

# Supreme Court of Florida

THURSDAY, MARCH 14, 2019

**CASE NO.: SC18-1866**

Lower Tribunal No(s):

2014-70,358(11I)

THE FLORIDA BAR

vs. PETER JAMES YANOWITCH

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Complainant(s)

Respondent(s)

The Court approves the uncontested referee's report and reprimands respondent. Respondent is further directed to comply with all other terms and conditions set forth in the report and consent judgment.

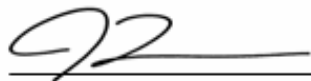
Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from Peter James Yanowitch in the amount of \$1,250.00, for which sum let execution issue.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, LAGOA, LUCK, and MUÑIZ, JJ., concur.

A True Copy

Test:



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John A. Tomasino  
Clerk, Supreme Court



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Served:

ALEJANDRO ALBERTO DIAZ  
HON. DARYL EVAN TRAWICK, JUDGE

THOMAS ALLEN KROEGER  
ADRIA E. QUINTELA

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

PETER JAMES YANOWITCH,

Respondent.

Supreme Court Case  
No. SC18-1866

The Florida Bar File  
No. 2014-70,358 (11I)

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**CONDITIONAL GUILTY PLEA FOR CONSENT JUDGMENT**

COMES NOW, the undersigned Respondent, Peter James Yanowitch, and files this Conditional Guilty Plea pursuant to Rule 3-7.9 of the Rules Regulating The Florida Bar.

1. Respondent is, and at all times mentioned herein was, a member of The Florida Bar, subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent is acting freely and voluntarily in this matter and tenders this Plea without fear or threat of coercion. Respondent is represented by counsel.
3. This consent judgment is entered into after the finding of probable cause and after the filing of a formal complaint.
4. Respondent is currently the subject of a Florida Bar disciplinary matter which has been assigned The Florida Bar File No. 2014-70,358(11I). There are no

additional pending Florida Bar complaints that have been initiated or filed against Respondent.

5. The disciplinary measures to be imposed upon Respondent are as follows:

A. Public Reprimand, to be published in the Southern Reporter.

6. The following allegations and rules provide the basis for Respondent's guilty plea and for the discipline to be imposed in this matter:

A. Beginning in or about 2010, Respondent commenced legal representation of Gianni Gelleni ("Gelleni"), a Venezuelan national.

B. Respondent performed "general counsel services" while non-lawyer Bernard Bohn ("Bohn"), at Gelleni's direction, managed a variety of Gelleni's personal and business affairs in the United States.

C. Subsequently, Gelleni instructed and directed Respondent and Bohn to retain a US immigration attorney and pursue an E-2 investor visa to address certain US immigration issues.

D. In consultation with a US immigration attorney, Respondent, Bohn, and Gelleni decided to pursue of an investment strategy to allow Gelleni to invest a substantial amount of capital in a U.S. business to qualify for an E-2 investor visa.

E. Consistent with the E-2 requirements, Respondent formed Corsa Enterprises, Inc. ("Corsa"), an entity to be wholly owned by Gelleni and to serve as the vehicle for the E-2 investment.

F. To further satisfy the E-2 requirements, Gelleni transferred \$250,000 to Corsa which in turn transferred the funds to Element America, Inc. ("Element America"), a business entity owned in equal shares by Respondent and Bohn, which provided advisory services to non-U.S. investors and their families seeking to relocate to South Florida.

G. Consistent with and in reliance upon the advice of the US immigration attorney and the E-2 requirements, Element America was to pay an annual fee of 20% of its annual profit to Corsa in exchange for management services and the payment of business expenditures. This agreement was documented by a management agreement which was approved as to form by the immigration attorney in order to properly structure the transaction to satisfy the E-2 visa requirements.

H. Gelleni was fully aware of Respondent and Bohn's efforts to secure an E-2 visa on his behalf, and authorized the retention of an immigration attorney to assist Gelleni in structuring the transaction and preparing the E-2 Visa application, and was otherwise generally familiar with the transaction.

I. In reliance upon and in accordance with the immigration attorney's advice concerning E-2 visa requirements, and the terms of the management agreement, Element America utilized Gelleni's funds to satisfy capital expenditures (pre-payment of rent) and operational expenses.

J. Neither Respondent nor Bohn took any salary or other form of compensation from Element America before or during their relationship with Gelleni. Any monies received by Element America were invested in marketing, promotions, or other operational expenses.

K. Indeed, had Gelleni not terminated his involvement in the enterprise, he would likely have been in a position to qualify for an E-2 visa based upon the actions taken by Respondent, Bohn, and the immigration attorney on his behalf.

L. Moreover, even after Gelleni terminated his involvement in the enterprise, Respondent and Bohn continued to expend considerable time and effort in their attempts to market Element America.

