IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

Case No.: SC20-286
Fl. Bar File No.: 2020-30, 104 (09C)

v.

KARL O. KOEPKE,

Respondent.

APPENDIX TO

THE FLORIDA BAR'S

INITIAL BRIEF

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IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

KARL O. KOEPKE,

Respondent.

_____/

Supreme Court Case
No. SC20-286

The Florida Bar File
No. 2020-30,104(09C)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On February 25, 2020, The Florida Bar filed its Complaint against Respondent in these proceedings. On August 3, 2020 and August 4, 2020, a final hearing was held in this matter utilizing Microsoft Teams videoconferencing. On August 5, 2020, a sanction hearing was held via Microsoft Teams videoconferencing in this matter to determine the appropriate sanction. Bar Counsel Karen Clark Bankowitz and Carrie Lee were present for The Florida Bar. Respondent appeared pro se. All items properly filed including pleadings, recorded testimony (if transcribed), The Florida Bar's exhibits 1-21, Respondent's

exhibits 1-14 and 16-24, and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

Narrative Summary of Case. By stipulation of the parties, the bar introduced 21 exhibits into evidence and respondent introduced 24 exhibits into evidence. This Referee heard the testimony of attorneys Gregory Michael Wilson, who testified on behalf of the bar, and Gary Doane and Anthony Caggiano, who testified on respondent's behalf during the final hearing. At the sanction hearing, the bar called respondent to testify and respondent recalled attorneys Gary Doane and Anthony Caggiano to testify on his behalf.

Respondent is an experienced attorney in civil trial law and specifically wrongful death actions. (R Ex. 21). Respondent is also a former husband in a dissolution of marriage proceeding.

Respondent's former wife received an alimony award at the time of the divorce that was later modified by agreement of the parties in 2002. (TFB Ex. 1). In 2014, respondent became substantially behind in his alimony payments and the former wife filed a Motion for Contempt. (TFB Ex. 2). Respondent then filed

former husband's Supplemental Petition for Modification or Termination of Alimony seeking to modify the existing alimony award. (TFB Ex. 3). Respondent was represented by counsel in the family law proceeding, but also filed an appearance as co-counsel. (TFB Ex. 4).

During the pendency of the motion for contempt and respondent's petition for modification in the post-dissolution of marriage matter, respondent remained a practicing lawyer representing clients in their personal injury claims.

On September 9, 2016, respondent, as counsel for the plaintiff in a personal injury matter, entered into a settlement agreement at mediation. (TFB Ex. 17; R Ex. 9 and 9B). Respondent personally signed a document titled "Settlement Agreement at Mediation" as attorney for the plaintiff. (TFB Ex. 17 and 19; R Ex. 9 and 9B). The settlement agreement was subject to court approval as it included claims of the plaintiff's minor children. Respondent was entitled to considerable attorneys' fees pursuant to the contingency fee agreement entered into with the client in the personal injury matter.

Attorney Gregory Wilson, counsel for the former wife, discovered that a substantial personal injury case being handled by respondent might have settled. Mr. Wilson began to pursue discovery related to the settlement of the case in late 2016. Mr. Wilson filed a motion to compel when respondent failed to produce documents in response to the discovery requests. (TFB Ex. 5). On June 29, 2017,

the court entered an order granting the former wife's April 4, 2017 Motion to Compel Production and required respondent to produce "(1) a redacted copy of his retainer agreement setting forth his fee agreement/compensation arrangement, (2) all settlement correspondence and written communications with the defendants, all documents, that are not atty-client privileged, related to any settlement payments by the insurance company, and (3) any settlement agreements." (TFB Ex. 6; R Ex. 16).

On July 10, 2017, respondent, through counsel, filed a Notice of Compliance and provided the former wife with a redacted copy of the fee contract in the personal injury matter. (TFB Ex. 7). However, respondent did not produce any documents regarding the September 9, 2016 Settlement Agreement at Mediation entered into in the personal injury case. On July 20, 2017, respondent, through counsel, filed an Amended Notice of Compliance with the June 29, 2017 Order compelling production stating specifically, "(1) a redacted copy of the contract was previously provided on July 10, 2017; as to category (2) there being no settlement, no documents exist or could be found that are responsive; and, as to category (3) there being no settlement, no documents exist or could be found that are responsive." (Emphasis added.) (TFB Ex. 8; R Ex. 10).

On August 24, 2017 and August 25, 2017, a trial on respondent's supplemental petition and the former wife's motion for contempt was held. (TFB

Exs. 9, 18 and 19, R Exs. 1, 7, and 17). Prior to trial, counsel for the former wife served subpoenas duces tecum on several parties in the personal injury matter, including one on respondent that required him to bring his client file to court on the day of trial. Attorney Gary Doane, Guardian Ad Litem for the minor children in the personal injury matter, filed a Motion to Quash Subpoenas Duces Tecum and Testimony. (R Ex. 6). Counsel for the mediation firm, counsel for the defendant in the personal injury matter and respondent filed notices of joinder in the Guardian Ad Litem's motion to quash. (TFB Ex. 6). Prior to the start of trial on August 24, 2017, the court heard the testimony of one of the owners of the mediation company who had appeared with the file from mediation in the personal injury case. (TFB Ex. 18). After hearing testimony of the mediation company representative, the trial court found that the mediator's file was confidential and work product and that the mediation firm was not required to produce their file. (TFB Ex. 18). Thereafter, the trial on respondent's supplemental petition and the former wife's motion for contempt began.

On August 25, 2017, the second day of trial, respondent testified. After the lunch break, respondent's cross examination began, and the former wife's counsel began inquiry into whether a settlement had been entered into in the personal injury matter. (TFB Ex. 19). Respondent was asked whether he had brought his client file to trial pursuant to the subpoena duces tecum that he had been served

with by counsel for the wife. (TFB Ex. 19). Respondent had not brought the client file for the personal injury matter to court. After hearing legal argument by respondent's counsel, Anthony Caggiano, and counsel for the former wife, Gregory Wilson, the trial court took a 1-hour recess and ordered respondent to return home to retrieve his client file in the personal injury matter. (TFB Ex. 19).

Upon respondent's return to the courthouse, the trial court conducted an in-camera review of respondent's personal injury client file. (TFB Ex. 19). The trial court identified the September 9, 2016 Settlement Agreement at Mediation (TFB Ex. 17; R Ex. 9 and 9B) and a letter dated July 21, 2016 from a Claims Specialist with Progressive Insurance (TFB Ex. 16) and ordered their production to the former wife. Thereafter, the trial court declared a mistrial based on respondent's failure to produce these documents in accordance with the June 29, 2017 Order, the failure of respondent to bring his client file to court, the inability to complete the trial in the remaining time allotted, and the presiding trial judge's upcoming rotation out of the division and the pending matter being reassigned to a different judge (TFB Ex. 9; R Ex. 17).

On or about September 27, 2017, counsel for the former wife filed a motion for rule to show cause why the respondent should not be held in contempt. On February 20, 2018, the successor trial judge entered an Amended Order to Show

Cause Under Criminal Rule 3.840 and Arraignment for Violation of Court Order and Subpoena Duces Tecum for Trial. (TFB Ex. 10).

On April 26, 2018, a trial was held on the indirect criminal contempt. (TFB Ex. 13). On June 28, 2018, after the trial court found respondent guilty beyond a reasonable doubt of indirect criminal contempt, a sentencing hearing was conducted. The trial court sentenced respondent to 30 days in the Orange County Jail. (TFB Ex. 14 and 11).

On July 2, 2018, the trial court issued a written Order and Final Judgment of Indirect Criminal Contempt as to Karl O. Koepke (TFB Ex. 12). In the order finding respondent guilty of indirect criminal contempt, the trial court found that respondent was untruthful and intentionally misleading in his discovery responses to the former wife in an effort to delay and obfuscate the former wife's discovery of the settlement agreement entered into at the mediation in the personal injury case. (TFB Ex. 12, pg. 6). The trial court found that respondent did not produce the settlement agreement and affirmatively stated that there was not an agreement when in fact he had personally signed the September 9, 2016 Settlement Agreement at Mediation. (TFB Ex. 12, pg. 6). The trial court also found that respondent's failure to comply with the subpoena duces tecum that required him to bring his client file to the trial on August 24, 2017 and August 25, 2017, was also intended to delay and obfuscate the former wife's discovery of the September 9,

2016 Settlement Agreement at Mediation and to hinder and delay the trial. (TFB Ex. 12, pg. 6).

The trial court's order also set forth a number of reasons that the court inferred respondent's intent, including, but not limited to the following: respondent was not paying alimony in the years that the alimony issues were pending before the court and that the delays created by respondent's untruthful discovery responses favored him; respondent's explanation for not disclosing the settlement agreement was not credible when the discovery requests, the trial court's order, and the subpoenas for trial were very clear and the title of the document was Settlement Agreement at Mediation; and during the delay in disclosing the personal injury case settlement, respondent "researched, planned and executed a diversion of the attorneys' fees to an irrevocable trust" that protected these earnings from the former wife. (TFB Ex. 12, pgs. 6-8).

