FLORIDA PERSONAL INJURY LAW TEAM

March 30, 2018

Michael Pike
Pike & Lustig, LLP
2465 Mercer Ave, Ste 204
West Palm Beach, FL 33401-7449

Via Electronic Mail Pike@bigfirmalternative.com

Re: **Florida Injury Law Firm vs. Florida Personal Injury Law Team Et al.,**
Orange County Case No.: 2018-CA-002535-O

SAFE HARBOUR LETTER PURSUANT TO SECTION 57.105 FLORIDA STATUTES

Dear Mr. Pike,

I'm sure you are quite familiar with "Safe Harbor" letters such as this. But in this case particularly, you need to pay particular attention. Because you personally have violated Section 57.105, this is not only a notice that your client will pay attorney's fees and costs in this case (something he is required to do pursuant to the independent contractor's agreement) but you will pay your share as well. As you know, this is because you knew or should have known at the time of the filing of the Complaint) that the allegations would not be:

a) supported by material facts necessary to establish the claim or defense; or (in this case it is "and", but the statute only requires "or")
b) Supported by the application of then-existing law to those material facts.

Let's review the clear and unequivocal violations;

A. COUNT I

50. "…have solicited clients of Florida Injury Law Firm and have sent deceptive commentary…"

You not only "should have known" at the time of the filing of this Complaint that not only was this paragraph untrue, you "ACTUALLY" knew it was. There was not and will not be a single shred of competent evidence that supports paragraph 50.

1) As to the "solicited clients" ...there was no competent evidence of this at the time of the filing of the Complaint and there will be none offered in this case. How am I so confident of this? Because only I would know if it happened, and it did not! If you had done even the most basic of investigation (which you were compelled to do under the Laws and Rules of Ethics in Florida), you should have known this too!
2) As to "deceptive commentary", while this is an irrelevant allegation, it is nonetheless, completely false. The commentary is in writing and is 100% accurate and it documents Johnny's violations (several of many many many) of the Rules of Professional Conduct.

B. COUNT II

This Entire Allegation so devoid of material facts which would support it and is so unsupported by Florida law (something which as an "expert" in this area, like you purport to be, knew or should have known about at the time of the filing of this Complaint) that you must have been thinking at the time of the filing, "I hope Schmitt doesn't serve and later file a 57.105 Motion' and you were checking your firm's bank account to see how much fees you could afford to pay. I hope you have counseled with your partners about this so as to avoid an action by them for exposing them to these tremendous fees and costs, but that is your concern.

Surely you knew (at least you should have known had you followed Florida Law and the Rules of Professional Responsibility and conducted investigation) that:

1) Not only did JOHNNY (or some agent of his) draft the ICA, he even later negotiated the terms to be in his benefit when I provided him with edits of HIS ICA.
2) The initial employment agreement had nearly 3 times the number of pages (with even smaller font size) than the ICA and more than twice the number of paragraphs and was so completely different than the employment agreement that they were incomparable.
3) The Florida Bar Grievance Committee had just found "probably cause" with respect to a Bar Complaint against Johnny and he was waiting on the discipline when he provided me with this agreement; and Johnny and/or his lawyers knew that a "percentage penalty" violated Rule 4-5.6 of the Rules of Professional Conduct, and clearly didn't want another clear violation of the Rules which is why Johnny and/or his attorney intentionally omitted this unethical "punitive" language from our ICA.

C. COUNT III and COUNT IV

73. "all material terms of the Employment Agreement would be restated and reaffirmed" in the ICA…

It was clear to you at the time of the filing of this complaint (or should have been) that this allegation was absolutely untrue (and would not be supported by material facts or the law) because the TRUTH was in writing. It was JOHNNY'S AGREEMENT and HE changed the terms of the Agreement drastically. Again, you knew HE presented it to ME and I agreed to his new terms (even though it cost me more money to do so) and we both signed the agreement.

Just because Johnny isn't happy with the fact that I left (before he could terminate our agreement which he had planned to do, I just beat him to the punch) and his former clients followed the only ethical and excellent attorney (between the two of Johnny and me) because he is not able to greedily claim more than quantum meruit, (because he is not legally entitled to do so) it does not change the fact that this was an agreement He presented to Me, which even after we negotiated, required me to agree to take less money (because now I would even have to pay my own malpractice insurance premiums among other new expenses) doesn't change the FACT that this was our agreement.

He is a licensed attorney (who claims to be a titan in industry) for gosh sakes. It's completely disingenuous for a licensed attorney (who told me when he handed me the agreement to sign that his attorney drafted the agreement) to come back after the negotiated, agreed upon and signed agreement is tested by termination and argue that he didn't either read his own agreement or mean what he said (which was so completely different than the prior employment agreement) especially in light of the fact that he didn't want a writing which clearly violated the Bar Rules, after he was suspended, was on probation, and was then subject to a probable cause finding. And you should have or did know this too at the time of the filing of this Complaint.

76. "Schmitt….lured FILF into entering…" For gosh sakes, you either knew or should have known that either Pineyro drafted this agreement or had his attorneys do so (that is what he represented to me) and he signed the agreement after we negotiated about it.

And as to the law, you should have known at the time of the filing of the Complaint that this allegation was completely without merit and would not be supported by the law, especially in light of the fact that you hold yourself out to be an "expert" (who is going to take the Business Board Certification Exam which you say you have applied for) in this field.

