

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

DAVID ALLEN BRENER,

Respondent.

Supreme Court Case

No. SC18-1944

The Florida Bar File Nos.

2019-10,269 (20C) (HES)

2019-10,240 (20C)

2019-10,293 (20C)

2019-10,297 (20C)

AMENDED
REPORT OF REFEREE

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, the following proceedings occurred:

On November 26, 2018, The Florida Bar filed a Petition for Emergency Suspension, with supporting affidavits, against Respondent, which was granted by the Supreme Court of Florida by Order dated November 28, 2018. The undersigned was duly appointed as Referee on December 4, 2018. Pursuant to Rule 3-5.2(a), Rules Regulating The Florida Bar, a Petition for Emergency Suspension shall constitute a formal complaint and requires Respondent to file an answer and any affirmative defenses within 20 days after the petition is docketed by the Supreme Court of Florida. Respondent's answer was due on or before December 16, 2018, but not later than December 21, 2018, to include the five (5) additional days for mailing and weekends. Respondent failed to file an answer or any other responsive pleading by the deadline. On December 21, 2018, The Florida Bar filed a Motion for Default and properly noticed the motion for hearing. On January 7, 2019, a telephonic case management conference and default hearing was held. Respondent failed to appear for the telephonic case management conference and default hearing after proper notice. On the same day, the undersigned granted The Florida Bar's Motion for Default and deemed all the

factual allegations as admitted and found Respondent guilty of the Rules charged by The Florida Bar. On February 22, 2019, a sanctions hearing was held to determine the appropriate discipline. Respondent was not present. The Bar presented several witnesses and documentary evidence. The undersigned took judicial notice of all of the underlying court records in each case presented in the Bar's petition and at the sanctions hearing. Any pleadings, responses thereto, notices, motions, orders, transcripts, exhibits and this Report constitute the record in this case and are forwarded to the Supreme Court of Florida.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: Chardean Mavis Hill, Esq.

For Respondent: *Pro Se*

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. I made the following findings of fact:

The Florida Bar's investigation of this matter has indicated Respondent has failed to appear at numerous court proceedings, most of which were hearings or trials in criminal cases, and has abandoned his clients without taking reasonable steps to protect their interests as set forth in further detail below. Respondent's abandonment of his practice and failure to appear for multiple court hearings has caused harm to his clients and to the legal system by causing unnecessary prejudice and delay.

TFB File No. 2019-10,269(20C), complaints by various judges from the 6th and 20th Judicial Circuits of Florida. Several judges before whom Respondent has pending cases reported that Respondent has failed to appear in court. *See Petition Exhibits B through G*. Due to Respondent's abandonment of his clients and cases, some of the judges before whom Respondent had pending cases were compelled to ask the clients whether they wanted to seek other counsel or the appointment of the public defender in order to protect their rights.

Honorable Holly T. Grissinger (Pinellas County): Respondent failed to appear before Judge Grissinger in State v. Ralph, 18-03660-MM, and in State v.

Ralph, 18-00494-CF, on at least nine (9) occasions, beginning in or about April 2018. Respondent was privately retained to represent Mr. Ralph, who was in custody, in both criminal cases. Respondent filed a notice of appearance on January 23, 2018, in Case No. 18-00494-CF, and on April 2, 2018, in Case No. 18-03660-MM. In both cases, Respondent failed to appear at several scheduled and duly-noticed hearings. He appeared at only one hearing. A trial date was scheduled for October 9, 2018, in both cases, with a trial readiness hearing scheduled for October 5, 2018. In both cases, Respondent failed to appear at the trial readiness hearing on October 5, 2018. Respondent's office was contacted and was told it was a mandatory appearance. Respondent failed to appear for the scheduled trial on October 9, 2018. Under oath, Mr. Ralph informed the trial judge that he had seen Respondent only once in court at the one pre-trial hearing on June 7, 2018, and had only one phone call with Respondent during the entire representation. Respondent was removed as counsel for Mr. Ralph after a pro se motion was made, and the public defender was immediately appointed under temporary status until the required financial information could be filed. On October 10, 2018, Mr. Ralph pled in both cases which resulted in time-served (271 days for Case No. 18-00494-CF and 213 days for Case No. 18-03660-MM), fines, and fees as the disposition in both cases. The State advised the court that the time-served disposition had been pending over three months. During the pendency of these cases, Respondent informed Judge Grissinger's office that he could not be present at the pre-trial hearings because he had a pinched nerve, a shoulder injury, his ex-wife had a heart attack, and his fiancé was Baker Acted in the Virgin Islands. Additionally, Judge Grissinger received a call from a Staff Attorney in Lee County who informed her that Respondent had failed to appear for an Order to Show Cause hearing in front of Judge Bruce Kyle that was issued due to Respondent's failure to appear for a criminal trial for which Respondent had informed Judge Kyle he could not attend because he was in front of Judge Grissinger for a trial, which was completely false.