Respondent appealed the trial court's order finding him in indirect criminal contempt and on July 26, 2019, the Fifth District Court of Appeal affirmed the trial court order per curiam. (TFB Ex. 15).

At the final hearing in this disciplinary matter, respondent continues to claim that he did not perceive the Mediated Settlement Agreement to be a true settlement because the matter involved minors' claims. Minors claim litigation does require a Guardian Ad Litem to make a report to the court as to whether the settlement is in

the minor's best interests, and then the court must determine whether the settlement should be approved taking into consideration the report of the Guardian Ad Litem.

A judge who heard the evidence concerning the respondent's intentions determined beyond a reasonable doubt that the respondent's intentions were for the purpose of concealing the settlement agreement. (TFB Exs. 11, 12 and 14).

The bar has brought evidence concerning the failure to disclose the settlement agreement in his discovery responses, even after being ordered by the court to do so, and a failure on the part of the respondent to bring his client file in the personal injury matter to court pursuant to a subpoena duces tecum.

This court is not convinced that respondent's failure to bring the client file pursuant to a subpoena duces tecum was established as deceitful by clear and convincing evidence. This finding is based upon Attorney Gregory Wilson's testimony that respondent did not file an objection to the subpoena duces tecum, when there is evidence in the record that respondent had filed notice of joinder in the Guardian Ad Litem's Motion to Quash Subpoenas Duces Tecum and Testimony. (R Ex. 6). However, this court is convinced that respondent's failure to disclose the settlement agreement was indeed deceitful.

The above conduct, for which the bar has presented clear and convincing evidence, establishes that respondent has violated the Rules Regulating The Florida Bar.

III. RECOMMENDATIONS AS TO GUILT.

Upon consideration of the evidence and testimony before me, as detailed above, I conclude that the bar has established, by clear and convincing evidence, that respondent has violated the Rules Regulating The Florida Bar. I recommend that respondent be found guilty of violating the following Rules Regulating The Florida Bar:

1. 3-4.3 Misconduct and Minor Misconduct. The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.

2. 4-3.4(a) Fairness to Opposing Party and Counsel. A lawyer must not: unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or

reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act.

3. 4-3.4(b) Fairness to Opposing Party and Counsel. A lawyer must not fabricate evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness, except a lawyer may pay a witness reasonable expenses incurred by the witness in attending or testifying at proceedings; a reasonable, noncontingent fee for professional services of an expert witness; and reasonable compensation to a witness for time spent preparing for, attending, or testifying at proceedings.

4. 4-3.4(d) Fairness to Opposing Party and Counsel. A lawyer must not in pretrial procedure, make a frivolous discovery request or intentionally fail to comply with a legally proper discovery request by an opposing party.

5. 4-8.4(b) A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

6. 4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional

misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule.

7. 4-8.4(d) A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

8. Oath of Admission. I do solemnly swear: I will support the Constitution of the United States and the Constitution of the State of Florida; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their

knowledge and approval; To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications; I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice. So help me God.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

3.2(b) Aggravating Factors

(2) dishonest or selfish motive;

(7) refusal to acknowledge the wrongful nature of the conduct; and

(9) substantial experience in the practice of law.

3.3(b) Mitigating Factors Include:

(1) absence of a prior disciplinary record;

(5) full and free disclosure to the bar or cooperative attitude toward the proceedings;

(7) character or reputation; and

(11) imposition of other penalties or sanctions.

5.1 Failure to Maintain Personal Integrity

5.1(b) Suspension. Suspension is appropriate when a lawyer knowingly engages in criminal conduct which is not included elsewhere in this subdivision or other conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

6.1 False Statements, Fraud, and Misrepresentation

6.1(b) Suspension. Suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld and takes no remedial action.

6.2 Abuse of the Legal Process

6.2(b) Suspension. Suspension is appropriate when a lawyer knowingly violates a court order or rule and causes injury or potential injury to a client or a party or causes interference or potential interference with a legal proceeding.

7.1 Deceptive Conduct or Statements and Unreasonable or Improper Fees

7.1(b) Suspension. Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

V. CASE LAW

I considered the following case law prior to recommending discipline:

In The Florida Bar v. Bischoff, 212 So. 3d 312 (Fla. 2017), Bischoff was suspended for one year for knowingly and recklessly pursuing frivolous claims,

repeatedly engaging in discovery related misconduct, and failing to comply with court orders. Bischoff filed a false notice indicating that he had served discovery responses, when, in fact, he had not served them. He also failed to comply with the Federal Rules of Civil Procedure in amending the client's complaint, failed to adequately research his client's causes of action to know what elements were required, and filed objections and appeals challenging the magistrate judge's authority to hear specific motions even though federal law outlined the court's authority to hear such motions. Further, Bischoff ignored motions for discovery and the magistrate's discovery order, refused to provide discovery materials, and counseled the client during her deposition to ignore the magistrate's direct order to answer questions from all three defendants. The Supreme Court noted that the attorney also made misrepresentations to a federal court, and that his conduct contributed to the dismissal of his client's case with prejudice.

In The Florida Bar v. Dupee, 160 So. 3d 838 (Fla. 2015), Dupee was suspended for one year for assisting the client in a pattern of deceptive conduct. Dupee filed the client's inaccurate financial statement, withheld financial documents during discovery, allowed the client to present false testimony during a deposition without taking any remedial action, and failed to notify opposing counsel that she had possession of a coin collection that was disputed property. Dupee later filed a corrected financial affidavit and produced the records sought by

the husband. In mitigation, Dupee had no prior discipline and a good professional reputation.

In The Florida Bar v. Hmielewski, 702 So. 2d 218 (Fla. 1997), Hmielewski was suspended for three years for making deliberate misrepresentations in a medical malpractice action regarding the location of patient's medical records and violating the professional discipline rules about dishonesty and access to evidence. Hmielewski represented a client in a wrongful death and medical malpractice matter against Mayo Clinic. At some point after commencement of representation, the client confided in Hmielewski that they had stolen some of the father's medical records from the clinic and showed them to Hmielewski. The client told the attorney that he felt that the records belonged to him since they had paid for the medical services. When these records were sought by Hmielewski in discovery, the clinic was unable to produce these records. Further, Hmielewski falsely stated that all medical records in his client's possession had been produced, when, in fact, these records had not been provided. When the client was called to testify in the deposition, Hmielewski did not attend and sent an associate who he advised that he must not allow the client to lie. The client admitted that he had the records and the trial court sanctioned Hmielewski and fined both Hmielewski and the client. Hmieleski agreed to hold the client harmless for the payment of the fine. Absent the finding by the referee that there was the absence of a selfish motive and strong

character evidence, the Court stated it would not have hesitated to impose disbarment.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BEAPPLIED

I recommend that respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A. A one-year suspension. Respondent will eliminate all indicia of respondent's status as an attorney on social media, telephone listings, stationery, checks, business cards office signs or any other indicia of respondent's status as an attorney, whatsoever. Respondent will no longer hold himself out as a licensed attorney.

B. Payment of The Florida Bar's costs in these proceedings.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 83

Date admitted to The Florida Bar: June 7, 1965

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find the following costs were reasonably incurred by The Florida Bar:

Administrative Fee	$1,250.00
Bar Counsel Travel Costs	$3.48
Court Reporters' Fees	$1,311.25
Investigative Costs	$42.00
TOTAL	$2,606.73

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 20th day of August, 2020.

/S/ ELLEN S. MASTERS
ELLEN S. MASTERS
Referee

Original To:

Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida, 32399-1927

Conformed Copies to:

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Karen Clark Bankowitz, Bar Counsel, The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, FL 32801-1050, kbankowitz@floridabar.org; and

Staff Counsel, The Florida Bar, 651 E Jefferson Street, Tallahassee, FL 32399-2300, psavitz@floridabar.org.

