

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

LEE DAVID SARKIN,

Respondent.

Supreme Court Case No.  
SC-

The Florida Bar File Nos.  
2023-50,627(17J) &  
2023-50,667(17J)

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**COMPLAINT**

The Florida Bar, complainant, files this complaint against Lee David Sarkin, respondent, under the Rules Regulating The Florida Bar and alleges:

1. Respondent is and, at all times relevant to this matter was, a member of The Florida Bar admitted on September 25, 1992, and is subject to the jurisdiction of the Supreme Court of Florida.

2. In addition to membership with The Florida Bar, respondent was also admitted to the bar for The United States District Court for the Middle District of Florida, subject to its jurisdiction.

3. This discipline action is based on the findings of misconduct against respondent in the United States District Court for the Middle District of Florida, Case No. 6:21-cv-1579-RBD-LHP.

4. On October 6, 2023, the Grievance Committee for the Middle District of Florida issued its Report and Recommendations, finding probable cause that respondent and his co-counsel violated Rules 4-1.3, 4-3.3(a)(1), 4-3.4(a), and 4-8.4(c).

5. Thereafter, by order dated November 1, 2023, the court approved the Report and Recommendations of the Grievance Committee for the Middle District, and suspended respondent and his co-counsel from practice in the Middle District of Florida for a period of nine months, in addition to other sanctions.

6. By operation of Rule 3-4.6, of the Rules Regulating The Florida Bar, the Order from the United States District Court Middle District of Florida Orlando Division on the Grievance Committee's Report and Recommendation shall be considered as conclusive proof of such misconduct in this disciplinary proceeding.

7. Respondent accepted the court's findings and sanction in his filed response. The United States District Court for the Middle District of Florida's Order was predicated on the committee's findings in two separate cases, as set forth below.

**COUNT I**  
**The Florida Bar File No. 2023-50,627(17J)**

8. Respondent and Co-Counsel, Drew M. Levitt, represented David Poschmann as a plaintiff in an Americans with Disabilities Act lawsuit captioned Poschmann v. Oceanside 99 Condo. Ass'n, Inc., Case No. 6:21-cv-1579- RBD-LHP in the United States District Court in the Middle District of Florida (the "Oceanside Case").

9. Poschmann was a "tester" in hundreds of ADA cases and had been represented by respondent in many lawsuits.

10. On November 12, 2021, while settlement negotiations were ongoing in the Oceanside case, Poschmann passed away. Five days later, the opposing parties' counsel filed a joint notice of settlement. The next day, unable to reach Poschmann, respondent and co-counsel Levitt signed Poschmann's name to the settlement agreement with an ink signature.

11. The settlement proceeds were paid into respondent's trust account, per the settlement agreement.

12. Respondent and Levitt stated they learned of Poschmann's death on or about December 16, 2021.

13. Approximately a year and a half later, the defendant learned that respondent and Levitt settled the case after the plaintiff was deceased.

Defendant then filed a motion to set aside the dismissal and vacate the settlement, alleging fraud on the court.

14. The court found that respondent and Levitt settled the case without authorization and found that their conduct constituted a fraud on the court. The settlement was vacated, and respondent and Levitt stipulated to a fee award of \$11,287.40 in favor of the defendant.

15. The matter was referred to the grievance committee for the Middle District of Florida. On October 6, 2023, the grievance committee for the Middle District of Florida issued its Report and Recommendations, finding probable cause that respondent and Levitt violated Rules 4-1.3, 4-3.3(a)(1), 4-3.4(a), and 4-8.4(c).

16. By an order dated November 1, 2023, the court approved the Report and Recommendations and suspended respondent and Levitt from practice in the Middle District of Florida for a period of nine months, in addition to other sanctions.

17. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar 4-1.3 (Diligence); 4-3.3(a)(1) (False Statement of Material Fact.); 4-3.4(a) (Access to Evidence.); and 4-8.4(c) (Dishonesty, Fraud, Deceit or Misrepresentation.).

