

In Re: Michelle Renee Suskauer
The Florida Bar File No.: 2019-50,822(10A)

GRIEVANCE COMMITTEE
RECOMMENDATION OF DIVERSION

I. GRIEVANCE COMMITTEE RECOMMENDATION OF DIVERSION: Pursuant to Rule 3-5.3, Rules Regulating The Florida Bar, the grievance committee recommends diversion of this matter to a practice and professionalism enhancement program under the terms and conditions stated herein.

II. NARRATIVE SUMMARY: In May 2019, The Honorable James I. Cohn, United States District Court, Southern District of Florida, sent the transcript of the hearing on respondent Michelle Renee Suskauer's Motion to Withdraw in the case of United States of America v. Anthony Michael D'Amico, in the U.S. District Court, Southern District of Florida, Case#: 9:18-cr-80179-JIC-1.. Judge Cohn's cover letter only referred Ms. Suskauer to the bar. During the bar's investigation, additional files were opened.

A total of four files were opened. The second file was on Mr. Garcia, a permanently disbarred attorney. Ms. Suskauer referred Mr. D'Amico, the defendant, to Mr. Garcia as a prison consultant. The use of prison consultants is not uncommon in South Florida for criminal matters. Mr. D'Amico became increasingly anxious as he realized that the resolution of his criminal case would result in a term of incarceration. Mr. Garcia, after his disbarment, had served a term of incarceration in federal prison and had unique knowledge about the process of entering the prison system, what to expect during incarceration and what to expect after release from incarceration. Mr. Garcia had an office located in the suite of offices used by his friend and attorney Glenn Herbert Mitchell. A third file was opened on Mr. Mitchell. A fourth file was opened on Tyler DiMaio. Mr. DiMaio is an associate who was recruited to assist Ms. Suskauer who had recently joined the law firm of Dimond Kaplan & Rothstein, P.A. (DKR). Mr. DiMaio was admitted to practice in Florida on September 25, 2015. After a two-year tenure in the Office of the Public Defender, on January 15, 2018, Mr. DiMaio joined DKR as an associate. Mr. DiMaio's direct supervisor was firm partner Ms. Suskauer. DKR had not practiced criminal law before Ms. Suskauer joined the firm.

The reason for Ms. Suskauer's referral of Mr. D'Amico to Mr. Garcia was solely

as a prison consultant who had been criminally convicted and served a term of incarceration. Ms. Suskauer or Mr. DiMaio were present at all meetings at the firm where Mr. Garcia and Mr. D'Amico were present. Ms. Suskauer's goal was to use Mr. Garcia's knowledge about the prison system to reduce Mr. D'Amico's anxiety so that he could appreciate the negotiated disposition that she had reached with the U.S. Attorney's Office. Mr. Mitchell was uninvolved and unaware of Mr. D'Amico's case until it became the subject of sensational newspaper articles.

During the bar's investigation, Ms. Suskauer voluntarily sat and provided a sworn statement. Ms. Suskauer's testimony was consistent with her written response to the bar. Commencing in or about October 2018, Mr. Suskauer began representing Mr. D'Amico in a criminal matter, United States of America v. Anthony Michael D'Amico, in the U.S. District Court, Southern District of Florida, before Judge Cohn. Before Ms. Suskauer began representing Mr. D'Amico at DKR, Mr. DiMaio had previously represented Mr. D'Amico's fiancé and his mother in separate criminal matters. When Mr. D'Amico hired DKR, Mr. DiMaio was not admitted to practice in federal court. During Ms. Suskauer's representation of Mr. D'Amico, he was advised that he could hire and consult with Mr. Garcia, the permanently disbarred attorney who after his criminal conviction served a term of incarceration in federal prison. Both Ms. Suskauer and Mr. DiMaio advised Mr. D'Amico that Mr. Garcia could provide Mr. D'Amico with information about the prison process. Ms. Suskauer unequivocally recalls that on multiple occasions where Messrs. DiMaio and Garcia were present, that she, Mr. DiMaio and Mr. Garcia advised Mr. D'Amico that Mr. Garcia was a permanently disbarred attorney who could not practice law. Any action taken by Mr. Garcia was at the request of either Ms. Suskauer, Mr. DiMaio or Mr. D'Amico. Ms. Suskauer never heard Mr. Garcia render a legal opinion to Mr. D'Amico.

When Mr. D'Amico hired Mr. Garcia, Mr. D'Amico paid Mr. Garcia a fee for his consultation without any involvement or input by either DKR or Ms. Suskauer. Mr. Garcia's fee was never handled in any manner by DKR or employees of DKR. Ms. Suskauer and/or Mr. DiMaio were present when Mr. D'Amico met with Mr. Garcia at the firm. Further, Ms. Suskauer is unaware of any instance where Mr. Garcia held himself out as a licensed attorney or where Mr. Garcia provided legal advice. Ms. Suskauer knew of other cases and law firms where clients of those firms had hired Mr. Garcia as a prison consultant in criminal matters.

Before Ms. Suskauer moved to be relieved of Mr. D'Amico's representation, she had never appeared in court with Mr. D'Amico. When Mr. D'Amico appeared before Judge Cohn for a change of plea, Ms. Suskauer arranged for substitute counsel to appear for the limited purpose of the change of plea. Ms. Suskauer later

learned that Mr. Garcia was also present at the change of plea and had sat beside Mr. D'Amico at the defense table. At one point, Judge Cohn referred to Mr. D'Amico and substitute counsel as Mr. D'Amico's lawyers. Neither Ms. Suskauer, nor anyone from her firm, accompanied Mr. D'Amico to federal probation for the purpose of preparing the Pre-Sentence Investigation. Mr. Garcia went with Mr. D'Amico to the meeting with probation.

