

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

PETER DALE FELLOWS,

Respondent.

Supreme Court Case
No.

The Florida Bar File Nos.
2015-70,548(11C)
2015-70,644(11C)

COMPLAINT OF THE FLORIDA BAR

The Florida Bar, Complainant, files this complaint against Peter Dale Fellows, Respondent, pursuant to the Rules Regulating The Florida Bar and alleges as follows:

1. Respondent is, and at all times mentioned in the complaint was, a member of The Florida Bar, admitted on May 3, 1999, and subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent practiced law in Miami-Dade County, Florida, at all times material.
3. The Eleventh Judicial Circuit Grievance Committee "C" found probable cause to file this Complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

COUNT ONE: THE FLORIDA BAR FILE NO. 2015-70,548(11C)

4. At all times material to this complaint, Phillip Thompson (“Thompson”), was the record owner of property located at 13282 NW 18th Street, Pembroke Pines, Florida 33028 (the “property”), having acquired title via a warranty deed executed on January 30, 2006.

5. Owing to financial difficulties, on December 4, 2008, Thompson petitioned for Chapter 7 bankruptcy protection and sought to surrender his interest in the property. An order of discharge was entered on March 17, 2009; however, unbeknownst to Thompson, he was not discharged from his obligation as mortgagor. In May of 2009, Deutsch Bank initiated foreclosure proceedings.

6. In or about early 2013, Thompson received an unsolicited telephone call from Sherine Wright (“Wright”), a non-lawyer assistant who provided administrative support services to Respondent. She encouraged Thompson to meet with Respondent to discuss the status of the property.

7. Thompson met with Respondent and learned that, despite the bankruptcy proceedings and the fact that he no longer resided at the home, he was still the record owner of the property and bound by the mortgage note. Ultimately, Thompson retained Respondent to represent him in the foreclosure proceedings and to assist in procuring a short-sale of the home.

8. Over the course of the next year, Thompson regularly met with Wright, at all times operating under the belief that she was acting as an employee/agent of Respondent, and provided her with copies of bank statements, paycheck stubs and other financial documents. These meetings took place at Respondent's law office.

9. In or about September of 2013, Thompson executed a residential real estate contract listing Wright Time Now, Inc., as the buyer of the home. According to Florida Department of State records, Sherine Wright was Wright Time's president, and its principal place of business was listed as Respondent's then-record bar address. Thompson was not aware of this at the time he entered into the transaction.

10. Subsequent to the execution of the contract, the transaction languished. Becoming concerned, Thompson's wife, Neisha Mcleish-Thompson, proceeded to contact the homeowners' association and learned that someone was actively living in the residence.

11. Thompson and his wife gained access to the residence and discovered that Wright and Respondent appeared to be living in the home. They found mail addressed to both Respondent and Wright, as well as photos depicting the two of them together.

12. A copy of the access control file print-out for the residence (which records the individuals who had access to the complex via a key card) lists Wright and Respondent as “permanent guests” since February of 2013.

13. Respondent was able to obtain permanent guest access for himself and Wright through the use of a power of attorney he had Thompson execute in his favor. The power of attorney granted Respondent the authority to communicate directly with the homeowners’ association and sign all real estate documents on Thompson’s behalf. Thompson denies knowingly or intelligently executing the power of attorney, and alleges that Respondent failed to adequately explain the significance of the document.

14. After learning of this, Thompson terminated Respondent’s services.

15. Despite Thompson requesting that Wright (and Respondent) vacate the property, she did not do so. In addition, despite terminating Respondent, Wright wrote to Thompson’s new attorney stating that she believed that Thompson was being coerced into making statements that were untrue, thereby revealing information Thompson had conveyed to Wright in the context of his attorney-client relationship with Respondent. In addition, Thompson alleges that Wright confronted him at his place of employment and advised him to terminate his successor attorney and rehire Respondent.

16. At no point during Respondent's representation of Thompson did he disclose the nature of his personal relationship with Wright, that Wright would reside in the property, or that he would live and/or maintain access to the property.

17. In addition, Respondent failed to adequately explain the significance of various legal documents he required Thompson to execute.

18. Thompson was ultimately forced to take legal action against Wright to remove her from the property.

19. By reason of the foregoing, Respondent has violated the following Rules Regulating The Florida Bar: Rules 4-1.2 (Objectives and Scope of Representation); 4-1.7 (Conflict of Interest; Current Clients); 4-1.8 (Conflict of Interest; Prohibited and Other Transactions); 4-1.9 (Conflict of Interest; Former Client); 4-5.3 (Responsibilities Regarding Nonlawyer Assistants); and 4-7.18 (Direct Contact with Prospective Clients).

COUNT TWO: THE FLORIDA BAR FILE NO. 2015-70,644(11C)

20. In or about March of 2014, Michaele Nicolas ("Nicolas") consulted with Respondent relative to a child custody matter. Nicholas agreed to pay Respondent \$500.00 to review the court file and discuss her potential options.

