

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

SCOT STREMS,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2019-70,468(11C)

COMPLAINT

The Florida Bar, Complainant, files this Complaint against Scot Stremms, the respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is and was, at all times mentioned herein, a member of The Florida Bar, admitted on September 25, 2007, and he is subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent is the founder, owner, and sole partner of the Stremms Law Firm, P.A. (“SLF”), the principal office of which is located in Miami-Dade County, Florida.

3. Respondent resided and practiced law in Miami-Dade County, Florida, at all times material to this complaint.

4. The Eleventh Judicial Circuit Grievance Committee “C” found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules

Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

Introduction

5. The thrust of this case is simple: respondent betrayed his ethical obligations to his elderly client in order to enrich himself at that client's expense.

6. While the full pattern of respondent's misconduct is too expansive to summarize in a paragraph, the central issue is this:

- a. Based upon representations of respondent's firm, respondent's client agreed to accept a settlement of \$30,000, approving a fee of \$7,500 for SLF, with the remaining \$22,500 going to the client.
- b. Without the client's knowledge or approval, respondent secured and finalized a second global settlement of \$45,000.
- c. Without the client's knowledge or approval, respondent did not allocate any of the increased settlement amount to the client. Instead, respondent allocated a fee of \$22,500 for his firm, while allocating only the client's original authority (\$22,500) to the client.

7. As the record exhaustively shows below, respondent committed a litany of ethical violations both in his representation of Mrs. Nowak, and during the Florida Bar's investigation.

8. Even more troubling is the fact that respondent maintains that this pattern of conduct is how his firm handles its business in the ordinary course.

The Underlying Lawsuit

9. On or about September 16, 2017, eighty-five year-old Margaret Nowak retained respondent and SLF for the purpose of resolving a claim against her homeowner's insurance company, Florida Peninsula Insurance Company ("FPIC"). *See* Exhibit A, Exhibit B. This claim purportedly involved damages to Mrs. Nowak's home resulting from Hurricane Irma.

10. Mrs. Nowak retained respondent and SLF pursuant to a Contingent Fee Retainer Agreement (the "Retainer Agreement") dated September 16, 2017. *See generally* Exhibit B. Mrs. Nowak and respondent each signed the Retainer Agreement, which provides, in relevant part:

1. **Attorney's Fees; Pre-Litigation:** This employment is on a contingent fee basis. If no recovery is made for, or on behalf of Client, THE CLIENT SHALL NOT PAY ATTORNEY'S FEES for any of the services rendered in this matter. From the gross recovery attorney shall receive, inclusive of pre-litigation costs, 25% of recovery (inclusive of recoverable depreciation, overhead and profit, and all claims that are to be charged from dollar one less deductible) ...
2. **Attorney's Fees; Litigation:** Client hereby authorizes Attorney to file suit against Client's Insurance carrier or other responsible party should they deny, reject, or under-pay Client's claim. If the payment of attorney's fees is required to be determined by the Court, or if settlement is achieved via negotiations with the responsible party, attorney shall be entitled to receive all of such attorney's fees, including any and all contingency risk factor multipliers awarded by the Court. If a settlement includes an amount for attorney's fees, attorney shall be entitled to receive all of its expended and/or negotiated fees. In all cases whether there is a recovery of court-awarded fees or

not, by contract or statute, the fee shall be thirty percent (30%) or the awarded amount, whichever is greater. Pursuant to 627.428, Florida Statute, the Insurance Company is responsible to pay for the Client's attorney's fees when and if, the Client prevails against the Insurance Company. NO RECOVERY NO FEE.

Exhibit B, p. 1.

11. The Retainer Agreement makes no mention of SLF's hourly rates, nor does it state how many attorneys would be assigned to Mrs. Nowak's case. *See generally id.* Indeed, the Retainer Agreement does not at all explain how SLF's fees would be calculated.

12. At all times relevant, Mrs. Nowak was in poor health, and her son Dennis Nowak handled her affairs as her agent pursuant to a Durable Power of Attorney. *See generally* Exhibit C. Accordingly, Dennis Nowak and Mrs. Nowak's other son Kenneth Nowak handled all communications with respondent and SLF during the course of representation. At all times, respondent and SLF accepted the role of Mrs. Nowak's sons in this matter.