Honorable Bruce E. Kyle (Lee County): Respondent failed to appear before Judge Kyle in State v. Benjamin, 17-CF-014693, on multiple occasions, beginning in or about October 2018. In or about December 2017, Respondent was privately retained to represent Mr. Benjamin, who was in custody, in Case No. 17-CF-014693. Respondent filed a notice of appearance on December 12, 2017. On or about December 18, 2017, the Court entered an order allowing the public defender to withdraw since Respondent had been privately retained. On Sunday, September 30, 2018, Respondent filed a Motion to Continue Trial set for October 1, 2018, indicating that he seriously injured his shoulder and arm while moving his residence causing him to be unable to write more than a few words without substantial pain and needs weeks to recover from the injury, and that his ex-wife

and mother of his daughters recently underwent emergency heart surgery which has greatly affected the functioning of his law office and personal life since the ex-wife was his legal assistant. On October 1, 2018, Respondent's motion was heard and denied. Judge Kyle offered reasonable alternatives to Respondent so that the proceeding could move forward and ordered that the trial commence on October 2, 2018, at 8:30am. Respondent failed to appear for the trial on October 2, 2018, at the time and date so ordered. However, Attorney Peter Ringsmuth appeared on Respondent's behalf indicating he had received a call from a despondent Respondent the night before requesting Attorney Ringsmuth to appear on his behalf. Respondent's office also left a message for Judge Kyle indicating that Respondent's shoulder was hurting and that he would not be coming to the October 2, 2018, trial date. Judge Kyle issued an Order to Show Cause in Case No. 17-CF-014693 based on Respondent's failure to appear at the trial without providing an explanation for his failure to appear. The Order to Show Cause was served on Respondent on October 3, 2018, while Respondent was in the courthouse set to appear before another judge. The show cause hearing was scheduled for October 8, 2018, at 8:30am; however, on the morning of the hearing, Respondent represented to Judge Kyle that he could not appear because he was to be in trial on the same date in Pinellas County. Based on Respondent's representation, the show cause hearing was rescheduled to October 17, 2018, with the trial in the matter rescheduled to October 22, 2018. Respondent's representation to Judge Kyle that he was scheduled to be in trial on October 8, 2018, in Pinellas County was false, misleading, and deceptive. Respondent failed to appear at the show cause hearing on October 17, 2018; however, his attorneys, Peter Ringsmuth and Christopher Cosden, did appear but had no information about Respondent's whereabouts. The show cause hearing was rescheduled to October 18, 2018. Respondent again failed to appear on October 18, 2018, resulting in Judge Kyle finding Respondent to be in contempt of court and issuing a Writ of Bodily Attachment. Case No. 18-MM-001508 was assigned to the contempt proceeding. As of the submission of Judge Kyle's affidavit, the Writ of Bodily Attachment has not been served on Respondent, who appears to be evading service. Respondent failed to appear for the scheduled trial date in Case No. 17-CF-014693 on October 22, 2018, which was rescheduled to October 23, 2018. Respondent failed to appear for the October 23, 2018, trial date. A pre-trial conference was scheduled for November 14, 2018, to allow the defendant Mr. Benjamin to secure other counsel or seek the appointment of the public defender. Respondent's failure to appear at these hearings has caused unnecessary prejudice and delay to his clients and the legal system. On or about October 26, 2018, the trial court received correspondence from what appears to be Mr. Benjamin's family expressing concern for Respondent's failure to appear, lack of communication, and having received

payment for representing Mr. Benjamin and failing to perform the services for which he was retained.

Honorable Margaret O. Steinbeck (Lee County): Respondent failed to appear before Judge Steinbeck in State v. Berthelette, 18-CF-015503, and in State v. Songer, 18-CF-016326, on multiple occasions, beginning in or about October 2018. For both matters, Respondent failed to communicate with the court or his clients about any inability to appear. The families of Mr. Berthelette and Mr. Songer expressed concern regarding their ability to get their money back from Respondent.

