’s case that what OLPR says is irrelevant.

In any case, I will be able to use this email to make a case to the judge how I am being bullied again with an attempt at blackmail into accepting a settlement agreement I didn’t have knowledge of or consented to.

Laurie is not being fair to Brian by trying to do this through manipulation and deception, and you aren’t being fair to me by going in circles trying to justify what you did without evidence or authorization you know you don’t have. Perhaps you both feel it is necessary to operate that way, but it doesn’t make it the right thing to do.

It’s helpful to have your admission that you did this without informing me of what you and Laurie agreed to prior to announcing it in court.

I will also inform the judge that I have offered Laurie two times to do a different settlement agreement, and so far she has not been willing to do it – a settlement agreement that is more respectful of me and is done with my knowledge and consent.

Thank you,
Becky

Becky A. Cole
Chief Capacity Builder

Problems become opportunities when the right people join together

From: Tim Maher <TMaher@gamlaw.net>
Sent: Thursday, June 29, 2023 9:26 AM
To: OutReachNE@outlook.com
Cc: Laurie Cylkowski <laurie@cylkowskilaw.com>
Subject: Motion to Vacate Invalid Settlement

Dear Becky,

I see you have filed a Motion to Vacate the settlement in your case.

As you have terminated my representation of you, this communication is not privileged, and I am copying Ms. Cylkowski on it, as she brought your motion to my attention.

In addition, I am explicitly notifying you that you can retain an attorney to represent you further, and I specifically advise you to do so.

As your motion makes allegations regarding my representation of you, the Rules of Professional Conduct permit me (but do not require me) to respond to your allegations. Specifically, Rule 1.6(b)(8) states that:

“A lawyer may reveal information relating to the representation of a client if: ... the lawyer reasonably believes the disclosure is necessary ... to respond in any proceeding to allegations by the client concerning the lawyer’s representation of the client.”

Ms. Cylkowski wants me to do exactly that. I do not know whether I would do that, and I certainly do not want to imply anything with regard to my opinion about your statements one way or the other unless and until I decide whether to respond.

I have confirmed my understanding of the limits of this rule with the Minnesota Board of Lawyer’s Professional Responsibility.

So, even though I know longer represent you, I just want to make sure you understand that, if you intend to pursue your motion, I would be allowed to reveal the substance of the communications we had regarding settlement. If you do not want those communications revealed, you should consider withdrawing your motion. But, again, I am not advising you one way or the other, except that I am encouraging you to consult with a lawyer about the contents of this e-mail.

Thank you for your attention to this matter.



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