

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS, LAW DIVISION**

GRETCHEN WILKINSON, JANE DOE, JANE)	
DOE II, MELODY FEDORIW, CHARIS)	
BARKER, RACHEL FROST, RACHEL LEES,)	
JANE DOE III, JAMIE DEERING, and RUTH)	
COPLEY BURGER,)	
)	
Plaintiffs,)	
v.)	Case No. 15 L 000980
)	
INSTITUTE IN BASIC LIFE PRINCIPLES, INC.,)	Hon. Judge Popejoy
and WILLIAM W. GOTHARD, JR.,)	
)	
Defendants.)	

**MOTION TO DISQUALIFY GIBBS LAW FIRM, P.A.
AND ATTORNEY DAVID C. GIBBS III AS COUNSEL FOR PLAINTIFFS AND
FOR ILLINOIS SUPREME COURT RULE 137 SANCTIONS**

NOW COMES the Defendant, INSTITUTE IN BASIC LIFE PRINCIPLES, INC. (the “IBLP”) and for its Motion to Disqualify Gibbs Law Firm, P.A. and Attorney David C. Gibbs III as Counsel for Plaintiffs, and for Illinois Supreme Court Rule 137 Sanctions, and states as follows:

INTRODUCTION

Plaintiffs’ counsel, David Gibbs III (“Gibbs”), is using information that he obtained unethically – including by means of an affidavit obtained through blatant deceit by Gibbs, then filed with this Court – in his attempt to make Defendant IBLP responsible for the alleged misconduct of its founder and former president, Defendant Gothard. As recounted below, Gibbs’ behavior has contaminated this legal process, threatening to deprive IBLP of the just and fair resolution that it has a right to expect. IBLP therefore asks this Court to restore integrity here as only it can, by disqualifying Gibbs and his firm from participation in this case; dismissing the Gibbs-prepared complaint; and giving Plaintiffs an appropriate period of time to secure new counsel who is unburdened by unethically obtained information.

FACTS

Gibbs Earns Gothard's Trust with Legal Advice Supporting Gothard's Attempted Re-Instatement to IBLP

Gibbs earned Gothard's trust in the spring, summer, and fall of 2015 by advocating a legal strategy by which Gothard would try to bully and shame the current IBLP board into re-instating Gothard to IBLP leadership. (Gothard had resigned from IBLP in March 2014 before an investigation conducted by the current board into allegations of Gothard's misconduct was completed). In May 2015, Gibbs' detailed, written legal advice to Gothard included:

- "Assert fraud and breach of contract claims" against IBLP;
- "Make the financial insinuations stronger against the [IBLP] board members" who were "in breach of their fiduciary obligations..."
- "As the founder [of IBLP, Gothard] has authority to appoint and remove board members. He has the authority to reinstate himself to the board."
- "[Gothard] needs to assert a claim [against IBLP] for a full accounting of all funds and assets" of IBLP.
- "[Gothard] needs to ask the court to freeze all [IBLP] assets....until the board is appropriately recognized by the court as valid."
- Dr. Gothard needs to ask that no board meetings take place any longer without him present and voting...."

See Gothard Affidavit at ¶ 21; Exhibit 9 thereto. Gibbs even told Gothard that Gibbs was a "possible witness" in support of Gothard's re-instatement plan. *Id.* Over the following months, Gibbs continued to dispense advice to Gothard concerning his possible reinstatement to IBLP, during some 40 conversations between the two men. Gothard Affidavit at ¶ 20. Gibbs further endeared himself to Gothard by declaring that the allegations that Gothard had sexually mistreated women – the very allegations which led to the IBLP investigation of Gothard – were "false." Blair Affidavit at ¶¶ 3, 6, and 7; Gothard Affidavit at ¶ 49.