In or about April 2018, Respondent was privately retained to represent Mr. Berthelette, who was in custody, in Case No. 18-CF-015503. Respondent filed a notice of appearance on April 24, 2018. Respondent and Mr. Berthelette appeared at a pre-trial hearing on October 16, 2018, at which Respondent advised Judge Steinbeck that Mr. Berthelette wanted to accept a plea offer and that Respondent needed time to review and discuss the plea with his client. Respondent requested a plea date, which was discussed in open court before all parties and counsel. A plea acceptance hearing was scheduled for October 22, 2018, at 1:30pm. Respondent failed to appear at the plea acceptance hearing on October 22, 2018; however, Mr. Berthelette was present. The plea acceptance hearing was rescheduled for October 29, 2018. At the October 22, 2018, hearing, Mr. Berthelette advised that he had been trying to reach Respondent without success for about seven months and had not had any contact with Respondent outside of court proceedings. On October 23, 2018, Judge Steinbeck issued an Order Directing Defense Counsel to Appear, which was served on October 24, 2018, to Respondent by e-mail to the address provided on his notice of appearance and by mail by the Clerk of Court on October 24, 2018. Neither Respondent nor Mr. Berthelette appeared at the rescheduled plea acceptance hearing on October 29, 2018. However, the State reported the Mr. Berthelette had died.

In or about August 2018, Respondent was privately retained to represent Mr. Songer, who was in custody, in Case No. 18-CF-016326. Mr. Songer had been charged with serious felonies that carried strong sentences, including life for one of the charges. Respondent filed a notice of appearance on September 11, 2018. On October 16, 2018, the State filed and served a Notice of Hearing on the State's Motion for Medical Records, which was set to be heard on October 24, 2018. Judge Steinbeck's judicial assistant advised that she was informed that the hearing date and time was coordinated as is routine for "special set" hearings. Respondent failed to appear at the motion hearing on October 24, 2018; however, Mr. Songer

and the State were present. The motion hearing was rescheduled to October 29, 2018. Respondent failed to appear at the hearing on October 29, 2018. On October 24, 2018, Judge Steinbeck issued an Order Directing Defense Counsel to Appear, which was served on October 24, 2018, to Respondent by e-mail to the address provided on his notice of appearance and by mail by the Clerk of Court on the same date. The delay in Mr. Songer's case is not only prejudicial to the defendant, it is also prejudicial to the alleged victim.

Honorable Devin S. George (Lee County): Respondent failed to appear before Judge George in State v. Perry, 18-CT-502350, and in State v. Klick, 17-MM-026046, on multiple occasions, beginning in or about September 2018.

In or about September 2018, Respondent was privately retained to represent Mr. Perry in Case No. 18-CT-502350. Mr. Perry had been arrested in June 2018 for driving with a suspended license, second offense. At arraignment in June 2018, and at a docket sounding in July 2018, Mr. Perry advised that he would be hiring a private attorney. At a docket sounding on September 11, 2018, Attorney Christopher Brown appeared on behalf of Mr. Perry and advised the court that Respondent would be representing Mr. Perry and that Respondent asked Attorney Brown to convey the message to the court. Attorney Brown further advised that it was Respondent's intent to request a one-time continuance. The docket sounding was continued to October 19, 2018. At the September 11, 2018, docket sounding, Judge George advised Attorney Brown that Respondent had not yet entered a notice of appearance, to which Attorney Brown responded that Respondent was aware and would be filing the notice by the end of the day. Respondent failed to appear for the October 19, 2018, docket sounding; however, Mr. Perry was present and advised the court that he had, in fact, hired Respondent to represent him but that he "had no idea where [Brener] is now." No other attorney was present on his behalf and the case was continued to allow Mr. Perry to obtain new counsel. Respondent never filed a notice of appearance on behalf of Mr. Perry, and never appeared at any court hearing on Mr. Perry's behalf.

In or about September 2018, Respondent was privately retained to represent Mr. Klick, who was in custody, in Case No. 17-MM-026046. In March 2018, a warrant and affidavit were issued for Mr. Klick for violation of probation charges. Respondent filed a notice of appearance on September 25, 2018. Mr. Klick was arrested on the warrant and held in custody on September 28, 2018. A first appearance hearing was held on September 29, 2018, at which Respondent failed to appear. However, nobody mentioned on record that an appearance had been entered by Respondent, therefore, the public defender was provisionally appointed

in open court. Subsequently, it was clarified that Respondent was counsel of record. On October 4, 2018, an amended warrant and affidavit were filed. Another first appearance hearing was held on October 5, 2018, at which Respondent failed to appear, but the scheduled violation of probation advisement hearing remained set for October 8, 2018. Respondent failed to appear at the October 8, 2018, hearing. Mr. Klick advised that he had retained Respondent. The hearing was continued to October 23, 2018, since Judge George had been advised that Respondent was in a “long hearing” and could not attend. Respondent failed to appear at the October 23, 2018, hearing and failed to notify the court of his non-appearance. Mr. Klick informed the court that he had not had any contact with Respondent since his arrest on the violation of probation. The court informed Mr. Klick that his attorney could not be located, asked him whether he wanted the public defender to be appointed in this matter since he had other matters pending for which he was being represented by the public defender, and removed Respondent as counsel of record. Judge George noted that the court records reflect that Respondent has filed notices of appearance on Mr. Klick’s behalf in other cases – 18-MM-20412 and 18-CT-500417.

