

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

STEPHEN GUTIERREZ,

Respondent.

Supreme Court Case
No. SC19-562

The Florida Bar File
No. 2018-70,160 (11J)

REPORT OF REFEREE ACCEPTING CONSENT JUDGMENT

I. **SUMMARY OF PROCEEDINGS**

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, review of an Unconditional Guilty Plea and Consent Judgment for Discipline was undertaken. All pleadings, responses thereto, notices, motions, and orders, along with this report, constitute the record in this case and are forwarded to the Supreme Court of Florida.

The following attorneys acted as counsel for the parties:

On behalf of The Florida Bar: Rita Elizabeth Florez, Bar Counsel
The Florida Bar
444 Brickell Avenue, Suite M-100
Miami, Florida 33131

Keri T. Joseph, Bar Counsel
The Florida Bar
444 Brickell Avenue, Suite M-100
Miami, Florida 33131

On behalf of Respondent: Pro se

Respondent submitted an Unconditional Guilty Plea and Consent Judgment for Discipline (hereinafter "Consent Judgment"), which has been approved and signed by Respondent and Bar Counsel. Said Consent Judgment provides for Respondent to receive a ninety-one (91) day suspension and probation for two (2) years, a special condition of which is a rehabilitation contract with Florida Lawyer's Assistance, Inc. Additional details are set forth in the disciplinary recommendations section of this Report of Referee.

II. FINDINGS OF FACT:

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

B. Narrative Summary of Case.

In this Consent Judgment, Respondent admits certain factual matters, which I hereby accept and adopt as the finding of fact in this cause, to wit:

1. On April 14, 2016, Claudy Charles (“Charles”) was arrested on suspicion of setting fire to his own vehicle in an attempt to defraud his insurer.
2. On May 2, 2016, Respondent filed a notice of appearance on Charles’s behalf in the criminal case, styled *State of Florida v. Claudy Charles*, Miami-Dade County Circuit Case No. F16-7813.
3. Among other charges later nolle prossed, the Information charged Charles with second-degree arson alleging that Charles had set fire to his vehicle on January 9, 2016.
4. On June 14, 2016, Respondent filed a civil suit on Charles’s behalf against GEICO in the case styled *Claudy Charles v. GEICO Indemnity Ins. Co.*, Miami-Dade County Circuit Case No. 2016-015231-CA-01.
5. In the initial complaint, Respondent represented that the damage to Charles’s vehicle on January 9, 2016 was “caused by a vehicle collision in such a fashion as to cause substantial damage to the risk property.”.
6. The complaint alleged that Charles suffered losses in excess of \$200,000, that GEICO had failed to properly adjust his claim and, in denying it, had breached the terms of the underlying insurance policy.

7. On July 17, 2016, the State filed a notice of intent to offer evidence of a business record in the criminal case which consisted of a surveillance video. The video was inculpatory in nature, arguably indicating the defendant unsuccessfully attempting to set his car on fire, then leaving and returning to enter his parked vehicle. Shortly after, the vehicle erupted in flames.

8. On July 20, 2016, Respondent filed an amended complaint in the civil case again claiming that the damage was caused by a “vehicle collision.”

9. Thereafter, the criminal case went to trial. The defense was predicated on attacking the sufficiency of the state’s evidence in order to advance the defense theory of deployment of defective airbags.

10. As Respondent commenced his closing argument, smoke began billowing from his pocket; he then ran from the courtroom to the men’s restroom to extinguish the fire.

11. Upon Respondent’s return to the courtroom and questioning by the court, Respondent claimed that a battery used to charge phones and e-cigarettes broke in his pocket. He denied engaging in a stunt, asserting the combustion was a coincidence.

12. The court took the battery and reserved on the issuance of a rule to show cause in order that the battery could be examined. Respondent resumed his closing argument. The jury returned a guilty verdict as to second-degree arson.

13. The State subsequently announced an investigation into the circumstances surrounding the battery fire. In addition, the court rescheduled the case so that Charles could consider requesting the appointment of a new attorney.

14. The next day, March 16, 2017, Respondent filed a second amended complaint in the civil matter. Despite knowing that a jury had found Charles guilty of setting fire to his vehicle, the latest complaint still represented that the damage was the result of a “vehicle collision.”¹

15. On March 17, 2017, Charles requested new counsel in his criminal case. The Public Defender’s Office was appointed. Charles ultimately pleaded guilty to second-degree arson on May 11, 2017.

16. On May 15, 2017, the State issued a memorandum analyzing whether Respondent’s actions in the trial rose to the level of arson under Florida law. The memo opines that the State could likely establish that

1. At deposition in these disciplinary proceedings, Respondent offered that in his mind “vehicle collision” referred to the slamming of the car door.

Respondent willfully caused the courtroom fire, but not that he did so unlawfully. Opining that Respondent ignited the battery as an attempt to demonstrate to the jury the feasibility of spontaneous combustion—a legitimate purpose, in theory—the memorandum concludes that Respondent’s actions, while ethically problematic, did not rise to the level of arson under the applicable case law. Consequently, the State abandoned any efforts to hold Respondent in contempt or to seek criminal charges.