21. At a subsequent meeting, Respondent indicated that he would charge a fee of \$1,500.00 plus costs to commence with the representation.

22. In or about July of 2014, Nicolas visited Respondent's office and made a payment of \$1,000.00. Respondent then prepared several pleadings for Nicolas' review; however, Nicolas never visited Respondent's office to review the pleadings, and no other contact took place between the two until January of 2015.

23. Respondent claims to have prepared a retainer agreement after receipt of the \$1,000.00 payment. However, the agreement was never forwarded to Nicolas, and at all times she operated under the belief that Respondent would refund the fees if she did not need his services.

24. On January 20, 2015, Nicolas emailed Respondent stating that she did not need representation because the father of her child was no longer seeking custody. She requested a refund.

25. Respondent replied that he would not refund any monies as the fee was non-refundable and earned upon receipt.

26. Prior to this email, Respondent had not communicated with Nicolas about the status of the representation since July of 2014.

27. In addition, at no time prior to this email had Respondent explained to Nicolas that her funds were nonrefundable.

28. Nicolas emailed Respondent again on January 22, 2015, expressly terminating him, asking for a copy of any documents he filed on her behalf, and

requesting a complete invoice. She followed up with a similar email on January 29, 2015.

29. Respondent did not provide the requested documents, and did not believe he had an obligation to do so as he did not consider the representation terminated.

30. In or about March of 2015, Nicolas went to Respondent's office at which point he attempted to make a partial refund. Nicolas refused to accept the partial refund and maintained that she was not provided with her file, the draft pleadings or the billing statement.

31. During the course of the investigation below, Respondent was asked to produce these documents in their original format. Respondent was to provide the documents no later than 2:00 p.m. on February 1, 2016.

32. On February 1, 2016, at 2:00 p.m., Respondent sent an email claiming to attach the following documents:

- A. a PDF file titled "Nicolas engagement";
- B. pleadings generated in Microsoft Word;
- C. a PDF file of the court record;
- D. a PDF file of two checks made payable to Nicolas; and
- E. a Microsoft Word document titled Nicolas "bill."

33. No documents were attached to the email.

34. At 3:18 p.m., Respondent sent another email which did attach the documents. The corresponding metadata indicated that all documents had been created that same day, February 1, 2016. The “Nicolas engagement” document reflected that it was created at 2:29 p.m., and modified again at 2:49 p.m. The Nicolas “bill” reflected that it was created at 3:17 p.m. The Microsoft Word pleadings reflected that they were created at 9:01 a.m., and modified at 1:55 p.m.

35. When confronted with this information, Respondent replied that he had his assistant retype the pleadings and invoice because he only had hard copies of the originals. Respondent could not explain why he did not simply scan the documents and provide them in a PDF format. He further had no explanation as to why the documents indicated creation times after 2:00 p.m. when he had represented in his initial email that they were attached.

36. In a further effort to resolve these issues, an attempt was made to speak with Respondent’s assistant, Sherine Wright, who did not answer the phone. The next day, February 2, 2016, Respondent indicated that he was in a relationship with Wright and that the two currently resided together.

37. By reason of the foregoing, Respondent has violated the following Rules Regulating The Florida Bar: Rules 4-1.2 (Objectives and Scope of Representation); 4-1.4 (Communication); 4-1.5(e)(1) (Fees and Costs for Legal Services; Duty to Communicate Basis of Rate of Fee or Costs to Client); and 4-

8.4(c) (Misconduct; A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation).

WHEREFORE, The Florida Bar prays Respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.



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CERTIFICATE OF SERVICE

I certify that the Complaint of The Florida Bar has been Efiled with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida with a copy provided via email to Kevin P. Tynan, Respondent's Counsel, at ktynan@rtlawoffice.com; using the Efiling Portal and that a copy has been furnished by United States Mail via certified mail No. 7016 0750 0000 3623 6969, return receipt requested to Kevin P. Tynan, Respondent's Counsel, whose record bar address is Richardson & Tynan P.L.C., 8142 N. University Drive, Tamarac, Florida 33321-1708; and via email only to Thomas Allen Kroeger, Bar Counsel, tkroeger@flabar.org, on this 20th day of October, 2016.

Adria E. Quintela

ADRIA E. QUINTELA
Staff Counsel

**NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY
EMAIL ADDRESS**

PLEASE TAKE NOTICE that the trial counsel in this matter is Thomas Allen Kroeger, Bar Counsel, whose address, telephone number, primary and secondary email address are: The Florida Bar, Miami Branch Office, 444 Brickell Avenue, Rivergate Plaza, Suite M-100, Miami, Florida 33131-2404, (305) 377-4445; tkroeger@flabar.org and abowden@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Adria E. Quintela, Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323, aquintel@flabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES OF DISCIPLINE, EFFECTIVE MAY 20, 2004,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.