Honorable Maria E. Gonzalez (Lee County): Respondent failed to appear before Judge Gonzalez in State v. Carter, 18-MM-020388, in State v. Jones, 17-MM-025667, in State v. Peters, 18-CT-501606, and in State v. Filardi, 18-MM-022917, on multiple occasions, beginning in or about October 2018.

In or about February 2018, Respondent was privately retained to represent Mr. Carter in Case No. 18-MM-020388. Respondent filed a notice of appearance on February 12, 2018. A jury trial was scheduled for October 23, 2018, at which neither Respondent nor Mr. Carter were present. The matter was set for docket sounding on November 16, 2018, as a mandatory court appearance. In or about April 2018, Respondent was privately retained to represent Mr. Jones in Case No. 17-MM-025667. Respondent filed a notice of appearance on April 12, 2018. A jury trial was scheduled for October 23, 2018, at which Respondent failed to appear. Mr. Jones advised the court that he had not heard from Respondent and requested additional time to seek or retain other counsel, which Judge Gonzalez allowed. The matter was set for a docket sounding on November 16, 2018.

In or about June 2018, Respondent was privately retained to represent Ms. Peters in Case No. 18-CT-501606. Respondent filed a notice of appearance on June 26, 2018. A jury trial was scheduled for October 23, 2018, at which Respondent failed to appear. Ms. Peters advised the court that she had not heard from Respondent, and was advised by the court that she could secure new counsel

or seek appointment of the public defender. Ms. Peters met the indigency requirements and the public defender was appointed. The matter set for a docket sounding on November 16, 2018. Judge Gonzalez also ordered Respondent to turn over all medical records to the public defender's office.

In or about August 2018, Respondent was privately retained to represent Ms. Filardi in Case No. 18-MM-022917. Respondent filed a notice of appearance on August 10, 2018. On or about October 16, 2018, Ms. Filardi's bond was revoked and she was remanded to custody pending trial. A jury trial was scheduled for October 23, 2018, at which Respondent failed to appear. Ms. Filardi advised the court that she had not heard from Respondent, and was advised by the court that she could secure new counsel or seek appointment of the public defender. Ms. Filardi met the indigency requirements and the public defender was appointed. Ms. Filardi was able to enter into a plea and the matter was resolved.

Honorable Ramiro Manalich (Collier County): Respondent failed to appear before the Honorable Ramiro Manalich, Collier County, in State v. Frydberg, 17-CF-002126, beginning in or about October 2018. Respondent filed a notice on appearance on May 16, 2018. During a calendar call hearing on September 11, 2018, the case was set for a pre-trial conference on October 15, 2018. Respondent failed to timely appear at the pre-trial conference on October 15, 2018. When the case was first called, Respondent was not present; however, upon Respondent's late arrival the court recalled the case and set it for a calendar call to be held on November 6, 2018, with a corresponding jury trial date commencing November 13, 2018, while Respondent was present in open court. Respondent failed to appear at the November 6, 2018, calendar call. Mr. Frydberg informed the court that he had not heard from Respondent since the court proceeding and has not been successful in reaching Respondent. Mr. Frydberg obtained new defense counsel, Nico J. Vitale and Domenico Lucarelli, who filed a notice of appearance and the court removed Respondent as defense counsel.

TFB File No. 2019-10,240(20C), complaint of Patricia Costello. Ms. Costello hired Respondent in January 2018 to represent her son, Ryan Costello, in a criminal appeal. Mrs. Costello paid Respondent \$10,000 to represent her son. Respondent abandoned the representation of Mr. Costello. Respondent last communicated with Mr. Costello or his family in or about February 2018. On or about May 9, 2018, Mr. Costello received a notice from the court stating that Respondent never filed the brief in the matter despite being granted an extension to file it. Mrs. Costello immediately called Respondent's office to speak with him about his failure to file the brief; however, Respondent's office staff provided

excuses for why Respondent was not available and had not completed the services for which he was hired and received \$10,000. When speaking to Respondent's staff, Mrs. Costello asked for the return of her son's court's documents that were in a large box. The documents have not been returned to Mrs. Costello. Respondent also failed to issue a refund to Ms. Costello. Also, the Bar notified Respondent of the grievance filed by Ms. Costello by letter dated October 17, 2018, and required his written response by November 1, 2018. Respondent failed to provide his required response to Ms. Costello's grievance