13. Early in the representation, SLF hired Contender Claims Consultants, Inc. ("Contender") to provide an estimate of damages for Mrs. Nowak's claim.[1] *See generally* Exhibit D. According to this estimate, Mrs. Nowak suffered some \$64,031.23 in damages. *See id.*, p. 18.

14. In the early months of the representation, SLF attorney Carlos Camejo ostensibly attempted to resolve the claim by negotiating with FPIC. This effort was unsuccessful.

15. On June 16, 2018, Ken Nowak communicated with Mr. Camejo and expressed that a settlement of \$36,680 would be acceptable. *See* Comp. Exhibit E, pp. 2-3. No such settlement was obtained at that time.

16. On or about July 2, 2018, SLF commenced a lawsuit against FPIC on Mrs. Nowak's claim.

17. On July 30, 2018, SLF received an e-mail from Matthew Feldman, defense counsel for FPIC, who conveyed an offer of \$30,000 as a "global resolution" of the case. Exhibit F, p. 3.

18. Days later, on August 2, 2018, Mr. Camejo e-mailed Ken Nowak to inform him that FPIC had made a settlement offer of "\$30K net." Comp. Exhibit E, p. 5. Accounting for the attorney's fee, this offer "would leave it to \$22,500 clean to [Mrs. Nowak]." *Id.*, p. 4.

19. The following day, Ken Nowak responded to Mr. Camejo, writing: "Unless you think you can do better, we would accept the offer of \$30k net to my mom." *Ibid.* Mr. Nowak subsequently wrote to clarify: "Net to my mom less your attorney fee of \$7,500. So \$22,500 actual net to my mom." *Ibid.*

20. In response, Mr. Camejo wrote: “Let me see if I can work the attorneys fees to be exclusive so your mom ends up with more. I’ll get back to you.” *Ibid.*

21. Later that month, Ken Nowak reached out to Mr. Camejo for an update on settlement efforts. Mr. Camejo replied, saying: “Mr. Stremms himself is in communication with the attorney representing the carrier to hopefully finalize the case.” *Id.*, p. 7.

22. Twice in the following month, Ken Nowak wrote Mr. Camejo to make further inquiries about the settlement discussions, and further requested that respondent contact him personally. *Id.*, pp. 9-10. Mr. Nowak received no such updates, and no communications from respondent.

23. Unknown to any of the Nowaks, and without their approval, respondent entered into a “global settlement” of the case for \$45,000 on November 9, 2018. *See Exhibit G*, p. 1.

24. On November 12, 2018, SLF e-mailed Mr. Feldman with directions to pay \$22,500 of the settlement to Mrs. Nowak, and the balance of \$22,500 to SLF. *See Exhibit H*. These payment instructions were given unilaterally by SLF; they were never considered or approved by the Nowaks.

25. Unaware that respondent had negotiated and finalized a global settlement for \$45,000, Ken Novak made further inquiries about the settlement

efforts in December 3, 2019. *See* Comp. Exhibit E, p. 11. On December 13, 2018, he was advised by SLF’s non-attorney staff that settlement paperwork was being finalized. *See id.*, p. 15.

26. After multiple subsequent requests, SLF provided final settlement documents to Ken Nowak on or about January 18, 2019. *See id.*, p. 16.

27. Prior to receiving these settlement documents, the Nowaks were unaware of any settlement offer other than the \$30,000 offer communicated by Mr. Camejo in August 2018. Likewise, the Nowaks were unaware that respondent and SLF were claiming any attorney’s fees in excess of \$7,500. *See* Comp. Exhibit E, p. 19 (“There was never any discussion of a settlement over the \$30,000. And there was never a discussion of attorney fees in excess of \$7,500.”).

28. Upon review of the finalized settlement documents, the Nowaks learned—for the first time—that respondent had already negotiated and secured a separate settlement of \$45,000 from FPIC.¹ *See generally* Exhibit I.

29. The settlement documents include a Release / Hold-Harmless / Indemnity Agreement (the “Release”), which provides in relevant part:

THIS INDENTURE WITNESSETH that the undersigned, **MARGARET NOWAK**, for himself/herself and for his/her heirs, personal representatives, executors, administrators, successors and assigns (hereinafter, “**Releasor**”), for the sole consideration of the total sum of **FIFTY THOUSAND, FOUR**

¹ The total settlement offer was for \$50,476, which includes credit for a \$5,476 deductible. *See* Exhibit I, p. 1. Accordingly, FPIC was to actually pay a total of \$45,000 under this settlement.