Ms. Suskauer move to be relieved of Mr. D'Amico's representation because she was terminated by Mr. D'Amico. In a letter to Judge Cohn, Mr. D'Amico alleged that Ms. Suskauer, Mr. Garcia and Mr. DiMaio conspired to misrepresent to Mr. D'Amico that Mr. Garcia was a Florida licensed attorney. Further, Mr. D'Amico alleged that Mr. Garcia did all the legal work on his case. Based upon that allegation of fraud, Mr. D'Amico successfully moved to vacate his change of plea. During the hearing on Ms. Suskauer's motion to withdraw, there was a long discussion between Ms. Suskauer and Judge Cohn regarding the propriety of allowing a permanently disbarred attorney to become involved in the case without complying with Rule 3-6.1 Employment of Certain Attorneys or Former Attorneys. Generally, the rule provides that suspended or disbarred attorneys may be employed by an entity providing legal services in a limited capacity. "An individual subject to this rule is considered employed by an entity providing legal services if the individual is a salaried or hourly employee, volunteer worker, or an independent contractor providing services to the entity." The legal entity must provide the bar with notice of the intention to hire a suspended or disbarred attorney. Further, the legal entity and suspended or disbarred attorney must provide quarterly notices to the bar indicating compliance with Rule 3.61. Ms. Suskauer was unaware of the specifics of the rule. Although Ms. Suskauer was prepared for a hearing on the motion to withdraw, she was unprepared for a specific discussion on the Rules Regulating The Florida Bar. Due to her lack of familiarity with the specific Rules Regulating The Florida Bar that applied in this scenario, Ms. Suskauer made several misstatements that contained terms that have a specific meaning in the context of the Rules. Ms. Suskauer failed to convey that Mr. Garcia was hired and paid for his assistance voluntarily and only by Mr. D'Amico. Ms. Suskauer did advise Judge Cohn that Mr. D'Amico knew that Mr. Garcia was a disbarred attorney who had served a term of incarceration in federal prison. The only purpose for Mr. Garcia's involvement was his experience with federal prison as an inmate. When Ms. Suskauer referred to Mr. Garcia as an independent contractor, she failed to convey that Mr. Garcia was Mr. D'Amico's independent contractor.

Ms. Suskauer, then President of The Florida Bar, became the subject of a highly publicized scandal created, in part, by South Florida newspapers and online bloggers. Ms. Suskauer's comments during the hearing on the motion to withdraw were either taken out of context, published without explaining her lack of familiarity with the procedural Rules Regulating The Florida Bar and Mr. D'Amico's self-interest and lack of credibility. The last six weeks of Ms. Suskauer's presidency were tarnished. Ms. Suskauer expressed her embarrassment in her handling of the hearing on the motion to withdraw which brought public scorn and ridicule by members of The Florida Bar.

Ms. Suskauer had negotiated a plea for Mr. D'Amico where he would enter a guilty plea to five counts of wire fraud, lesser criminal offenses, and the two more serious charges of money laundering would be dismissed. Pursuant to the negotiated plea, Mr. D'Amico's term of incarceration was expected to be between 12 and 24 months. After vacating his change of plea, Mr. D'Amico hired new counsel and proceeded to trial within 5 months. After a jury trial, Mr. D'Amico was found guilty of all charges. The Pre-Sentence Investigation recommended a term of incarceration of at least 100 months. After his conviction, Mr. D'Amico began making allegations of incompetence and malpractice by the attorney who represented him at trial. Mr. D'Amico's sentencing has been repeatedly continued. Sentencing is currently set for July 14, 2020.

III. PURPOSE AND PROGRAMS WHICH ARE RECOMMENDED: The purpose of the diversion is to assist respondent in the future avoidance of the conduct summarized herein.

Respondent shall attend the following within six months of acceptance of this diversion:

Ethics School

IV. FEES AND COSTS: Respondent shall pay the fees and costs of this matter which are:

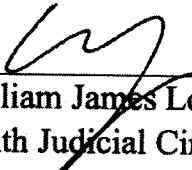
Ethics School	\$750.00
Costs	<u>\$1,231.07</u>
TOTAL	\$1,981.07

Fees and costs are due to The Florida Bar within 30 days from acceptance of this diversion recommendation.

V. **EFFECT OF DIVERSION:** Diversion to a practice and professionalism enhancement program shall close this disciplinary file without the imposition of a disciplinary sanction and diversion shall not constitute a record of professional misconduct. If respondent successfully completes the diversion recommended hereunder, this disciplinary file shall remain closed.

VI. **EFFECT OF FAILURE TO COMPLY WITH DIVERSION RECOMMENDATION:** If respondent fails to fully comply with all requirements of this diversion, the bar may reopen its disciplinary file and conduct further proceedings under Rule 3-5.3(k). Failure to complete the practice and professionalism enhancement program shall be considered a matter of aggravation when imposing a disciplinary sanction. If fees and costs assessed are not paid within 30 days of acceptance of this diversion recommendation, respondent will be declared a delinquent member pursuant to Rule 1-3.6 and will become ineligible to practice law in Florida.

DATED this 18th day of May 2020.



William James Lobb, Chair
Tenth Judicial Circuit Grievance Committee "A"