TFB File No. 2019-10,293(20C), complaint of Ismonde Luberisse. Ms. Luberisse hired Respondent to represent Jose Andino in a criminal matter. Respondent abandoned the representation of Mr. Andino. Respondent failed to appear in court on Mr. Andino's behalf on October 31, 2018. Respondent has not responded to Ms. Luberisse's attempts to contact him about the status of the representation. The Bar notified Respondent of the grievance filed by Ms. Luberisse by letter dated November 6, 2018, and required his written response by November 21, 2018.

TFB File No. 2019-10,297(20C), complaint of Marquis Goodman. Mr. Goodman hired Respondent to represent him in a criminal matter. Respondent abandoned the representation of Mr. Goodman. By letter dated September 29, 2018, Mr. Goodman asked Respondent to withdraw from the representation due to Respondent's failure to communicate with him about representation and other issues. By letter dated October 8, 2018, Mr. Goodman asked for a refund and has not received a response from Respondent. The refund was requested due to Respondent's abandonment of the case and failure to appear before Judge Steinbeck at a hearing. The Bar notified Respondent of the grievance filed by Mr. Goodman by letter dated November 6, 2018, and required his written response by November 26, 2018.

At the sanctions hearing, the Bar presented evidence and testimony from several persons affected by Respondent's misconduct in addition to the facts in the petition filed by the Bar. These witnesses testified as to the harm caused by Respondent. A summary of each witnesses' testimony is below.

1. *Patricia Costello*. Ms. Costello testified about hiring Respondent for the appeal of her son's criminal case. She testified that her son had been convicted for destroying evidence and for child endangerment which resulted in the child's death. He had been sentenced to 30 years following a jury trial. After Respondent abandoned the representation, Ms. Costello's ex-husband (son's father) and his

new wife were able to come up with additional funds to hire another attorney, Chris Brown. Ms. Costello also testified that she reached out to Respondent's office to get the large box of files back, and was told the files could not be located. She further testified that she has not received a refund either. The undersigned finds that Respondent is not entitled to keep the funds received for the representation given he failed to perform the services for which he was retained. The underlying case numbers provided by Ms. Costello are 10-CF-17419 and 10-CF-17525 (Lee County). The undersigned took judicial notice of the full underlying court file.

A review of the court record in Case No. 10-CF-17525 reflects that Respondent filed a notice of appearance in January 2018 to handle a motion for post-conviction relief. Mr. Costello had filed a *pro se* motion a few months before Respondent filed his appearance.

2. *Ismonde Luberisse*. Ms. Luberisse testified that she hired Respondent to represent her fiancé Jose Andino. She testified that Mr. Andino was arrested in June 2018 and charged with child abuse of his minor child who was 10 at the time of the allegations. Ms. Luberisse states she met with Respondent about three times and paid \$3,000 for the representation. The underlying case number is 18-CF-16982 (Lee County). The undersigned took judicial notice of the full underlying court file.

A review of the court record in Case No. 18-CF-16982 reflects that Respondent filed a notice of appearance in July 2018 to represent Mr. Andino. The court record shows activity between July 2018 and November 2018. Respondent was removed as counsel per request of Mr. Andino in open court on November 19, 2018, and the public defender was appointed.

3. *Steven Songer*. Mr. Songer testified about hiring Respondent to represent his brother, Johnny Songer, in August 2018, who had been charged with kidnapping/ false imprisonment and domestic battery. Mr. Songer testified that he was acquainted with Respondent through a female friend whom Respondent was dating. Respondent charged \$8,000 for the representation; however, Mr. Songer only paid \$3,000 down. Mr. Songer provided a receipt for the funds paid. See TFB Exhibit 2. Mr. Songer also had copies of text messages showing his communications with Respondent, some of which were improper. See TFB Exhibit 3. The text messages express Mr. Songer's eagerness for Respondent to take the matter seriously, to contact his brother, and to get the case moving as the brother was facing serious criminal charges. Mr. Songer testified that Respondent

only visited his brother once and has missing come court appearances. Judge Steinbeck's affidavit included the missed appearances. Mr. Songer and his family had to find other funds to hire another attorney to take over the representation. Mr. Songer requested a refund, but has not received any response. The undersigned finds that Respondent is not entitled to keep the funds received for the representation given he failed to perform the services for which he was retained, and that a full refund is appropriate.