HUNDRED AND SEVENTY-SIX DOLLARS AND 00/100 CENTS (\$50,476) ... for a net payment of FORTY-FIVE THOUSAND DOLLARS AND 00/100 (\$45,000)...

Id., p. 1.

30. By its own terms, the Release contemplates a single “net payment” in favor of Mrs. Nowak alone totaling \$45,000. *Ibid.*

31. The Release then provides “payable as” instructions, directing two separate payments of \$22,500 to Mrs. Nowak and SLF. *Ibid.* Again, these payment instructions were never reviewed—much less approved—by the Nowaks.

32. The settlement documents also included a closing statement, in which SLF claimed attorney’s fees of \$22,500, leaving \$22,500 for Mrs. Nowak. *See generally* Exhibit J.

33. After reviewing the settlement documents, Ken Nowak wrote to Johana Espinal at SLF to reject the settlement. Specifically, he wrote:

I agreed to as settlement netting my mother \$22,500 with the understanding that your firm would try to collect the additional attorney fee due to Stremms so that my mother would effectively net \$30k. I actually just reviewed the documents and I am shocked to see that you actually secured an additional \$22,500, but none of which will go to benefit my mother. That is unacceptable to me. Unless you can net my mother the \$30,000 we will reject this settlement.

Comp. Exhibit E, p. 17.

34. Ms. Espinal responded that same day. While she is a Legal Assistant at SLF, and not a licensed attorney, Ms. Espinal provided Mr. Nowak with a substantive interpretation of statutory law (presumably Fla. Stat. § 627.428) that

ostensibly entitled SLF to charge Mrs. Nowak a fee above the contingency fee of 30%. *See* Comp. Exhibit E, p. 18.

35. Ken Nowak replied that evening, observing that “[t]here was never any discussion of a settlement over the \$30,000. And there was never a discussion of attorney fees in excess of \$7,500.00.” Comp. Exhibit E, p. 19.

36. Dennis Nowak replied the following day, writing:

My mother will not be signing these documents. I[n] addition, you should confirm with one of the lawyers in your firm that the Florida Statute cited in your closing statement does not override the provisions of your engagement agreement and, in any event, applies only to court awarded fees not negotiated settlements. So unless you are telling me that this case went to judgment, the fee statute you refer to is irrelevant. Also, even that statute only provides for a reasonable attorneys fee. In your engagement agreement, you quantified that as 30% of the recovery. In this case that equals \$15,142.80, not the \$22,500 you are claiming. That leaves \$29,857.20 (which incidentally is close to the \$30,000 net that the continued negotiation was supposed to accomplish) which is what we want the settlement documents to provide. **Any prior outstanding proposals of a compromise amount are rescinded.** Please govern yourselves accordingly.

Comp. Exhibit E, p. 18 (emphasis supplied).

37. At this time, SLF had not provided the Nowaks with any invoice, bill, or other itemized record of the firm’s fees. In fact, respondent and SLF never provided the Nowaks with any documentation of their fees.

38. As explained above, the \$45,000 settlement in November 2018 was never communicated to the Nowaks until they were provided the closing

documents over two months later. Furthermore, the final breakdown of attorney's fees clearly contradicts Mr. Camejo's prior representation that Mrs. Nowak would "end[] up with more" if SLF negotiated its fees separately, as respondent claims was done. Comp. Exhibit E, p. 4.

39. Then, on January 24, 2019, Ken/Dennis Nowak wrote SLF to request a call from respondent to discuss this matter. *See* Exhibit A, p. 4. Respondent did not call Ken or Dennis Nowak; instead, attorney Lea Castro-Martinez called him to discuss the objections to SLF's fee. *See ibid.* Ms. Castro-Martinez stated that the Fee Statute and the Retainer Agreement entitled SLF to calculate a fee in excess of the contractual 30% contingency because the case had entered litigation. *See ibid.* Ms. Castro-Martinez further advised Ken/Dennis Nowak that this as the way the firm calculated all of its contingency fees. *Ibid.*

40. After this conflict arose, respondent and SLF ceased litigating Mrs. Nowak's case. SLF filed nothing further on this matter for a period of over five months. *See* Exhibit K.