**COUNT II**  
**The Florida Bar File No. 2023-50,667(17J)**

18. Respondent and Levitt also represented Poschmann in a case captioned *Poschmann v. Linda Young Reffitt Revocable Trust, LLC, et al.*, Case No. 8:21-cv-01922-CEH-AEP in the United States District Court for the Middle District of Florida (the “Reffitt Case”).

19. In the fall of 2021, settlement discussions were underway in the Reffitt Case. Despite Poschmann’s death on November 12, 2021, respondent and Levitt reached a settlement agreement with the defendants on or about December 7, 2021.

20. The court noted that Mr. Sarkin’s representations at this hearing suggested that respondents must have learned of Mr. Poschmann’s death on or before December 8, 2021, which directly conflicted with the date respondents claimed to have learned of Mr. Poschmann’s death (December 16, 2023) in response to the Motion to Set Aside. As a result, the court found that respondents’ actions were sufficient to constitute a fraud on the court. It further found that because the settlement was reached after Mr. Poschmann’s death, respondents did not have authority to act on his behalf and therefore the settlement was unauthorized and must be vacated. (Doc. 36, p. 4.) Ruling that respondents’ conduct constituted disregard for their ethical obligations under the Rules Regulating the

Florida Bar Rule, the court forwarded a copy of the Referral Order to The Florida Bar and referred respondents to this committee for further evaluation.

21. On or about May 3, 2023, defendants' counsel learned that Poschmann's death occurred before the settlement in their case, and that sanctions were issued in the Oceanside Case based on the similar facts. Shortly thereafter, they notified the court of the pertinent timing of the settlement agreement in their case and Poschmann's death.

22. On or about May 8, 2023, respondent and Levitt returned the settlement proceeds without need for any intervention of the court.

23. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar 4-1.3 (Diligence); 4-3.3(a)(1) (False Statement of Material Fact.); 4-3.4(a) (Access to Evidence.); and 4-8.4(c) (Dishonesty, Fraud, Deceit or Misrepresentation.).

WHEREFORE, The Florida Bar respectfully requests that this Court make findings of guilt and appropriately discipline the respondent under the Rules Regulating The Florida Bar.



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The Florida Bar

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### **CERTIFICATE OF SERVICE**

I certify that this document has been filed via the Florida Courts E-Filing Portal with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida with a copy provided via the portal to Counsel for Respondent, D. Culver Smith, III, at [csmith@culversmithlaw.com](mailto:csmith@culversmithlaw.com); and that a copy has been provided by United States Mail via certified mail No. 9589 0710 5270 0677 1180 05, return receipt requested to D. Culver Smith, III, whose record bar address is 1555 Palm Beach Lakes Blvd., Ste 1440, West Palm Beach, FL 33401-2311 and via email to Tracy Sorcek, Bar Counsel, [tsorcek@floridabar.org](mailto:tsorcek@floridabar.org) and [smiles@floridabar.org](mailto:smiles@floridabar.org), on this 31st day of March, 2025.



Patricia Ann Toro Savitz  
Staff Counsel

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

The trial counsel in this matter is Tracy Sorcek, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Fort Lauderdale Branch Office, Lake Shore Plaza II, 1300 Concord Terrace, Ste. 130, Sunrise FL 33323, (954)835-0233 and [tsorcek@floridabar.org](mailto:tsorcek@floridabar.org) and [smiles@floridabar.org](mailto:smiles@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 E Jefferson Street, Tallahassee, Florida 32399-2300, [psavitz@floridabar.org](mailto:psavitz@floridabar.org).

**NOTICE OF MANDATORY ELECTRONIC FILING**

All parties must file all pleadings, motions, and notices in this matter electronically, with a copy to the referee, through the Florida Courts E-Filing Portal, [www.myflcourtaaccess.com](http://www.myflcourtaaccess.com), under Rule Regulating The Florida Bar 3-7.6(h)(5)(A) and (B).

**MANDATORY ANSWER NOTICE**

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