The underlying case number is 18-CF-16326 (Lee County). The undersigned took judicial notice of the full underlying court file. A review of the court record in Case No. 18-CF-16326 reflects that Respondent filed a notice of appearance on September 11, 2018, to represent Mr. Songer.

4. *David Dussard.* Mr. Dussard, who is incarcerated on a domestic violence conviction, testified that Respondent was hired in April 2016 to represent him in a criminal matter involving a 3.850 motion for post-conviction relief. After receiving payment, Mr. Dussard testified that Respondent never filed the motion and ceased communicating. Respondent charged \$10,000 for the representation, but the agreement was to pay \$5,000 to start and the \$5,000 balance when the motion was filed. Mr. Dussard paid the initial \$5,000 through his family. He testified that his family, Doreen Daly and Marian Wright, tried to communicate with Respondent on his behalf, but to no avail. Mr. Dussard testified that he ultimately filed a *pro se* motion so that he would not miss the deadline. Mr. Dussard requested a refund, but has not received any response. The undersigned finds that Respondent is not entitled to keep the funds received for the representation given he failed to perform the services for which he was retained, and that a full refund is appropriate.

The underlying case number is 15-CF-14834 (Lee County). The undersigned took judicial notice of the full underlying court file. A review of the court record in 15-CF-14834 reflects that no notice of appearance was ever filed by Respondent and that Mr. Dussard filed a *pro se* motion in September 2018.

5. *Marquis Goodman.* Mr. Goodman, who is incarcerated, testified that he hired Respondent in June 2018 after being arrested for violating probation in 13-CF-18962 (Lee County). He paid Respondent \$2,100 for the representation. Mr. Goodman had also been arrested and charged with new crimes (grand theft and depositing funds with intent to defraud) in June 2018, filed under case numbers 18-CF-00255, 18-CF-16603, and 18-CF-17495 (Lee County). Mr. Goodman testified that Respondent stated in open court that he would also represent him on the new

cases; however, Respondent never filed a notice of appearance on those cases and Mr. Goodman ended up being represented by the public defender's office. Mr. Goodman testified that he sent Respondent a letter on September 29, 2018, asking him to withdraw/terminate the representation. He sent another letter to Respondent on October 8, 2018, asking for a partial (\$800) refund of the \$2,100 paid. Mr. Goodman did not ask for a full refund considering Respondent had done some work and had appeared in court a few times. Respondent did not respond to Mr. Goodman's requests; however, Mr. Goodman testified that in a subsequent hearing before Judge Steinbeck, Respondent was withdrawn and walked out of the courtroom. The undersigned finds that Respondent is not entitled to keep the funds received for the representation given he failed to complete the services for which he was retained, and a partial refund is appropriate. Mr. Goodman ultimately reached a global resolution for the violation of probation (60 months) and new charges (40 months) to run concurrently. Mr. Goodman testified that he trusted Respondent, is embarrassed by Respondent, had to learn on the news that Respondent had his own legal troubles and had stopped coming to court on behalf of his clients.

The undersigned took judicial notice of the full underlying court files. The court record in 13-CF-18962 reflects that Respondent filed a notice of appearance in June 2018 for the violation of probation case. The record further reflects that Respondent was present at a hearing on October 15, 2018, and was withdrawn from the representation.

6. *Aron Frydberg.* Mr. Frydberg testified that he hired Respondent in May 2018 to represent his son, Aric Frydberg, who had been charged with assaulting a police officer, fleeing/evading by driving off, and possession of marijuana in November 2017. Mr. Frydberg testified about his son's extensive mental health history, hospitalizations, and in-out of jail. Mr. Frydberg testified that he paid Respondent \$7,500 by credit card and requested a receipt from Respondent, which he never received. However, Respondent did confirm the payment in a text message on June 22, 2018. See TFB Exhibit 5. Respondent had also communicated with Mr. Frydberg by text indicating he would go see Aric, but did not go on the date promised. He testified that he believed Respondent visited Aric once on July 1, 2018. After several attempts to communicate with Respondent about the status of the representation, Mr. Frydberg learned that Respondent had missed court appearances. Judge Manalich's affidavit included the missed appearances. Mr. Frydberg also learned that Respondent had not file any documents in his son's case. Mr. Frydberg hired new counsel to represent his son after borrowing funds. Mr. Frydberg further testified that his son has been in jail

for 14 months, has a \$100,000 bond, and that he had to wait some months before he could come up with the funds to hire Respondent. Mr. Frydberg felt as though Respondent swindled him out of his money and desired a refund. The undersigned finds that Respondent is not entitled to keep the funds received for the representation given he failed to complete the services for which he was retained, and that a full refund is appropriate.