M. However, notwithstanding the fact that Gelleni was generally familiar with the terms of the E-2 requirements, and the structure of the related investment to satisfy those requirements, strict compliance with Rule 4-1.8 was not effectuated. Neither the management agreement, nor any other contemporaneous writing, specifically informed Gelleni of the potential for a

conflict of interest, advised Gelleni of the desirability of seeking independent counsel, or fully documented Gelleni's informed consent to the essential terms of the transaction and Respondent's role in the transaction.

N. By virtue of the foregoing, Respondent has violated Rules 4-1.7 (Conflict of Interest; Current Clients) and 4-1.8 (Conflict of Interest; Prohibited and Other Transactions) of the Rules Regulating The Florida Bar.

O. Had this matter proceeded to a final hearing, the parties acknowledge that, pursuant to Florida Standard for Imposing Lawyer Sanctions 9.32, the following mitigating factors would apply: a) absence of a prior disciplinary record; b) absence of a dishonest or selfish motive; d) timely good faith effort to make restitution or to rectify consequences of misconduct; and e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

7. The Florida Bar has approved this proposed plea in the manner required by Rule 3-7.9.

8. If this plea is not finally approved by the referee and the Supreme Court of Florida, then it shall be of no effect and may not be used by the parties in any way.

9. If this plea is approved, then Respondent agrees to pay all reasonable costs associated with this case pursuant to Rule 3-7.6(q) in the amount of \$1,250.00.

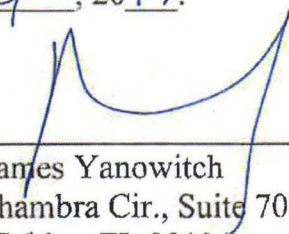
These costs are due within 30 days of the court order. Respondent agrees that if the costs are not paid within 30 days of this court's order becoming final, respondent shall pay interest on any unpaid costs at the statutory rate. Respondent further agrees not to attempt to discharge the obligation for payment of the Bar's costs in any future proceedings, including but not limited to, a petition for bankruptcy. Respondent shall be deemed delinquent and ineligible to practice law pursuant to Rule 1-3.6 if the cost judgment is not satisfied within 30 days of the final court order, unless deferred by the Board of Governors of The Florida Bar.

10. Respondent acknowledges the obligation to pay the costs of this proceeding and that payment is evidence of strict compliance with the conditions of any disciplinary order or agreement and is also evidence of good faith and fiscal responsibility. Respondent understands that failure to pay the costs of this proceeding or restitution may reflect adversely on any reinstatement proceedings or any other bar disciplinary matter in which respondent is involved.

11. This Conditional Guilty Plea is predicated upon approval by the Referee and the Supreme Court of Florida and should the Referee or the Supreme Court not approve this Conditional Guilty Plea then all admissions set forth herein will not be binding upon the Respondent or The Florida Bar.

12. This Conditional Guilty Plea for Consent Judgment fully complies with all requirements of the Rules Regulating The Florida Bar.

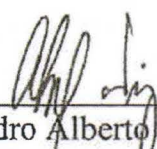
Dated this 15 day of January, 2019.



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Peter James Yanowitch  
255 Alhambra Cir., Suite 700  
Coral Gables, FL 33134  
305/443-2100  
Florida Bar ID No. 337196  
[peter@yanowitchlaw.com](mailto:peter@yanowitchlaw.com)

Dated this 10 day of January, 2019.



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Alejandro Alberto Diaz  
Klein Glasser Park & Lowe, P.L.  
9130 S Dadeland Blvd., Suite 2000  
Miami, FL 33156  
786/219-2211  
Florida Bar ID No. 17243  
[DiazA@kgplp.com](mailto:DiazA@kgplp.com)

Dated this 15 day of January, 2019.



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Thomas Allen Kroeger, Bar Counsel  
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IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
  
Complainant,

v.

PETER JAMES YANOWITCH,  
  
Respondent.

Supreme Court Case  
No. SC18-1866

The Florida Bar File  
No. 2014-70,358 (111)

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**REPORT OF REFEREE ACCEPTING CONSENT JUDGMENT**

I. **SUMMARY OF PROCEEDINGS**

Pursuant to Rule 3-7.6 of the Rules of Discipline, the undersigned was duly appointed as referee to conduct disciplinary proceedings.

On November 7, 2018, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions. These pleadings, the Conditional Guilty Plea for Consent Judgment, and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

In these proceedings, The Florida Bar is represented by Thomas Allen Kroeger, Bar Counsel, Miami Branch Office. Respondent is represented by Alejandro Alberto Diaz, Klein Glasser Park & Lowe, PL.

## II. FINDINGS OF FACT

A. Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

### B. Narrative Summary of Case.

1. Beginning in or about 2010, Respondent commenced legal representation of Gianni Gelleni ("Gelleni"), a Venezuelan national.
2. Respondent performed "general counsel services" while non-lawyer Bernard Bohn ("Bohn"), at Gelleni's direction, managed a variety of Gelleni's personal and business affairs in the United States.
3. Subsequently, Gelleni instructed and directed Respondent and Bohn to retain a US immigration attorney and pursue an E-2 investor visa to address certain US immigration issues.
4. In consultation with a US immigration attorney, Respondent, Bohn, and Gelleni decided to pursue an investment strategy to allow Gelleni to invest a substantial amount of capital in a U.S. business to qualify for an E-2 investor visa.

