ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION
of the
SUPREME COURT OF ILLINOIS

One Prudential Plaza
130 East Randolph Drive, Suite 1500
Chicago, Illinois 60601-6219
(312) 565-2600 (800) 826-8625
Fax (312) 565-2320

3161 West White Oaks Drive, Suite 301
Springfield, IL 62704
(217) 546-3523 (800) 252-8048
Fax (217) 546-3785

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051
By email: paul_dulberg@comcast.net

Chicago
February 7, 2024

Re: Hans Anton Mast No. 2023IN03135
Thomas J. Popovich No. 2023IN03136

Dear Mr. Dulberg:

We have concluded our review of your request for investigation of attorneys Hans Mast and Thomas Popovich and have determined to take no further action based on your allegations.

According to your initial request, on December 1, 2011, you hired the Mr. Popovich's law firm to represent you in a personal injury claim against your neighbors, Caroline and William McGuire, and their relative, David Gagnon, after you were injured in an incident involving a chainsaw while on the McGuires' property. You stated that Mr. Popovich and his associate, Hans Mast, filed a complaint and took other action to pursue your claims, and that they handled your claim incompetently, to your financial detriment. You later filed a legal malpractice claim against Mr. Popovich and Mr. Mast.

Attorneys representing Mr. Mast and Mr. Popovich submitted written responses to your allegations on their clients' behalf, and we sent you copies of those responses, to which you have replied. According to the extensive information that has been submitted, it seems clear that Mr. Mast had primary responsibility for handling your matter.

Your malpractice claims against both Mr. Mast and Mr. Popovich were dismissed by the court on their motion, a decision that was recently upheld by the appellate court. The ARDC is not the appropriate forum to review or re-litigate those claims.

The attorneys representing Mr. Mast and for Mr. Popovich both denied that their clients mishandled your original personal injury case. Your claims in that case arose from an incident in which you were assisting Mr. Gagnon in trimming downed branches on the McGuires' property. Mr. Gagnon was not employed by the McGuires for that work, and you reportedly agreed to assist him in exchange for a promise that you would receive some firewood.

The attorneys for both Mr. Mast and Mr. Popovich said that they made an effort to connect Mr. Gagnon's actions to the McGuires, claiming that he was their agent and acting under their supervision. Subsequently, they said, they concluded that in their professional judgment, your claims against the McGuires were unlikely to succeed, so they urged you to accept a $5,000 settlement from the McGuires in order to focus on prosecuting the claims against Mr. Gagnon.

While you now claim that the attorneys coerced you into accepting that settlement, Mr. Mast's attorney reported that that in the deposition you gave in the legal malpractice matter, you admitted that you deliberated over that settlement offer for several weeks, and also that you had not been coerced to settle those claims. That information tends to show that your claim of coercion cannot be substantiated.

The Popovich firm withdrew as your attorneys in 2015 and you continued with your claim against Mr. Gagnon using the services of other attorneys, ultimately obtaining an arbitration award against him in the amount of $561,000. Because of a "high-low" agreement you had executed prior to the binding mediation, the maximum you could recover from Mr. Gagnon was $300,000. You were unhappy that you could not seek recovery of the remainder of the award from the McGuires because of that prior settlement, and you asserted that the attorneys' advice to you to settle those claims had been a mistake. Mr. Popovich's attorney, though, argued that the ultimate success of the claim against Mr. Gagnon shows that your strongest case had always been against Mr. Gagnon. Further, it does not appear that the attorney who represented you after 2015 questioned the earlier decision to settle with the McGuires.

Although the ARDC cannot provide legal advice, we can tell you that in evaluating your charges we looked at the requirements of the Illinois Rules of Professional Conduct. Rule 1.2(a) provides in part that a lawyer is to abide by the client's decision whether to accept an offer of settlement. Comment [2] to that Rule indicates that clients "normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters." Here, the decision whether to accept the settlement offer from the McGuires was ultimately yours to make, but in making that decision you clearly relied on the lawyers' assessment of the strength of your various claims relating to the incident, a judgment that was based on their training, experience and understanding of the various legal issues and defenses raised in the case.

We recognize that you maintain that the advice you received from Mr. Mast and Mr. Popovich harmed you. While the Rules of Professional Conduct require attorneys to be both competent and diligent, the ARDC typically does not pursue discipline against an attorney based on the outcome of a client's case. That is partly because the litigation process is uncertain, and attorneys cannot always accurately predict how a judge or jury will respond to an argument, a witness's testimony, or a piece of evidence. Also, client expectations or disappointment with an outcome are not always an accurate measure of their attorneys' performance.

Where a client believes that an error of judgment had led to a financially detrimental outcome, our office generally recommends that the client consult with a lawyer to determine whether a civil malpractice claim is warranted. We are not doing that in your case because you have already done so, and your claims against Mr. Popovich and Mr. Mast were unsuccessful.

We have determined that there is insufficient evidence to establish that either Mr. Mast or Mr. Popovich engaged in professional misconduct in their handling your personal injury claim and have closed these investigations. If you have any questions or concerns about that decision, please write to me at srenfroe@iardc.org, or telephone my colleague, ARDC Senior Paralegal Angelique Mundt, at 312-540-5203.

Thank you for bringing your concerns to our attention.

Very truly yours,

/s/ Scott Renfroe

Scott Renfroe
Deputy Administrator, Appeals

SR:vja