The underlying case number is 17-CF-2126 (Collier County). The undersigned took judicial notice of the full underlying court file. The court record in 17-CF-2126 reflects that Respondent filed a notice of appearance on May 16, 2018. The record also reflects that Respondent arrived late on October 15, 2018, after the case had already been called, and that a date was set for a hearing in November. New counsel filed a notice of appearance on November 5, 2018.

7. *Catherine Peters.* Ms. Peters testified that she hired Respondent in June 2018 to represent her for a DUI matter. Ms. Peters was charged \$1,500 for the representation. She paid \$500 cash on June 14, 2018, and \$1,000 by check on June 19, 2018, and had proof of her payments. The receipt was signed by Jill Brener, known to her as Respondent's assistant and former spouse. See TFB Exhibit 6. She stated that Respondent requested several continuances and then disappeared in or about October 2018. Ms. Peters testified that she also lives in the same condo complex as Respondent. Ms. Peters testified that she appeared at a hearing in front of Judge Gonzalez on October 23, 2018; Respondent was not present. She was advised by Judge Gonzalez that she could seek to have the public defender's office appointed, at which time a provisional appointment was granted. Judge Gonzalez also ordered Respondent to turn over all medical records to the public defender's office. Judge Gonzalez's affidavit includes the missed appearance and order to turn over medical records. Respondent did not turn over the medical records. Ms. Peters testified that she has tried to obtain the records herself from Respondent's office and that Jill Brener had a power of attorney, but would not provide her with the records. She also asked for a refund and has not received a response by Respondent. The undersigned finds that Respondent is not entitled to keep the funds received for the representation given he failed to complete the services for which he was retained, and that a full refund is appropriate.

The underlying case number is 18-CT-501606 (Lee County). The undersigned took judicial notice of the full underlying court file. The court record in 18-CT-501606 reflects that Respondent filed a notice of appearance on June 26,

2018, made some court appearances in July and September where he sought continuances, and did not appear on October 23, 2018.

At the sanctions hearing, the Bar also provided an affidavit from its Auditor, Patrick Dougherty, regarding Respondent's trust accounts. See TFB Exhibit 1. Respondent had two trust accounts at the time of the emergency suspension order. One account was with Edison National Bank and the other was with Bank of America. The trust account with Edison National Bank was closed on November 30, 2018, after a final withdrawal was made on November 30, 2018. This withdrawal occurred before the bank received notice to freeze the trust account pursuant to the November 28, 2018, emergency suspension order. The trust account with Bank of America had a balance of \$12,469.40, which had been in the account for a lengthy period of time. Upon Bank of America's receipt of the November 28, 2018, emergency suspension order and notice to freeze the trust account, the funds were placed in a temporary holding account until such time as an order is received regarding the subject funds. The Bar was not able to determine to whom the funds in the Bank of America trust account belonged. The undersigned entered an order directing Bank of America to escheat the funds to the State of Florida Bureau of Unclaimed Property and provide proof of same to The Florida Bar.

III. RECOMMENDATIONS AS TO GUILT.

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

Rule 4-1.3 (Diligence); **Rule 4-1.4** (Communication); **Rule 4-1.5** (Fees and Costs for Legal Services); **Rule 4-1.16** (Declining or Terminating Representation); **Rule 4-3.2** (Expediting Litigation); **Rule 4-8.4(c)** (Misconduct – a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); **Rule 4-8.4(d)** (Misconduct – a lawyer shall not engage in conduct prejudicial to the administration of justice); and, **Rule 4-8.4(g)** (Misconduct – a lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency).

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

4.4 Lack of Diligence

4.41 Disbarment is appropriate when: (b) a lawyer knowingly fails to perform services for a client or causes serious or potentially serious injury to a client; or (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

6.1 False Statements, Fraud, and Misrepresentation

6.11 Disbarment is appropriate when a lawyer (a) with the intent to deceive the court knowingly makes a false statement or submits a false document

7.0 Violations of Other Duties Owed as a Professional

7.1 Disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

9.22 Aggravating Factors:

(b) dishonest or selfish motive

(c) pattern of misconduct - Respondent has exhibited a pattern of misconduct by abandoning his law practice; failing to diligently represent his clients; failing to properly communicate with his clients; and failing to respond to The Florida Bar's inquiries

(d) multiple offenses - Respondent has engaged in multiple violations of the Rules Regulating The Florida Bar and failed to properly represent multiple clients

(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency - Respondent failed to participate in these proceedings, and failed to respond to The Florida Bar's Petition for Emergency Suspension and motion for default.

