

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Adrian Lewis, )  
 )  
Plaintiff, )

Case No. 2024-CP-10-\_\_\_\_\_

vs. )

**AFFIDAVIT OF MICHAEL J. VIRZI**

Marvin R. Pendarvis, Esquire, individually, )  
and Pendarvis Law, LLC, )  
 )  
Defendants. )

The undersigned affiant, Michael J. Virzi, deposes and says as follows:

1. I am offering this affidavit, pursuant to S.C. Code Ann. § 15-36-100(B), as an expert witness on behalf of the above-captioned Plaintiff to support his Complaint against the above-captioned Defendants for professional negligence.

2. My name is Michael J. Virzi, and I am attorney in good standing and licensed to practice law in the State of South Carolina. My practice has focused exclusively on matters of legal ethics, malpractice, and lawyer discipline for the past twenty-one years, including three years as an Assistant Disciplinary Counsel to the South Carolina Supreme Court, and I have taught Professional Responsibility at the University of South Carolina School of law for more than ten years. I have served on the South Carolina Bar's Ethics Advisory Committee since 2003, including three years as Chair, on the Bar's Professional Responsibility Committee since 2011, including two years as Chair, and on the Board of Directors for the South Carolina Association for Justice as Ethics Chair for four years. I am a member of the South Carolina Association of Ethics Counsel, the Association of Professional Responsibility Lawyers, the ABA Center for Professional

Responsibility, and the South Carolina Bar House of Delegates. I have been interviewed by and quoted in The ABA Journal, The State, The Post and Courier, The Greenville News, The Augusta Chronicle, and S.C. Lawyers Weekly on matters involving lawyer ethics and have appeared on HBO, Discovery, Oxygen, and Court TV. I have authored seven published articles, numerous ethics advisory opinions, and a book chapter on matters involving lawyer ethics, and I have given more than 100 presentations on the topics of lawyer ethics, discipline, and malpractice as a law school guest lecturer and CLE presenter, including as a faculty member for the South Carolina Bar and Supreme Court's semi-annual Legal Ethics and Practice Program for twelve years. I have been qualified to give expert testimony on matters of lawyer ethics and malpractice in federal and state courts in South Carolina and have provided expert opinions on matters involving lawyer ethics and malpractice on more than 100 occasions either in court, in deposition, or by affidavit, and I am familiar with the standard of care applicable to lawyers in the circumstances involved in this case.

3. My opinions herein are based on my review of the following documents:
  - A. Complaint in the above-captioned case, with exhibits including:
    1. Complaint in Adrian Lewis vs. Dorchester County Sheriff's Office, Case # 2021-CP-18-01991 (hereinafter "False Imprisonment Suit"), dated November 10, 2021, and filed in Dorchester County Court of Common Pleas on the same date;
    2. Proof of ADR in the False Imprisonment Suit, dated April 24, 2023, and filed April 25, 2023;
    3. Full and Final Release in the False Imprisonment Suit, dated January 5, 2024;
    4. Verification in the False Imprisonment Suit, dated January 5, 2024;

5. Screenshots of text messages apparently between Plaintiff and Defendant Marvin Pendarvis;
6. Images of check nos. 1076, 1094 and 1105 drawn on Defendants' IOLTA account payable to Plaintiff; and
7. Stipulation of Dismissal in the False Imprisonment Suit, dated January 5, 2024.

4. Based on my experience, education, training, and knowledge of the standard of care for lawyers, it is my opinion that the Defendants engaged in negligent actions and omissions in their representation of Plaintiff, which breached duties owed to Plaintiffs and fell below the standard of care for lawyers in South Carolina.

5. In particular, the Complaint alleges and it appears that Defendants represented Plaintiffs in the False Imprisonment Suit at least during mediation and through Defendants' settlement of that lawsuit. It is alleged and appears that Defendants settled the False Imprisonment Suit without Plaintiff's knowledge or consent, in violation of Rules 1.1, 1.2, 1.3, and 1.4 of the South Carolina Rules of Professional Conduct ("SCRPC") and the standard of care for lawyers. When representing parties in litigation, the standard of care for lawyers includes informing clients of the status of their case, informing clients of the receipt of settlement offers from opposing parties, deferring to the client's wishes and instructions regarding whether to make or accept any offer of settlement, and providing clients with sufficient material information to allow the client to make an informed decision regarding settlement. It is my professional opinion that, by failing to do these things in advance of settling the False Imprisonment Suit, Defendants' conduct fell below the standard of care for lawyers by breaching duties of truthfulness, communication, competence, diligence, deference, and loyalty owed to Plaintiff.

6. It is further alleged and appears that, after the settlement of the False Imprisonment Lawsuit, Defendants failed to respond to some of Plaintiff's inquiries regarding the status of the case and responded to others with inaccurate information, in violation of RPC Rules 1.1, 1.4, and 8.4(d). The standard of care for lawyers in litigation includes timely and truthfully responding to a client's reasonable requests for information about the status of their case. It is my professional opinion that, by failing to do so, Defendants' conduct further fell below the standard of care for lawyers by breaching duties of truthfulness and communication owed to Plaintiff.

7. Finally, it is alleged and appears that, after Plaintiff learned that Defendants had settled the False Imprisonment Suit without his knowledge or consent, Defendants made several attempts to settle the potential claims Plaintiff had against Defendants (namely those stated in the Complaint in this case, identified at paragraph 3.A.1 hereinabove) without advising Plaintiff to seek the advice of outside counsel and giving him a reasonable opportunity to do so, in violation of RPC Rule 1.8(h). The standard of care for lawyers faced with a potential malpractice claim from a client includes advising the client to seek independent legal advice about the potential claim and, before attempting to resolve the claim directly with the client, ensuring the client has had ample opportunity to so consult. It is alleged and appears that Defendants instead attempted to resolve Plaintiff's malpractice claims quickly with cash and without Plaintiff consulting with independent counsel. It is my professional opinion that this conduct by Defendants fell below the standard of care for lawyers by breaching duties of loyalty and independent professional judgment.

8. Therefore, it is my professional opinion that Defendants failed to exercise the degree of care, skill, knowledge and judgment usually possessed and exercised by members of the legal profession in South Carolina and breached duties of truthfulness, communication,

competence, diligence, deference, loyalty, and independent professional judgment owed to Plaintiff.

9. The opinions in this affidavit are given to a reasonable degree of certainty based on the evidence listed above. I reserve the right to alter, amend, modify, reduce, or expand these opinions if and when additional information is presented.

Further affiant sayeth naught.

  
\_\_\_\_\_  
Michael J. Virzi

State of South Carolina  
County of Richland

Sworn and subscribed before me  
This 10<sup>th</sup> day of April, 2024

  
\_\_\_\_\_  
Notary Public

My Commission Expires : Sept 15, 2025