



F I L E D

Feb. 13, 2023

THE BOARD of DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

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SUPREME COURT OF TEXAS BOARD OF DISCIPLINARY APPEALS

_____)	
In the Matter of)	Docket #65262
)	
PETER J. CRESCI, ESQUIRE)	MOTION TO CONTINUE OR WITHDRAW
Bar ID # 24005767)	DOCKET #65262
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_____)	

RESPONDENT CRESCI moves this Board for Withdrawal or Continuance of the Reciprocal Disciplinary Action, and states that this motion for Withdrawal or Continuance is made for the following reasons, and for good cause shown:

Introduction:

1. The evidence in this matter, including sworn declarations, indicates this matter is: a). premature as the other states' action is neither complete nor final; b). the action did not meet a modicum of the due process required and set forth in Tx.R.D.P. Part IX, 9.04, et seq.; Retroactivity, or *post facto* application, is not permissive of the newly approved amendment to the Texas Rule of Disciplinary Porcedure.

2. No Prejudice. The Request for Withdrawal or Continuance will not prejudice the State Bar of Texas. Respondent Cresci has been a licensed Texas Attorney since July

10, 1998. Respondent Cresci has received no grievances, claims of malpractice, nor been subject to a disciplinary hearing in all the legal activities within Texas in almost 25 years. This Request for Continuance will not unduly inconvenience the Court because the BODA (Board of Disciplinary Appeals) addresses the docket on a quarterly basis. As such Withdrawal or Continuance would be without prejudice to BODA.

ARGUMENT

3. The Board has discretion to Withdraw or Continue this matter of reciprocal discipline as part of its inherent power to control its own docket to insure that cases proceed in an orderly manner, See *Chambers v. NASCO, Inc.* 501 U.S. 32, 43-44 (1991). As set forth above, herein, and in the attached Responsive Answering Document, Respondent Cresci would be substantially prejudiced if he is not permitted to present his case (from a foreign jurisdiction) in which a modicum of due process was not afforded. Despite filing an Answer and Requesting Discovery, requesting a Hearing, the case was treated as a default. This was "railroad," quite frankly of allegations that were first solicited by an opposition litigator, but has been fully and completely investigated by an Attorney Investigator in 2011 (of issues from 2009) and deemed not in violation of disciplinary rules.

4. As set forth in our initial letter to Attorney Kates as well as the attached Respondent Cresci's Answer & Response:

a). The matter in New Jersey (and N.Y.) is not final. A Motion for Reconsideration was filed on or about April 10, 2019. Such action filed under New Jersey Rule 4:49-2, a Motion for

Reconsideration (attached as Ex. B) makes the action active (and not final) per New Jersey State Rule 2:4-3(e). See also *Alberti v. Civl Serv.Comm.*, 41 U.S. 147, 154 (1963); *Milne v. Goldenberg* (2012) 428 N.J.Super.184,187.

b). The procedure in the other jurisdiction(s) was so lacking in notice or opportunity to be heard that the attorney was deprived of due process. Despite the 46 page Answer being timely filed on April 11, 2018-(Ex.C) this matter was decided on Default (Ex. B addressing the Default in March 2019). No formal hearing, no ability to cross examine witnesses (you will see there is **no transcript of any testimony** supporting Mr. McNamara's actions); and

c). There was such an infirmity of proof in the other jurisdiction that the conclusion that was reached should not be accepted as final. As you see in the Responsive Documents and Exhibits- ***the issues of 2009 had previously been investigated in 2011-2012 and deemed no action to be taken by New Jersey Investigator/Attorney Jan Richter.*** This led now Defendant Timothy McNamara publicly state to Cresci's retained counsel Rotolo Law Firm on April 19, 2016, ***"we don't have a complaint, but we will find one."*** (Demonstrating the prejudice and misuse of office by Mr. McNamara).

d). Imposition of identical discipline would result in grave injustice. There was no due process. 'The minimum requirements of due process . . . are notice and the opportunity to be heard.'" *Jamgochian v. N.J. State Parole Bd.*, 196 N.J. 222, 240 (2008) (alteration in original). Again, no hearing was conducted, no witnesses testified, no discovery was exchanged nor provided; no record of the proceedings; and no opportunity

for appeal or judicial review of the decision. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 543 (1985). Respondent Cresci's Law License is a property interest in continued employment. Board of Regents v. Roth, 408 U.S. 564, 576-578, 92 S.Ct. 2701, 2708-2709, 33 L.Ed.2d 548 (1972). The State could not deprive Cresci of this property without affording him due process. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 538, 105 S.Ct. 1487 1491, 84 L.Ed.2d 494 (1985) citing Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 11-12, 98 S.Ct. 1554, 1561-1562, 56 L.Ed.2d 30 (1978)... Swanson v. Houston Independent School Dist., 800 S.W.2d 630 (Tex. App. 1990)

e). Other jurisdictions have refused to take action on this matter. In one instance, ***the United States Court of Appeals for the Third Circuit Third Circuit Order*** (Docket No. 16-8076) received May 20, 2019 stayed the action pending due process. It continues until this day. Likewise, on many levels of jurisprudence, due process, binding precedent: the principle or rule established in a previous legal case that is either binding on or persuasive for the U.S. District Court within the Third Circuit. (Order Attached at Ex.2);

f). Among other mitigating circumstances. (See Tx.R.D.P. Part IX, 9.04, et seq. as set forth above). Fraud vitiates all. The instant matters should be dismissed as "fruit of the poisonous tree" and violations of the 4th, 5th, 6th, and 14th Amendments of the Constitution. It is clear this was a political and retaliatory "hit" by persons who were named as Defendants in civil matters for Plaintiffs represented by the law firm, i.e.

Charles D'Amico, Timothy McNamara, Charles Centinaro,¹ and the connection of Ralph Lamparello (and adversary laws firm and prior NJ Bar President)

WHEREFORE, Respondent Cresci respectfully requests that the Board Withdraw or in the alternative Continue submission of this matter to the full Board. The Board of Disciplinary Appeals should determine that one or more of the foregoing defenses have been established, it shall enter such orders as it deems necessary and appropriate." Rule 9.04 - Defenses, Tex. R. Disc. P. 9.04.

Dated: February 13, 2023 Signed: *Peter J. Cresci, Esq. /s/*
Attorney for Respondent Cresci
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Certificate of Service: I certify the subject Motion & Response has been provided to Attorney Amanda Kates, Assistant Disciplinary Counsel via e-mail this 13th day of February, 2023.

¹ Charles Centinaro employment as Chief of the Office of Attorney Ethics was Terminated for Cause for violations complained of throughout this almost 10 year ordeal. It was only after a subordinate colleague and co-worker sued for similar violations and Centinaro sleeping with the staff for promotions was he terminated. Another useful cog became useless.