41. On or about June 20, 2019, the court filed a Notice of Lack of Prosecution in Mrs. Nowak's case, advising that the case would be dismissed if no record activity occurred within 60 days. *See* Exhibit L.

42. Even though the Nowaks had rescinded settlement authority, SLF filed a Notice of Settlement on June 28, 2019 representing that Mrs. Nowak and FPIC had “amicably settled this matter.” Exhibit M.

43. Based upon SLF’s Notice of Settlement, the court closed the case on or about August 8, 2019. *See* Exhibit N.

44. At no point in the lawsuit did respondent or SLF withdraw from Mrs. Nowak’s representation. *See generally* Exhibit K. Likewise, SLF never advised the court of the conflict with its client, nor did SLF attempt to have the case stayed pending the resolution of that conflict.

45. To date, the global settlement agreement of \$45,000 has not been consummated. Based on information and belief, FPIC still has the settlement proceeds, and stands ready to tender them. To date, Mrs. Nowak has not received a dime due to respondent’s representation in this matter.

The Bar Investigation

46. As explained in more detail below, respondent made several misrepresentations and material omissions during the course of the Florida Bar’s investigation in this matter.

47. On or about February 22, 2019, the Florida Bar first corresponded with respondent in this case, providing a copy of Mr. Nowak’s complaint and requesting a response. *See* Exhibit O, p. 1.

48. Respondent replied via his counsel Mark Kamilar on March 14, 2019. *See generally* Exhibit P. On the very first page of his response, respondent made a gross misrepresentation of fact: “Mr. Nowak has never been a client of The Strems Law Firm and Scot Strems has never represented Mr. Nowak **nor did he personally provide the legal services to Mr. Nowak’s mother** and client of the firm Margaret J. Nowak which are the subject of Mr. Nowak’s complaint.” *Id.*, p. 1 (emphasis supplied). Respondent’s assertion is demonstrably false for a number of reasons, including:

- a. Respondent had personally signed a Retainer Agreement with Mrs. Nowak. *See* Exhibit B.
- b. According to the invoice later provided by respondent, he personally billed 11.3 hours (\$5,085) on Mrs. Nowak’s case, with his first involvement in the matter coming as early as February 26, 2018. *See* Exhibit V.
- c. Mr. Camejo’s e-mail to Ken Nowak on August 3, 2018, in which he explains that “Mr. Strems himself is in communication with the attorney representing the carrier to hopefully finalize the case.” Comp. Exhibit E, p. 7.
- d. Mr. Feldman e-mailed respondent to confirm their global settlement. *See generally* Exhibit G.
- e. Respondent personally signed the closing statement. *See* Exhibit J.
- f. Furthermore, three attorneys billed a total of 3.9 hours (\$1,495) for reviewing Mrs. Nowak’s power of attorney. Exhibit V, p. 7. Accordingly, respondent and his firm were clearly aware of who their client was, and the role that Ken and Dennis Nowak played in their mother’s case.

49. Furthermore, the March 14, 2019 letter states: “The Strems Law Firm was able to receive an offer from the insurance company of [\$22,500] net to

Ms. Nowak with attorney's fees separately negotiated between the firm and the company." Exhibit P, p. 2. This representation is false for two reasons:

- a. There was no separately negotiated fee. In his November 9, 2018 e-mail, counsel for FPIC writes: "Please allow this to confirm we have reached a **global** settlement agreement" for \$45,000. Exhibit G (emphasis added). The e-mail includes no mention at all of any separate payment to respondent or his firm. *See id.* The Release likewise only contemplates a single "net payment" of \$45,000 to Mrs. Nowak alone. *See* Exhibit I, p. 1. Furthermore, according to the Investigating Member's report on this matter, FPIC's counsel said fees were never discussed in any case he had with respondent, and that settlements were always negotiated on a global basis. *See* Exhibit X, p. 23.
- b. FPIC offered Mrs. Nowak \$45,000. *See generally* Exhibit G, Exhibit I. It was respondent who unilaterally decided that Mrs. Nowak would receive \$22,500. On November 12, 2018 (the following business day after the date of the purported settlement) SLF staff wrote to Mr. Feldman providing payment instructions that had never been reviewed or approved by the Nowaks. *See* Exhibit H. Consequently, it was respondent's decision alone to allocate \$22,500 to his client.