Gothard's trust in Gibbs was not disturbed even by Gibbs' filing, in October 2015, of the first complaint in this case. For that complaint – while it alleged the sexual mistreatment of young women at IBLP, which had been publicly attributed to Gothard – did not name Gothard as a

defendant, and did not even mention Gothard's name anywhere among its allegations of abuse. Indeed, that complaint appeared entirely consistent with Gibbs' advice to Gothard to legally attack the current IBLP board to gain re-instatement, as it named as defendants each of those board members, and blamed each of them for the mistreatment of plaintiffs (even though the alleged mistreatment had pre-dated by many years the tenure of the current board members). *See, e.g.*, Complaint at ¶¶ 18, 25, 31, 36, 45.

Gibbs assured Gothard that this was the complaint's purpose, and even publicly indicated that he would not be naming Gothard as a defendant. Gothard Affidavit at ¶¶ 57-58; *see also* Exhibit 18 thereto.

Gothard was very grateful for Gibbs' support and counsel, and said so. For example, in a May 30, 2015 email, Gothard thanked Gibbs for his help "in this whole matter of appealing to the board," and assured Gibbs that "God will honor you for your generous spirit." Gothard Affidavit at ¶ 26; Exhibit 11.

Gibbs Learns Confidential Information Through Gothard

During his conversations with Gibbs, Gothard revealed many details of his past relationships with certain of the women who are now plaintiffs in this case. Gothard told Gibbs his view of the accusations of sexual misconduct that these women had already publicly made against him. *See* Gothard Affidavit at ¶¶ 34-38.

Gibbs also used these conversations to learn confidential information about IBLP and its current board members, that Gothard had obtained while he himself had been a board member for many years prior to his 2014 resignation. Such confidential information included:

- The identity of witnesses to the alleged sexual abuse and the knowledge they have, and non-public documents and communications which could be used on this case;
- The identity and contact information for key IBLP donors and financial backers;
- Possible IBLP plans to relocate its headquarters and sell assets; and
- Extensive confidential information about each IBLP board member.

See Gothard Affidavit at ¶¶ 14, 21, 24; 31, 39-46.

***Gibbs Lies to Gothard to Secure an Affidavit Later
Filed in this Case Against Gothard and IBLP***

IBLP moved to dismiss Gibbs' first complaint for lack of specificity concerning, *e.g.*, exactly who had committed the alleged sexual abuse, and the allegedly deficient investigation by IBLP of sexual misconduct. In response, Gibbs withdrew that complaint, promising to amend to cure the deficiencies.

That's when Gibbs decided to make use of the confidential information he had secured from Gothard in the previous months. This is what Gibbs did:

On the eve of his filing the amended complaint, Gibbs drafted, and insisted that Gothard immediately sign, an affidavit in which Gibbs advised Gothard to confess to wrongdoing while at IBLP, specifically advising that Gothard admit:

- "I now realize how I treated [plaintiffs] was not right;"
- "I showed [plaintiffs] the wrong kind of love;"
- "I believe that the plaintiffs have valid claims."

See Gothard Affidavit at ¶ 59; Exhibits 19, 20, and 21 thereto. The Gibbs-drafted affidavit would also have had Gothard admit that he had hand-picked the IBLP board and investigator, thus resulting in an untrustworthy investigation of the sexual abuse allegations; and imply that IBLP planned to liquidate its Illinois properties, and flee to the state of Texas. *Id.*

Even though Gibbs knew that, just days later, he would attach the highly-incriminating Gothard affidavit to his amended complaint – a complaint that, for the first time, would name Gothard as a defendant – Gibbs did not tell Gothard that, and indeed lied to Gothard about what he intended to do with that affidavit. Gibbs told Gothard that the affidavit would be used only to "put pressure on the [IBLP] board". Gothard Affidavit at ¶ 59. Gibbs further deceived Gothard about his intentions by omitting from the affidavit draft sent to Gothard the caption of the case –

which would have shown that Gibbs was suing Gothard.

Gothard asked Gibbs to make some revisions to the affidavit before Gothard would sign it. Gibbs made the requested revisions, and Gothard signed the affidavit and returned it to Gibbs. However, as with the first draft, Gibbs omitted the case caption – and thus the truth that the affidavit would be used against Gothard in a case in which Gibbs was suing him. Gibbs likewise did not tell Gothard that the affidavit would be repeatedly cited – no fewer than 36 times¹ – in the amended complaint in this case, as proof, *inter alia*, that:

- Gothard had admitted to “at least some of the wrongdoing”;
- The IBLP investigation into allegations of Gothard’s sexual misconduct was a “sham”; and
- IBLP might be planning to flee Illinois.

