IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C., and HANS MAST,	)	
	)	
Defendants.	)	

DEFENDANTS THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. AND HANS MAST'S MOTION TO DEEM FACTS ADMITTED

Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast (collectively "Popovich"), by and through their attorneys, Karbal, Cohen, Economou, Silk & Dunne, LLC, and for their Motion to Deem Facts Admitted, state as follows:

1) Dulberg's pattern and practice of abusing the discovery process with improper and incomplete responses is repeated in his latest filing, Plaintiff's Responses to Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast's Request for Admissions of Fact and Genuineness of Document (Exhibit 1). (Request for Admissions attached as Exhibit 2).

2) Defendants' Requests for Admissions simply intended to authenticate a March 4, 2015 letter purportedly drafted by attorney Saul Ferris, and establish when it was received by Dulberg. Dulberg finally produced said letter in discovery on June 7, 2021 with no explanation why it was not previously produced in this litigation (Exhibit 3, Plaintiff's Amended Additional Response to Defendant Law Offices of Thomas J. Popovich, P.C.'s Supplemental Requests for Production).

3) Notably, Dulberg was deposed on February 19, 2020 and was asked about the discovery of his malpractice action at that time at pgs. 38 and 95 (attached as Group Exhibit 4). On page 38, Dulberg described a communication from Ferris and other attorneys who would not take over his underlying personal injury case from defendant Popovich. "As I started to work away from local further out finding attorneys, the thing was your decision to settle with the McGuires was a mistake and we don't take it because of that." Dulberg testified that Saul Ferris made that comment in a letter, "and he said it on the phone and he sent me an email, I think. I don't remember the ways he contacted me. I would have to go back and look."

4) The attached Request for Admissions was an attempt at simply authenticating the copy of Ferris's letter, which again should have been produced years ago in this litigation but was not. Instead of acknowledging the authenticity of the copy of the letter, Dulberg's response is a muddled and evasive attempt at muddying the water, and should not be countenanced by this court. Dulberg's specious objections and attempt at explaining away the content of Ferris's letter is deserving of a sanction.

5) Perhaps the most egregious of Dulberg's violations, aside from his attempt at redefining common legal terms and their variations such as "genuine" and "authentic", is his denial of the genuineness of Exhibit A because he does not agree with the accuracy of the content, and because he is not in control of the author (see Response #1). A close second, is his failure to admit in No. 2 and No. 3 that he received the document from Ferris within 7 or within 30 days respectively, of the date affixed to the face of the letter.

6) Not only should those facts contained in the Request to Admit be admitted, but Defendants should not have to engage in "teeth pulling" discovery in order to simply authenticate a copy of a document which was inexplicably withheld in the first place. The

document is responsive to discovery, and is relevant to the so-called "discovery" of Dulberg's legal malpractice claim, given that he has filed it outside of the two year statute of limitations.

7) Dulberg should have either objected or answered the Request to Admit, but not both. *Chicago Use of Schools v. Albert J. Schorsch Realty Co.,* 95 Ill. App. 2d 264, 280 (4th Dist. 1968). The purpose of a Rule 216 "admission of fact or of genuineness of documents" request is to not to discover facts. Rather the purpose of such a request is to establish some of the material facts in the case without the necessity of formal proof at trial. This enables the parties and the court to limit the issues and it results in substantial savings of time and expense, for both parties and the court. *Fraser v. Jackson*, 214 IL App (2d) 130283 (an award of costs and fees was warranted due to the defendant's lack of good faith in responding to requests for admission). "Rule 219(c) provides that the trial court may award as sanctions the 'reasonable expenses incurred as a result of the [offending party's] misconduct, including a reasonable attorney fee…. The trial court may award attorney fees as sanctions when a party's misconduct has caused another party to incur fees.'" 2011 IL App (1st) 103506 at **[P19].

WHEREFORE Defendants The Law Offices of Thomas J. Popovich, P.C. and Hans Mast, respectfully request that this Court enter an Order:

1) Granting Defendants' Motion, denying all of Dulberg's objections, and deeming Requests 1, 2, 3, and 4 admitted;
2) Granting fees and costs for Defendants in prosecuting this motion;
3) Alternatively, should the deposition of Saul Ferris be necessary if Requests 1, 2, 3, and 4 are not deemed admitted, that Dulberg be assessed Defendants' attorney fees and costs in deposing Saul Ferris; and
4) For any additional relief this honorable court deems fair and proper.

Respectfully submitted,

/s/ *George K. Flynn*

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