50. Respondent's March 14, 2019 letter also averred that the Nowaks "improperly sought portions of the attorney's fees and costs in violation of their fee agreement." Exhibit P, p. 3. This is likewise patently untrue. Nowhere in the parties' correspondence do the Nowaks express any interest in sharing respondent's fee. Rather, Ken Nowak objected to the unapproved settlement on the basis that *none* of the additional \$15,000 that respondent negotiated had been allocated to Mrs. Nowak, which violated both the parties' Retainer Agreement and

Mr. Camejo's express promise to attempt to increase Mrs. Nowak's recovery. *See* Exhibit B, p. 1; Comp. Exhibit E, p. 17.

51. On March 25, 2019, Dennis Nowak submitted his reply to respondent's March 14, 2019 letter. *See generally* Exhibit Q. Among other things, Mr. Nowak sought to correct several of the misrepresentations set out in the March 14, 2019 e-mail.

52. Subsequently, on July 30, 2019, the Florida Bar sent a request for information to respondent, requesting a copy of his file on the Nowak matter. *See generally* Exhibit R. The letter expressly requested "all correspondence and emails with the insurance company's attorney." *Ibid.*

53. On August 23, 2019, respondent replied to the Florida Bar's request for information, along with a limited production of documents (discussed further below). *See generally* Exhibit S. At this point—only after been caught in his misrepresentation—respondent admitted to performing legal services for Mrs. Nowak. *See id.*, p. 1.

54. It was only at this time that respondent disclosed his invoice on Mrs. Nowak's file, which purports to represent \$34,585.94 in fees and costs. *See* Exhibit V, p. 12.

55. The invoice had not been previously submitted to the Nowaks or Mr. Feldman.

56. Furthermore, in the August 23, 2019 document production, respondent produced (for the first time) a self-serving and unsigned memorandum drafted by himself and dated November 9, 2018. *See* Exhibit W. This memorandum purportedly describes respondent's successful efforts to negotiate the client's indemnity claim separately from the attorney's fees. *See id.*

57. The memorandum provides, in its entirety:

On November 9th upon reviewing the file and having noted that client's settlement authority given to Carlos Camejos, was \$22,500 net (clean) I commenced negotiations [sic] with defense counsel. After several [sic] conversations back and forth, we were able to agree to a settlement of \$22,500 in indemnity, net to the client and exclusive of any Assignment of Benefits monies owed to the water mitigation company. Once that settlement was secured, we were further able to negotiate Strem's statutory attorney fees and costs. As such we are able to negotiate and agree to \$22,500 in statutory fees and costs. We considered the matter settled pending execution of release documents.

Ibid.

58. Several assertions made in the self-serving memorandum are false. The first demonstrably false statement in this memorandum is that settlement negotiations were "commenced" on November 9, 2018. In fact, respondent personally began settlement efforts approximately three months earlier; by November 9, 2018, respondent had personally billed Mrs. Nowak for 6.3 hours of

work, totaling \$2,835 in fees according to the respondent's own invoice, which includes the following entries:²

- a. August 10, 2018 entry for Scot Strems for 1.8 hours of work totaling \$810. The narrative reads: "Review of file documents and analysis of issues in preparation for settlement negotiations." Exhibit V, p. 8.
- b. August 10, 2018 entry for Scot Strems for 0.5 hours of work totaling \$225. The narrative reads: "Communicate with Opposing Counsel regarding settlement negotiations." *Ibid.*
- c. August 20, 2018 entry for Scot Strems for 1.2 hours of work totaling \$540. The narrative reads: "Review of file documents and analysis of issues in preparation for settlement negotiations." *Ibid.*
- d. August 20, 2018 entry for Scot Strems for 0.8 hours of work totaling \$360. The narrative reads: "Communicate with Opposing Counsel regarding settlement negotiations." *Ibid.*
- e. August 21, 2018 entry for Scot Strems for 0.3 hours of work totaling \$135. The narrative reads: "Communicate with Opposing Counsel regarding settlement negotiations." *Ibid.*
- f. September 11, 2018 entry for Scot Strems for 0.3 hours of work totaling \$135. The narrative reads: "Communicate with Opposing Counsel regarding settlement negotiations." *Id.*, p. 9.
- g. October 19, 2018 entry for Scot Strems for 0.9 hours of work totaling \$405. The narrative reads: "Review of file documents and analysis of issues in preparation for settlement negotiations." *Ibid.*
- h. October 19, 2018 entry for Scot Strems for 0.5 hours of work totaling \$225. The narrative reads: "Communicate with Opposing Counsel regarding settlement negotiations." *Ibid.*