See, e.g., Amended Complaint at ¶¶ 31, 34, 36, and 37. Gibbs also did not tell Gothard that the affidavit would be used in this case to claim as true the allegations of Gothard’s sexual misconduct which, only months earlier, Gibbs had assured Gothard were “false.”

Just days before Gibbs attached the affidavit to his amended complaint and filed it, Gothard learned of Gibbs’ intention. Gothard thus twice insisted that Gibbs not use the affidavit. Gothard Affidavit at ¶¶ 61-62. But Gibbs ignored Gothard, and used the affidavit anyway.

LEGAL STANDARDS

“Disqualification motions require a two-step analysis. The court must consider (1) whether an ethical violation has actually occurred, and (2) if disqualification is the appropriate remedy.” *Guillen v. City of Chicago*, 956 F. Supp. 1416, 1421 (N.D. Ill. 1997). “[T]here can be no hesitation to disqualify where impropriety *has occurred*.” *Guillen v. City of Chicago*, 956 F. Supp. 1416, 1421 (N.D. Ill. 1997) (emphasis in original).

¹ *See, e.g.*, Amended Complaint at ¶¶ 22, 26, 27, 28, 29, 34, 36, 37, 53, 68, 96, 103, 113, 146, 152, 155, 161, 198, 228, 234, 243, 285, 291, 300, 331, 337, 346, 376, 382, 391, 421, 427, 436, 462, 468 and 477).

Whether an ethical violation has occurred is governed by the Illinois Rules of Professional Conduct (“RPC”), which forbid a lawyer, *inter alia*, from:

- Suing his own client (RPC 1.7);
- Talking to a person, if he knows that person is represented by another lawyer, unless that other lawyer consents (RPC 4.2);
- Giving legal advice to an unrepresented person, other than to advise that person to secure counsel, if the lawyer knows that the interests of the unrepresented person maybe in conflict with those of the lawyer’s client (RPC 4.3);
- Making misrepresentations to a court (RPC 3.3); and
- Serving as a lawyer in a case where he is likely to be a necessary witness (RPC 3.7).

Pursuant to Illinois Supreme Court Rule 707, this Court has the power to “terminate the permission to practice upon its own motion” based upon “conduct of the attorney inconsistent with...the [RPC]” and the conduct of the attorney in the proceeding in which the attorney is admitted pro hac vice. Ill. Sup. Ct. R. 707(i)(2)-(3).

Finally, Illinois Supreme Court Rule 137 empowers a Court to award an “appropriate sanction” including attorneys’ fees and costs incurred by filings which are untrue or which are interposed for an improper purpose.

ARGUMENT

I. Gibbs’ Knowing Filing of an Affidavit Obtained by False Pretenses is Behavior Which the Illinois Supreme Court has Classified as “Professionally Outrageous” and a “Fraud Practiced Upon the Judicial System”.

“The [Illinois] Supreme Court has indicated that an attorney’s intentional filing of a false or misleading document with a court is a ‘fraud practiced upon the judicial system,’ ‘reveals a disregard for ethical concerns,’ and is ‘professionally outrageous.’” *In the Matter of: Leonard K. Hays, Jr.*, Case No. 1163043, 2005 WL 6200267, at *8-9, citing *In re Ingersoll*, 186 Ill. 2d 163, 178, (1999); *see also In re Thebeau*, 111 Ill. 2d, 251 256 (1986).

As set forth above, Gibbs intentionally misled Gothard on numerous occasions, culminating with drafting the affidavit for Gothard, pressuring Gothard to sign it immediately,

lying to Gothard about its purpose, and using the affidavit even after Gothard had twice instructed Gibbs not to use it. Gibbs cited this improperly-obtained affidavit no fewer than 36 times for propositions such as that Gothard had admitted “at least some degree of wrongdoing” (Amended Complaint at ¶ 34), and that the IBLP investigation into allegations of Gothard’s sexual misconduct was not only a “sham”, but also that it was so because Gothard himself chose an investigator (Gibbs, Jr.) and an IBLP board that was loyal to Gothard.