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NUMBER 1990-DR-3247
DOMESTIC RELATIONS DIV. 42

Karl Koepke,
Petitioner,

vs.

Nancy Koepke,
Respondent,

ORDER on Respondent's motion to Compel Production filed 4/4/17

THIS CAUSE, came on for consideration/hearing this 26 day of June, 2017, on the above referenced motion and the Court being fully advised in the premises, it is

ORDERED and **ADJUDGED** that the motion is granted in part. Petitioner shall produce (1) a redacted copy of his retainer agreement setting forth his fee agreement/compensation arrangement, (2) all settlement correspondence and written communications with the defendants, all documents, that are not atty-client privileged, related to any settlement payments by the insurance company, and (3) any settlement agreements. The court reserves as to the remainder of the requested documents.

ORDERED at Orlando, Orange County, Florida this 29 day of June, 2017.

CIRCUIT JUDGE

COPIES TO:

Petitioner/Attorney: Open Court/U.S. Mail

Respondent/Attorney: Open Court/U.S. Mail

EXHIBIT
6

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

Case No.: 1990-DR-003247-O

IN RE: THE FORMER MARRIAGE OF

KARL O. KOEPKE,

Petitioner,

and

NANCY M. KOEPKE,

Respondent.
_____/

PETITIONER'S AMENDED NOTICE OF COMPLIANCE

COMES NOW, Petitioner, KARL O. KOEPKE, and provides this amended notice of compliance with this court's June 29, 2017, order on Respondent's motion to compel production filed on April 4, 2017, by stating as to category (1) a redacted copy of the contract was previously provided on July 10, 2017; as to category (2) there being no settlement, no documents exist or could be found that are responsive; and, as to category (3) there being no settlement, no documents exist or could be found that are responsive.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was emailed pursuant to Florida Rule of Judicial Administration 2.516 to Gregory M. Wilson, Esq., Attorney for Respondent at gmwnancy@bellsouth.net and gmwil@bellsouth.net; and, Karl O. Koepke at koepkelaw@aol.com this 20th day of July, 2017.

Respectfully submitted,

/s/ **Anthony J. Caggiano**

EXHIBIT
8

ANTHONY J. CAGGIANO, ESQ.
Florida Bar No. 434507
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Orlando, FL 32801
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Attorney for Petitioner

1990-DR-3247

FILED IN OPEN COURT
THIS 25 DAY OF August, 2017
Clerk
BY _____ D.C.

Plaintiff(s) Anthony Williams

Vs.

Estate of Everton Cox and Double C Fruit Inc.

Defendants(s)

_____/

SETTLEMENT AGREEMENT AT MEDIATION

THE PARTIES hereto have reached the following agreements, at Mediation Conference in full and complete resolution of the above-styled litigation:

1. The Defendant (s) Estate of Everton Cox and Double C Fruit, Inc. agree to pay the total sum of One million Dollars Dollars ($1,000,000.00) to the Plaintiff(s) within 20 days. The Plaintiff's attorney's Tax Identification number is [redacted]
2. [redacted]
3. [redacted]
4. [redacted]
5. [redacted]
6. [redacted]
7. [redacted]
8. [redacted]

EXHIBIT
17

9. All parties acknowledge that all of their agreements are stated in full above.

SIGNED this **9th day of September, 2016** at _____ Florida.

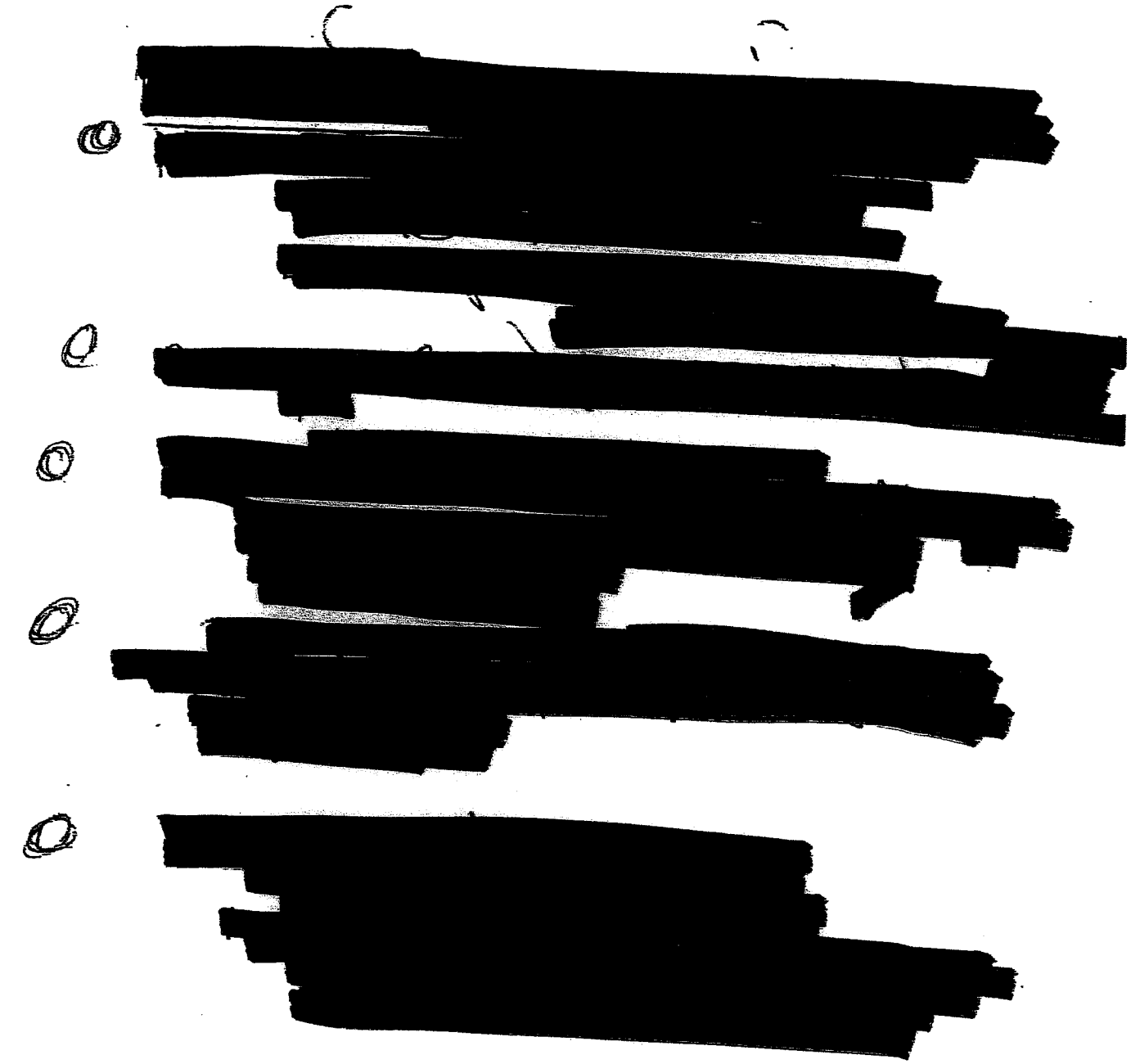
Plaintiff	Defendant
Plaintiff	Attorney for Defendant
Attorney for Plaintiff (s)	Insurance Claim Representative
Mediator	Defendant (s)
	Insurance Claim Representative

Donna C. Doyle
Gregory P. Miles
Mark S. Walker
Clement L. Hyland
Douglas B. Beattie
James A. Cabler
William H. Lore
David C. Schwartz
Richard C. Singer
Stan Strickland
Charles M. Rieders

Mediate First, Inc.
200 E. Robinson Street
Suite 700
Orlando, FL 32801

Business Phone: 407-649-9495
Toll-Free 800-851-9173

Email: admin@mediatefirstinc.c
Website: www.mediatefirstinc.com



Plaintiff(s) Anthony Williams

Vs.

Estate of Everton Cox and Double C Fruit Inc.

Defendants(s)

SETTLEMENT AGREEMENT AT MEDIATION

THE PARTIES hereto have reached the following agreements, at Mediation Conference in full and complete resolution of the above-styled litigation:

1. The Defendant (s) Estate of Everton Cox and Double C Fruit, Inc. agree to pay the total sum of One million Dollars Dollars ($ 1,000,000.00) to the Plaintiff(s) within 20 days. The Plaintiff's attorney's Tax Identification number is _____. In the event the settlement draft is not honored, after presentment, by the bank for any reason, this Settlement Agreement is voidable at the option of the Plaintiff, and any release or dismissal executed in contemplation of the Agreement shall be treated as nullities.

