

Fla. Atty Can't Beat Contempt Ruling Over Failed Apology

By **Madison Arnold**

Law360 (January 8, 2025, 4:17 PM EST) -- A Florida state appeals panel on Wednesday agreed that an attorney was in indirect criminal contempt when he failed to post an apology on a consumer reporting website as part of a settlement in his former counsel's suit against him over disparaging and allegedly defamatory comments made on the site.

In Wednesday's order, Judge Kevin Emas wrote that the Third District Court of Appeal upheld the indirect criminal contempt decision against attorney Daniel Kaplan as well as a monetary sanction of \$1,000. The panel did, however, toss the more than \$28,000 in attorney fees that the lower court imposed on Kaplan.

"We reverse that portion of the final judgment that determined plaintiffs were entitled to attorney's fees and costs as restitution in the indirect criminal contempt proceedings, and remand for entry of an amended final judgment consistent with this opinion," Judge Emas wrote.

Plaintiffs Kenneth B. Schurr and the Law Offices of Kenneth B. Schurr sued Kaplan as their former client for a disparaging post he made on consumer reporting website "Ripoff Report." The lawsuit was eventually resolved when a written settlement agreement was adopted by the trial court.

However, the settlement required Kaplan to immediately post an apology on the site, which he did not do, violating the terms of the settlement agreement, according to Wednesday's decision. Kaplan then responded with a series of three apologies, none of which were an exact match to the "carefully crafted" and agreed-upon apology language with Kaplan's facsimile signature below.

Indirect criminal contempt proceedings followed, leading the trial court to appoint plaintiffs' lead counsel, Raymond Rafool to prosecute the matter.

The court found Kaplan guilty and required him to pay \$1,000 to charity. Additionally, the court determined that the plaintiffs were entitled to "restitution" in the form of \$28,246.50 in attorney's fees incurred for their attorney's participation in the proceedings, a detail the panel took issue with Wednesday.

"We affirm without elaboration the trial court's final judgment holding Daniel Kaplan in indirect criminal contempt, concluding the trial court strictly complied with the requisite procedures for indirect criminal contempt, and there was competent substantial evidence to support its determination that Mr. Kaplan willfully violated a clear and definitive court order when he failed to immediately post the specific apology attached to the parties' settlement agreement," the panel said.

The appellate court said the trial court chose to appoint Rafool to assist the court in conducting the indirect criminal competent proceeding. While the choice is authorized under the rule of procedure regarding criminal contempt, it does not mean legal services provided by Rafool were automatically reimbursable as restitution, according to Wednesday's decision.

"And our conclusion remains the same even if (as Mr. Rafool testified) his client in the underlying litigation (Kenneth Schurr) paid Mr. Rafool for the legal services rendered by Mr. Rafool as the attorney appointed by the court to assist in the criminal contempt proceeding," the panel said.

Whether attorney fees are awardable as restitution is determined by the nature of contempt

proceedings, meaning were the proceedings intend to provide a remedy to Schurr and his law firm for services incurred in seeking the enforcement, which would be civil contempt, or to punish Kaplan for his violation of a court order, which would be criminal contempt.

"[I]t is clear that the proceedings at issue (resulting in the attorney's fees award challenged on appeal) were initiated by the trial court not for the purpose of coercing Mr. Kaplan's compliance, but to punish Mr. Kaplan for his repeated and intentional violation of the court's order, and to vindicate the authority of the court," Judge Emas wrote.

He added that the "services rendered by Mr. Rafool, and fees incurred (and paid) by Mr. Schurr were not reimbursable as 'restitution,' and the trial court erred in awarding attorney's fees to Mr. Rafool or Mr. Schurr on this basis."

Rafool and an attorney for Kaplan didn't immediately respond to a request for comment Wednesday.

Judges Kevin Emas, Edwin A. Scales III and Alexander S. Bokor sat for the Third District.

Kaplan is represented by Jay Levy of Jay M. Levy PA and Marcy S. Resnik of Kahn & Resnik PL.

Schurr is represented by Raymond J. Rafool of Rafool LLC and David Hazouri of Rottenstreich Farley Bronstein Fisher Potter Hodas LLP.

The case is Kaplan v. Schurr et al., case numbers 3D22-2167 and 3D23-1291, in the Third District Court of Appeal of Florida.

--Editing by Kelly Duncan.