² It also bears noting that, during this August-November 2018 period, the invoice includes numerous entries for client communications. *See* Exhibit V, pp. 8-9. Accordingly, respondent had ample opportunity to speak with the Nowaks regarding his ongoing settlement efforts, as Ken Nowak himself repeatedly requested during this time.

59. As noted above, the original \$30,000 settlement offer was communicated to the Nowaks on or about August 2, 2018. According to the entries in the foregoing paragraph, then, respondent personally billed Mrs. Nowak \$2,835 for negotiating another \$15,000 for his firm's own fee.

60. Furthermore, the other contemporaneous documents relating to the settlement all confirm that Mrs. Nowak's settlement was a global settlement—not a bifurcated settlement with a separately-negotiated attorney's fee. Specifically:

- a. In his November 9, 2018 e-mail, counsel for FPIC writes: “Please allow this to confirm we have reached a **global** settlement agreement” for \$45,000. Exhibit G, p. 1 (emphasis added). The e-mail includes no mention at all of any separate payment to respondent or his firm. *See ibid.*
- b. The Release likewise only contemplates a single “net payment” of \$45,000 to Mrs. Nowak alone. *See Exhibit I, p. 1.*
- c. There was no bifurcated payment communicated to Mr. Feldman until the November 12, 2018 e-mail in which SLF first advised him that the \$45,000 payment should be split evenly between Mrs. Nowak and SLF. *See Exhibit H.* Again, SLF sent these payment instructions to Mr. Feldman without client approval and without the client even being aware of the settlement.
- d. Furthermore, according to the Investigating Member's report on this matter, FPIC's counsel said fees were never discussed in any case he had with respondent, and that settlements were always negotiated on a global basis. *See Exhibit X, p. 23.*

61. As the documents produced by respondent included no communications between himself and Mr. Feldman, the Florida Bar believed respondent's document production was incomplete. Consequently, The Florida Bar again wrote to respondent on November 26, 2019 to request specific information,

including copies of: (i) all communications with FPIC's counsel pertaining to settlement; (ii) copies of all releases; and (iii) copies of all internal communications pertaining to settlement offers. *See* Exhibit T.

62. On December 20, 2019, respondent replied with another production of documents. *See* Exhibit U. It was in this production that respondent first produced the November 9, 2018 e-mail in which Mr. Feldman confirmed a global settlement for \$45,000. *See* Exhibit G, p. 1. Respondent did not previously provide this e-mail to the Florida Bar, even though it clearly fell within the express request of the July 30, 2019 request for information, and even though it was clearly relevant to the complainant's allegations from the beginning of these proceedings.

63. On January 6, 2020, respondent and his counsel met with the grievance committee's chair and investigating member on this matter, who conducted an interview. *See* Exhibit X, p. 1. At his time, he maintained a position consistent with his counsel's prior correspondence with the Florida Bar, *i.e.*, that he had separately negotiated a fee of \$22,500. *See id.*, p. 12.

64. On February 21, 2020, the investigating member on this file took a statement from Mr. Feldman, pursuant to a subpoena from The Florida Bar. Mr. Feldman's statement was taken "due to the seeming conflict between Mr. Strem's statements and the emails between this defense attorney." Exhibit X, p. 12. While Mr. Feldman did not have any independent recollection of the Nowak

case specifically, “he said that in all cases he had in litigation with the Stremms Firm, the settlement of indemnity and fees do not get discussed in a bifurcated manner.” *Id.*, p. 23. Rather, settlement was always done on a global basis. *See ibid.*

65. Mr. Feldman’s office also produced documents pursuant to a subpoena, which included a copy of the November 12, 2018 e-mail from SLF to Mr. Feldman giving him the unauthorized payment instructions. *See Exhibit H.* This was the first time that this document was produced in this matter.