2. The Plaintiff(s), shall promptly dismiss the lawsuit with prejudice, and shall execute a mutually acceptable Release of the Defendant (s). It is contemplated by the parties that the Release will contain "Dyess" language to prevent unintended forfeiture of group health or other similar insurance.

3. The Plaintiff(s) shall satisfy or resolve all liens and subrogated interests and shall hold the Defendant(s) harmless from same.

4. All parties agree to promptly execute all documents and to perform all acts necessary to complete this Settlement Agreement.

5. All parties agree to bear their own costs and attorneys fees.

6. All parties herein stipulate that the trial court shall retain jurisdiction to enforce all terms of the Settlement Agreement.

7. The mediator's fee shall be paid as follows:
   ___ Each party shall pay its proportionate share.
   ☑ The Defendant (s) shall pay the entire fee.
   ___ The Plaintiff (s) shall pay the entire fee.

8. Additional terms of this settlement, if any, are as follows:
   See attached hand written attachment to be included in releases. ~~Plaintiff agrees to execute attached releases with additions referenced.~~ It is understood and agreed that ~~the amended~~ this settlement includes the settlement of the Plaintiff's minor children's loss of parental consortium claims and all formalities related thereto shall be complied with.

PLF/DEF 9
EXHIBIT
DATE A. 27 TR
Milestone | Reporting Company

9. All parties acknowledge that all of their agreements are stated in full above.

SIGNED this **9th day of September, 2016** at _____ Florida.

Plaintiff	Defendant
Plaintiff	Attorney for Defendant
Attorney for Plaintiff (s)	Insurance Claim Representative
Mediator	Defendant (s)
	Insurance Claim Representative

Donna C. Doyle
Gregory P. Miles
Mark S. Walker
Clement L. Hyland
Douglas B. Beattie
James A. Cabler
William H. Lore
David C. Schwartz
Richard C. Singer
Stan Strickland
Charles M. Rieders

Mediate First, Inc.
200 E. Robinson Street
Suite 700
Orlando, FL 32801

Business Phone: 407-649-9495
Toll-Free 800-851-9173

Email: admin@mediatefirstinc.c
Website: www.mediatefirstinc.com

Must Be In Release

- No Indemnity or Hold Harm Less Except Medical / Estate & Progressive
- Only Cox & Double C
- No "Ones who May be Vicariously Liable"
- Did not Receive "~~Not~~ Full Value of Case!"
- Expressly not: Tire Mfck "T-Trailer Motor Broker & etc

(3)

Points
KK's Attached

1990-DR-3247

Progressive Claims
30 Becker Rd, Suite A
West Henrietta, NY 14586
Phone No: (585) 486-2386
Fax No: (585) 321-1508
mbudd1@progressive.com

PROGRESSIVE
Underwritten by: Progressive Express Insurance Company
Policyholder: Double C Fruit Inc.
Policy No: [redacted]
Claim No: [redacted]
Date of Loss: [redacted]
1-800-PROGRESSIVE (1-800-776-4737)

Rec'd 7/25/16 BY KK

By CERTIFIED and REGULAR MAIL

July 21, 2016

Karl O. Koepke, Esq.
1121 Eastin Avenue, Suite B-7
Orlando, FL 32804

FILED IN OPEN COURT
THIS 25 DAY OF August 2017
Clerk
BY _____ D.C.

Yvonne Brown-Wright, Esq.
5605 NW 108th Way
Coral Springs, FL 33076

Dear Counsel:

This letter is in reference to the motor vehicle accident of May 25, 2016 that occurred on I-95 near Rocky Mount, North Carolina involving the 2012 Kenworth tractor owned by Double C Fruit, Inc. and driven by Everton Cox, in which Anthony Williams was a passenger.

At the time of the subject accident Progressive Express Insurance Company ("Progressive") insured Double C Fruit, Inc. under a commercial auto liability policy, Policy No. 03759724-0, which has a liability limit of $1,000,000.00, combined single limit for bodily injury and property damage.

At this time Progressive is committed to utilizing the full extent of the liability limit of its policy, $1,000,000.00, to effectuate a settlement of, and secure releases of Double C Fruit, Inc., the Estate of Everton Cox, and Double C's broker, Sunstate Logistics, Inc. for the claims of Anthony Williams, and releases of Double C Fruit, Inc. and its broker, Sunstate Logistics, Inc. for the claims of the Estate of Everton Cox arising out of the May 25, 2016 accident.

Please advise regarding how the policy limits should be divided between your two clients. Once this has been determined, please forward payment instructions and a W-9 for your respective law firms to me, so I can order the settlement checks and forward the appropriate releases.

Neither this communication and undertaking, nor any future communication or undertaking should be deemed or construed as a waiver of any of the rights of Progressive, including those rights provided in the contract of insurance.

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Should you have any questions regarding the forgoing policy limit offer, please contact me.

PROGRESSIVE EXPRESS INSURANCE COMPANY

Michael Budd
Claims Specialist Sr. Commercial Lines

cc: Hadley & Lyden Inc
P.O. Box 700
Winter Park, FL 32790

Double C Fruit Inc.
Attn: Carol Wright
7061 Grand National Dr, Suite 105G
Orlando, FL 32819

Josh Rotenstreich, Esq.
Teague, Rotenstreich Stanland
101 S. Elm Street, Ste. 350
Greensboro, NC 27401

David Evelev, Esq.
Cole, Scott & Kissane
Tower Place, Suite 400
1900 Summit Tower Boulevard
Orlando, FL 32810

Alyssa Pickles, Esq.
Taylor & Associates
20 3rd Street SW, Suite 209
Winter Haven, FL 33880

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

CASE NUMBER: 1990-DR-003247-O

DIV 41

KARL O. KOEPKE,

Petitioner,

vs.

NANCY M. KOEPKE,

Respondent.

_____/

ORDER AND FINAL JUDGMENT OF INDIRECT CRIMINAL CONTEMPT AS TO KARL O. KOEPKE

THIS CASE came before the Court for Trial on April 26, 2018, upon the Amended Order to Show Cause Under Criminal Rule 3.840 and Arraignment for Violation of Court Order and Subpoena Duces Tecum for Trial (filed Feb. 20, 2018) (the "Amended Order to Show Cause"). The Defendant was represented by counsel. All of the procedural safeguards of the criminal justice process were afforded to the Defendant, KARL O. KOEPKE.[1] The Court heard the testimony of the parties and other witnesses, and

[1] "[T]he indirect criminal contempt process requires that all procedural aspects of the criminal justice process be accorded a defendant, including an appropriate charging document, an answer, an order of arrest, the right to bail, an arraignment, and a hearing." *Gidden v. State*, 613 So. 2d 457, 460 (Fla. 1993). *See also* Fla. R. Crim. P. 3.840(g); *Ensign v. State*, 67 So. 3d 353 (Fla. 2d DCA 2011); *Martinez v. State*, 976 So. 2d 1222 (Fla. 4th DCA 2008).

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considered all factors bearing on the credibility of those that testified. The Court also considered the testimony of Clem Hyland, Mediate First, taken on August 24, 2017, and the subject of this Court's Order Granting Former Husband/Petitioner/Defendant's Motion to Reopen Evidence (filed June 21, 2018). After hearing the evidence and argument of counsel, having reviewed the evidence, relevant filings and pleadings, and being otherwise duly advised in the premises, the Court FINDS, beyond and to the exclusion of any reasonable doubt, as follows:

FACTS

A. This case arises out of an alimony obligation imposed following dissolution of the marriage of the Petitioner/Former Husband and Defendant herein, KARL O. KOEPKE ("Defendant"), and Respondent/Former Wife, NANCY M. KOEPKE ("Former Wife"). It is alleged that Defendant has failed to pay a substantial amount of alimony owed to the Former Wife. Former Wife filed a Motion for Contempt/Enforcement (filed March 5, 2014) seeking to collect the alimony owed. Defendant responded by filing a Supplemental Petition for Modification or Termination of Alimony (filed May 22, 2014). The Supplemental Petition has been amended twice since and remains pending.