The improperly-obtained affidavit is the end result of a fraud perpetrated upon the judicial system by Gibbs, which this Court should not allow to go unpunished. *REP MCR Realty, L.L.C. v. Lynch*, 363 F. Supp. 2d 984, 997-98 (N.D. Ill. 2005) *aff’d*, 200 F. App’x 592 (7th Cir. 2006) (collecting cases whereby document fabrication or perjury resulted in sanctions as severe as dismissal with prejudice and noting that “[t]he cases that have upheld dismissals as a sanction based on inherent powers have typically involved bad faith, fraud, or undue delay...”).

II. This Court Should Exercise its Power to Terminate Gibbs’ Pro Hac Vice Status Based on His Egregious Misconduct.

Gibbs is not a licensed attorney in Illinois, but was admitted pro hac vice pursuant to Illinois Supreme Court Rule 707.² As he must to be admitted pro hac vice, Gibbs submitted himself to the disciplinary authority of the Illinois Supreme Court and swore to comply with the RPC and other Illinois law governing attorneys.

Pursuant to Illinois Supreme Court Rule 707, this Court has the power to terminate Gibbs’ admission for conduct inconsistent with the Illinois RPC or improper conduct in the proceeding in which the attorney is admitted pro hac vice. Ill. Sup. Ct. R. 707(i)(2)-(3). Gibbs’ blatant violation of the RPC described above, and his conduct in obtaining an affidavit through false pretenses, is

² Although Gibbs’ “Verified Statement” for admission was never filed with this Court—in violation of Rule 707—he did provide such a statement to the IBLP.

sufficiently serious that this Court should, respectfully, terminate Gibbs’ right to practice in Illinois in this proceeding.

III. Gibbs Either Violated RPC 1.7, 4.2, or 4.3, and, Based on the Egregiousness of the Violations, Should be Disqualified.

When Gibbs engaged in the above dishonest (and ethically violating) behavior, either: (a) Gibbs was Gothard’s lawyer and is therefore prohibited from now suing him; (b) Gothard was represented on these issues by another lawyer and Gibbs was prohibited from contacting him; or (c) Gothard was unrepresented, and Gibbs was ethically required to provide a series of disclosures to Gothard, including that Gothard obtain counsel. Regardless of which is the case, Gibbs violated the RPC.

First, if Gibbs was Gothard’s lawyer, RPC 1.7 forbade Gibbs to sue Gothard, for “it is irrebuttably presumed that confidential information was disclosed” in “substantially related matters...” *Weglarz v. Bruck*, 128 Ill. App. 3d 1, 5-6 (1st Dist. 1984). “Any doubts as to the existence of a conflict should be resolved in favor of disqualification.” *SK Handtool Corp. v. Dresser Industries, Inc.*, 246 Ill.App.3d 979, 989-90 (1st Dist. 1993). Moreover, there is evidence that Gibbs received confidential information from Gothard about the IBLP. *See* Gothard Affidavit at ¶¶ 33-46.³ Gibbs and his firm⁴ is fatally-conflicted and must be disqualified from representing the plaintiffs in this matter.

³ The Gothard Affidavit, and the exhibits thereto, reveal a further potential conflict of interest: Gibbs indisputably provided legal advice to and had an attorney-client relationship with John Stancil—until January 2016, an active member of the IBLP board—in both a mediation (*see* Gothard Affidavit at Exhibit 13) involving the IBLP as well as in matters related to alleged abuse committed by Gothard. *See, e.g.* Gothard Affidavit at ¶¶ 12, 20, 40, and 45. Indeed, Stancil facilitated or was involved with several of the critical emails identified above in the “Facts” section, whereby Gibbs provided legal advice to Gothard *and* the transmission of the falsified affidavit. *See* December 14 and 20, 2015 emails attached to Gothard Affidavit. Therefore, while the full extent of Gibbs’ representation of John Stancil—an active IBLP board member—cannot be ascertained, Gibbs undoubtedly obtained from Stancil information which he is now using against Stancil’s fiduciary, the IBLP.

