

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Supreme Court Case

Complainant,

No. SC-

v.

The Florida Bar File
No. 2015-00,718(2B)

MARC JOHN RANDAZZA,

Respondent.

_____ /

FORMAL COMPLAINT FOR RECIPROCAL DISCIPLINE

The Florida Bar, complainant, files this Complaint against Marc John Randazza, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is, and at all times mentioned in the complaint was, a member of The Florida Bar, admitted on March 25, 2003, and is subject to the jurisdiction of the Supreme Court of Florida.
2. In addition to membership in The Florida Bar, respondent was a member of the State Bar of Nevada, subject to the jurisdiction of the Supreme Court of the State of Nevada.
3. This is a reciprocal discipline action, based on the Findings of Fact, Conclusions of Law and Recommendation of the Southern Nevada Disciplinary Board of the State Bar of Nevada dated July 10, 2018, and the Order Approving

Conditional Guilty Plea Agreement of the Supreme Court of the State of Nevada, dated October 10, 2018, which imposed a 12 month suspension, stayed for 18 months subject to conditions. Copies of the Findings of Fact and the Order are attached hereto as **Exhibits A and B**, respectively.

4. The suspension was based on the following conduct:

A. In or about June 2009, respondent drafted and signed an agreement ("Legal Services Agreement") with Excelsior Media Corp. ("Excelsior") which provided, among other things, that respondent would become in-house general corporate counsel for Excelsior.

B. At the time of the signing of the Legal Services Agreement, Excelsior was located in California.

C. The Legal Services Agreement did not prohibit respondent from also maintaining a private legal practice to provide legal services to clients other than Excelsior.

D. Excelsior had a subsidiary or affiliate called Liberty Media Holdings, LLC ("Liberty"). Liberty is engaged in the business of production and distribution of pornography.

E. After entering into the Legal Services Agreement, respondent provided legal services to Excelsior and Liberty, although no separate agreement was entered into between Liberty and respondent.

F. In or about February 2011, Excelsior relocated its corporate headquarters to Las Vegas, Nevada.

G. In or about June 2011, respondent relocated to Las Vegas, Nevada and continued working as general corporate counsel for Excelsior.

H. Until his admission to the Nevada Bar in January 2012, respondent was not engaged in the practice of law in the State of Nevada, except in his capacity as a member of the bar of the U.S. District Court for the District of Nevada.

I. At the direction of Excelsior, respondent pursued violations of Liberty's intellectual property rights by third parties through his separate law firm.

J. On or about June 20, 2012, respondent, on behalf of Liberty, filed a lawsuit in U.S. District Court, District of Nevada against FF Magnat Limited d/b/a Oron.com ("Oron") for alleged violations of Liberty's intellectual property.

K. On or about June 21, 2012, respondent obtained an injunction in the Oron litigation freezing certain accounts and funds belonging to Oron.

L. On July 1, 2012, respondent and attorneys for Oron signed a letter memorializing settlement terms in regard to the Oron litigation and a similar case between the two parties in Hong Kong (hereinafter "Settlement

Letter").

M. An essential part of the Settlement Letter was that Oron would pay Liberty the sum of \$550,000.00 with said sum payable to respondent's Attorney Trust Account.

N. A dispute arose after the Settlement Letter was signed.

O. On behalf of Liberty, respondent filed a Motion to Enforce Settlement.

P. By Order dated August 7, 2012, the United States District Court found that the Settlement Letter constituted an enforceable contract as there was a "meeting of the minds as to all material terms on July 5, 2012." A Judgment was entered in favor of Liberty as judgment creditor and against Oron as Judgment Debtor for \$550,000.00.

Q. By Order dated August 21, 2012, the United States District Court ordered Pay Pal, Inc., to transfer funds belonging to Oron to satisfy the Judgment by paying \$550,000.00 to the trust account of Randazza Legal Group.

R. In mid to late August 2012, a settlement payment in relation to the Oron litigation of approximately \$550,000.00 was sent to respondent's out-of-state trust account. A full and proper accounting of those funds has occurred with Liberty receiving its appropriate share.

SIDE AGREEMENT

S. During post-judgment discussions, Oron informed respondent that it wanted to enter into an agreement to retain respondent for bona fide legal services, which would have the practical effect of conflicting off respondent from ever representing a client in litigation against Oron in the future.