B. Defendant is a longtime plaintiff's personal injury lawyer in the Orlando area. In mid to late 2016, counsel for Former Wife learned that a substantial personal injury case being handled by the Defendant may have settled[2]. Final settlement of the case would

[2] The specifics of the personal injury case including the parties, amount of settlement and amount of attorneys' fees are not set forth in this order in an effort to maintain this information as confidential. Those details are available to a reviewing court in the record exhibits and testimony.

have generated significant attorneys' fees payable to the Defendant and available to satisfy Defendant's alimony obligation. Consequently, Former Wife began to pursue discovery related to the settlement of the case.

C. Unbeknownst to Former Wife, Defendant had indeed entered into a written "Settlement Agreement at Mediation" in the personal injury case on September 9, 2016. The Settlement Agreement at Mediation was signed by the Defendant personally, as well as by his client. The Settlement Agreement at Mediation included settlement of the claims of minor children of the plaintiff for loss of parental consortium. Accordingly, the settlement was subject to court approval of the minor children's claims.

D. The Defendant in this case retained counsel to represent him on the alimony issues. Importantly, Defendant, as a member of the Florida Bar, also noticed his appearance in the case to serve as co-counsel. Thus, Defendant was both client and counsel.

E. Discovery requests related to settlement of the personal injury case began in late 2016. When no documents were produced, motions to compel followed. One such motion to compel was granted by the Court on June 29, 2017. That Order on Respondent's Motion to Compel Production filed 4/4/17 specifically required Defendant to produce "any settlement agreements." Defendant filed Petitioner's Notice of Compliance on July 10, 2017 indicating service of documents that were responsive. Despite the known existence of the Settlement Agreement at Mediation, there were no documents produced in response to the order requiring "any settlement agreements." Counsel for Defendant, Anthony

Caggiano, testified that he inquired of the Defendant directly prior to preparing the response and was told by the Defendant that no such documents exist.

F. Thereafter, on July 20, 2017, the Defendant filed his Amended Notice of Compliance with the June 29, 2017 order compelling production. The Amended Notice of Compliance stated specifically, "(3) there being no settlement, no documents exist or could be found that are responsive." Again, counsel for Defendant testified that he was responding based on information provided directly by Defendant.

G. Trial on the Supplemental Petition and the Motion for Contempt was set by the Court to occur on Thursday, August 24, 2017 and Friday, August 25, 2017. In anticipation of the trial, Former Wife served a Subpoena Duces Tecum (For Trial) demanding that Defendant bring to trial his complete office file on the subject personal injury case. Contrary to the Subpoena, Defendant did **not** bring his file to the trial. It was not until the middle of day one of the trial that the Court addressed the issue and, after hearing argument, ordered the Defendant to immediately return to his home/office to retrieve the file, resulting in a several hour delay. Upon *in camera* review of the file the Court identified the Settlement Agreement at Mediation contained within the file materials and ordered its production. Due to delays resulting from the untimely disclosure of the Settlement Agreement at Mediation by the Defendant, the trial of the then three year old case could not be completed. Regularly scheduled rotation of the trial judge from the division now requires that the entire case be tried again, at significant additional cost to the Former Wife and considerable additional time commitment by the Court.

H. Since discovery of the Settlement Agreement at Mediation and final approval of the settlement in the personal injury case, the Defendant has surreptitiously directed the payment of his substantial attorneys' fees to an irrevocable trust for the benefit of himself and his grandchildren. This transfer effectively shields the asset from execution by the Former Wife for satisfaction of any outstanding, unpaid alimony and any attorneys' fees to which she might be entitled. It also impacts the assessment of "ability to pay" on the part of the Defendant required per §61.08, Florida Statutes.

I. Defendant justifies his decision not to disclose the existence of the Settlement Agreement at Mediation because the settlement of the underlying case was "not final," was contingent upon court approval, and could have been rescinded if the insurance company elected. He also believes that he did not fail to obey the Court's orders, and that his decision not to disclose was based upon his interpretation of the non-final status of the settlement. Defendant further asserts that there was no intent to embarrass the Court or hinder or obstruct the administration of justice.

ANALYSIS

Criminal contempt involves conduct calculated to embarrass, hinder, or obstruct the administration of justice. Punishment is used to vindicate the authority of the court and to punish the contemnor. *Bowen v. Bowen*, 471 So. 2d 1274 (Fla. 1985); *Johnson v. State*, 584 So. 2d 95 (Fla. 1st DCA 1991). The conduct must have occurred outside the presence of the court to constitute indirect criminal contempt. *Wasserman v. State*, 671 So. 2d 846 (Fla. 2d DCA 1996). A refusal to obey a legal order, mandate, or decree constitutes an act of contempt. § 38.23, Fla. Stat.; *A.A. v. Rolle*, 604 So. 2d 813, 815 (Fla. 1992); *Richey v.*

McLeod, 137 Fla. 281, 188 So. 228 (1939); *Ex parte Earman*, 85 Fla. 297, 95 So. 755 (1923); *Murrell v. State*, 595 So. 2d 1049 (Fla. 4th DCA 1992). Intent is an essential element of indirect criminal contempt. *Power Line Components, Inc. v. Mil-Spec Components, Inc.*, 720 So. 2d 546 (Fla. 4th DCA 1998). The intent to commit contempt may be inferred from the actions of the contemnor.

In this case, the Court concludes that the Defendant's responses to the discovery requests, both as a lawyer and client, were untruthful and intentionally misleading, interposed for the purpose of obfuscating and delaying Former Wife's discovery of the terms of the Settlement Agreement at Mediation. At the time the Defendant produced no settlement agreement and affirmatively stated there were no settlement agreements, there was in fact a Settlement Agreement at Mediation personally signed by the Defendant. The Court also concludes that the Defendant's intentional failure to comply with the properly issued subpoena duces tecum for trial was intended to obfuscate and delay Former Wife's discovery of the terms of the Settlement Agreement at Mediation, and to delay and hinder trial on the issues of alimony.

The Court infers Defendant's intent in this case based upon the following:

(a) At the time of Defendant's responses, the alimony issues had been pending for 3 years, unresolved. During this time, the Defendant was not paying court-ordered alimony. Delay favored the Defendant and the Defendant created and took advantage of the delays created by his untruthful discovery responses.

(b) At the time of Former Wife's discovery requests and Defendant's responses, there was an actual settlement agreement. The discovery requests, this Court's

orders, and the subpoena for trial were very clear and Defendant's explanation for not disclosing the Settlement Agreement at Mediation is simply not credible. The terms of the Court's orders and the title of the Settlement Agreement at Mediation mirror each other. It is clear that the Defendant disobeyed the Court's orders, was not truthful in his written response, and intended to mislead Former Wife and the Court.

(c) The personal injury case was, indeed, settled at the time of the discovery orders and trial subpoena. While it is true there were contingencies to be accomplished before finalization of the settlement, the case had been settled subject to those contingencies. The Court's orders required disclosure of the Mediated Settlement Agreement, or at least an acknowledgement that it existed and a privilege log if there was a contention of privilege. In this Court's view, no reasonable lawyer, and no reasonable client, would believe or act otherwise given the clarity of the Court's order.

(d) Defendant's refusal to bring his litigation file for the trial court to timely consider any objections was unreasonable and improper, and resulted in further delays.

(e) While successfully accomplishing the delay in disclosure of the personal injury case settlement, Defendant researched, planned and executed a diversion of the attorneys' fees to an irrevocable trust. The diversion effectively shielded a substantial asset that would have been available for payment of overdue, unpaid alimony and attorneys' fees/costs as appropriate. Further, it impacted the

Court's ultimate analysis of the Defendant's "ability to pay." This is a financial win for the Defendant, at the cost of integrity and fairness in the justice system.

Actual delay in reaching the merits of this case resulted from Defendant's actions, and justice was in fact hindered and delayed. The case lingered unnecessarily through motions to compel, incomplete production of documents, explicit false responses to discovery, and ultimately a mistrial. Defendant continues to enjoy paying no alimony under prior court orders. Significant additional court time and attorneys' fees have been and will be required in order to bring the case to conclusion. Moreover, Defendant's delay may indeed have impacted the outcome of the case on the merits.

Lawyers are sworn to uphold principles of truth and honor in the administration of justice, and shall "never seek to mislead the judge . . . by any artifice or false statement of fact or law."[3] The Defendant intentionally violated his oath and these enduring principles that are fundamental to the integrity of our system of justice. In doing so, he disrupted the orderly administration of justice, and hindered, obstructed, delayed, and frustrated the prosecution of this case. Sanctions for contempt of court are mandated by the law and the facts of this case.