⁴ Pursuant to RPC 1.10, Gibbs conflict is imputed to his firm. Moreover, Christine Field—a lawyer with the Gibbs Firm and a signatory on the original Complaint—was present for some of the conversations in which Gibbs obtained confidential information. Notably, disqualifying Gibbs and his firm does not leave the Plaintiffs without representation: Jonathon Remijas remains of record for the plaintiffs in this matter.

Second, if Gothard was the client of a different lawyer, Gibbs violated RPC 4.2, which forbade Gibbs from having any such communications with Gothard without first obtaining the other lawyer's consent. The sheer volume of the conversations—Gibbs had at least 40, over phone, email, and in person—and the content of the conversations—which culminated in the drafting of the affidavit and misleading Gothard to execute it—underscores the egregiousness of the Rule 4.2 violations.

Third, if Gothard was unrepresented, Gibbs violated RPC 4.3, which demands that attorneys follow strict rules for dealing with unrepresented individuals:

...When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Gothard unquestionably misunderstood Gibbs's role in his communications with Gothard—because Gibbs affirmatively misled Gothard of this role. Incredibly, Gibbs stated as early as June 2015 that he represented several “victims” who allege they were sexually abused by Gothard and later became plaintiffs, yet Gibbs still provided legal advice to the alleged abuser, Gothard, until as late as November 2015. *See, e.g.*, Gothard Affidavit at Exhibits 12 and 19-21. There can be no doubt that Gibbs knew that Gothard's interests were in conflict with the interests of his clients, so Gothard was entitled to Rule 4.3's protections.

Finally, there is no other plausible explanation to the end result: in 40 communications between Gibbs and Gothard which resulted in Gothard being named as a defendant and attacked with an affidavit drafted by Gibbs III for Gothard's signature.

IV. Due to the Egregiousness of Gibbs' Ethical Violations, Gibbs Should Be Disqualified and Sanctioned Pursuant to Illinois Supreme Court Rule 137.

“...[T]here can be no hesitation to disqualify where impropriety *has occurred*.” *Guillen v.*

City of Chicago, 956 F. Supp. 1416, 1421 (N.D. Ill. 1997) (emphasis in original), citing *Panduit Corp. v. All States Plastic Mfg. Co.*, 744 F.2d 1564, 1576–77 (Fed. Cir. 1984). Gibbs’ serious misconduct—in misleading Gothard, obtaining the affidavit under false pretenses, and using the affidavit despite Gothard’s clear direction—requires disqualification of Gibbs and his law firm. “Allowing a party to submit a falsified affidavit with no greater sanction than withdrawing the offending paper would be no sanction at all.” *Paniagua v. Max 18, Inc.*, Case No. 11 C 03320, 2013 WL 5907893, at *8 (N.D. Ill. Nov. 4, 2013) (granting motion to strike affidavit, striking motion relying on affidavit, fining attorney \$1,000, and allowing opposing party to file a fee petition for its reasonable attorneys’ fees and costs).

CONCLUSION

WHEREFORE, the Defendant, INSTITUTE IN BASIC LIFE PRINCIPLES, INC., prays that this Honorable Court grant its Motion, disqualify David C. Gibbs III and Gibbs Law Firm, P.A., and/or revoke their Rule 707 admission, find that Plaintiffs’ counsel violated Rule 137 and grant Defendant leave to file a fee petition, dismiss the Amended Complaint, and for such other and further relief and this Court deems equitable and just.

Shawn M. Collins
Robert L. Dawidiuk
Jeffrey M. Cisowski
THE COLLINS LAW FIRM, P.C.
1770 Park Street, Suite 200
Naperville, IL 60563
630-527-1595
Firm No. 24048

Respectfully submitted,
**INSTITUTE IN BASIC LIFE PRINCIPLES,
INC.**

By: _____

One of their attorneys