17. As for the civil case, despite Charles’s formal adjudication of guilt, Respondent did not withdraw, nor did he file a notice of voluntary dismissal until May 30, 2018. However, neither did Respondent take any affirmative action in furtherance of the civil lawsuit.

18. Respondent admits that his foregoing actions constitute a violation of the following Rules Regulating The Florida Bar: Rule 3-4.3 (... any act that is unlawful or contrary to honesty and justice), Rule 4-3.1 (meritorious claims and contentions), and Rule 4-8.4(d) (conduct prejudicial to the administration of justice).

III. RECOMMENDATIONS AS TO GUILT

Respondent admits and I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rule 3-4.3 (...any act that

is unlawful or contrary to honesty and justice), Rule 4-3.1 (meritorious claims and contentions), and Rule 4-8.4(d) (conduct prejudicial to the administration of justice).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

7.0: Violations of Other Duties Owed as a Professional

7.2: Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

V. CASELAW

I considered the following cases to be the most analogous to the instant proceedings for the purpose of recommending discipline:

The Florida Bar v. Burns, 392 So. 2d 1325, 1325 (Fla. 1981) (finding a 30-day suspension and public reprimand appropriate where Respondent appeared in court on a stretcher wearing pajamas)

The Florida Bar v. Richardson, 591 So. 2d 908 (Fla. 1991) (finding sufficient mitigation to reduce sanction to a 60-day suspension where attorney brought frivolous and malicious federal lawsuit)

The Florida Bar v. Kelly, 813 So. 2d 85 (Fla. 2002) (finding a 91-day suspension appropriate where counsel filed a frivolous lawsuit along with several rule violations).

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

It is recommended that after reviewing the record of these proceedings, I find that Respondent's plea, and the recommendation of The Florida Bar as to terms of discipline, are both fair to Respondent and in the best interest of the public. Accordingly, I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that Respondent receive the following discipline:

A. 91-day suspension.

B. Probation for a period of two (2) years. As a special condition of probation, Respondent will participate actively in the program offered by Florida Lawyer's Assistance, Inc. (FLA, Inc.), by signing a rehabilitation contract with that organization within thirty (30) days of the order of the Supreme Court approving this consent judgment. Should FLA, Inc. recommend a longer monitoring period than two years, Respondent agrees for the contract to be extended by no more than five (5) years from the date of the court order approving the consent judgment. The monitoring of Respondent's probation status shall be conducted under Supreme Court Case No. 15-1394.

Respondent will pay a Florida Lawyers Assistance, Inc., registration fee of \$250.00 and a probation monitoring fee of \$75.00 a month to The Florida Bar's headquarters office. All monthly monitoring fees must be remitted no later than the end of each respective month in which the

monitoring fee is due. All fees must be paid to the Bar's headquarters office in Tallahassee. *Failure to pay shall be deemed cause to revoke probation.*

VII. MITIGATION

I considered and found the following mitigation as set forth in the Consent Judgment in this cause:

9.32 Mitigation

9.32 Mitigating factors include:

- a) absence of prior discipline record;
- b) absence of a dishonest or selfish motive (while conceding that his conduct was improper, Respondent attributes it to his lack of experience and complete understanding of the true meaning of zealous advocacy, rather than dishonest or selfish motive);
- c) personal or emotional problems (Respondent's Consent Judgment indicates that he suffers from personal and emotional problems, having lost both his mother and sister to tragic occurrences during the relevant time period. Respondent has also been coping with his father's serious illness during the same time period. Additionally, following the events at issue, Respondent's wife initiated dissolution of marriage proceedings which added to Respondent's personal and emotional upset;
- f) inexperience in the practice of law (Respondent was admitted to The Florida Bar in 2015);
- h) Respondent suffers from impairments for which he has been receiving and will continue to receive treatment.
- l) remorse (Respondent's Consent Judgment reflects that he is remorseful for his conduct and its impact on both the justice system, the profession, and his client);

I further find that although he did not do so promptly, Respondent did ultimately dismiss the civil suit underlying this disciplinary action.

VIII. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

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

Age: 30

Date admitted to the Bar: September 5, 2015

Prior Discipline: None

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

It is recommended that The Florida Bar's Motion to Assess Cost by GRANTED, I find the following costs were reasonably incurred by The Florida Bar:

Administrative fee	\$1,250.00
Court Reporting Costs.....	1,006.00
TOTAL	\$2,256.00

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 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 4th day of September, 2019.


The Honorable Christine Bandin, Referee

Original To:

Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399-1927

Conformed Copies to:

Stephen Gutierrez, Respondent, via email to sg@sglawfirms.com

Rita E. Florez, Bar Counsel, via email to rflorez@floridabar.org

Keri T. Joseph, Bar Counsel, via email to kjoseph@floridabar.org

Allison Carden Sackett, Interim Staff Counsel, via email asackett@floridabar.org