The Court has considered the testimony in mitigation by attorney Caggiano and by the Defendant himself. The Defendant has practiced law for 51 years in this jurisdiction and has had a hand in many organizations and endeavors with meaningful and significant contributions to professionalism and ethics in this local legal community. The Defendant

[3] Oath of Admission to The Florida Bar.

denies an intent to hinder, obstruct or delay the orderly administration of justice.[4] His conduct in this case, however, stands in stark contrast to the remarkable career painted in testimony. The Court has considered lesser sanctions for the contempt (e.g., a $500 fine or lesser jail time) but finds that those sanctions would be a mere slap on the wrist, insufficient to adequately punish the Defendant's violation of law, its impact in this case, and the need to reinforce the principles upon which the orderly administration of justice relies. The Court recognizes that there may be other consequences that follow entry of this Final Judgment (e.g., discovery sanctions, sanctions issued by The Florida Bar) and has considered same in its sentencing decision.

IT IS, THEREFORE, ORDERED AND ADJUDGED as follows:

1. The Defendant, KARL O. KOEPKE, is hereby held in indirect criminal contempt of this Court and adjudicated guilty of contempt.

2. KARL O. KOEPKE is hereby sentenced to 30 days in the Orange County Jail with credit for zero (0) days time served. KARL O. KOEPKE shall report to Courtroom 16-H, Orange County Courthouse, 425 North Orange Avenue, Orlando, FL 32801, at 9:00 a.m. on July 27, 2018, to be remanded into custody to serve his sentence.

3. This Order and Final Judgment of Indirect Criminal Contempt shall supplement the oral order of the Court announced in open Court on June 28, 2018.

---

[4] Merely stating that he did not mean to be contemptuous when violating the court's order does not change the result. *Vizzi v. State*, 501 So. 2d 613, 619 (Fla. 3d DCA 1986).

4. The Defendant, KARL O. KOEPKE, may appeal this Order and Final Judgment within thirty (30) days.

5. By copy of this Order and Final Judgment to The Florida Bar, the Court refers the matter for such proceedings as may be appropriate.

DONE AND ORDERED in Orlando, Orange County, Florida on this 2nd day of July, 2018.

Donald A. Myers, Jr.
Circuit Judge

Copies furnished to all parties/counsel via filing through the e-portal to:

Karl O Koepke, Esquire	1121 Eastin Ave Apt B7 Orlando, Fl 32804
Robert James Buonauro, Esquire	722 Vassar St Orlando, Fl 32804
Anthony J Caggiano, Esquire	301 Hillcrest St Orlando, Fl 32801
Gregory M Wilson, Esquire	29 E Pine St Orlando, Fl 32801

And via U.S. Mail to The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO.: 1990-DR-3247-O

DIV.: 29

IN RE: THE MARRIAGE OF:

KARL O. KOEPKE,

FORMER HUSBAND,

VS.

NANCY M. KOEPKE,

FORMER WIFE.

_____/

HEARING BEFORE THE HONORABLE JUDGE DONALD A. MYERS

DATE: JUNE 28, 2018

REPORTER: KARLA S. GARRIDO

PLACE: ORANGE COUNTY COURTHOUSE
425 NORTH ORANGE AVENUE
COURTROOM 16-H
ORLANDO, FLORIDA 32801

EXHIBIT
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nothing to believe he's going to pay in the future. You know, I don't have any problem if this Court says, "Okay, last chance, 24 hours, I'll send you" -- "if that money's in the registry of the Court we'll talk about it. If it isn't, forget it." I just -- good guys -- yeah, that's all I got.

JUDGE MYERS: I can't --

MR. WILSON: I know.

JUDGE MYERS: I can't help you there. It -- look, I don't -- I didn't envision -- I practiced law for 21 years before I came on the bench. The vast majority of that in personal injury, medical malpractice, insurance, litigation fields. For the ten years before I was elected, I wanted to be a judge, but I knew I needed more experience, I knew that I needed more perspective, and to the extent that God grants it, I certainly needed more wisdom. At no point in that ten years did I ever imagine this was the kind of decision that I'd be confronting. And -- and I don't take any pleasure, any joy, any thrill in having an issue like this before me, but I do take seriously my responsibility to the law, my responsibility to ethics, my responsibility to professionalism very seriously. And every day that I sit on this bench, I do what I

can to further those causes in the practice and from the bench.

MR. KOEPKE: (Sneezes).

MR. BUONAURO: Bless you.

JUDGE MYERS: What has occurred in this case is offensive to me. It is wrong and it violates beyond a reasonable doubt in my mind all three of those things that I aspire to encourage. I am genuinely aware of your reputation in the community, Mr. Koepke, simply by having been a lawyer here now for 29 years without any specific occasions to have interaction. And -- and I acknowledge what has clearly been a distinguished past in the law in this community. Many of those things that you are credited with being a part of or participating in are things that I personally have enjoyed the benefits of. And thus, it is so shocking to me to be here because your decisions in this case are not consistent with that past. But I find beyond a reasonable doubt that your decisions in this issue have been motivated by an intent to deceive Ms. Koepke on the availability of settlement monies in a way that has disrupted the orderly administration of this case, ultimately the trial of this case that was begun before Judge Pinder Rodriguez, and now

ultimately, has cost -- I'm going to guess conservatively -- 100 or more hours of attorney time and hours upon hours of court time to resolve. This case came to trial before me after an order to show cause after an arraignment with the benefit of counsel on your behalf on April the 26th. I heard the testimony of the parties, of the witnesses, considered on the factors bearing on the credibility of those that testified. I also considered the evidence that was offered after the trial in granting your petition or motion to reopen the evidence. And after having heard all of that evidence and the argument of counsel, I find as follows -- and this will all be memorialized in a written order, which I will issue -- that this case arises out of an alimony obligation imposed following the dissolution of marriage of the defendant, Karl Koepke, and his former wife, Nancy Koepke. In that proceeding, it is alleged that the defendant has failed to pay a substantial amount of alimony that is owed to the former wife. The former wife had filed a motion for contempt or enforcement back in 2014 -- in March of 2014, seeking to collect the alimony that is owed. That case is still open, that motion has not been resolved as we sit here,

four years later. The defendant responded to that motion by filing a supplemental petition for modification or termination of alimony, filed in May of 2014. That supplemental petition is not resolved, four years after the fact. That supplemental petition has been amended twice, and as I said, remains pending. Mr. Koepke, as you are a long-time Plaintiffs' personal injury lawyer in Orlando, in late 2016 -- it turns out perhaps in mid-2016, Mr. Wilson, the counsel for the former wife, learned that there was a substantial personal injury case that was being handled by you that may have been settled. Final settlement of that case would have generated a significant attorney's fee payable to you and available to satisfy your alimony obligation. As a result, the former wife began to pursue discovery related to the settlement of the case. Unbeknownst to the former wife, however, the defendant had indeed entered into a written "Settlement Agreement at Mediation" in the personal injury case in September of 2016. That settlement agreement was not only signed by your client, but was signed by you, the defendant, personally. The settlement agreement in mediation included the settlement of the claims of minor children for loss

of their parental consortium. As a result, the settlement agreement was contingent, it was nevertheless an agreement and set forth what the contingencies were to finalize it. Discovery requests related to the settlement of the personal injury case began in late 2016 and when no documents were produced, motions to compel followed. One such motion to compel, and the one that's the subject of this case, was granted by the Court on June 29, 2017. That order under the respondent's motion to compel production filed April 4, 2017 specifically required the defendant to produce "any settlement agreements." The defendant filed the petitioner's notice of compliance on July 10, 2017 after that hearing, indicating that certain documents had been served that were responsive. Despite, however, the known existence of the settlement agreement in mediation, there were no documents produced in response to the Court's order requiring any settlement agreements. Counsel for the defendant, Mr. Caggiano, testified that he inquired of the defendant directly prior to preparing the response and was told by the defendant that no such documents existed. Thereafter, on July 20, 2017, the defendant filed his amended notice of compliance