66. The June 28, 2019 notice of settlement was not produced at all by respondent. *See generally Exhibit M.* This document was pulled from the public docket by the grievance committee’s investigating member.

67. To reiterate, respondent omitted the following crucial documents in his various document productions to the Florida Bar:

- a. The November 9, 2018 e-mail from Mr. Feldman to respondent confirming a global settlement of \$45,000. *See Exhibit G.* Respondent did not produce this document until his December 20, 2019 response to the Florida Bar’s second request for additional information.
- b. The November 12, 2018 e-mail from SLF to Mr. Feldman conveying unauthorized payment instructions of the settlement proceeds. *See Exhibit H.* This document was not produced by the respondent at all.
- c. The June 28, 2019 notice of settlement. *See Exhibit M.* This document was not produced by respondent at all.

68. The omissions identified in the foregoing paragraph are critical because each of the omitted documents directly contradicts respondent's narrative of this matter, and/or evidences further unethical conduct on the part of respondent.

Evidence of a Broader Pattern of Misconduct

69. The record in this matter further reflects that respondent's approach to Mrs. Nowak's settlement is his firm's common practice.

70. For example, the November 12, 2018 e-mail from SLF providing Mr. Feldman with unauthorized payment instructions is clearly a form e-mail. *See generally* Exhibit H.

71. In her January 21, 2019 e-mail to the Nowaks, Johana Espinal explains that "[o]ur firm obtains settlement authority from every client and we aim to settle as close to their authorization." Comp. Exhibit E, p. 18.

72. In his complaint, Dennis Nowak recounts a January 25, 2019 phone call with attorney Lea Castro-Martinez, during which Ms. Castro-Martinez stated that "they calculated all of their contingency fees this way," *i.e.*, the same way Ms. Nowak's fees had been calculated. *See* Exhibit A, p. 4.

73. Respondent describes the handling of Mrs. Nowak's settlement as "standard procedure and the way cases are resolved on a daily basis..." *See* Exhibit P, p. 3.

74. In his interview with the grievance committee's investigating member, Mr. Feldman explained that "in all cases he had in litigation with the Strems Firm, indemnity and attorney fees did not get discussed in a bifurcated manner. He said there was always a global settlement number...providing a breakdown on how much of the settlement should be divided between the client and the law firm." *See* Exhibit X, p. 23.

75. From the foregoing facts, it is apparent that the allegations in this complaint are not the result of an isolated indiscretion. Rather, the misconduct alleged in this complaint is systemic within respondent's practice.

Rule Violations

76. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 4-1.1 (Competence); 4-1.2 (Objectives and Scope of Representation); 4-1.4 (Communication); 4-1.5 (Fees and Costs for Legal Services); 4-1.7 (Conflict of Interest; Current Clients); 4-1.8 (Conflict of Interest; Prohibited and Other Transactions); 4-8.1 (Bar Admission and Disciplinary Matters); and 4-8.4(a) and (c) (Misconduct and Minor Misconduct).

WHEREFORE, The Florida Bar prays the respondent, Scot Strems, will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that this document has been E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Scott Kevork Tozian, attorney for respondent, at stozyan@smithtozyan.com; and that a copy has been furnished by United States Mail via certified mail No. 7017 3380 0000 1082 8338, return receipt requested, to Scott Kevork Tozian, attorney for respondent, whose record bar address is 109 N. Brush Street, Suite 200, Tampa, Florida 33602, and a copy provided via email to Mark Alan Kamilar, attorney for respondent, at kamilar@bellsouth.net; and that a copy has been furnished by United States Mail via certified mail No. 7017 3380 0000 1082 8321, return receipt requested, to Mark Alan Kamilar, attorney for respondent, whose record bar address is 2921 SW 27th Avenue, Miami, Florida 33133, and via email to John Derek Womack, Bar Counsel, at jwomack@floridabar.org this 11th day of June, 2020.



Patricia Ann Toro Savitz
Staff Counsel

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

PLEASE TAKE NOTICE that the trial counsel in this matter is J. Derek Womack, Bar Counsel, whose address, telephone number and primary email address are: The Florida Bar, Miami Branch Office, 444 Brickell Avenue, Rivergate Plaza, Suite M-100, Miami, Florida 33131-2404, (305) 377-4445, jwomack@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 E Jefferson Street, Tallahassee, Florida 32399-2300, psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

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