T. Subject to the agreement of Liberty, and Liberty's execution of a written agreement, respondent negotiated a separate agreement with Oron, whereby \$75,000.00 of Oron's frozen funds would be released to Oron's counsel with the understanding, but no guarantee, that such funds would be used to retain respondent as counsel for Oron. This would have the practical effect of potentially conflicting respondent off any future litigation against Oron.

U. On or about August 13, 2012, respondent informed Liberty of the proposed post-judgment agreement by presenting a copy to Liberty's CEO, Jason Gibson, for his review, approval and signature. The Post-judgment agreement encompassed the payment of the \$550,000.00 Settlement Amount and Judgment by Oron to Liberty as well as the release of \$75,000.00 of Oron's frozen funds to Oron's counsel.

V. On or about August 13, 2012, respondent and Jason Gibson

discussed the proposed unfreezing of \$75,000.00 of Oron's funds. Jason Gibson expressed concerns to respondent about the disposition of that \$75,000.00 and did not consent to such unfreezing.

W. As a result of the August 13, 2012 discussion between Jason Gibson and respondent, the post-judgment agreement was not executed. Oron's frozen funds were not released, respondent did not receive a \$75,000.00 payment, and did not become counsel for Oron.

\$25,000 LOAN

X. In August 2012, the respondent loaned approximately \$25,000.00 to Liberty, to cover part of overseas legal fees that would be incurred in potential further litigation in the Oron case.

Y. On or about August 21, 2012, on the advice of respondent, Mr. Gibson signed a promissory note on Liberty's behalf noting the terms of repayment of the \$25,000.00 loan.

Z. Respondent failed to advise Liberty of its right to seek the advice of independent counsel with regard to this promissory note, nor did he obtain Liberty's informed written consent to the terms of the transaction, or to his role as a lender in the transaction.

AA. On or about August 29, 2012, respondent's employment with Excelsior ceased. Respondent and Excelsior dispute whether respondent

resigned or was terminated by Excelsior.

BB. By reason of the foregoing, respondent was found to have violated the following Nevada Rules of Professional Conduct: 1.8 Conflict of Interest: Current Clients: Specific Rules. (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) The client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) The client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction; (b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules; and 5.6 Restrictions on Right to Practice: a lawyer shall not participate in offering or making: (a) A partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of

the relationship, except an agreement concerning benefits upon retirement; or

(b) An agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

5. By operation of Rule 3-4.6, Rules Regulating The Florida Bar, the Findings of Fact, Conclusions of Law and Recommendation of the Southern Nevada Disciplinary Board of the State Bar of Nevada and the Order Approving Conditional Guilty Plea Agreement of the Supreme Court of the State of Nevada shall be considered as conclusive proof of such misconduct in this disciplinary proceeding.

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



James Keith Fisher, Bar Counsel
The Florida Bar
Tallahassee Branch Office
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5845
Florida Bar No. 142158
jfisher@flabar.org

Adria E. Quintela

ADRIA E. QUINTELA
Staff Counsel
The Florida Bar
Lakeshore Plaza II, Suite 130
1300 Concord Terrace
Sunrise, Florida 33323
(954) 835-0233
Florida Bar No. 897000
aquintel@flabar.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 a copy provided via email to Respondent at mjr@randazza.com; and that a copy has been furnished by United States Mail via certified mail No. 7017 0190 0000 0892 4866, return receipt requested to respondent at 2764 Lake Sahara Drive, Suite 109, Las Vegas, Nevada 89117-3400 and via email to James Keith Fisher, Bar Counsel, jfisher@flabar.org, on this 6th day of January, 2019.

Adria E. Quintela

ADRIA E. QUINTELA
Staff Counsel

**NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY
EMAIL ADDRESS**

PLEASE TAKE NOTICE that the trial counsel in this matter is James Keith Fisher, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Tallahassee Branch Office, 651 East Jefferson Street

Tallahassee, Florida 32399-2300, (850) 561-5845 and jfisher@flabar.org; and respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323, aquintel@flabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES OF DISCIPLINE, EFFECTIVE MAY 20, 2004,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.