with a June 29, 2017 order compelling production. The amended notice of compliance stated specifically as to Category 3, that requesting settlement agreements, there being no settlement, no documents exist or could be found that are responsive. Again, counsel for the defendant testified that he was responding based on information provided directly by the defendant. It is significant to note that Mr. Koepke himself was co-counsel in this case. He was aware of the responses being filed by Mr. Caggiano, he knew their contents, and as a lawyer and co-counsel, he understood the significance of the representation that there were no documents in the nature of settlement agreements in this case. Trial on the supplemental petition and on the motion for contempt was set by the Court to occur on Thursday, August the 24 of 2017 and the following Friday in front of Judge Rodriguez. In anticipation of that trial, the former wife served a subpoena duces tecum for trial, demanding that the defendant bring to trial his complete office file on the subject personal injury case. Contrary to that subpoena, the defendant did not bring his file to the trial. It was not until the middle of day one of the trial that the Court addressed the issue, and after

hearing argument, had to recess in order for the defendant to return to his home and office to retrieve the file. That delay resulted in the case itself not being able to be concluded as it was timely set, and because of the regularly scheduled rotation of Judge Pinder Rodriguez, resulted in another continuance of a trial that was in progress and that should have been completed on a petition that at that point was three-and-a-half years old. Upon an in-camera review of the file that was finally produced for the first time the following morning, the Court identified the Settlement Agreement at Mediation that was contained within the file materials. That is the same Settlement Agreement at Mediation that Mr. Caggiano has testified even here today he saw for the first time at that moment. The Court can make no other conclusion except that the intent was to withhold, to hide, to deceive, and to delay the production of a critical settlement document with the consequence that is now clear to the Court, and that has come out during the case -- or during the trial of this issue, that all of the money that would have been available to satisfy the alimony obligation has now been secreted away into some sort of a trust that is

no longer available, according to Mr. Koepke's own statements, for distribution in satisfaction of the alimony obligation. That intent to hide is apparent from what was apparently going on during the time that all of these efforts to deny the existence of a settlement agreement occurred. That was the time frame in which these trust documents were being drafted and the agreements made, such that the law -- that the money according to Mr. Koepke's own testimony would never come into his own trust account, would never be available to be attached or set aside for purposes of the alimony obligation. Smart? Could be argued perhaps. Deceitful? Yes. And a lie to the Court and a lie to Ms. Koepke about the consequences. The Court's heard the mitigating testimony and I found, as previously announced, Mr. Koepke could be in indirect criminal contempt beyond a reasonable doubt. Given the sentencing options -- and again, the Court takes no joy and recognizes candidly what I think the likely consequence of this is, Mr. Koepke -- that I am going to sentence you to 30 days in the Orange County jail as a sanction for your indirect criminal contempt, which was intentional and has absolutely interfered with the ability of this Court to resolve the issues that are

before it. The Court recognizes the consequences. A copy of the Court's order will be directed to the Florida Bar. I have no choice ethically, but to do that. I'm going to set a remand date. I will issue my written order tomorrow so that you can take whatever appellate course of action you wish to take.

MR. BUONAURO: Thank you, Your Honor.

JUDGE MYERS: I'm going to give you 30 days --

MR. BUONAURO: Okay.

JUDGE MYERS: -- for a remand date, so if you intend to seek a stay of the order, whatever you intend to do, you have adequate time to accomplish that.

MR. BUONAURO: Thank you.

JUDGE MYERS: If I have made an error in this process, I respect the Fifth DCA and their ability to correct it, but I believe on the basis of the law and the basis of the facts, that this is the correct outcome. The remand will be Friday, July 27th at 9:00 a.m.

MR. BUONAURO: Your Honor, it -- my intent -- I will be filing a notice of appeal, then a motion for bond pending appeal and I will try and get a hearing prior to the remand date. Is that okay?

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

KARL O. KOEPKE,

Appellant,

v.

Case No. 5D18-2231

NANCY M. KOEPKE,

Appellee.

_____/

Decision filed July 26, 2019

Appeal from the Circuit Court
for Orange County,
Donald A. Myers, Jr., Judge.

Roy D. Wasson, of Wasson & Associates,
Chartered, Miami, for Appellant.

Gregory M. Wilson, Orlando, for Appellee.

PER CURIAM.

AFFIRMED.

GROSSHANS, J., and ROBERSON, E.C., Associate Judge, concur.
COHEN, J., concurs and concurs specially, with opinion.

EXHIBIT
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COHEN, J., concurs and concurs specially, with opinion.

Karl O. Koepke ("Former Husband") appeals the final order finding him in indirect criminal contempt of court in his post-dissolution action against Nancy M. Koepke ("Former Wife"). He raises two issues on appeal: (1) the trial court's failure to effectuate proper service of process pursuant to Florida Rule of Criminal Procedure 3.840(a), and (2) the insufficiency of evidence establishing willfulness.

The second argument raised is meritless. Former Husband, a practicing lawyer, has been battling with Former Wife over his payment of alimony. During the pendency of the proceeding, Former Wife sought discovery related to Former Husband's anticipated settlement of a personal injury case, in which he was expected to generate a significant award of attorneys' fees. Former Wife sought to use the award to resolve Former Husband's unpaid alimony obligation. However, after settling the personal injury case, Former Husband proceeded on a course of conduct devised to conceal from Former Wife both the settlement and his award of attorneys' fees. Ultimately, Former Husband placed a significant portion of his awarded fees[1] into an irrevocable trust to shield the monies from use for repayment of past due alimony.

The record amply supports the trial court's findings holding Former Husband in indirect criminal contempt. The court, in its well-articulated order, stated:

> In this case, the Court concludes that the Defendant's responses to the discovery requests, both as a lawyer and client, were untruthful and intentionally misleading, interposed for the purpose of obfuscating and delaying Former Wife's discovery of the terms of the Settlement Agreement at Mediation. At the time the Defendant produced no settlement

[1] The portion not used to pay for his own attorneys' fees in this matter.

> agreement and affirmatively stated there were no settlement agreements, there was in fact a Settlement Agreement at Mediation personally signed by the Defendant. The Court also concludes that the Defendant's intentional failure to comply with the properly issued subpoena duces tecum for trial was intended to obfuscate and delay Former Wife's discovery of the terms of the Settlement Agreement at Mediation, and to delay and hinder trial on the issues of alimony.
>
> . . . .
>
> While successfully accomplishing the delay in disclosure of the personal injury case settlement, Defendant researched, planned and executed a diversion of the attorneys' fees to an irrevocable trust. The diversion effectively shielded a substantial asset that would have been available for payment of overdue, unpaid alimony and attorneys' fees/costs as appropriate. Further, it impacted the Court's ultimate analysis of the Defendant's "ability to pay." This is a financial win for the Defendant, at the cost of integrity and fairness in the justice system.
>
> . . . .
>
> Lawyers are sworn to uphold principles of truth and honor in the administration of justice, and shall "never seek to mislead the judge . . . by any artifice or false statement of fact or law." The Defendant intentionally violated his oath and these enduring principles that are fundamental to the integrity of our system of justice. In doing so, he disrupted the orderly administration of justice, and hindered, obstructed, delayed, and frustrated the prosecution of this case. Sanctions for contempt of court are mandated by the law and the facts of this case.

We fully agree with the trial court's conclusions on this issue and find no error.

Former Husband's argument as to service of process merits discussion. Former Husband seeks reversal of the order to show cause because a sheriff or process server did not serve him the order. I disagree.

Florida Rule of Criminal Procedure 3.840 provides in pertinent part:

> A criminal contempt, except as provided in rule 3.830 concerning direct contempts, shall be prosecuted in the following manner:
>
> (a) Order to Show Cause. The judge, on the judge's own motion or on affidavit of any person having knowledge of the facts, may issue and sign an order directed to the defendant, stating the essential facts constituting the criminal contempt charged and requiring the defendant to appear before the court to show cause why the defendant should not be held in contempt of court. The order shall specify the time and place of the hearing, with a reasonable time allowed for preparation of the defense after service of the order on the defendant.

The rule is silent as to the required method of service.

Here, Former Husband was served the order to show cause through the E-Portal System, which sent the order and a notice of electronic filing to the attorneys of record. In this case, the attorneys of record included Former Husband, his counsel, and Former Wife's counsel. Former Husband does not suggest that he was unaware of, or surprised by, either the allegations raised against him or the occurrence of the hearing. He appeared at the hearing, and both he and his counsel in the dissolution case testified.