(g) refusal to acknowledge wrongful nature of misconduct - Respondent has failed/refused to acknowledge the wrongfulness of abandoning his law practice.

(h) vulnerability of victim - clients and their families placed their trust in Respondent to handle their criminal cases; several have been negatively impacted by Respondent's lack of services and abandonment of his practice.

9.32 Mitigating Factor:

(a) absence of a prior disciplinary record

V. CASE LAW

I considered the following case law prior to recommending discipline:

In *Florida Bar v. Lord*, 433 So. 2d 983, 986 (Fla. 1983), The Supreme Court of Florida defined the three objectives of attorney discipline as follows: (1) fairness to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer; (2) fairness to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation; and (3) deterrence to others who might be prone or tempted to become involved in like violations.

In *Florida Bar v. Vaughn*, 608 So. 2d 18, 21 (Fla. 1992), that Supreme Court of Florida stated that a respondent's fitness to practice law is relevant to a determination of an appropriate sanction. The Court said, "The single most important concern of the Court in defining and regulating the practice of law is the protection of the public from incompetent, unethical, and irresponsible representation. The very nature of the practice of law requires that clients place their lives, their money, and their causes in the hands of their lawyers with a degree of blind trust that is paralleled in very few other economic relationships. Our primary purpose in the disciplinary process is to assure that the public can repose

In *Florida Bar v. Davis*, 149 So. 3d 1121 (Fla. 2014), an attorney was disbarred for neglecting a client matter, accepting a fee and failing to perform services for which he was paid, and failing to participate in the disciplinary proceeding. Davis had a prior disciplinary history consisting of a public reprimand for neglecting client cases. Further, the Court cited to *Florida Bar v. Bartlett*, 509 So. 2d 287 (Fla. 1987), in reaching its basis for discipline.

In *Florida Bar v. Bartlett*, 509 So. 2d 287 (Fla. 1987), the Supreme Court of Florida disbarred an attorney who agreed to represent a client regarding a real property matter, accepted a fee, and promised to resolve the matter quickly. Thereafter, he took no action on the matter and retained the fee. Bartlett had been disciplined twice in the previous two and a half years, receiving a 30-day suspension for trust account violations, and a 15-month suspension for neglect and misrepresentation. Bartlett failed to appear in the disciplinary proceedings and did not file an appeal. The Supreme Court of Florida requested the parties to submit briefs, but Bartlett failed to do so. In approving the referee's recommendation of

disbarment, the Court considered Bartlett's willful refusal to participate in the disciplinary process. *Id.* at 289. The Court stated, "a lawyer's willful refusal to participate at all in the disciplinary process when he is accused of misconduct calls into serious question the lawyer's fitness for the practice of law." *Id.*

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:

- A. Respondent shall be permanently disbarred.
- B. Respondent shall pay restitution to Patricia Costello in the amount of \$10,000; to Steven Songer in the amount of \$3,000; to David Dussard in the amount of \$5,000; to Marquis Goodman in the amount of \$800; to Aron Frydberg in the amount of \$7,500; to Catherine Peters in the amount of \$1,500. Restitution shall take priority over payment of disciplinary costs. Should Client's Security Fund make any disbursements to any of Respondent's clients with legitimate claims, in part or in full, Respondent shall reimburse Client's Security Fund for any such amounts.
- C. Respondent shall pay The Florida Bar's costs in this disciplinary proceeding.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

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

Age: 59

Date admitted to the Bar: January 22, 1988

Prior Disciplinary Convictions and Disciplinary Measures Imposed Therein: By Order dated November 28, 2018, Respondent was emergency suspended effective December 28, 2018, in this matter.

The Referee notes that Respondent is not Florida Board Certified in any area of practice.

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

I find the costs set forth in The Florida Bar's Motion to Assess Costs and Statement of Costs filed in this cause were reasonably incurred and were not unnecessary, excessive, or improperly authenticated.

Administrative Costs pursuant to Rule 3-7.6(q)	\$1,250.00
Bar Counsel Costs	\$ 50.63
Court Reporter Costs	\$ 335.00
Audit Costs	\$ 262.50
Investigative Costs	\$ 353.42
TOTAL COSTS	\$2,251.55

It is recommended that the costs itemized in The Florida Bar's Statement of Costs in the total sum of **\$2,251.55** be charged to Respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar. If not paid, 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 8th day of March, 2019.

/s/ Mark D. Singer

Mark Douglas Singer, Referee

Original to:

Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida, 32399-1927, and via electronic mail to e-file@flcourts.org

Copies provided to:

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