D. COUNT V

95. a. failing to give 14 days. Surely you had or should have had my email giving Johnny 14 days notice of termination and my statement that I would be in on Monday "unless he advises otherwise", which he did immediately) and therefore knew or should have known that this allegation violated 57.105. It would seem to me that one of the first things an esteemed business lawyer like you claim to be (and who boasts that he always wins) would have asked for is the "termination notice"! Am I wrong about this….as I was (before I educated myself and became and expert in this field) a novice in this field to which you claim to be an expert?

b. soliciting – again you knew or should have known this would not be supported by the facts.

c. …joint letters. If you read the letters, you saw they were virtually identical to the agreed form.

d. soliciting FILF non-attorney employees – I didn't solicit and did not take any non-attorney employees and how could you not have known that.

e. failing to tender 80% - 1) this is in the wrong paragraph; and 2) you knew or should have known this was unsupported by the facts and the law. See above.

f. see e. and discussion of Counts III and V above.

E. COUNT VI

You knew or should have known at the time of the filing of the Complaint that allegations regarding the old, prior employment agreement were/are unsupported by Florida Law and the material facts in this case. See discussion above.

F. COUNT VII

This is the Fiduciary duty count. SURELY YOU KNEW OR ABSOLUTELY SHOULD HAVE KNOWN (as you hold yourself out as an expert in this field and even advertise on your website a particular expertise in fiduciary duty cases) that THERE IS NO SUCH THING AS A FIDUCIARY DUTY ON THE PART OF AN INDEPENDENT CONTRACTOR IN FLORIDA UNLESS IT IS AGREED TO BY CONTRACT (AND IT CERTAINLY WASN'T HERE). In fact, I'm not aware of any law in Florida that imposes a fiduciary duty on even an employee (absent an express agreement) and as an expert in this field, surely you not only should have known this but did know it at the time of the filing of the Complaint, not that that is relevant to this case…but it just shows how far removed from the Law your allegations were.

And it is undisputed that I was not a partner or a shareholder at FILF, ever! (notwithstanding Johnny's misrepresentation that I would be).

G. COUNT VIII and IX

See discussion regarding Count VII above. If there is no Fiduciary Duty (and clearly there is not) there cannot be a conspiracy to commit breach of fiduciary duty or aiding and abetting breach of fiduciary duty by Mr. Valdes. Even a first year law student would know this, much less an expert in this field that as you profess to be.

H. COUNT X

127. Schmitt and Schmitt Legal Team failed and/or refuses to pay FILF for quantum meruit.

Again, you not only should have known that this would be unsupported by the facts and the law at the time of the filing of the Complaint but YOU ACTUALLY KNEW that it was, as I have repeatedly advised you that Johnny should be entitled to QM. However, in light of his continued attempts to damage his former clients' cases by continuing to contact and harass them and by failing to provide the former clients' files to their new attorneys, this claim is significantly diminished, if not extinguished, considering "all of the circumstances" that the Court will. But this will be for the Court to decide. The fact remains that the allegations are a clear violation of Section 57.105 Florida Statutes.

MIKE, FURTHER YOU ARE UNPROTECTED BY THE SAFE HAVEN IN THE STATUTE BECAUSE YOU DID NOT ACT IN GOOD FAITH "UPON THE REPRESENTATION OF YOUR CLIENT". BECAUSE NOT ONLY WOULD ANY INVESTIGATION HAVE REVEALED THE ABOVE, BUT I ADVISED YOU OF ALL OF THESE FACTS EVEN BEFORE YOU FILED THE COMPLAINT AND AT VERY LEAST THAT SHOULD HAVE TRIGGERED AN INVESTIGATION INTO MY TRUE REPRESENTATIONS, WHICH SURELY WOULD HAVE REVEALED THAT

EVERY SINGLE ONE OF MY REPRESENTATIONS TO YOU ARE ABSOLUTELY TRUE. I SUSPECT (AND I'M SURE IT WILL COME OUT IN THE EVIDENTIARY HEARING) THAT YOU DID DO THE INVESTIGATION AND FOUND THAT WHAT I TOLD YOU WAS ABSOLUTELY TRUE AND YOU NEVERTHELESS WITH ACTUAL KNOWLEDGE OF ITS FALISTY ACROSS THE BOARD, FILED THIS COMPLAINT! THIS IS INEXCUSABLE!

PURSUANT TO SECTION 57.105 FLORIDA STATUTES, IN ORDER TO AVOID THE PENALTIES OF THE STATUTE, UNLESS THIS ACTION IS WITHDRAWN (WHICH WOULD STILL NOT ABSOLVE JOHNNY OF LIABILITY FOR MY ATTORNEY'S FEES AND COSTS PURSUANT TO THE CONTRACT, BUT IT WOULD ABSOLVE YOU OF YOUR LIABILITY FOR MY FEES WHICH ARE APPROACHING $50,000. AS OF THE PROOFING OF THIS LETTER) AS IT CANNOT BE "APPROPRIATELY CORRECTED" UNDER THE STATUTE, YOU AND YOUR CLIENT WILL BE LIABLE FOR MY ATTORNEY'S FEES AND COSTS!

Govern Yourself Accordingly!

Sincerely,

Thomas P. Schmitt, Esquire
Owner and Lead Trial Attorney

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