Despite not raising this issue below, Former Husband argues that the failure to effectuate personal service of process of an order to show cause constitutes fundamental error. Former Husband relies upon Graham v. Florida Department of Children & Families, 970 So. 2d 438 (Fla. 4th DCA 2007). In Graham, the trial court appointed Catholic Charities of the Diocese of Palm Beach as the emergency temporary plenary guardian of Graham's incapacitated mother. Id. at 440. Graham allegedly removed his mother, as well as her money, from the jurisdiction of the court. Id. Catholic Charities filed a verified petition for an order compelling Graham to disclose his mother's location and to show

cause why he should not be held in contempt of court. Id. The trial court's show cause order indicated that Graham and his attorney received copies of the order, to which Graham responded, but it was undisputed that Graham was not personally served with the order and did not appear before the trial court. Id. at 440, 442. On appeal, the Fourth District found that the trial court's failure to strictly comply with Rule 3.840 warranted reversal. Id. at 442 (citing Van Hare v. Van Hare, 870 So. 2d 125, 127 (Fla. 4th DCA 2003) (reversing criminal contempt order for failure to comply with Rule 3.840)).

Unlike Graham, here, Former Husband was directly served through the E-Portal System. The plain text of Rule 3.840 does not define the nature of service. The only case that attempts to define the method of service for such orders is Giles v. Renew, 639 So. 2d 701 (Fla. 2d DCA 1994). In a footnote, Giles, a domestic relations case, relied on Florida Rule of Juvenile Procedure 8.285(b)(1), which states that an order to show cause for indirect contempt "shall be served in the same manner as a summons." Id. at 702 n.2.

In contrast, Florida Rule of Judicial Administration 2.516 mandates service via electronic filing. That rules provides in relevant part:

> (b)(1) Service by Electronic Mail ("e-mail"). All documents required or permitted to be served on another party must be served by e-mail, unless the parties otherwise stipulate or this rule otherwise provides. A filer of an electronic document has complied with this subdivision if the Florida Courts e-filing Portal ("Portal") or other authorized electronic filing system with a supreme court approved electronic service system ("e-Service system") served the document by e-mail or provided a link by e-mail to the document on a website maintained by a clerk ("e-Service"). . . .

Fla. R. Jud. Admin. 2.516(b)(1); see also Fla. R. Civ. P. 1.080(a) ("Every pleading subsequent to the initial pleading, all orders, and every other document filed in the action

must be termed in conformity with the requirements of Florida Rule of Judicial Administration 2.516.").

It is axiomatic that strict compliance with Rule 3.840 is required and that the failure to do so raises due process concerns. Each of the five District Courts of Appeal seem to describe those due process concerns in terms of fundamental error. I am unaware of the Florida Supreme Court utilizing a fundamental error analysis in this context. As such, I am bound to follow our court's precedence in cases where a party was not served in strict compliance with Rule 3.840. Sylvester v. State, 923 So. 2d 1289, 1289 (Fla. 5th DCA 2006) (finding fundamental error where Rule 3.840 procedures were not strictly followed in criminal contempt proceeding); Hagan v. State, 853 So. 2d 595, 597 (Fla. 5th DCA 2003) ("[F]ailure to strictly follow the dictates of Rule 3.840 constitutes fundamental, reversible error." (citations omitted)).[2]

However, in the instant case, the court complied with Rule 3.840. Former Husband was both a litigant and attorney below. He was served through the E-Portal System in accordance with Florida Rule of Judicial Administration 2.516 and never challenged that service in the trial court. I do not agree that when one appears in court and fully litigates the merits of a contempt action, the nature of the service of process becomes an issue of fundamental error on appeal. E.g., D.H. v. Adept Cmty. Servs. Inc., 271 So. 3d 870, 880 (Fla. 2018) ("Fundamental errors are those which go 'to the foundation of the case or . . . to the merits of the cause of action.'" (quoting Sanford v. Rubin, 237 So. 2d 134, 137 (Fla. 1970))).

[2] While I agree that because of the criminal nature of such indirect contempt issues, the full panoply of procedural safeguards should be provided and an individual's due process rights should be scrupulously honored, I question such a per se rule.

I concur in affirmance.

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

Supreme Court Case No. SC20-286
The Florida Bar File No. 2020-30,104 (9C)

THE FLORIDA BAR,

Complainant,

vs.

KARL O. KOEPKE,

Respondent.

TRANSCRIPT OF SANCTION HEARING

DATE TAKEN:	AUGUST 5, 2020
TIME:	10:03 A.M. - 12:41 P.M.
PLACE:	POLK COUNTY COURTHOUSE VIRTUAL COURTROOM 255 NORTH BROADWAY AVENUE BARTOW, FLORIDA 33830
BEFORE:	HONORABLE ELLEN MASTERS CIRCUIT JUDGE

This cause came on to be heard at the time and place aforesaid, when and where the following proceedings were reported by:

Joan L. Pitt
Registered Merit Reporter
Certified Realtime Reporter
Florida Professional Reporter

him and him personally, which the court -- the Supreme Court has held is specifically egregious, and disbarment is appropriate.

THE COURT: All right. You will recall the findings that I announced yesterday, and I believe I indicated yesterday in my findings that indeed significant were the findings of Judge Myers in finding guilty intent in the respondent's conduct that was the indirect criminal contempt. The court specifically referenced the respondent's failure to disclose the contingent asset, that is, the attorney's fees associated with the settlement agreement, his concealing the asset.

And if I did not say it yesterday, it certainly was meant to include the matter referenced by Judge Myers, that is, the asset was determined to be placed in a trust and controlled by the respondent.

I did also indicate yesterday with regard to my findings that I was not convinced that the Bar had established by clear and convincing evidence that Mr. Koepke had violated the subpoena duces tecum. Certainly Mr. Koepke violated the court's order concerning the discovery disclosure associated with that settlement agreement, but this referee heard the testimony of Mr. Wilson that very clearly

indicated that the respondent had never raised an objection to this subpoena duces tecum, and that, quite frankly, is the reason why I do not find that the Bar established by clear and convincing evidence that this respondent did fail to honor the specific subpoena duces tecum, because it is clear that Mr. Koepke joined the objection and that Mr. Wilson was aware or should have been aware that Mr. Koepke did oppose that.

I read the testimony before Judge Myers, that is, Mr. Wilson basically did say the same thing. However, that was not the total evidence before Judge Myers. So Judge Myers' evidence with regard to the intent, the criminal intent, failing to disclose that contingent asset was the basis for this referee's finding yesterday that the Bar has established by clear and convincing evidence the violation of each of those specific rules that this Court addressed.

Ms. Bankowitz, I did ask you to prepare the findings or the referee's report, and I add that additional language, because it occurred to me that you all may be somewhat confused by my comments yesterday as it pertained to the allegations of the Bar associated with that subpoena duces tecum. So

that's why I'm adding that -- adding this language today so that I can clear up in case there was any confusion.

All right. In carrying on then, the Court has indeed considered conduct of the respondent in the referee's findings, and the Court does find that the aggravating factors that do apply is dishonest and selfish motive, refusal to acknowledge wrongful nature of the conduct, and the third one is the substantial experience in the practice of law.

The Court finds mitigating factors, and that would include the lack or absence of the prior disciplinary record or history, also, the full and free disclosure in the Bar proceeding and Ms. Bankowitz's reference to the nature of how Mr. Koepke has handled himself with regard to this proceeding.

Another mitigating factor is indeed Mr. Koepke's character and reputation in all other proceedings but, of course, the one involving he and his ex-wife. And then also a mitigating factor is the imposition of other penalties, that is, the sanction imposed by the 30 days in the county jail imposed by Judge Myers.

The Court has also been persuaded by the case

law submitted and has reviewed and relied upon The Florida Bar vs. Cyrus Bischoff -- that one was the 212 So.3d 312 -- The Florida Bar vs. Zana Dupee, 160 So.3d 838, and The Florida Bar vs. Hmielewski -- H-m-i-e-l-e-w-s-k-i -- 702 So.2d 218.

Based on the findings, the review of the law and the argument of counsel, this referee recommends a one-year suspension.

Are there any cost issues that the Bar wished to raise?

MS. BANKOWITZ: Yes, Your Honor. The Bar will be filing a motion to assess costs for the administrative fee as well as the court reporter and investigative fees that were -- and once I have the court reporter's costs from today and the last few days, I will file that with the court.

THE COURT: All right. And, Mr. Koepke, there have been occasions where Bar counsel contacts the respondent and, in the event there is no objection with regard to that, it is added to the referee's report without challenge as to the amount. So certainly I would want you to have the opportunity to see that.

And, Ms. Bankowitz, what is your procedure with regard to that?

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this __ day of November, 2020, the foregoing was filed and served via the State of Florida's E-Filing Portal to:

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/s/ Chris W. Altenbernd
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