

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Petitioner,

Supreme Court Case No.
SC2023-1440

-vs-

The Florida Bar File Nos:
2024-00,078 (10A) (OSC)

MATT SHIRK,
Respondent.

**RESPONSE TO THE FLORIDA BAR'S PETITION FOR CONTEMPT AND ORDER TO
SHOW CAUSE**

COMES NOW the Respondent, Matt Shirk, and respectfully files this response to the Florida Bar's Petition for Contempt and Order to Show Cause and states the following:

1. Respondent denies that he is in contempt of the Court's August 25, 2023 order suspending him from the practice of law for one year.
2. Respondent has been in full compliance with the Court's order of suspension.
United States Citizenship and Immigration Services (USCIS) Filings
3. The preparation of applications and forms with USCIS does not require Bar membership or any special licensing. Any person can prepare applications and forms on behalf of applicants. If a preparer is a licensed attorney, the attorney should include a copy of form G-28, Notice of Appearance as Attorney with the prepared form or application.
4. The Florida Bar's Exhibit C includes applications prepared on behalf of three clients. It was the common practice of the Respondent to submit applications for multiple clients at the same time by priority mail, in part to cut down on the costs of multiple priority mailings. Unless an application or form had a time sensitive

deadline, Respondent would sometimes wait 6 to 8 weeks to send applications to USCIS. During the month following the Court's August 25th order, Respondent (a sole practitioner) had been focused on winding down his practice and protecting client's interest. On October 4th and 5th of 2022, Respondent realized there were several applications that had not been sent to USCIS (there were several applications included in each mailing). Therefore, Respondent removed all cover letters, G-28 forms, and any other documents that listed Respondent as an attorney in good standing from the mailings. It was a complete oversight and mistake to not remove the G-28 forms for the three clients in the Bar's Exhibit C.

5. It is clear from the Bar's Exhibit C that all the applications were all signed prior to the effective date of the Respondent's suspension. Furthermore, the G-28 forms, in particular, were all signed prior to the Court's August 25, 2022 order suspending Respondent. Therefore, at the time the forms were signed, Respondent was a member in good standing with the Florida Bar.
6. Once Respondent became aware of his oversight, it was quickly remedied. The G-28's for two of the clients were withdrawn on October 7, 2022 and October 11, 2022. The third G-28 was not accepted by USCIS and was therefore not needed to be withdrawn. A printout of Respondent's online USCIS account shows the two withdrawn G-28's and is incorporated herein as Exhibit A.
7. Respondent was not engaged in the practice of law before USCIS. Quite the contrary, Respondent had timely notified disciplinary counsel for USCIS of his suspension. Additionally, within days of the applications being inadvertently

mailed to USCIS, the G-28's were withdrawn. The dates the applications were signed coupled with the G-28's being withdrawn within days of their receipt by USCIS is clear evidence that Respondent was not engaged in or attempting to engage in the practice of law. Notwithstanding, the applications were all submitted to USCIS prior to the effective date of Respondent's suspension before USCIS (it is worth noting that Respondent did not receive notice of the October 5, 2022 suspension until October 14, 2022 by U.S. mail delivery).

Executive Office for Immigration Review (EOIR) Filings

8. The Bar's petition correctly alleges that the Respondent was contacted by a client and that the Respondent filed an emergency motion to continue as well as two additional motions to continue. However, the Bar incorrectly alleges in paragraph 15 of its petition that the Respondent did not advise his clients of his suspension.
9. The Respondent did fully comply with the Court's August 25, 2022 order of suspension. Respondent also fully complied with the October 5, 2022 order of suspension by the Board of Immigration Appeals. Pursuant to those orders, Respondent advised all clients in writing as well as verbally.
10. The Respondent acted with diligence to protect the client's interest.
11. The individual hearing in removal proceedings before EOIR is the hearing on merits or trial phase. These cases require many hours of preparation (in fact, all three of these clients' cases have been pending for several years). When the client in question contacted the Respondent to inquire whether he would be able to represent him, Respondent knew that one week was not sufficient time for

Respondent to retain other counsel. Because of the amount of preparation, it would be impossible for the client to find other counsel to make an appearance on such short notice. Therefore, Respondent attempted to protect the client's interest by contacting EOIR to determine what the client should do in these circumstances.

12. When Respondent contacted EOIR, he informed the legal assistant that he was still suspended from practice and unable to appear at the individual hearings and that the clients would need the cases continued. When Respondent filed the motions, he was simply following the instructions of an EOIR legal assistant. Unlike some Florida County and Circuit courts where a simple email to the Judge's judicial assistant and opposing party that counsel was suspended and unable to represent a particular client would resolve the matter, EOIR requires everything to be in writing and filed with EOIR (these cases were filed with EOIR in Orlando prior to 2021 and require a paper filing). Additionally, Respondent could not find other counsel to file anything on his behalf. EOIR will not accept filings by anyone not a party to the proceeding. Furthermore, an attorney cannot even file an E-28 notice of appearance of counsel with EOIR if the party is represented by other counsel. Knowing all of this, Respondent relied on EOIR staff and filed the three motions.
13. The motions filed have just a few paragraphs and the main paragraph in each clearly indicate that Respondent is suspended from practice and cannot represent the client. The purpose of these filings is clear: Respondent is suspended from

practicing before EOIR and cannot represent the clients. Respondent removed his Florida Bar number from each motion and removed any reference to himself as counsel for the client in the introductory paragraph. An EOIR legal assistant instructed Respondent to title the documents as motions to continue and to indicate that Respondent was still suspended from practice and unable to appear at the hearings.

Conclusion

14. Respondent was not engaged in the practice of law during the period of suspension. Respondent was not attempting to litigate any matter and was not giving any legal advice. Respondent was simply notifying EOIR that he was still suspended from practice and could not appear on behalf of the clients in question.

WHEREFORE, Respondent respectfully requests the Court deny the petition for contempt.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by e-service to Carrie Constance Lee, Bar Counsel at clee@floridabar.org and Staff Counsel, Patricia Ann Toro Savitz, The Florida Bar, at psavitz@floridabar.org, on this 15th day of November, 2023.

Respectfully Submitted,

/s/ **Matthew A. Shirk**
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