5. Consistent with the E-2 requirements, Respondent formed Corsa Enterprises, Inc. ("Corsa"), an entity to be wholly owned by Gelleni and to serve as the vehicle for the E-2 investment.
6. To further satisfy the E-2 requirements, Gelleni transferred \$250,000 to Corsa which in turn transferred the funds to Element America, Inc. ("Element America"), a business entity owned in equal shares by Respondent and Bohn, which provided advisory services to non-US investors and their families seeking to relocate to South Florida.
7. Consistent with and in reliance upon the advice of the US immigration attorney and the E-2 requirements, Element America was to pay an annual fee of 20% of its annual profit to Corsa in exchange for management services and the payment of business expenditures. This agreement was documented by a management agreement which was approved as to form by the immigration attorney in order to properly structure the transaction to satisfy the E-2 visa requirements.
8. Gelleni was fully aware of Respondent and Bohn's efforts to secure an E-2 visa on his behalf, and authorized the retention of an immigration attorney to assist Gelleni in structuring the

transaction and preparing the E-2 visa application, and was otherwise generally familiar with the transaction.

9. In reliance upon and in accordance with the immigration attorney's advice concerning E-2 visa requirements, and the terms of the management agreement, Element America utilized Gelleni's funds to satisfy capital expenditures (pre-payment of rent) and operational expenses.
10. Neither Respondent nor Bohn took any salary or other form of compensation from Element America before or during their relationship with Gelleni. Any monies received by Element America were invested in marketing, promotions, or other operational expenses.
11. Indeed, had Gelleni not terminated his involvement in the enterprise, he would likely have been in a position to qualify for an E-2 visa based upon the actions taken by Respondent, Bohn, and the immigration attorney on his behalf.
12. Moreover, even after Gelleni terminated his involvement in the enterprise, Respondent and Bohn continued to expend considerable time and effort in their attempts to market Element America.

13. However, notwithstanding the fact that Gelleni was generally familiar with the terms of the E-2 requirements, and the structure of the related investment to satisfy those requirements, strict compliance with Rule 4-1.8 was not effectuated. Neither the management agreement, nor any other contemporaneous writing, specifically informed Gelleni of the potential for a conflict of interest, advised Gelleni of the desirability of seeking independent counsel, or fully documented Gelleni's informed consent to the essential terms of the transaction and Respondent's role in the transaction.
14. By virtue of the foregoing, Respondent has violated Rules 4-1.7 (Conflict of Interest; Current Clients) and 4-1.8 (Conflict of Interest; Prohibited and Other Transactions) of the Rules Regulating The Florida Bar.
15. Had this matter proceeded to a final hearing, the parties acknowledge that, pursuant to Florida Standard for Imposing Lawyer Sanctions 9.32, the following mitigating factors would apply: a) absence of a prior disciplinary record; b) absence of a dishonest or selfish motive; d) timely good faith effort to make restitution or to rectify consequences of misconduct; and e) full

and free disclosure to disciplinary board or cooperative attitude toward proceedings.

### III. RECOMMENDATIONS AS TO GUILT

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

Rules 4-1.7 (Conflict of Interest; Current Clients) and 4-1.8 (Conflict of Interest; Prohibited and Other Transactions).

### IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

#### 4.3 Failure to Avoid Conflicts of Interest

4.33 Public reprimand is appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to the client.

#### 9.32 Mitigation

- a) absence of a prior disciplinary record;
- b) absence of a dishonest or selfish motive;
- d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

V. CASE LAW

I considered the following case law prior to recommending discipline:

*The Florida Bar v. Kramer*, 593 So. 2d 1040 (Fla. 1992) (attorney's failure to make full disclosure of the terms of a business transaction with a client warranted, under the facts, a public reprimand).

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

Public Reprimand, to be published in the Southern Reporter.

VII. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following personal history of Respondent, to wit:

Age: 64

Date admitted to the Bar: February 12, 1982

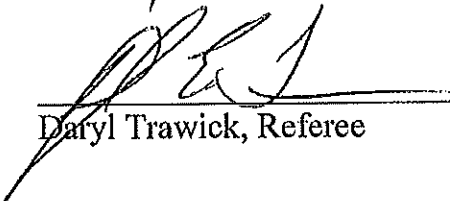
Prior Discipline: None

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

I find that The Florida Bar reasonably incurred costs in the amount of \$1,250.00. It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and that should such cost judgment not be

satisfied within thirty (30) days of said judgment becoming final, Respondent shall be deemed delinquent and ineligible to practice law, pursuant to R. Regulating Fla. Bar 1-3.6, unless otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 15 day of February, 2019.

  
\_\_\_\_\_  
Daryl Trawick, Referee

Original To:

John A. Tomasino, Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida, 32399-1927

Conformed Copies to:

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